Journal of
the Socio-Political Thought of Islam
Vol. 3, No. 2, 2022

The jurisprudential approach to independent legal responsibility of States in the measure of rules of jurisprudence

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Received: 2022/04/25 ; **Revised:** 2022/05/17 ; **Accepted:** 2022/06/09 ; **Published online:** 2022/07/01

Abstract

Independence in responsibility is something that has been specified in different legal systems, with different titles and propositions, based on reason and fairness. According to this principle, the government or international organization is responsible for behavior that is considered a violation of their international obligations and attributed to them. On the other hand, a system of jurisprudential rules such as the minister's rule and its complementary rules (as the issue of this article), will include contributions to the development and advancement of the principle of independent responsibility. The necessity of the international responsibility of an independent state is one of the most important issues of international law in the contemporary era; Moreover, it has a close relationship with other areas of international law, especially the issue of international peace and security. therefore The legal development of a is a debate based on jurisprudence and its introduction to the field of international leads to the development of the guarantee of the implementation of international law. and it will be useful and valuable work for the government's international responsibility. Based on this, the purpose of this descriptive-analytical writing is to develop this legal institution contained in the United Nations International Law Commission by presenting the fruits of the ministerial jurisprudence and its complementary rules to the field of international law. To ensure the interests of small powers against big powers and to enrich and make international law more efficient, is with the help of Islamic thought. Among the results of this article, it is also possible to identify the principle of independent responsibility in Islamic teachings and its manifestation in the violation of unilateral and multilateral obligations about the two goals and objectives of "preparing the damages incurred" and "imposing illegitimate damages and Hatred" pointed out. The institution of sharing responsibility and relying on "necessity" and "pious destiny" in departure from the aforementioned principle is also one of the other analyses resulting from the rules of wizr, Jabb, ʿirq ẓālim, and other rules.

Keywords: wizr rule, International responsibility of the States, independent responsibility, Imami jurisprudence, succession of States.

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Publisher: Urwat al - Wuthqa International Academic Research Institute
https://www.jspt.ir/ **DOI:** https://doi.org/10.22034/jspt.2024.396109.1001

Introduction

International liability law is one of the main branches of general international law and in all other fields, This human knowledge can be effective. This area includes international legal rules and the resulting obligations are created following the commission of an international wrongful act or in other words the violation of primary obligations resulting from any of the formal sources of international law.

Thus, the obligations arising from the rules of international liability law are known as secondary obligations (Combacau and Alland, 1985: 81 and 82).

International refugee law, international humanitarian law, international human rights, international environmental law, international criminal law, international economic law, international law of the seas, and international air and space law. There are some areas where it is possible to exercise responsibility in connection with another action (http://www.sharesproject.nl/news).

The issue of this article is formulated in this way jurisprudence has a basic principle regarding international liability law, which is understood in line with independent responsibility, which in fact, expresses independence in international responsibility. Of course, this principle is older than the idea of independent responsibility of governments in international law. This basic rule of independent responsibility in jurisprudence is evaluated as the first jurisprudential rule (in terms of rank), in accordance with the principle of justice and fairness, and a flexible basis with exceptions. Of course, the scope of this principle is not limited to the field of legal responsibility and it can also be invoked in the criminal field; However, the issue of this article is the feasibility of proposing some jurisprudential rules in the field of responsibility and formulating the "system of independent responsibility of States" in international law based on the requirements and capacities of the main and supplementary jurisprudential rules, which are respectively: wizr, Jabb, acquired rights and the passing of time الحقُّ القـديم لا يُزيلـه شـيء (al-Haq al-qadim la yozilohu shai: Nothing destroys the existing right) and "ʿirq ẓālim".

