International Liability for Environmental Damage

Omar Al-Okour*, Mohammed M. Al-Maagbeh**, and Haitham Al-Adaylah***

Abstract

It is well established that environmental problems have characteristics that distinguish them from others in terms of their diversity and relationship to each other, or in terms of the extent of the damage caused, which are difficult to estimate or even to know their impact, as well as other legal problems relating to the identification of the parties to the dispute or the court competent to hear such cases, or those legal rules applicable to international environmental disputes.

Perhaps the concern for the environment and its issues, including (international responsibility for harm and its convening) was not a topic raised at the level of international legal research until the beginning of the last third of the twentieth century, and even the term environment did not appear in the international legal presence clearly until the preparatory stage for the United Nations Conference on the Human Environment held in Stockholm in 1972, hence the fact that real international interest in the environment began to be an important subject in international law, which led to this concern. On national and international legislation on the need to establish legal rules in protecting the environment and repairing the damage caused by others.

If it is easy to establish a system of responsibility in domestic law, and to determine whether the nature of the environment is so simple in international law, because of the absence of a supreme independent authority over States, it has a legitimate authority to determine the system of responsibility, enforce respect for international law, and it becomes more complicated when it comes to the rules of international responsibility for environmental damage, because of the novelty of the environment in the international legal arena, and the characteristics of the environment, which consist of a complex set of elements, as well as the damage done to it. He is still in the dark and the precise legal determination of what it is. International jurisprudence and jurisprudence have unanimously agreed on the conditions for international responsibility in order to be contrary to the rules of international law, whether in its positive or negative capacity, and to attribute that violation to a person of international law, and as a result the damage is done by that violation, to the extent to which the question is applied in establishing international responsibility for environmental damage, and how adequate it is.

Keywords: Environment, Liability, Responsibility, Peremptory norms, Obligations.

© All rights reserved to Jerash University 2021.
* Associate Professor, Faculty of Law, The University of Jordan, Amman, Jordan. E-mail: o.okour@ju.edu.jo
* Assistant Professor, Faculty of Law, The University of Jordan, Amman, Jordan. E-mail: m.faleh@ju.edu.jo
* Ministry of Environment, Amman, Jordan. E-mail: m.faleh@ju.edu.jo
المؤلفة القانونية الدولية عن الأضرار البيئية

عمر العكورة، أستاذ مشارك، كلية الحقوق، الجامعة الأردنية، الأردن.
محمد محمود معاقبة، أستاذ مساعد، كلية الحقوق، الجامعة الأردنية، الأردن.
هيثم العضيلة، وزارة البيئة، الأردن.

ملخص

من الالتباس أن للمشكلات البيئية خصائص تميزها عن غيرها من حيث تنوعها وعلاتها ببعضها البعض، أو من حيث مدى الضرر الناجم الذي يصعب تقديره أو حتى معرفة تأثيره كالمشكلات القانونية الأخرى المتعلقة بتحديد أطراف النزاع أو المحكمة المختصة للنظر في مثل هذه القضايا، أو تلك القواعد القانونية المتعلقة بالمنازعات البيئية الدولية، ولعل الاهتمام بالبيئة وقضاياها ومنها (المؤلفة الدولية عن الضرر) لم يكن موضوعاً مطروحاً على مستوى البحث القانوني الدولي حتى بداية القرن الأخير من القرن العشرين وبتحديده 1972. ومن هنا بدأ الاهتمام الدولي الحقيقي بالبيئة وأصبح موضوعاً مهماً في القانون الدولي، وهذا أدى إلى القلق في التشريعات الوطنية والدولية حول الحاجة إلى وضع قواعد قانونية لحماية البيئة وإصلاح الأضرار التي يسببها الآخرون. وإذا كان يسهل إنشاء نظام المسؤولية في القانون المحلي، وتحديد ما إذا كانت طبيعة البيئة هذه البداية في القانون الدولي، بسبب عدم وجود سلطة عليا مستقلة على الدواد، فإن لها سلطة شرعية لتحديد نظام المسؤولية. يفرض احترام القانون الدولي، ويصبح أكثر تعقيدًا عندما يتعلق الأمر بقواعد المسؤولية الدولية عن الأضرار البيئية، بسبب حداثة البيئة في الساحة القانونية الدولية. وخصائص البيئة التي تتكون من مجموعة معقدة من العناصر، وكذلك الأضرار التي تحق بها.

الكلمات المفتاحية: المسؤولية القانونية، المسؤولية، القواعد القطعية، الالتزامات.
Introduction:

The rules of international responsibility have become complementary to all other rules of international law, and by establishing the cooperation of international units in establishing a peace based on law, responsibility is an indispensable deterrent to the right, and every international right is matched by a responsibility that protects it. (1) This is precisely what was approved by the 1927 International Law Society in Lausanne, Switzerland, when it stated that the State was responsible for damages to others as a result of its actions, or disregarded by a constitutional, legislative, administrative or judicial authority, contrary to its international obligations. (2)

The first requirement: to commit an act contrary to the rules of public international law or international environmental law.

Because of the principles and goals of the United Nations organization is to establish international peace and security to achieve the main goals contained in its charter, which includes multiple mechanisms that allow the possibility of achieving this goal (3) according to what is stipulated in Article 1 of Chapter One of the Charter of the United Nations, (4) The rules of international law and what it subdivides from or from it, is a duty of all recognized international law persons, and any violation of one of these persons, whether positive or negative behavior, lawful or unlawful, should not violate the rules of international law. Therefore, international responsibility is based on any act contrary to a rule of international law (5) or the rules of international environmental law, (6) and this international action involves two elements, the first being a personal element based on positive or negative behavior attributed to a person of international law, and the objective element that is based on the violation of international obligations, through which international responsibility is generated, whatever the source of such breach, whether it is a written or customary international legal rule that States have traditionally followed. (7)

What is meant by binding international legal rules, (8) and the failure to comply with them which entails raising and establishing international responsibility in the field of international law, (as stipulated in Article Fifty Three of the Vienna Convention on the Law of Treaties of 1969 (9), which settled the debate about the concept of peremptory international rules, by its text. "The treaty is absolutely null and void, if the time of its conclusion is contrary to the rules of international law, and for the purposes of this Convention it is considered a rule of general international law, a rule accepted and recognized by the international community as a whole, as a rule that shall not be violated, and cannot be amended, except by a subsequent rule of public international law of its own character". (10) As article 64 of the same treaty states: "If a new rule of
public international law emerges, any existing treaty contrary to this rule becomes invalid and ends."

This was not absent from the consultations of the International Law Commission while describing the articles of the draft state responsibility, as its violation constituted a serious violation of the rules of international law.

The fact that the draft articles on international responsibility addressed this issue when examining international crimes and countermeasures, as the draft mentioned a number of these rules considering that their violation represents an international crime, as a serious violation of an international obligation of fundamental importance for the maintenance of international peace and security, such as the obligation to prohibit aggression or, guaranteeing the rights of peoples to self-determination, or a serious violation of an international commitment of fundamental importance for the protection of the human environment, and its preservation as crises prohibiting the serious contamination of air and seas, all of this constitutes an international crime in its essence in violation of a peremptory rule of general international law, and it is not permissible to agree Otherwise.

On the other hand, there is a doctrinal view that denies the existence of a congruence between public order and peremptory norms in international law where it sees this trend, that the rules of public order and peremptory norms are two different things or concepts, if all the rules of public order are peremptory norms, but not all peremptory norms are necessarily The rules of a public order, the rules that require formal procedures in some behaviors are originally jus cogens and not the rules of a general system, and the jurist (Squillb) believes that despite the close relationship between the jus cogens and the public order, the two concepts do not exactly coincide, so if the system The year In light of the various legal systems found to enable the judge to exert ijtihad in a conflict that has no judgment in what is in his hands of the means, the general system is ambiguous and relativistic from one legal system to another, while the jus cogens are clear and specific as it contains all the elements of the legal rule.

