

## THE LIMITS OF LIABILITY IN COMPENSATING VICTIMS OF TERRORISM; A READING OF INTERNATIONAL INSTRUMENTS AND IRAQI LEGISLATION

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### Abstract

Amid the turbulence of wars and humanity's struggle against the forces of terrorism, the victim does not remain merely a number in the records of suffering. Rather, the victim stands as a witness to the absence of justice at times, and the weakness of institutional response at many others. From this perspective, the present study explores the dilemma of compensating victims of terrorism—between the rights proclaimed by laws and the justice actually delivered in practice. The study is structured around two interrelated dimensions. The first is the international dimension, which analyses the provisions of conventions and treaties affirming the right of victims to protection and compensation. These provisions, however, have often remained closer to promises than binding obligations, as responsibility is shifted to states, causing rights to dissipate in the labyrinth of politics and sovereignty. The second dimension examines the Iraqi context, focusing on legal texts such as Law No. 20 of 2009 on the Compensation of Victims of Terrorist Operations, and Law No. 2 of 2016 on the Martyrs' Foundation. It reveals that the difficulty lies not only in the laws themselves, but in the will to enforce them, the vagueness of criteria, and the absence of an institutional framework that treats the victim as a priority rather than as an administrative burden. Accordingly, the study recommends the establishment of a binding international legal framework, along with deep structural reforms in Iraq's compensation regime, so that justice becomes a present reality rather than a deferred promise.

**Keywords:** Victims of Terrorism; International Responsibility; Compensation for Damage; Legislative Deficits.

### 1. Introduction

#### 1.1. About the subject

Although terrorism is by no means a novel phenomenon and possesses a long historical record, it has in recent times acquired increasingly extensive and complex dimensions, constituting a serious and persistent threat to international peace and human security. It continues to inflict significant harm and claim numerous lives across diverse regions of the world. Accordingly, the issue of state responsibility arising from this perilous phenomenon, as well as the legal mechanisms for compensating its victims, has garnered heightened attention from both national governments and international institutions. Iraq, having been among the countries most affected by terrorism in recent years, has enacted a series of legislative and regulatory measures aimed at countering this threat. Assessing the efficacy and impact of these measures—particularly with regard to the protection, support, and reparation of victims—represents a critical area of scholarly and practical inquiry in the field of international law.

This study addresses the issue of legal responsibility for compensating victims of terrorism, with a particular focus on the limits of such responsibility. It does so through the study of relevant international agreements and national legislation, especially Iraqi laws. The purpose is to analyse the effectiveness of both international and domestic frameworks in securing fair and effective compensation for those harmed by terrorist operations, while also highlighting the legal and

practical challenges that obstruct this goal and diminish the capacity of these frameworks to provide adequate protection and reparation for victims.

The significance of this research lies in the grave threat posed by terrorism as a global phenomenon that undermines international peace and security, while inflicting severe harm on individuals and societies alike. Within this context, the question of compensating victims emerges as a central humanitarian and legal concern. It is vital for achieving justice, reinforcing the rule of law, and ensuring redress for those affected. The study also seeks to expose the shortcomings of the current legal framework—whether at the level of national legislation or international agreements—in terms of holding states and other actors accountable for their obligations towards victims, thereby underlining the urgent need to develop these frameworks to ensure broader and more effective protection.

### **1.2. Objectives of the Study**

The research aims to achieve the following key objectives:

1. To analyse the international legal framework governing the responsibility to compensate victims of terrorism, and to assess its effectiveness in safeguarding victims' rights.
2. To examine Iraqi national legislation related to compensation for harm caused by terrorist acts, and to evaluate its alignment with international standards.
3. To highlight the legal and practical challenges that hinder the provision of fair and effective compensation for victims.

### **1.3. Research Methodology**

The study adopts a descriptive–analytical methodology by examining the relevant legal texts, both international and domestic, relating to the compensation of victims of terrorism. It analyses their substance, reviews associated judicial practice, and compares these norms with their practical application. A critical approach is also employed to assess the effectiveness and limitations of the national and international legal framework, as well as its impact on ensuring victims' right to compensation. The study draws on academic sources and official instruments to construct an integrated vision that helps diagnose problems and propose appropriate legal solutions.

### **1.4. Research Problem**

The central question of this study is: \*To what extent is legal responsibility for compensating victims of terrorism effective, and what are its limits, under international instruments and national legislation? Do these legal frameworks guarantee victims the right to fair and effective compensation? From this question arise a series of subsidiary issues, most notably the extent to which national legislation—particularly that of Iraq—can provide appropriate mechanisms for compensation, and the degree to which international law supports or restricts this right. By addressing these questions, the study seeks to analyse the gap between international and domestic frameworks, identify the challenges that impede compensatory justice, and propose approaches for developing the relevant legal system.