Regarding the background of the research, there are extensive studies on these fields at the level of international law, but so far no study has been done on the shortcomings of international law and their solution by using the capacities of Imami jurisprudence. Explaining that, among the scientific writings, the writings of Setayeshpour and Haddadzadeh (2023), despite the mission focused on the comparative study of ministerial rule and the independent legal responsibility of governments, did not pay attention to the requirements of ministerial rule in the field of international law. It has not covered rules such as the rule of Jabb. As the current research method is not comparative and only takes the concept of "independent legal responsibility of States" from the field of

international law, it has focused on the purely jurisprudential examination of the jurisprudence rules of independent responsibility of States. Other writings have also focused on the jurisprudential examination of governments' responsibility, but from the point of view of jurisprudence rules, this writing has not been concerned with the independent responsibility of States; including a comparative study of the international responsibility of the state in Islam and international law (with an emphasis on Imami jurisprudence) (Hashemi Moghadam, 2017), the international responsibility of States and non-governmental organizations; Jurisprudential foundations and political challenges (Fahimi-Azad and others, 2023).

Based on this, the main issue of the present research is to study the jurisprudential rule of the Minister (individually and along with other complementary rules) and to deduce its various aspects in the field of international responsibility and to present it to the statement of independent responsibility in the findings of the United Nations Commission.

1. The concept of the independent responsibility of the state in international law

The International Law Commission from the very beginning of its activity in 1949, considered it necessary to compile the rules of international liability law[1]. The effort of this commission in the field of international responsibility finally led to the presentation of the final set of materials on international responsibility in 2001 and to the presentation and finalization of the set of materials on the responsibility of international organizations in 2011[2].

Both the first set, which did not appear as a convention on purpose, and the second set, which lacked binding power and only served as descriptions and interpretations that speed up and make the treaty-making process more technical, governments and International legal authorities (judicial and arbitration) have referred to them many times (A/71/80, 2016: 5 and 24).

Both sets of 2001 and 2011 articles of the International Law Commission are based on a fundamental principle with the content that only the perpetrator of an international criminal act is responsible for the act. In fact, in international liability law, the principle is to rely on the "independent" or "personal" responsibility of States and international organizations.

According to the principle of independent responsibility, the States or international organizations are responsible for behavior that is considered a

1. For the Analytical Guide to the Work of the International Law Commission see http://legal.un.org/ilc/guide/9_6.shtml
2. See Report of the International Law Commission, Sixty-sixth session Supplement No. 10. A/66/10, 2011, ch. V.

violation of their international obligations and is attributed to them (ARSIWA, 2001: 128; Crawford, 2013: 395).

This basic principle is included in Article 1 of the 2001 plan of the International Law Commission regarding the international responsibility of the State, and it is stipulated that "every internationally wrongful act of the State causes the international responsibility of that State". (ARIO, 2011: 80-81)

Of course, despite this principle, the International Law Commission also considers the responsibility of having "in connection with" another act - which can be the government international organization, or both, depending on the case. This is what is referred to as 'Derivative Liability'. In the plan of 2001, the Commission considered the three situations of 'Aid or Assistance', 'Direction and Control', and 'Coercion' in this set of materials, and in the plan of 2011, it added the status of 'Circumvention of International Obligation' to them.

The extent of secondary responsibility is unrelated to the number of victims (ARSIWA, 2001: 123). And what is important in this case is that more than one active actor is responsible. Of course, this multiplicity should not be confused with the violation of multilateral obligations (Crawford, 2013: 395). In this case, independent responsibility is applied and not secondary responsibility; Unless more than one government or international organization is involved in violating the same multilateral obligation.

Also, the concept of Derivative Liability, although it can be found in the pursuit of "common but different responsibility", should not be included in its conceptual territory. This principle, as a manifestation of the general principle of fairness in international law (CISDL, 2002: 1) is derived from the concept of the common heritage of humanity and refers to the common commitment of countries to protect the environment and not only ozone and climate (Stone, 2004: 276; Abdollahi and Moarrefy, 2010: 99).

Although this principle stipulates the Common responsibility of States in protecting the environment also also pays attention to the different existing situations and the role of each State in creating and expanding It also includes the ability of that state to prevent, reduce and eliminate it in the amounts of responsibility (CISDL, 2002: 1).

The shared responsibility project also examines cases where several actors (either activists or non-governmental actors) are involved in the occurrence of an international criminal act since sometimes violations of international obligations are carried out with the cooperation of international actors (Lanovoy, 2014: 134). But The Derivative Liability is only for the active subordinates of international law (States and international organizations) (d'Aspermont et. al., 2015:49). Based on this, the ratio of shared responsibility to Derivative Liability is absolute generality and peculiarity.