Referring to the draft articles of international liability for illegal acts adopted in 2001, articles (2, 12, 14, 15, 26) have talked about breaching the international obligation, its time span and compliance with the rules, as these articles must be linked together to clarify The full picture of the concept of breaching international commitment as a prerequisite for establishing international responsibility, and compliance with peremptory norms that violate international responsibility.
Referring to article two in the second paragraph, it states: “The state commits an internationally illegal act if the act constitutes a breach of an international obligation on the state.” (14)

This breach extends to both treaty and non-treaty obligations, as indicated by the international judicial rulings, whether the International Court of Justice in its ruling in the Chorizo factory case, when it stated the words "breach of obligation", or as the International Court explicitly referred to This phrase in the (Renault Warrior) case by saying "that is, a violation by a state of any obligation." (15) In international law, I often consider breaching an obligation equal to behavior that is incompatible with the rights of others, meaning that there are no international obligations for a person of international law without To be met by an international right of a person or other persons of the international community as a whole, and therefore the international responsibility does not arise from the conduct of a state ignoring its obligations except in the event of harm to another country, but the necessity of the existence of such elements depends on the content of the primary obligation,

There is no general rule in this regard, for example, the obligation under a treaty to issue a unified law is violated when no such law is issued, but to know whether a specific obligation is violated by the failure of the state responsible for actually doing, or whether another event must occur to occur The violation depends on the content and interpretation of the initial obligation and cannot be determined in theory. (16) Rather, its application to the responsible state in the specific case, and reference to the obligation is limited under international law and not the domestic law referred to in Article Three of these articles.

As for Article Twelve, it stipulated a type of breach of an international obligation by stipulating that “the State violates an international obligation whenever the act issued by it does not conform to what is required of it by this obligation regardless of the origin and nature of the obligation,” (17) This article is considered a continuation of the aforementioned second Article As the international responsibility of a country arises from its breach of any international obligation on that state, it must first determine the intended meaning of (breach of the international obligation) which is the purpose of the second article, which depends on knowing whether it actually occurred in violation of the international obligation, and the time that It occurred in it, and on the conditions of the obligation itself, and on its interpretation and application, taking into account the purpose and purpose of it and the facts of the case, and therefore any breach of an international obligation occurs whenever the act is not identical to what is required by that obligation regardless of the origin of the obligation, whether it is a customary rule of law International law, or a treaty, or a general principle of international law, and the international
obligation may arise from the provisions of a treaty, or from a ruling issued to adjudicate a dispute between two states by the international judiciary, and this is what the phrase refers to regardless of the origin of the It is obligatory and character in the same twelfth article mentioned, and this is what distinguishes the rules of general international law, as it does not distinguish in the system of international responsibility for any violation of any written or customary legal rule, which was confirmed by the arbitration panel in the case (Renault) "that it does not There is a distinction in the field of international law between liability arising from a contract and liability based on an offense ”(18).

Accordingly, international responsibility arises when breaching bilateral or multilateral obligations or the international community as a whole, this system is a comprehensive system in its scope, general in its nature, flexible in its application, The basic principles of international law are not based on any particular source of law or any specific law-making procedure, which is also confirmed by Article 53 of the Vienna Convention on the Law of Treaties of 1969 (referred to earlier), the peremptory rule of public international law is the rule accepted and recognized in the international community as a whole, as a rule that is not allowed to derogate from, And can only be changed by a later base of the same strength and character. Article twelve also indicated that a breach of an international obligation occurs whenever the act is not identical to what the obligation requires "regardless of its nature" and there are different classifications of international obligations, for example, a distinction is made between obligations related to behavior and those related to a result, and this distinction may help On assessing whether a violation has occurred. (19)

As for Article Fourteen of the Draft Articles of International Responsibility, it stipulated the time span for breaching the international obligation, when it indicated:

"- The state's breach of an international obligation occurs with an act that is not of a continuing nature at the time the act is performed, even if its effects continue,

- The state's breach of an international obligation extends to an act of a continuing nature throughout the period of the continuation of the act, and its survival is not in conformity with the international obligation.

- A breach of an international obligation occurs, which requires the state to prevent a specific event when this event occurs and the breach extends throughout the period of the event's continuity and remains incompatible with that obligation. (20)

Accordingly, the effects of the breach of the international obligation depend on the commitment that was breached and the duration of this breach, for
example the arbitration in the (Renault) case included the failure of France to detain two agents on the French island of Howe in the Pacific Ocean for a period of three years, as required by the agreement between France And New Zealand, where the arbitration court noted, "By applying this classification to this case, the violation of not returning the agents to (HAW) was not only a physical violation, but also a continuing one, and this classification is not a purely theoretical classification but has practical implications, since the severity of the violation Prolonging its duration must have a significant impact in determining the appropriate amount of reparation for this violation. (21)

Thus, the behavior that begins earlier and which constitutes a breach at that time, can continue and lead to the emergence of a continuous breach in the present, the nature of the continuation can have legal significance for various purposes including the establishment of international responsibility.

As for the time dimensions of a specific category of breaches of international obligations referred to in in the third paragraph of Article Fourteen refers to a breach of obligations to prevent a particular event, where the obligations to prevent a particular event are interpreted as obligations to make the utmost efforts to prevent such an event, requiring States to take all reasonable and necessary measures to prevent it, for example, the obligation to prevent cross-border damage through air pollution continues if the emissions of polluting air continue gradually, and the breach may gradually worsen. As a result of not being prevented.

As for Article (15) of the approved liability draft articles of responsibility, it stipulated that the breach by committing a complex act stipulated that “the breach of an international obligation occurs through a series of specific acts or omissions in its entirety as unlawful at the time of the act or omission, which, if taken with Other acts or omissions, sufficient to constitute the unlawful act, and in such a case, the breach extends throughout the entire period that begins with the first acts or omissions that make up the chain, and continues as long as such acts are repeated or Omissions remain unmatched by international commitment."

The complex acts covered by Article 15 are limited to cases of breach of obligations that occur through a set of actions, not through individual acts as such, in other words, they focus on a series of acts or omissions defined in their entirety as unlawful. Examples include obligations related to genocide, apartheid, crimes against humanity, systematic acts of racial discrimination, systematic acts of discrimination prohibited by a trade agreement, etc. Some of the most dangerous acts of illicit conduct in international law are defined in terms of the complex nature of such acts. The importance of these obligations in international law. In the case of crimes against humanity, a complex act is
considered to be a violation independent of the individual human rights violations that compose it. (22)

Concerning Article 26 regarding compliance with the peremptory norms, it stipulated that “nothing in this chapter denies the character of unlawfulness of any act of the state that is not consistent with an obligation arising under a peremptory rule of general international law” (23). Consequently, if there is a clear contradiction between fundamental obligations, one of which is on the state directly according to a peremptory rule of general international law, then the precedence of this obligation will be, for example, it is a conflict between an obligation stemming from a treaty and a peremptory rule, the latter is obligatory and that the breach of it results in the obligation and the establishment of International responsibility.

This is what the International Court of Justice affirmed in its 1970 ruling in the case of the Barcelona Energy and Lighting Company, where it said, "These obligations derive not only from contemporary international rules prohibiting acts of aggression and genocide, but also from principles and rules relating to fundamental human rights, but rather that Some of these rights have become part of international norms." (24)

One of the rules that the researcher come to call is the rules of command, and perhaps the most prominent development in this matter is the association of a significant number of these rules with the themes of international peace and security and human rights, which means that the rules are linked to the idea of international public order, which in its presence reflects the set of considerations, principles and fundamental values of the economic, social and political nature prevailing in the international community, so that no legal system can be talked about if these values are not respected, through their formalization in rules that it is not permissible to be violated. Therefore, this is in line with the development of the various branches of international law, particularly international human rights law, and international environmental law, which sets new rules in the international community, which in turn arranges obligations to all, thus declaring the birth of the term rules, which arrange obligations to all in such a way that they often interfere with the concept of international legal rules.

Based on the foregoing, any legitimate or illegal international action violates the rules of international environmental law, it entails international responsibility for whoever did it and to any previous theory formulated for what the declaration of responsibility is whether the fault is the basis for raising it, or illegal action, or what resulted from The dangerous act, obligated to the perpetrator of international responsibility. Among the cases in which international responsibility arises for acts that violate an international obligation
in the field of environmental issues, they are themselves derived from the rules
of general international law related to its sources, whether they are contractual or
custody rules concluded by states in the environmental field and imposed on
persons of international law with the obligations contained therein to achieve
protection The absolute environment, (25) or the source violates the general
principles of law established by Article 38 of the Statute of the International
Court of Justice. (26)

On the whole idea of general legal principles, they are those general and
fundamental rules that dominate legal systems, and from which other rules
derive, which come into effect in the form of custom or legislation. (27) Within
the framework of international law, general principles mean the set of general
rules derived from regulations Interior, which is applied in general international
law as standard, interpretive and procedural rules during the international
judiciary performing its judicial function. (28) These rules are shared by the
various legal systems of states as principles derived from the idea of natural law
and the spirit of justiceand they have a general characteristic that most countries
of the world share in their legislation Patriotism, which extended to govern
international relations and resolving disputes between persons of international
law, because of the goals it carries to achieve peace, justice and equality of
rights, and among the most prominent of these norms that are accepted and
accepted by the international community, such as the rule of non-abuse of the
use of the right, the rule of good neighborliness, and the principle of good
The intention to fulfill international obligations, the principle of the obligation to
compensate for each violation of any international obligation, the principle of
the contractor when contracting it, and many other rules and principles It is
permissible to apply in the field of relations and international law, and it follows
that a violation by a person of international law of a rule of international public
and environmental law, which means that he does not fulfill his international
obligations to preserve the environment, with which he must be responsible for
those damages that result from such breaching work. For example, if the state,
one of its agencies, or its individuals undertakes actions that would introduce
materials or energy into the environment that would result in harm to the
environment and human health, or spoil the natural properties of the
environmental components of water, air, and soil, or if it is proven negligence or
negligence by the state to take the necessary and appropriate measures to prevent
those Damage, or the state has not taken due care to prevent or combat the
pollution caused by it or one of the natural or legal persons within its territory,
which entails all of this international responsibility for the environmental
damage caused by it.
The second requirement: assigning harmful work to the environment to the state or a person in international law.

The state is no longer the lone entity which represents international law, as other entities have the possibility of charging them as a part of international law, whose circle has expanded to accommodate them such as international organizations, (29) and even ordinary individuals, who have become addressed under the rules of international law as persons who apply to them. The rules entail their international responsibility in the event of a breach of their international obligations under the concept of contemporary international law. As stipulated in Article 4 of the draft articles on the responsibility of international organizations, (30) attribution of conduct to an international organization under international law is a prerequisite for bestowing the unlawful international act of the international organization, and that same conduct constitutes a violation of an existing international obligation under international law. As a second condition, articles 3-8 dealt with the issue of attributing conduct to the international organization. (31)

This is also recognized by the International Court of Justice in its advisory opinion on compensation damages incurred in the United Nations Service of 1949 referred to earlier. Consequently, it is inconceivable to carry out actions and activities that entail international responsibility for a person of international law, without natural persons engaging in such acts, to assign such work to the State or international organization for which they work and to achieve their purposes and objectives, so that such acts and actions contrary to the rules of international law would then be directly attributed to that legal person, and as a result of the creation, excitement and arrangement of international responsibility.

As for the state's responsibility for the actions of its employees acting on its behalf and on its behalf, the international liability material project approved for internationally illegal acts, and in chapter II, articles (4-9) which revolve around the conduct of state organs and officials, and whatever this authority or legislative, executive or judicial authority is, regardless of the rank or job title, as long as they act within the limits of their job duties, and whether those actions are legitimate in accordance with internal law or illegal, then the transit is what is decided. International law is not internal law, and therefore the state has no right to disavow this infringing act on the pretext that the offender who is affiliated with the authorities of the state has acted according to the limits of his jurisdiction, (32) so this matter is an internal matter of the state the right to hold the person violated in accordance with its internal laws, and the state remains responsible for the conduct. That reason is according to general international law,
and it is the trend that has become more appropriate to follow, and which has become acceptable to most of the international community.

This was confirmed by the International Court of Justice in the case brought before it known as the (Yuma Nazen) case between the United States of America and Mexico, in 1923, when the court issued its ruling approving Mexico's responsibility for its failure to supervise its employees, which is responsible for their poor selection, (34) It is in the same context that the International Court has adopted the responsibility of Iran for the actions of its personnel in the case of American diplomatic nationals.

According to article 4 of the approved International Liability Bill, the State is responsible for the actions of its organs by stating that "the conduct of any state organ is an act of this state under international law, whether it exercises legislative, executive, judicial or other functions, whatever the position it occupies in the organization of the State and whether it is a central government organ, or a regional unit of the State. The service includes any person or entity with that status in accordance with the internal law of the state." (35)

The general principle in international law in establishing international responsibility is to attribute the actions of an organ of the state to the state, and includes the term (organ of the state) i.e. all individual or collective entities that make up the organization of the state and that act on its behalf, and also includes an organ Any regional government entity within the country on the same basis as it includes the central government agencies of this country.

It follows from the principle of the unity of the state that acts committed by all state agencies should be considered or shortened by state-issued acts for purposes of international responsibility. Accordingly, Article Four includes the bodies exercising legislative, executive, or judicial functions, or any other functions, alike, which is a meaning that carries the extension, not the definition as it is clear in the phrase (and any other functions), and there is also no distinction at the level of principle between the actions of superiors And the actions of subordinates, provided that their actions were carried out in their official capacity, and this is what is benefited from the phrase “whatever position he occupies in the organization of the state” contained in Article IV. (36)

The state is also responsible for the actions of persons and entities exercising some of the powers of the governmental authority, according to the text of Article Five of the draft articles of international responsibility. (37) These bodies, even though they are not considered state agencies, are only authorized to exercise governmental authority, as the phenomenon of quasi-governmental entities It has become a noticeable increase in which members of the governmental authority exercise state bodies, such as cases in which companies
that were affiliated with the state are privatized, but they still retain certain public and organizational functions. (38)

The state is also responsible for exceeding the limits of the authority or violating the instructions, which is stipulated in Article Seven of the draft articles of international responsibility by saying "it is considered an act issued by the state in accordance with international law, the disposal of one of its organs, or a person or entity authorized to exercise some of the powers of the governmental authority, If the body, person, or entity is acting in this capacity even if it exceeds the limits of its authority or violates the instructions. " (39) As this article deals with the issue of unauthorized or transgressive actions by the authorities of the state or its entities, and by the proportions of this behavior to the state when it is Officially or within an official framework, even if the agency or entity exceeds the limits of its authority or violates the instructions, and the state may not claim that they have acted in accordance with its internal law or instructions, and this rule arose in response to the need for clarity and security in international relations.

With regard to Article 8 of the draft articles, the actions that are taken based on the directions of the state or under its control, remain under the umbrella of the responsibility of the state itself, as the article states, "It is considered an act issued by the state in accordance with international law, the behavior of a person or group of persons, If they act in accordance with the instructions of that country, or under the direction of it, or under its control when doing so." (40)

As a general principle, the actions of persons in their individual capacity or entities are not attributed to the state under international law, but circumstances may arise in which these actions are attributed to the state due to the existence of a real relationship between that person or that entity acting and the state, as Article Eight sets out two circumstances of these conditions, The first relates to the situation in which people act in their individual capacity based on the instructions of the state when they committed the illegal act, and the second circumstance relates to the state of the behavior of persons in their individual capacity under the direction or under the supervision of the state, (41) which requires taking into account the existence of a real link between the person, or The group that performs the act and the state apparatus.

This was confirmed by the International Court of Justice in the case of military and paramilitary activities in and against Nicaragua, as it was a question of knowing the extent to which the contra county's actions must be attributed to the United States of America in order to be considered responsible for the contra violation of international humanitarian law, and the International Court of Justice analyzed this issue in terms of The concept of oversight, on the one hand,
the United States was considered responsible by virtue of the planning, guidance
and support it provided to the implementers, but the court rejected the request
submitted by Nicaragua to attribute all of the contras' actions to the United
States by virtue of its control over them, and the court concluded that” despite
significant subsidies and other forms of support that The United States presented
them to them, as there is no clear indication that the United States has in practice
practiced a degree of control in all fields justifying the treatment of the Contra as
having acted on its behalf... "(42).