The possibility and extent of the connection between "Wizr's Rule" and "Independent Responsibility of States"

The present article, while dealing with the ministerial rule and its documents, tries to present the requirements of this rule in the points of silence held by the commission.

"Wazir" in the meaning of "carrying a heavy burden" ((Mustafawi, 1981, vol. 13: 95) and "sinning" (Fayyumi, 1997, Vol. 2: 657), and in the noble verses لِيَحْمِلُوا أَوْزَارَهُمْ كَامِلَةً يَوْمَ الْقِيَامَةِ (līaḥْmiluwā āūْzārahumْ kāmilaẗً: They must bear the burden of their sins on the Day of Judgment) (Nahl: 25) and also وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ (walā taziru wāziraẗٌ wizْra auḫْraiٰ: No sinner bears the burden of another's sin) (An'am: 164) Come. Some sources have referred to a weapon as a heavy burden (Tarihi, 1995, vol. 3: 510). In most sources, this rule is considered certain (Najafi, 1983, vol. 27: 34) and it means a heavy load of It is a sin that is hard for the sinner to bear (Qurtubi, 1984; Vol. 7: 102; Tabarsi, 1985, Vol. 7: 47). Also, according to the evidence of "self-cultivation" and "the personal nature of self-cultivation and the personal nature of receiving the results of this act", "wizr" in the 18th verse of the Blessed Surah Al-Fater can be considered as "sin".

1-1. Feasibility of discussing Wizr's jurisprudential rule in international law

Regardless of the relation of "sin" and "crime" to each other, in some other sources of this rule, the meaning of "wizr is considered to be" legal and worldly responsibility", in line with the present study. Another interpretation of this rule is personal responsibility. The narrator (Abu Dawud) narrates from a person named Abu Ramtha: I went with my father to the Messenger of God 6 The Prophet smiled and said that I resembled my father so much and my father swore to it. Then the Prophet said by reciting the verse وَلَا تَـزِرُ وَازِرَةٌ وِزْرَ أُخْـرَىٰ (walā taziru wāziraẗٌ wizْra auḫْraiٰ: No sinner bears the burden of another's sin), But know that he will not take responsibility for your crime and you cannot take responsibility for his crime (Zuheili, 1997, Vol. 8: p164).

Imam Sadiq also says: The wizr of The bloodshed and property and reputation shed, without diminishing the degree of the cruelty of the perpetrators of these atrocities, It is confirmed on the BaniIsrael and those who tolerate disbelief and oppression (Hawazi, 1994, V 3: p48).

In addition to narrative evidence, reason also considers punishment without reason to be cruel and ugly. Also, the jurists in many cases such as ruling on the children and property of a dhimmi who kills a Muslim (Shahid Thani, 1989: Vol. 10: 60), the non-permissibility of applying the حدّ (Hadd: A kind of Islamic punishment) on the bearer (Mohaqheqh Ardebili, 1982, Vol. 12: 420) or not

applying the Hadd on all witnesses in The rejection of some witnesses (Muntazeri, 1979: 55) and the acceptance of ولد الزنا (waladu al-zwinā: illegitimate child) testimony (Shahid Thani, 1992, Vol. 14: 223) refer to this rule.

The basis of this rule can be found in some fundamental Islamic propositions such as the principle of non-wilayat of individuals over each other. Based on this principle, no one has the right to seize another's affairs, unless the permission of such seizure is acceptable based on solid reasons (Kashif al-Ghita, 2001 vol. 1: 207). Therefore in any case where there is doubt in this province or its boundaries, it should not be followed (Mousavi Khalkhali, 2001: 237).

This meaning is the basis of the wizr; Because the removal of the wizr and the transfer of responsibility to others will require usurpation of the sovereignty and property of the country or other international legal entities, which is illegal and forbidden based on the principle of non-velayat.

According to the proposition of jurisprudential principles of "validity of the legal matter", as well as the paradigm of "identification and determination of the State in the ruling person and also the existence of historical records of "assumption of legal personality for the Baītu al-māl" based on the concentration and legal practice, it can be concluded that It is not prohibited to extend the rulings of individuals and individuals to States. Because there is no reason for restricting and withdrawing the wizr's rule to natural persons and withdrawing it from States. In short, this rule also has the requirement of citation in the field of international responsibility of States.