As for the actions taken in the event of the absence of the official authorities
or in the event that they have not performed their duties and the percentage of
these actions for the state itself, it has been addressed by Article IX of the draft
articles stipulating that "it is considered an act issued by the state according to
international law the behavior of a person or group of Persons if they were
actually exercising some of the powers of the governmental authority in the
absence of the official authorities, or in the event that it did not carry out its
functions and in circumstances that call for the exercise of those powers. As in
the case of revolution, armed conflict, or foreign occupation, the principle
underlying this article is the idea of mass disobedience, or the state of citizens'
defense of themselves in the absence of regular forces, which is an instrument of
necessity, and therefore the Court of Joint Claims between Iran and the United
States was considered, The position of the Revolutionary Guards immediately
after the revolution falls within the conditions envisaged in this article, and the
court decided Iran's responsibility for the actions of the Revolutionary Guards by
saying, At least some of the competences of the government authority in the
absence of official authorities have been involved in operations that the new
government must have been aware of and did not specifically object to" (44)

On this basis, it is not permissible to argue that the state is not responsible
for the actions of its legislative authorities and its violation of the rules of
general international law. The opinion in international jurisprudence and
jurisprudence is the affirmation of the principle of the supremacy of international
legal rules for internal rules. International treaties, their articles and decisions,
otherwise the state bears international responsibility for those acts issued by its
legislative powers. (45) The permanent International Court of Justice has
recognized since the time of the United Nations in the Kurzu case of 1923,
Poland's international responsibility for the laws issued by its parliament that
violated the International Convention Concluded between Poland and Germany,
held at Geneva in 1922. (46)

Likewise, the state is responsible for the actions of its judicial authority.
Judgments issued by the state’s judicial authority and in violation of judicial
procedures taken by an internal judicial body (and whatever their degree) are
outside the rules of international law and violate international obligations, which would hold the state international responsibility, (47) and therefore not it is permissible for it to argue that it is not responsible for the actions of its legislative authority on the pretext of the principle of the independence of the judiciary, or the principle of respecting the matter decided by it, because this matter is an internal matter between the state’s authorities and does not work when implementing the rules of international law.

In order to say that there is a basic and recognized principle in international law, which is that international treaties that have been properly concluded bind all parties that have concluded it, and this matter finds its basis in the rules of international law, which is the principle (contracted to contract it), and that is due to the firmness of the rules International law as we mentioned earlier, the state or one of the people of public international law, when it concludes international agreements is only an expression of its desire to fully comply with the treaty concluded, and is only an expression of its free will, which is considered in accordance with the principle of state sovereignty, and according to its constitutional requirements, which It necessarily arranges an obligation to prevent the invocation of constitutional rules and its internal laws to justify their failure to fulfill their established obligations. (48) This is what the Vienna Convention of International Treaties of 1969 explicitly affirmed in the text of its twenty-sixth article by saying, “Every treaty in force is binding on its parties and they must implement it in good faith.” According to its Article 27, which stipulates, “A party to a treaty may not invoke the provisions of its domestic law as justification for its failure to implement the treaty.” (49) The international obligation imposes on the state must harmonize the provisions contained in the agreement with its internal laws. Rather, the state is obligated to take all legislative and administrative measures necessary to enforce the international agreement, which is confirmed by Article Two of the International Covenant on Civil and Political Rights of 1966, (50) and Article Two of the International Covenant Economic, Social and Cultural Rights for the year 1966, as most international agreements have ratified this commitment, (51) which is also what the international judiciary has established in many of the rulings and decisions it has issued in this regard. (52)

In order to say that there is a basic and recognized principle in international law, which is that international treaties that have been properly concluded bind all parties that have concluded it, and this matter finds its basis in the rules of international law, which is the principle (contracted to contract it), and that is due to the firmness of the rules International law as we mentioned earlier, the state or one of the people of public international law, when it concludes international agreements is only an expression of its desire to fully comply with
the treaty concluded, and is only an expression of its free will, which is considered in accordance with the principle of state sovereignty, and according to its constitutional requirements, which necessarily arranges an obligation to prevent the invocation of constitutional rules and its internal laws to justify their failure to fulfill their established obligations. This is what the Vienna Convention of International Treaties of 1969 explicitly affirmed in the text of its twenty-sixth article by saying, “Every treaty in force is binding on its parties and they must implement it in good faith.” According to its Article 27, which stipulates, “A party to a treaty may not invoke the provisions of its domestic law as justification for its failure to implement the treaty.” The international obligation imposes on the state must harmonize the provisions contained in the agreement with its internal laws. Rather, the state is obligated to take all legislative and administrative measures necessary to enforce the international agreement, which is confirmed by Article Two of the International Covenant on Civil and Political Rights of 1966, (50) and Article Two of the International Covenant Economic, Social and Cultural Rights for the year 1966, as most international agreements have ratified this commitment, which is also what the international judiciary has established in many of the rulings and decisions it has issued in this regard.

And based on all of that established, international responsibility is based on environmental damage. The condition of affiliation of the harmful act to the state or one of the persons of international law is conceivable and realistic, as the state is responsible for the actions of its legal authorities, as it may be envisaged that the legislative authority in a state may carry out positive or negative actions attributed to the state and its obligation to compensate for those actions, on the one hand, the positive action of the legislative authority is in its ability to legislate that authorizes actions and activities harmful to the environment, such as establishing the legitimacy of releasing toxic or harmful substances in any component of the air, and land environment, or by dumping them at sea, Or regional waters and adjacent international rivers, or to pass legislation that establishes rules for environmental protection except that it conflicts with the standards and norms of international environmental law, and it is also possible that the legislature will refrain from or fail to adopt and develop legislation and regulations to prevent environmental pollution, reduce it, or control It must, whatever its source, refrain from developing the necessary legislation to protect rare or vulnerable ecosystems, or refrain from developing legislation for monitoring, measuring and analyzing pollution risks, in contravention of the rules of international environmental law. (53)

The state also is to questioned about the actions of its executive authority in environmental matters who are considered employees of it, and they carry out their work, for its account, and in their functional capacity as well, and such
This also results in proving positive action or abstaining from acting in its negative capacity. Among the positive actions of the executive authority, for example, the state asks about the activities of its factories and installations, and about the activities of ships and aircraft flying its flag that cause pollution to the marine, air, or land environment, and also necessarily asks about the actions of its military forces that intentionally discharge harmful substances in the environment, or transferring environmental damage and dangers directly or indirectly from one region to another, or transferring one type of environmental pollution to another type, (55) or the implementation by its executive bodies of technology that leads to environmental pollution, or the introduction of alien or new species intentionally or accidentally on a certain part of the environment that can be caused by major and harmful changes. (56) The state’s responsibility also remains for the actions of its executive authority even if the necessary measures are taken, but it is not Legitimacy or exceeded the required measures in an acceptable manner. (57)

One of the negative cases of the work of the executive authority is that it does not take the necessary measures to ensure that the environmental damage is not caused to another country as a result of actions and activities that fall under its jurisdiction and supervision, or the executive authority does not implement the laws established to prevent environmental pollution, reduce or control it, or it does not adhere to standards recognized international norms established by international agreement or international obligations, or what has been the international custom. (58)

With regard to assigning the work of the state judicial authority to its work related to environmental affairs, as this authority is considered one of the legal pillars of the state, if one of the national courts deprives foreigners of the right to resort to the judiciary to obtain a repair of the damages caused to them or their property as a result of their rights Damage to the environment resulting from the work of the state and its apparatus, or failure to observe the accepted legal procedures to enable foreigners to defend themselves, or the wrong interpretation of national law in confronting them, or delaying the issuance of the ruling and obstructing its implementation if it was issued in their favor. (59)

Attribution of the actions of ordinary or legal persons to the same state when they perform harmful actions and acts polluting the environment and violating the norms of international norms is not proven to be non-compliance with international legal norms, but rather proves its responsibility as a result of negligence and negligence on the part of the state if it does not take the necessary care to prevent those from committing the harmful act, Or, it did not take the necessary precautions to prevent that harmful act from happening to the actions would not comply with the rules of international environmental law, (54)
environment and to protect others from the damages that might befall them as a result of those actions and activities, because the responsibility here arises as a result of negligence and negligence and not from the polluted activity that these people have practiced. (60)

The Assembly of International Law has long emphasized this rule, as it recognized it in its meeting in 1935 by saying, "The state is not responsible for harmful actions that occur from individuals, unless the damage arises because of its failure to take the appropriate means that are usually resorted to in similar circumstances." To prevent or punish such acts. (61)

This is also confirmed by the international judiciary on many occasions, including the case of the metal smelting plant in Canada. Canada's failure to monitor it and its lack of commitment to take appropriate measures to prevent the escalation of toxic fumes and fumes, it stated in its ruling "that, given the circumstances of the case, the court considers that Canada is responsible and in accordance with international law for the behavior of the fuse, and away from the obligations stipulated in the agreement, it is imperative to The government of Canada is to monitor the smelter, and that this behavior should be consistent with Canada's obligations under international law. "(62)

The bottom line is that, with the reality of scientific and technological development that we are witnessing, there are a lot of executive actions of states that are carried out by governments and their agencies, which may cause severe damage to the environment and other countries, especially those represented by the discovery of outer space and the use of nuclear energy, the majority of these activities are carried out by individuals or private companies and they are necessarily attributed to the state, especially since the use of nuclear energy always falls within the overall strategic planning of the state's economy, and the benefits of this activity will necessarily affect the entire community of the country, and therefore the state must bear responsibility for these far-reaching risks. The extent and transboundary, as it is incumbent on them to issue operating licenses for these projects and monitor their work and performance, to ensure the availability of security, protection and prevention measures, which is precisely what is stipulated in the 1967 Outer Space Treaty in its sixth article by saying “States parties to the Treaty have international responsibility for national activities Direct in outer space, including the moon and other celestial bodies, whether initiated by governmental or non-governmental bodies And on securing the conduct of national activities in accordance with the principles established in this treaty, and the designated State party to the treaty takes into account the imposition of permits and continuous supervision of the activities of non-governmental organizations in outer space, including the moon and other celestial bodies, on the part of an international organization, this organization is
with the countries that are involved in it. As parties to the treaty, it is responsible for compliance with the provisions of the treaty." (63)

The third requirement: environmental damage has occurred.

In order for legal responsibility to arise, whether by internal or international law, a hierarchy must be completed that fulfills its conditions of verification of damage, as the head of the hierarchy of pillars of responsibility is considered, without it responsibility may be negated, so it is not possible to envisage an act that entails responsibility, without the damage being achieved as a result of the violation, and despite Although there are some orientations of international jurisprudence that do not require the realization of the responsibility to achieve harm, but only the two preceding conditions are not legitimate in accordance with the rules of international law, and the ratio of this work to the state, (64) but the majority of international jurisprudence and jurisprudence considers that achieving harm is an essential pillar for the convening of international responsibility, (65) and they see that the damage is the first spark that emanates from thinking about moving the claim of international responsibility, because achieving the damage is the only thing that proves responsibility, and thus repairing the damage or compensation for it, as the absence of damage leads to lack The Authority is against filing a suit for international liability.

And the researcher supports this trend, as prejudice to the right or legitimate interest of one of the persons of international law if it is not followed by actual harm, and a real violation of the rights of the other country, does not raise international responsibility, as the intended result of raising international responsibility is to repair the damage or compensation for it, and thus how Responsibility can arise without realizing this damage, which requires repair, but with the need to distinguish between the damage and the interest.

The harm that international liability entails within the scope of general international law is defined as the violation of a right or legitimate interest of a person of international law. (66) Accordingly, the actual harm and its realization rests with him international responsibility, whether that act is legitimate or unlawful, so long as the act is limited to The same violated the international obligation and resulted in harm to the other. This is in contrast to what some international jurisprudence believes that the harm should be done by an unlawful act, and rather they consider the illegality of the act to be a synonym for the condition of the damage, and the fact of this serious matter is what was confirmed by the first article of the first chapter of the draft articles of international responsibility for The internationally wrongful acts adopted for the year 2001, which stipulated “every internationally unlawful act carried out by the state entails its international responsibility.” (67) This is also confirmed by
many provisions of the international judiciary, as the International Court of Justice took it into the phosphate case in Morocco, and the case Corfu, the case of military and paramilitary activities in Nicaragua, which was also confirmed by the Arbitration Court in the Rainbow Warrior case by saying: “Any violation by a state of any obligation, whatever its origin, entails the responsibility of the international state.” (68)

In any case, the damage in this way may be material or moral damage, and each one has many forms in the field of international law, as material damage is the one that afflicts a person of international law in his body or his money, while moral damage is in the event of violating the reputation or honor of this person International law, that is, it affects the moral or moral edema of this international entity. (69) There is an aspect of international jurisprudence that considers that the damage, whether material or moral, causes moral damage to the state indirectly, given that moral damage means that the state does not respect it as a person Of the persons of international law, (70) meaning that moral damage is achieved in all cases of harm, which is, since it was not harmful in itself, it is a consequential consequence of the material damage.

The position of the international judiciary has become moral damage and compensation for it independently without material dependence. The ruling issued by the International Court of Justice in the (Conley) case decided the court to compensate for moral damage, which is also what was explicitly contracted in the field of international relations between West Germany and France for the year 1960 Bonn Agreement, which affirmed the principle of compensation for moral damages, by paying compensation to French victims who were exposed to moral damage as a result of their detention in Nazi camps. (71)

It is worth noting that there is a great disagreement in the papers of international jurisprudence about the extent of the punitive character of this compensation resulting from the damage achieved. It also has a correctional aspect, and another team considers that the punitive characteristic of repairing the damage is not considered, and they consider that the compensation takes the character of the correctional nature, which removes it from the essence of the punishment represented by pain. International Justice in its judgment issued in the Shoruzo Factory Case of 1927, when it ruled that "compensation must be done in a fair manner, and that returning the case to what it was before the occurrence of the wrongful act is fair compensation in this case, and if it is not possible, it is possible to resort to An alternative method is to pay a cash allowance as compensation for the losses and damages that have occurred, so that it is equivalent and equal, or that the satisfaction is resorted to. (72)
The establishment of the causal relationship between the act and the damage is an element and a condition of international responsibility, and it is an existing condition in itself, but the reality of the case shows that the causal relationship between the action and the damage is a condition for the damage to be realized and not for the liability to be established, since the damage is necessarily not achieved unless it actually occurred Harmful and certain, which are the same conditions that are required to achieve harm in order to stir up the international responsibility that the damage be accomplished, certain, direct, and personal, and that such damage affects a legitimate interest protected by law. (73)

And on this previous establishment of the concept of the condition of harm in holding responsibility, except that its application in the field of international liability for environmental damage has characteristics that distinguish it from ordinary damage and in normal cases and civil cases, from here it is necessary to highlight the concept of environmental damage and its conditions and characteristics in order to hold international responsibility for it Those environmental damage.

The first branch: What is the environmental harm required for international liability based on environmental damage?

The study of the legal system of environmental damage in general is considered one of the legal issues that still need to be addressed and analyzed and many considerations, the most important of which is the association of environmental damage achieved to the claim of international responsibility for those dams directly and absolute, as well as the novelty of this topic in legal thought, because of The increase in the risks that human activities cause to the environment, whether those in peacetime, and become more influential in times of armed conflict, where the concept of the environment is closely related to environmental damage on the basis that the damage is the one that affects the natural elements that make up the environment, the latter of which is necessarily the object of the damage, and since the damage in general is the main pillar for the establishment of civil responsibility in the internal laws, which revolve with it in existence and non-existence, there is no civil liability without the damage being achieved, and no harm without prejudice to the legitimate interest of the law. (74)

To achieve this, it is necessary to fulfill the conditions that are necessary for the damage, which the legal rules require from the necessity of it being immediate, verifying and direct, and then the injured party must prove the damage that he sustained by all means of evidence, including evidence and evidence, considering that the damage is a material occurrence. (75) Therefore, no It is sufficient to establish evidence of the occurrence of environmental
damage, but it is necessary to prove the extent of the damage that occurred and clarify its elements, and technical expertise plays an important role in determining it and its amount, and this matter becomes very complicated when it comes to environmental damage, as the latter is unique in terms of characteristics that make it distinct from damage. It is recognized in the general rules, whether in terms of its source, or in terms of the persons responsible for its occurrence, not to mention the peculiarity of the environment itself and the extent of proving the damage caused to it, which is often double, tangled, and extensive, and often indirect.

**The second branch: Definition of environmental damage:**

Damage is generally defined linguistically, as against benefit, and harm is damage, (76), and it also appears in the sense of distress and decrease,

As for harm in terms, it means assault or harm that affects a person with one of his rights, or a legitimate interest for him, whether that right or interest is related to the safety of his body, his emotions, his money, or his honor, and whether this right is in the financial or other value (77).

The provisions of the internal civil law did not include the definition of harm, and some of them had given him a special chapter on what it is, its elements and the conditions for its verification. On the jurisprudential side, the juristic disagreement about the definition of damage prevailed, as some defined it as the harm that befalls a person by infringing a right of his rights or a legitimate interest to him (78) As some have argued, the deemed harm is the derogation of a human right from his natural or financial rights without a legal justification (79), and another has defined it as a violation of a right or interest of value to the victim (80). On all the above definitions, it meets that harm is an essential pillar of civil responsibility, and it is not envisaged that it will be done without harm, as it is a condition for the obligation to be compensated and compensated (81).