1-2. The extent of the influence of "wizr's rule" on the field of "independent responsibility of States"

wizr's rule has various effects and consequences in the field of international liability law; including in the area of succession of governments (in the sense of various States). It should be noted that this rule should be seen as the main basis of international liability law along with other liability rules. Also, مسئولیت تضامنی (Taḍāmuni: joint liability) and مسئولیت تضاممی (Taḍāmumi: multiple liability) can be applied as a supplement or exception to Wizr's rule.

1-2-1. The succession of States and the rule of wizr

How is the transfer of the obligations and responsibilities of the predecessor State (dūlat ğūr) to the next State (successor Islamic State)? Undoubtedly, according to the requirements of the rule of wizr and single legal personality, in case of homogeneity and succession of Islamic states (and only change of rulers), the international responsibility resulting from the actions of the previous ruler will remain on the responsibility of the next Islamic state.

However, regarding the heterogeneity of the government of the predecessor and the successor, it is necessary to first explain the criterion of جور (ğūr: fairness)

in governance. At the beginning of the Shia jurisprudence period and the beginning of the Kabir occultation, the juridical personality of the juridical government had a comprehensive, negative, rigid concept in the sense of "unauthorized government". But over time, the theory of "just performance" was also considered by some jurists (Ibn Tawoos, 1991, vol. 9: 8; Ibn Taqatqi, 1941: 19). Accordingly, when the government only claims social leadership and has no claims in spiritual matters, the condition of social justice (justice against oppression) will be sufficient.

Now, in fact, on the assumption of the authorization of the occupation and action of the wrongful State in some matters, will the statutory guarantee regarding these behaviors disappear, or will it be the responsibility of that State (even if the assumption of succession is fulfilled)? In other words, does the imposition of obligations on the Beit Al-Mal necessarily have to be done by the "just State" (the objectivity of the just State), or "the capture of the just State" also be valid and the successor government will be the successor in the implementation of the obligations of the predecessor government (Tariqit of just State)?

In the light of jurisprudence and a result-oriented approach in jurisprudence, regarding the title of "Imam" in the verses and traditions that confirm authority for the Imam (Hur Ameli, 1995, vol.22: 6; Koleni, 1986, vol.2: 272 and vol.1: 539), There are three possibilities:

The title of imam refers to a person who in practice is in charge of imamate, and this title has no subjectivity and authenticity.

The title of "Imam" should be a tall title. In other words, the reason why The holy lawgiver has delegated powers including the right to occupy the treasury, to this person is because of the management of the society.

The title of "Imam" has a restrictive status. That is, the titles of "imamate" and ولایت (wilāyat: Guardianship on the Islam) are matters for each of these powers, especially financial powers. Therefore, the owner of authority is the personality of the imam, which is interpreted as a legal personality.

Now, if the first and second possibilities are based, the Imam's wealth will go to the Imam's heir (the next government) in terms of inheritance. Because this is the requirement of society management without justice divine appointment or Shari'a permission in the State.

But Based on the third possibility, it will not be inherited and will be transferred to the Imam and the next guardian of the Islamic society.

Therefore, in the first and second possibility, if the بیت‌المال (Treasury :Baītu al-māl) is spent on non-consumables and the interests of Muslims, and in the third possibility, the State of Jour (and not the successor) will be the guarantor. For example, the State spends revenues from oil resources in line with militant

and war-mongering goals. Such possession, in any of the above three possibilities, will change the nature to "Odious Debts".

This debt includes three categories war debt (expenditures received from other countries to cover war expenses), subjugation debt (international loans to suppress revolutions liberating the people and expanding the colonial domain of the government), and regime debt (debt imposed to strengthen the regime's authoritarian rule.

If the existence of three conditions debt will be unclaimable from the successor government:

the first condition is that the contract was concluded without the will and consent of the people and without the existence of a legitimate government that complies with all legal procedures.

The second is that the debt has not had any tangible benefits for the people.

Thirdly, the creditors were aware of these two facts or could have been aware of them (Adams, 2004: 120).