As for the environmental damage created for the establishment of international responsibility, according to the general rules of the concept of damage and what are its characteristics and scope, there is a difficulty in finding a comprehensive and preventive definition of environmental damage as a result of the absence of a precise definition of the environment in general and the damage caused to it in particular, due to the multiplicity and breadth of its areas on the one hand, and the appearance of damage associated with its temporal and spatial dimension on the other hand, which made some believe that it is very difficult to develop a precise definition of environmental damage, as this concept has become the subject of the doctrinal difference on the question of knowing the damage and the damage, is it the human or the environment itself, and who
tried to give a definition of the damage. The environmental jurist, R. Drago, defined him as the damage being done to people and things by the medium in which he lived. As defined by the French jurist (P. girod), that it is harmful work caused by pollution and caused by man to the environment and affects its various fields, such as water and air, as long as these elements are exploited by man (82). There are those who went in the definition of environmental damage to the damage to the environment itself, such as damage and ruin, which cannot be covered or repaired, except by returning the situation to what it was before the damage occurred, so he learned in this juristic direction (f. cabllero) that environmental damage, is every damage that affects the medium Environmental directly, which is an independent damage that has its impact on the people and property (83).

The international community, when drafting civil liability agreements for environmental damage, and in several areas, did not lose sight of the definition of environmental damage related to this or other agreements, for example the Paris Convention on Civil Liability in the Field of Nuclear Energy of 1960 (84), and the Brussels Convention on Liability of Operators Nuclear ships of 1962 (85), the Vienna Convention on Civil Liability for Nuclear Damage of 1963 (86), as well as the Supplementary Compensation Convention for Nuclear Damage of 1998 (87), and other international agreements on the nuclear field and its impact on the environment. As for the field of exploration and use of outer space, the Treaty on Principles Governing the Activities of States in the Field of Space Exploration of 1967 stipulated in its Article Nine: "...... The states parties in the study of the exploration of outer space are obligated to avoid causing any harmful pollution to them, as well as any harmful changes in the terrestrial environment are caused by the introduction of any non-terrestrial materials and, when necessary, the taking of appropriate measures for this purpose.... "(88).

It is noted on the definitions of environmental damage to these agreements, that they linked the damage to the result of the penalty in compensation for death or injuries and other losses and damages that may be caused to the person or his property, as it focused on the personal component based on the human without addressing the objective component of the damage that affects the environment itself. And, it is in the same way that the 1972 Stockholm Declaration was adopted when it stipulated in its twenty-second principle, that states cooperate to develop international law relating to liability and compensation for pollution and other damage to victims.
The third branch: properties of environmental damage.

It is required by the general rules in civil liability that the damage be real and immediate, or a verified future occurring, and directly afflicts the person in his financial liability, or his moral reputation, but the matter is not so easy with regard to establishing responsibility for environmental damage, because of the latter's characteristics. It makes it unique from harm in traditional matters, as environmental damage is characterized by a diffuse nature, slouchy nature, and not identifiable, and in most cases it is indirect and impersonal damage, and these are the most important characteristics of environmental damage that we will try successively to explain and serve the purpose of research.

1 - The diffuse environmental damage characteristic: This characteristic makes the damage unspecified as it affects the environment in its various fields and the extent of its temporal and spatial scope, as the damage may arise from multiple sources of pollution, especially in areas that are predominantly industrial, as the damage can expand to extend to several regions within the state and may cross the regional borders of the state, so it is difficult to determine the true cause of the published damage, and therefore responsibility is divided among several parties proving that it caused this damage, whether it is an individual or a company or a state (89), and this matter called the Organization for Economic Cooperation and Development OCDE to recognize the difficulty of defining the scope of geographical contamination, as it defined it as "any intentional or unintentional pollution whose source and origin are subject to or totally or partially located in a region subject to the national jurisdiction of another country, and at a distance with which it is not possible to distinguish between what it contributes It contains individual sources, or the sum of emission sources "(90).

2 - The indecisive nature of the environmental damage: as it is rare to show the environmental damage in the event of pollution operations, but rather its slackening to the future, it is a long-term, temporal and spatial damage, hence the problem of proving it and the availability of a causal link between it and the source of the damage, as there are other factors. It may interfere with its spread and its verification, and there are many examples of this, whether related to radiative environmental damage, or chemical pollution of agricultural products and foodstuffs (91).

3- The inability of the environmental damage to be identifiable: As the environmental damage is often not identifiable because its identification requires special scientific expertise as if it comes to pollution by union and integration with other elements, the materials or elements that cause pollution may result in the exercise of a specific activity. Not contaminated or harmless on its own,
except that it becomes so in conjunction with another substance or element resulting from another activity or its interaction with it, as is the case with pollution of waterways as a result of dumping or discharging harmless materials or liquids, but it interacts with other materials present in water, it turns into a new chemical dye that is difficult to determine its true origin or source, (92) which increases the complexity of proving causation, especially if the contaminated activity is legitimate and the error is negated by its owner, which in some cases leads to an inability to prove it. Which results in depriving the aggrieved party of compensation (93).

4- The property of environmental damage is that it is indirect and not personal: this stems from the specificity of the environmental damage that blends and overlaps several factors to achieve it, such as technological development and the development of manufacturing, because direct damage is that damage that results from the harmful action, where the occurrence of the action is a necessary condition for the occurrence of damage, while indirect damage is the damage that is indirectly related to the action, as other factors overlap between the action and the result, and this is the nature of the environmental damage.

This is what made the international judiciary hesitate to compensate for the indirect damage for several reasons stemming from the property of the indirect damage itself, as the primary damage should focus on people or real-time property at once, while in the indirect damage it affects people other than those who were the subject of the damage. The basic principle when it occurs, which did not show its time and condition, as well as overlapping external causes for managing the cause of the damage. This international attraction appeared not only among the international judiciary, but also among its jurists, and this is evident through the preparation of the draft articles of international responsibility in the work of the International Law Commission, where some countries wanted to include indirect damage to compensation, but some knew it within the general definition of the damage, However, most countries rejected this trend.

Accordingly, there are no international judicial rulings that recognize the legality of indirect harm to stir up international responsibility, although some of the international arbitration trends have clarified the extent of the link and correlation between direct and indirect damage which is the essence of the causal relationship and the obligation to compensation without arguing that one of them does not deserve compensation being indirect, which is in the same sense stated by the jurist (Horio), who said that the indirect harm that results from external factors is not being assaulted or compensated for, then the causal link is lacking between him and the direct damage, but when this damage comes
from factors that mediate the direct damage and the illegal action, it is not possible to exclude or exclude it from the calculation of compensation even if what is linked to direct damage are complex or difficult to understand connections (94). This opinion has a great deal of rationality and realism, especially in the field of establishing international responsibility for environmental damages, most of which are indirect damages, and this opinion calls for discussion, research and development in the international thought and judiciary.

It is from this special nature of the environmental damage that it has made the jurisprudence in adopting the idea of compensation for indirect damage, and it relied on this on the rule (the separation limit), according to which no damage compensation is allowed, unless it is related to material damage to the property of the affected person (95). This is a positive issue in which there is a clear development in the international judiciary, especially as it became more acceptable to domestic national legislation when it adopted the idea of compensation for indirect damages, including, for example, what was approved by Article 134 of the Lebanese Civil Code, which established the rule for compensation for indirect damage and set it for him Conditions, such as being in contact with an already evidently harmful contact, (96) and also as taken by the Algerian legislator in the Algerian Environmental Protection Law in its article 37, as it gave the associations for the defense of the environment the right to compensation for direct and indirect damages regarding facts that harm the collective interests that aim To defend him, (97) it also took some western legislation into the possibility of compensation for indirect damages, including the American law known as (CERCIA), as well as the French law of 1955, when it gave environmental societies to initiate the right to litigate in the crimes that result Direct or indirect damages that are in the collective interest. (98)

As for the property of environmental damage, it is impersonal, which lies in the fact that the damage may affect the vital and non-vital materials of the environment, that is, damage that directly affects the environmental resources as an element of kind. The biggest victim is the environment itself, and it is recognized jurisprudence and judicial that the environment is not a legal person in the strict sense Thus, compensation is provided for persons with legal personality. (99)

This contains a lot of discussion and analysis, and there is no room to talk about in this research.

In sum, that environmental damage, with its characteristics that distinguish it from damage in traditional matters, must entail the necessity to adapt and develop the rules of international responsibility for environmental damage, as it
is inconceivable that the damage should be severe as evident in civil liability, This is because the goal of protecting the environment from damages and the necessity of international responsibility on it is itself a major goal and a higher goal of dwarfing the rules and conditions that are not appropriate to the characteristics of its nature and concept, which is something that has a kind of extremism and exaggeration on the purpose of protecting the environment because that militancy leads to wasting many rights People who have been harmed and have been unable to demonstrate the degree of gravity or the severity of the damage, let alone this hardening, is incompatible with the principle of the preventive purpose of international responsibility for protecting the environment and repairing damage to it, because in reality if the state appreciates and knows that and to paint its international responsibility for its actions harmful to the environment requires Serious harm has been achieved, as it may not make it think this time and time again about the consequence of its lack of clarity, and thus it becomes more aggressive to embark on its harmful actions against the environment, which are not massive.

This called on the American jurisprudent (M. Boysen) who served as director of the American Nuclear Law Institute to say, "The doubts that relate to the dangerous effects of radiation, such as the length of time needed to appear, and the conflict that occurs in determining the causes responsible for these effects, requires creating a new art of compensation in The law of responsibility if we want justice to be done by all parties concerned, and this method must be in place to overcome the difficulties of proving the harm and the actions that cause this harm. (100)

Results:

Accordingly, international responsibility is based on every action that violates a rule of general international law or the rules of international environmental law. This international action has two elements. The first is a personal component based on positive or negative behavior attributed to a person of international law, and the objective component that is based on Violation of this behavior with international obligations, through which international responsibility is generated, and whatever the source of this breach, whether by a written or customary international legal rule that states have traditionally followed.

1- Any international lawful or unlawful act that violates the rules of international environmental law, it entails international responsibility for whoever committed it, whether the error was the basis for its provocation, or for the unlawful act, or what resulted from the dangerous act, obligated to the one who committed the international responsibility.
2- It follows from the principle of the unity of the state that the actions taken by all state agencies should be considered or shortened by the state actions for the purposes of international responsibility for environmental damage. Accordingly, Article Four includes both bodies that exercise legislative, executive, or judicial functions, or any other functions, alike.

3- The prejudice to the right or legitimate interest of a person of international law if it is not followed by actual harm and a real violation of the rights of the other country, does not raise international responsibility, since the intended result of raising international responsibility is to repair the damage or compensation for it, the responsibility cannot arise from Other than this, the damage that requires repair is achieved, but with the need to distinguish between the damage and the interest.

4- For lack of agreement on a unified definition of environmental damage, some jurisprudence went on to say that environmental damage lies in several areas, such as damage to biological diversity, damage to landscapes that leads to the loss and enjoyment of aesthetic views, and the loss of their tourism resources or is the damage that Leads to the loss of economic resources due to damage to environmental elements

5- Through research, it was found that most of the jurisprudence has been unanimously agreed on the elements of the damage and that it is the damage that affects the environment in its various fields and the components that constitute it, which will be followed by an impact on the health or property of a person and its realization will lead to international responsibility.

Recommendations:

1- The international efforts, especially the legal ones represented by the International Law Commission, must be intensified to establish a general definition, a general barrier and an umbrella to environmental damage, in which the elements of international responsibility for environmental damage are completed and at the same time do not do without achieving the damage with the need to adapt to the multiple areas of the environment and the differences and the time place to occur.

2- The international and local judiciary must deal with environmental damage and the rules of responsibility on them with a kind of privacy that corresponds to their characteristics, nature and concept without going to the point of proving the abstract rules of civil responsibility in domestic laws and the rules of international responsibility in international law.
3- We believe that it should be directed not to link the causal relationship between the act and the environmental damage, because the fact of the situation shows that the causal relationship between the act and the damage is a condition for the realization of the damage and not for the international responsibility for environmental damage, which is essentially related to the specificity of the concept of environmental damage.

4- The rule of international legal accountability for environmental damage should be extended to all persons of international law, especially individuals and persons responsible for causing harm to their crimes, which are considered in the concept of international law as war crimes and in the same context an environmental crime.

5- The international community should go to formulate appropriate rules for international responsibility for environmental damage, reconsider the 2001 draft international responsibility and the need to adopt new legal principles that are more effective in bringing down the pillars of international responsibility for environmental damage and its procedures in line with the specificity of environmental damage and the definition of the environment in all its various issues. The need for international cooperation to develop the rules of international law with regard to liability and compensation for pollution.

6- The idea of establishing international environmental compensation funds should be activated in order to compensate the victim in the case where it is not compensated by another means, and the imposition of international compulsory insurance would solve the problems related to compensation for environmental damages and thus reduce their violations.

End Notes:


3) Mohieddin, Khawla Youssef, 2011, The Role of the United Nations in Peace building, Ph.D., Department of International Law, Faculty of Law, Damascus University, Damascus University Journal of Economic Symbiosis, Volume 27, Third Issue, p. 188.
4) Article 1 of Chapter 1 of the Charter of the United Nations entitled "The purposes and principles of the Commission" states:

To this end, the Commission takes effective joint measures to prevent and remove the causes that threaten peace, suppress aggression and other forms of disruption of peace, and invoke peaceful means and in accordance with the principles of justice and international law to resolve international disputes that may lead to a breach of the peace or to settle it.

5) International law is defined as a set of legal rules governing international relations in times of peace and armed conflict.

6) International environmental law is defined as a set of international legal rules and principles governing the activity of states in the prevention and reduction of various damages, which result from different sources of the environmental environment.

7) Kurdish, Jamal Mahmoud, 2005, Competent Court and applicable law on liability claims and compensation for the harms of cross-border pollution, New University Publishing House, Egypt, p. 23.

8) The idea of the rules and their emergence in the international community was compared to some of the factors and reasons that led to the creation of a current that denies the existence of the rules, and in the first place the jurisprudential (Brierly) and the jurist (Kokenheim) who considered that these rules are a restriction on the authority of the will of the state, and consider that the nature of International law is a coordinating law and not a law of submission, as they demonstrate their refusal to define the rule of command, in addition to the possibility of decomposition of international obligations, and on this basis the deniers of the idea of international legal rules go by looking at the sources of the international base and they see that the agreement whether Expressly, treaty or implicitly in the form of custom or general principles of law, are the only sources of international law. While some of international jurisprudence considers that there are rules that cannot be opposed, but that they are of a humanitarian nature, notably the jurist (Firdous), who has considered that there are rules that bear the status of the rules of command, and the criterion of which exist edifying the needs of the State unilaterally, but to apply and protect the higher interests of the international community, Another jurist who is in favor of this idea is the jurist George Sall, who based his view on the idea of supreme international legitimacy, since customary international law contains certain rules that possess a higher value and are adhered to by all countries, and have no right to agree otherwise, including rules that protect freedoms. Individual rights, such as the right to life, and the right to the physical integrity of man, as confirmed by this trend of Arab jurisprudence, Dr. Mohammed Hafiz Ghanem, as well as Dr. Mustafa Kamel Yassin, who affirm the characteristics of the rules of the command and as general rules protecting an international interest, and are restrictive rules of the will of states for the benefit of the international public. See: Al-Taie, Haidar Adham, Evolution Of The Rules of International Law, p. 30-35, research published on the website: http://www.iasj.net.
9) Article 53 of the Vienna Convention does not clarify the basis for the rules of public international law to the level of which the rules of public law become, and does not explain how to achieve these rules, the words (approved and recognized by the international community) are loose rubber, so what is the established criterion for determining what states may agree on, which is fully subject to state consent.


14) See, article 2/b text of the 2001 Draft International Liability Articles.

15) See the International Law Commission's Yearbook on the work of its 53rd session, 2001, previous reference, p. 43.

16) International Law Commission Annual supranational for the work of its 53rd session, 2001, previous reference, p. 44

17) See, article 12 of the 2001 Draft International Liability Articles.


19) See, International Law Commission Yearbook 2001 for previous reference, p. 72

20) See Article 14 of the 2001 Draft International Liability Articles.


23) See the text of article 26 of the 2001 draft liability articles.


26) Article 38 C of the Statute of the International Court of Justice states: "The function of the Court is to adjudicate disputes brought against it in accordance with the provisions of international law and applies in this regard c - the general principles of law established by the United Nations."


28) Al-Hasani, Zuhair, 1993, Sources of Public International Law, Publications of Qarionis University, Benghazi, Libya, p. 223.

29) After the steady increase in the number of such organizations and the expansion of their competence, especially in the second half of the twentieth century, these organizations became addressed in accordance with the rules of public international law, as a person of this law, and for that reason the Commission for International Law was drafted in its 54th year 2003, a special chapter in the preparation of
materials related to the responsibility of international organizations, and although they became treated as persons of international law under the rules of international law, they are still not the legal personality of these organizations because of the fundamental difference between them, the personality The legality granted to international organizations is as much as necessary for the practice of the specialty for which it was established and to achieve its objectives. See Al-Daridi, Hussein Ali, 1993, International Conventions concluded by international organizations, Master's Thesis, University of Jordan, Jordan, p. 19.