The principle of continuity of responsibility, in the case of "spending financial resources in line with public interests", is established and confirmed in religious teachings by Imam Ali7 In a sermon on the second day of the reign, he said: "O people... know that the lands that Uthman gave to his relatives and the properties that he gave to this and that will all be returned to the treasury. Nothing indeed invalidates the right. By God, if I find any of those properties that have gone to the dowry of women or the price of maidservants, I will return it (Nahj al-Balagheh, sermon 15).

But in the case of spending the Baītu al-māl in line with the public interest, what will be the mandatory and conditional ruling of the predecessor state's seizure of the Baīt al-māl in the assumption of the succession of States?

In this regard, several aspects and opinions can be discussed:

Some jurists, by establishing a connection between the theory of "permission to receive gifts and awards from the unjust sultan" by Muslims (Shaheed Thani, 1992; Vol. 3, 142; Najafi, 1983, Vol. 22, p. 172) with the questionable assumption, believe in the "non-guarantee of the government" They have predecessors. Explaining that the occupation of Muslims is considered permissible and enforceable provided that it is in line with public interests; such as paying land tribute and mogasemeh or receiving a gift from the Sultan Jaer. Analyzing this issue in the framework of (مقاصد الشريعة Maqhased of the Shari'ah: The goals of Sharia law), it can be considered in a more general way, "any occupation whose interests are ultimately for the benefit of Muslims" has the same ruling. These scholars have considered the illegal State's seizure in the Baītu al-māl, conclusion of contracts, and generation of international debt (even under the assumption of respecting the public interests of Muslims) as haram,

but they do not consider this State as a guarantor. This means that this State is a غاصب (usurper: ġāṣib), therefore, it will be forbidden to dispose of the Baītu al-māl (Tabatabai Yazdi, 2001, 1:43).

From a rational point of view, in these credit affairs, it is possible to have a ruling difference on both sides of the same matter. Also, the influence of such occupations on the rights of Muslims is due to the "facilitation of the law for the oppressed Shiites throughout history" and this facilitation cannot be transferred to the law. Especially considering all the narrations indicating that governance is the right of the imams, therefore, the seizure of the ġāṣib's government does not absolve the government from liability (Rohani, 1991, Vol 15: 66).

The permission of the Shariah to influence the transaction in the Muslim's right is the permission of the owner and guardian. In this view, the State has snooped on the property of the Muslims, and then with the consent of the Muslims when they receive the benefits (expressly or implicitly), this transaction is enforced. Therefore, although there is a duty of respect for the predecessor state, it is not currently responsible for it. Therefore, although taking possession of the predecessor's State is still forbidden, it will not be legally responsible for it and will be exempt from liability. The problem with this attitude is that the above permission is a clearance from the Shariah and the owner's permission has no effect so that the discussion can be analyzed in the form of a prying sale. Also, in Shariah ترخیص (Tarkhith: permits), one should be satisfied with the same amount of permission and not expand it (Ruhani, 1991, 15: 67).

The permission to receive gifts and transactions on tribute (ẖarāğ ārāḍi wa muqāsimih[1]) means Establishing a Velayah and a kind of authority resulting from the delegation of the imam. Therefore, in this hypothesis, the sultan is liable for usurping the caliphate, but he is permitted in these occupations and there is no guarantee for him (http://www.ostadmadadi.ir/persian/lesson/12323/).

Seizure is not valid in any way and all the seizures will remain in the property of the owners and the property of the Baītu al-māl. Although it is permissible for the people to enjoy the benefits of these occupations, the occupation of the State is usurping and guaranteed (http://www.ostadmadadi.ir/persian/lesson/12323/).

It seems that the promise in detail is the correct theory. The sense that, although mediation is illegal, the custom in these cases establishes the connection between "influence of possession" and "acquittal".

Because in the end, the Baītu al-māl has been spent in its place and also, the property of the baītu al-māl (: Treasury) belongs to the Ummah, which is in the

1. Both words mean a tax on the land, but ẖarāğ is an amount of property from the non-product of the land, but the meaning of (muqāsimih) is a share of the land's produce.

hands of the ruler in line with the governmental duties and public interests of Muslims (Mohaqq Sani, 1987, 1: 402). The concerns of jurisprudence regarding the possession of property are actually due to sensitivity to the final result and not spending property in other places or wasting it. This is why, even in the case of the absence of a ruling jurist, the guardianship is placed in the hands of the believers, and after that in other levels (people). Of course, in the opposite case, the legal responsibility will not be transferred to the successor state. Because ʿirq ẓālim has no respect. In fact, in this assumption, "the rule of ʿirq ẓālim[1]" will become a complementary rule of "the rule of the wizr". Also be mentioned that regarding the implementation of Wizr's rule in the recent assumption, there may be some losses towards the States of the parties, remain without provision and compensation. But it seems that contrary to the rule of jurisprudence that places uncompensated losses on Baītu al-māl (Mamqani, 1971: 337), these losses should be known as the actions of the States against them, and the Baītu al-māl should be considered as having no responsibility. In addition, the rule of wear does not reject all damages caused by the actions of others. Such as the qiṣāṣ (revenge) of a murderer or the imprisonment of a criminal whose children are also harmed. Otherwise, it would cause most of the punishments to be suspended (Makaram Shirazi, 2004: 161).

But does the ruling apply only to the sultan who claims to be the guardian of all Muslims, or does it include others such as the Shiite or infidel sultans? (Mousavi Khomeini, 1994, vol. 1: 503). Also, does the above ruling only apply to the state that has taken over the country, or does it also include the interim government and the rebel government that has taken control of a region of the country? There are viewpoints (of course with special considerations) to generalize the verdict to all the situations raised, and its documentation is rules like the rule of our va Maharaj, and the generality of narrations (Hur Ameli, 1988, vol. 13: 261; see: Rouhani, 1991, vol. 15: 80 and 81).

2. Joint and Multiple liability of the states: supplement and exception to the ministerial rule.

According to the nature of the rule of التلازم بين النماء و الدرک (āltalāzumu bayna ālnamāʾi wa āldara: The relationship between benefits and damages), which comes with interpretations such as من له الغنم فعليه الغرم (man lahu ālġunmu faʿalayhi ālġurmu: anyone who has gain and benefit will be responsible for the loss and grief as well) (Araki, 1994, Vol. 1: 191), the state of the successor (even the divided governments due to the collapse of the predecessor state), according to

1. See Sunan Abi Dawud 3: 178/3073 and Helli, 1992, Vol. 16: 92. The explanation of the principles and function of this rule can be seen in this article: Tavallaie and Farzaneh, 2013: 99-120.

the share accepted from the Bait-ul-Mal (Plissier, 1961: 928), must be a legitimate debt. pay the previous government; Because the basis and reason of this guarantee is the necessity of benefiting from the benefits (Bahr ul-Uloom, 1982, Vol. 4: 231).

Substitutionary responsibility in cases such as the acceptance of the (Stabilization Clause) (meaning the condition that the change of states does not affect the contractual process of the countries) on the successor government is the provision of the rule of the wizr and sometimes in line with the text of the "rule of the wizr.

Among the cases where the condition of lack of supervision in the execution of the obligation is inferred from the current evidence; such as human rights treaties. The lack of stewardship and as a result the binding of these treaties for the predecessor States is due to the special characteristics of these treaties. Among other things, the role of countries in the field of human rights standards is only a declaration role[1].

According to the rules of responsibility in Islamic international law, if a State buys or receives the usurped property (including national or natural treasures) from the usurping state, that state is also a guarantor and according to the rules of responsibility, the owner state can refer to the seller's state and the customer's state and demand the same and in case of its loss, the same or the price of the property as well as its benefits in any case. Therefore, in the relationship between the owners and the buyer state, the latter person is ġāṣib (The usurper), and for this reason, there is no difference between a buyer who is aware of usurpation and a customer who is ignorant of usurpation. Mohagheq Ardabili doubted the possibility of referring to the ignorant and proud ġāṣib (see: Mohagheq Ardabili, vol 10: 520).

Liability is a joint liability when several independent debts have arisen from different sources and only one payment is payable to the obligee. On the one hand, there is no more demand, but there is a separate debt on the part of the obligees (Katouzian, 1995: 202).

Contrary to the existence of "a common religion" under the responsibility of "multiple responsible parties" in joint responsibility, in multiple responsibilities there are "multiple debts with the same subject" (multiple sources of debt and same debt but similarity of debt).