30) At its 54th session in 2002, the International Law Commission decided to include the subject of the responsibility of international organizations in its program of work, and at the same session the Commission established a working group on the subject and the panel addressed in its report the scope of the topic and the means of attribution of member States' responsibility for the conduct assigned to an international organization. At its 61st session in 2009, the Committee adopted in the first reading a set of 66 articles on the responsibility of international organizations, and the Commission decided in accordance with draft articles 16.21 of its statutes to refer draft articles through the Secretary-General to Governments and international organizations. To make her remarks, at meeting 3118 in August 2011, the Committee adopted the draft articles by acclamation. See document No. A/66/10 Previous reference, p. 62+63.


32) Ibrahim, Emad Khalil, responsibility of international organizations for their illicit uncles, TT1, Zain Human Rights Publications, Beirut, Lebanon, p. 191.

33) Omar, Hassanein Hanafi, 2005, the case for diplomatic protection of state nationals abroad, Dar al-Nahda Al-Arabiya, Egypt, p. 222.

34) The facts of this dispute are that there were massive demonstrations in Mexico protesting the American presence in its territory, and the masses of these demonstrations surrounded American citizens, and the Mexican authorities sent a paratrooper to rescue and protect American nationals, but the Mexican police The court rejected Mexico’s claim that it was not responsible for the actions of the soldiers, as they had violated the instructions of their Government. It ordered them to protect, not kill, American nationals, which was rejected by the International Tribunal and acknowledged Mexico's responsibility for its failure to control and supervise its personnel. See Al-Zuabi, Mohamed Sinitan, previous reference, p. 29.

35) Article 4 of the 2001 Draft International Liability Articles.

36) See the International Law Commission's Yearbook on the work of its 53rd session of 2001, previous reference, p. 51.

37) Article 5 of the 2001 Draft Articles of Responsibility stipulates that "it is an act of the State under international law, the conduct of a person or entity that does not constitute a state organ under Article 4, but is empowered by the law of that state to exercise certain jurisdictions of government authority, provided that it is The person or entity has acted as such in the particular case."

40) See Article 8 of the Draft International Liability Articles adopted for 2001
43) Article 9 of the 2001 draft liability articles.
46) Al-Taie Karima, Al-Daridi Hussein, previous reference, p. 22.
47) (Omar, Hussein Hanafi, 2005, the case for diplomatic protection of state nationals abroad, Dar al-Nahsa Arab, Egypt, p. 23.
49) See the text of Articles 26, 27, Part III, Respect, Implementation and Interpretation of Treaties, Chapter 1, of the Vienna Convention on Treaty Law of 1969.
50) Article 2.2 of the International Covenant on Civil and Political Rights of 1966 states that "each State party to this Covenant undertakes if its existing legislative or non-legislative measures do not effectively guarantee the realization of the rights recognized in this Covenant, to take, in accordance with its constitutional procedures, and the provisions of this Covenant what is necessary for such enforcement of legislative or non-legislative measures."
51) Article 2/2 of the International Covenant on Economic, Social and Cultural Rights of 1966 states that "each state party to this covenant undertakes to take it alone and through international assistance and cooperation, particularly at the economic and technical levels as much as possible. Its available resources, the necessary steps to ensure the effective and gradual enjoyment of the rights recognized in this Covenant, are subject to all available and appropriate means, particularly legislative measures."
54) Kurdi, Jamal Mahmoud, 2005, Competent Court and applicable law on liability claims and compensation for the harms of trans-cheek pollution, New University Publishing House, Egypt, p. 183.
55) Article 195) of the United Nations Convention on the Law of the Sea of 1982 stipulates that "the duty not to transfer damage or hazards or to convert one type of
pollution to another, the State shall act when taking measures to prevent, reduce and control pollution of the marine environment, so that it does not move directly or indirectly for damage or hazards from one area to another or to convert some kind of pollution into another."

56) Article 169) of the Convention on the Law of the Sea stipulates that "states shall take all necessary measures to prevent and reduce pollution of the marine environment and to control this pollution resulting from the use or control of technologies under their jurisdiction or by introducing strange or new species intentionally or accidentally to a certain part of the environment. The navy can be caused by significant and harmful changes in that environment."

57) Article 232) of the Law of the Sea Agreement states that "the State shall be liable for the damage or loss attributed to it resulting from the measures it has taken, in the event that such measures are unlawful or reasonably exceed the measures reasonably required in the light of the information available, and states ensure ways To return to their courts to take action on this damage and loss."

60) Kurdi, Jamal Mahmoud, previous reference, p. 184+185.
61) Samir, Mohammed Fadhil, former reference, p. 135+136.
62) Kurdi, Jamallow, Mahmoud, previous reference, p. 186.
63) Article 6 of the Treaty of Principles governing the activities of states in the exploration and use of outer space, including the Moon and other celestial bodies of 1967.
65) Sultan, Hammed, 1972, International Law, Peacetime, 15, Arab Renaissance House, Cairo, Egypt, P. 301.
68) See these and other issues in the International Law Commission's yearbook on the work of its 53rd session of 2001, previous reference, p. 40 and beyond.
69) Samir, Mohammed Fadhil, former reference, p. 67.
70) Narrator, Jabber, previous reference, p. 17+38.
72) Joseph, teacher, former reference, p. 34 and beyond.


75) Boufalja, Abdurrahman, 2016, Civil Liability for Environmental Damage and the Role of Insurance, Ph.D., University of Abu Baker Belkaid, Algeria, p. 65.


81) Muhammad, Nasreddine, 1983, basis of compensation in Islamic law and Egyptian law, PhD, Cairo University, Egypt, p. 381.


84) Belhadj, Wafa, previous reference, p. 25.

85) The 1960 Paris Convention, the nuclear damage indirectly defined in article 1/a/1 as "any incident or series of facts of a single origin caused damage as long as these facts or some of the damage caused or caused either by radiation properties, or the combination of properties, toxic and explosive properties, or other hazardous properties of nuclear fuel, radioactive products or waste, or radiation from ionized materials from any other source of nuclear radiation, within a facility that exists."

86) The Brussels Convention of 1962 defined nuclear damage in article 1/7 by saying "Nuclear damage is loss of life or injury, loss of property caused by radioactive properties, or by the meeting of radioactive, high and explosive properties, all resulting from nuclear fuel or radioactive waste, and any other losses or damages determined by national law and to the extent it deems appropriate."

87) The Vienna Convention of 1963 defined nuclear damage in article 1/11 by saying "a- Death, personal injury or any loss or damage to property arising or resulting from radiation properties, or a combination of radiation properties and toxic, explosive or other hazardous properties that are characterized by In the nuclear facility, nuclear
fuel, radioactive products or wastes within or to the facility are produced or sent to b- any other losses or damages arising or resulting in this manner c- death, personal injury, loss or damage to property arising or resulting from other ionized radiation from any other radioactive source within the facility Nuclear”.

88) The 1998 Nuclear Damage Supplemental Damage Supranational Damage Agreement defined nuclear damage by saying "Nuclear damage 1- death and personal injury 2- loss or damage of property, and each of the following elements to the extent specified in the Law of the Competent Court."

89) See Article 9 of the Treaty of Principles governing the activities of states in the field of exploration of outer space, including the moon and other celestial bodies of 1967.

90) Bou Flaga, Abdurrahman, 2016, Civil Liability for Environmental Damage and the Role of Insurance, Ph.D., University of Tlemcen, Algeria, p. 70.

91) Bou Falja, Abdul Rahman, previous reference, p. 91.


93) Hawass, Atta Saad Mohammed, previous reference, p. 522.

94) Bou Falja, Abdul Rahman, previous reference, p. 78.

95) (Mukhtar, Taiba Jawad Mohammed, 2011, Damage in International Responsibility, Research publication of the Faculty of Law, Babylon University, Iraq on 26 May 2011 at www.uobabylon.edu.iy.

96) Belhadj, Wafa, previous reference, p. 72.

97) See Article 134 of the Lebanese Civil Code, called the Obligations and Contracts Act of 1932.

Which states."... Indirect damages should also be considered, provided they are clearly related to the offence or quasi-offence......."


99) Jihad, Ali 2010, Legal Protection of the Marine Environment from Pollution Hazards, Comparative Study, Ph.D., Faculty of Law, University of Tlemcen, Algeria, p. 248.

100) Jihad, Ali, previous reference, p. 250.