Also, in تضـامنی (Taḍāmuni: multiple liabilities), there is no relationship between the officials unless the true debt is with one of them. In addition to the verdict or contract, breaking the covenant or committing a harmful act can also be the source of multiple liability

1. Judge Tanaka in the South West Africa Case, ICJ Reports, 1960, p. 297.

For example, if two States dump waste materials into the sea at the same time, and of course each of these materials alone can pollute the water, and this happens and damage is caused to a third party, each of them alone is responsible for compensating the third party's total damages and none of them can claim that without him A loss would occur (the same side as the wears rule). Because the illogical and' unacceptable result of this statement is not compensating for the damage caused to the victim. Rulings similar to this perception can be seen in various فتـاوا (fatāwā: The opinion of jurists) (see: Mousavi Khomeini, 1994, vol. 2: 191).

In this proposed order, States based on "international or regional cooperation" in addition to the benefits they get as a result of against against unintentional damages caused by some states, other States guarantee the reasonableness of damages damages. Especially such an order is taken by the so-called developed countries towards the countries that have the title of developing. This order is evaluated according to the rule of wear.

Therefore, in case of damages, the responsibility of the original country is first, and Aqhele tries to get the responsibility of that country to be acquitted. The spirit and text of Shariah rules and regulations وَ تَعـاوَنُوا عَلَـى الْبِـرِّ (Taʿāwanuwā ʿala al-birw: And (always) cooperate in the way of goodness) implies the need to solve the problems of individuals and even societies through cooperation and cooperation.

3. The jurisprudential rule of "job" and the independent international responsibility of governments.

"Jabb" in the word means to cut off, to cut, or to leave (Ibn Athir, 1947, Vo1 1. 233).

Qa'idah Jabb "has its roots in the Prophet Hadith "الاسـلامُ يجُـبُّ مـا قبلَـه ālislāmu yağubuw mā qablah: Islam removes the previous situation and forgives" (Ibn Abi Jumhor, 1982, Vo1. 2: 54).

That is, Islam takes away what was in the time of disbelief, and the time of disbelief It does not connect a person to the time after his conversion to Islam, but rather cuts it off and does not consider it. (Ibn Zohra, 1996: 202[1]).

This ruling/Islamic rule indicates a kind of peace and tolerance and instills peace to those who intend to enter the religion of Islam. This is the rule Overseeing a part of Sharia rulings It is about the new Muslims who entered the Jirga of Islam out of disbelief. Based on that Due to the grace of the merciful God and to encourage and persuade the unbelievers to Islam, the punishments for some violations, crimes, and rights of the era of disbelief have been removed

1. This rule is stated in some Sunni sources as follows: "Al-Islam Yahdem Ma Kan Qibla, Hijra, Tahdem Ma Kan Qibla, Hajj Yahdem Ma Kan Qibla" (Shokani, 1973, vol 1: 379).

and are not charged. The ruling of obligatory qadha of unperformed worship (period of disbelief) has been removed from such people. This is where it is said that Islam considers their past as nothing[1].

Assuming the possibility and correctness of the implementation of the Jabb rule at international law, after the change of a state or the nature of a state from infidel to an Islamic state and the status of the "state about international obligations and responsibilities" based on the wizr's rule, there are considerations.

Is the responsibility of the Islamic state due to obligations and damages, or has the rule of compensation been negated, and as a result, the burden of losses due to non-fulfillment of obligations will be on the shoulders of the previous government? It seems that Islam absolutely does not prevent the realization of criminal responsibility. It means that the faith of the individual /state should not be due to profit, but should be true. If a state is disappointed and finds itself in trouble and converts to Islam to escape from criminal responsibility, its faith and Islam are not It will be useful. Verse 85 of Surah Ghafir expresses this criterion:

فَلَمْ يَكُ يَنْفَعُهُمْ إِيمَانُهُمْ لَمَّا رَأَوْا بَأْسَنَا ۖ سُنَّتَ اللَّهِ الَّتِي قَدْ خَلَتْ فِي عِبَادِهِ ۖ وَخَسِرَ هُنَالِكَ الْكَافِرُونَ

Their [sudden] faith did not benefit them once they saw Our might; [such is] God's practice which He has already used with His servants. The disbelievers lost out right there!".

as If a disbeliever becomes a Muslim out of fear of the implementation of Hadd, such conversion to Islam does not prevent the implementation of Hadd (Ansari, 1997, vol. 2: 558). But in the case of the state's civil guarantee, including about the lost property and damages, despite some disagreements regarding the non-guarantee of the state (Shaheed Avval, 1996, vol. 2: 43). it seems that the Islamic State is the absolute guarantor. This means that whether this property was lost during war or peace, whether it was lost from the Muslim state or the infidel state, it must be compensated On the one hand, the fame of this opinion can be obtained from jurisprudential texts[2].

On the other hand, the gratefulness of the Jabb rule does not mean that harm should be done to the respectable property of others (either the Islamic state or the infidel state).

Regarding the contractual obligations of the new Islamic state, if the conclusion of a contract with an infidel state at the time of its disbelief can be considered correct, considering the order and subordination of the rule on the nullity of the contract, there will be no possibility for the inclusion of the rule of Jabb.

1. This article provides useful information about the rule of Jabb: Meghari, Mohammad Reza, 2016, Volume 3 pp. 109- 137.
2. Among other things, see Makarem Shirazi, Al-Qasas al-Fiqhiyyah 1990, v 2: 183.

The opinion of some jurists is also that the marriage of a non-believer is valid in a state of disbelief (Najafi, 1983, vol. 36: 416). However, according to the promise of invalidity, considering that the application of the rule requires proof, it should be believed in the acceptance of the survival of the necessity of fulfilling the contractual obligations استصحاب (istiṣḥāb: the acceptance) of a fixed ruling in the case of disbelief). As well as The application and generality of the rule of أَوفوا بِالعُقودِ "āūْfuwā biālْʿuqūd: Keep your contracts" can also be possible. Also, the gratitude of the rule of Jab does not reflect harm to others. In addition to this, the rule of Jabb does not cover rational rules and commonalities between past beliefs and Islam, and it does not apply in these cases (Makaram Shirazi, 1993, vol. 2: 182).

Still, the gratitude resulting from it should not lead to harm to others. Converting to Islam is not an excuse to escape obligations.

Conclusion

The principle of independent Liability is the fundamental rational and necessary principle of justice in applying responsibility both in international responsibility law and in domestic systems. The wizr's rule also has a rational and Shariah basis. These two, with two different titles, are rooted in a rational proposition. The proposition of independence in responsibility is, after all, a proposition that has emerged and developed in various matters and aspects as required by the situation; Whether in violation of unilateral obligations; Both in bilateral contractual situations and in violation of multilateral obligations. As it has been manifested in the case of criminal liability and other times in the case of civil liability.

At the same time, some requirements in Wizr's rule have been silenced or rejected differently in the proposition of independent responsibility; Among other things, as the most basic rule in international liability law, in terms of the scope of inclusion and exclusion, the wizard's rule pursues the two goals of "preparing the damages incurred" and "imposing illegitimate damages and odious debts".

Both destinations are so considered in Wizr's rule that first, no harm is left uncompensated, and at the same time, debt contrary to the general interests of a nation is not imposed on them. Also, various situations and their predictability can affect the principle of responsibility and its extent under the title of action of the affected state against itself.

Accordingly, the reason for the existence of limited cases of vicarious liability is the protection of international public interests. Of course, in cases of departure from the principle and terms of implementation and interpretation, it should be sufficient "as much as necessary" and "as much as is certain". Another

point is that the supplementary exceptions to the wizr" rule with different titles spread the responsibility to other States as well. Among other things, the rules of subordination and participation in individual responsibility are also accepted in the field of international law and international responsibility, and the Islamic state, along with other States, must pay for the damages (loss sharing). The literature on international responsibility law refers to it as shared responsibility. All of these are a good confirmation that Islam, before international law, has dealt with the dimensions of independent responsibility more completely. Through the International Law Commission and the United Nations General Assembly, Islamic propositions can have a stronger role in the process of gradual development of international law. This causes international law to be strengthened and leads to the expansion of the scope of application of Islamic standards in the international scope.

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