## **2. The International Legal Framework of Responsibility**

Compensation for victims of terrorism constitutes one of the central themes in modern international law. It has become impossible to confront terrorism without addressing its destructive consequences for individuals and societies, particularly those who have suffered

grave losses in life and property<sup>1</sup>. This reality has led to a gradual evolution in international legal doctrine, resulting in the crystallisation of general principles governing the responsibility of states and international entities for wrongful acts, most notably the principle of state responsibility for internationally wrongful acts and the principle of reparation<sup>2</sup>.

In this context, important legal trends have emerged in international practice, embodied in international conventions and Security Council resolutions, alongside influential codification efforts—chief among them the 2001 International Law Commission’s Articles on State Responsibility<sup>3</sup>. This project entrenched fundamental principles that oblige states to be held accountable when they breach their obligations, particularly those relating to the prevention of using their territory or support for carrying out terrorist acts<sup>4</sup>.

Despite such progress, the international legal framework specific to compensating victims of terrorism still lacks full normative force and, in many cases, clear and effective enforcement mechanisms<sup>5</sup>. The complexity is exacerbated by the multiplicity of actors and the overlap of responsibilities, making it necessary to conduct a critical analysis of these legal rules to assess their capacity to protect victims’ rights and ensure fair and realistic compensation<sup>6</sup>.

### **2.1. The Principle of International Responsibility for Wrongful Acts**

International law does not rest merely on intentions; it is built upon clear obligations that regulate state conduct and connect acts to the legal consequences that follow<sup>7</sup>. At the core of these obligations lies the principle of international responsibility, regarded as the cornerstone of international justice, especially concerning victims of terrorism who became embroiled in conflicts not of their making and endured devastating losses in life, property, and human dignity<sup>8</sup>.

Since terrorism is an international crime that transcends borders, holding states accountable when they support, allow, or turn a blind eye to such acts is not optional but a legal duty imposed by customary and treaty-based international law<sup>9</sup>. Within this framework, the principle of responsibility for internationally wrongful acts emerges as a foundational rule upon which

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<sup>1</sup>Compensation for terrorism victims has been recognised as one of the pillars of modern international law. See: Antonio Cassese, *International Law*, 2nd ed., Oxford University Press, 2005

<sup>2</sup>James Crawford, *The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge University Press, 2002.

<sup>3</sup>International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001.

<sup>4</sup>UN Security Council Resolutions related to counter-terrorism, particularly Resolution 1373 (2001).

<sup>5</sup>Christian J. Tams, *Enforcing Obligations Erga Omnes in International Law*, Cambridge University Press, 2005.

<sup>6</sup>Dinah Shelton, *Righting Wrongs: Reparations in the Articles on State Responsibility*, *American Journal of International Law*, Vol. 96, No. 4 (2002), pp. 833–856.

<sup>7</sup>Malcolm N. Shaw, *International Law*, 8th ed., Cambridge University Press, 2017.

<sup>8</sup>Christine Gray, *International Law and the Use of Force*, Oxford University Press, 2018.

<sup>9</sup>Ian Brownlie, *Principles of Public International Law*, 7th ed., Oxford University Press, 2008.

accountability rests and which provides the legal basis for victims' right to compensation and reparation.<sup>10</sup>

This principle does not only represent legal obligations but also reflects an ethical advancement in the awareness of the international community. It is no longer acceptable for states to escape liability for their direct support of, or their wilful silence regarding, terrorist acts—particularly when such silence stems from political or geostrategic interests<sup>11</sup>. Hence, this requirement is significant in studying the conceptual and normative framework of international responsibility, as well as exploring how to operationalise victims' right to compensation under contemporary international law<sup>12</sup>.

### **2.1.1. Conceptual Framework**

To understand international responsibility, it is necessary to begin with its definitions, both linguistic and technical. Linguistically, responsibility is the obligation placed on the liable party to answer for its actions and bear their consequences<sup>13</sup>. Terminologically, it refers to the legal status imposed upon a state as a result of breaching a rule of international law, compelling it to accept the legal consequences of its unlawful conduct<sup>14</sup>.

#### **2.1.1.1. Linguistic Definition**

The Arabic linguistic root of “responsibility” (mas’ūliyya) connotes questioning and accountability—that is, demanding justification for a given act or omission. It implies the individual’s obligation to bear the consequences of their actions and to be subject to accountability, whether legal or moral<sup>15</sup>. Ibn Manzur, in *\*Lisān al-‘Arab\**, defines responsibility as “being questioned for what emanates from a person in words and deeds, and bearing the consequences deserved,” a definition that highlights the punitive and accountability dimensions inherent in the concept<sup>16</sup>.

Thus, responsibility is defined as “the individual’s obligation to answer for their actions and to be held accountable for what they have committed,” expressing the nexus between conduct and consequence, and embodying the principle of accountability before law or moral conscience<sup>17</sup>.

“Act”: derived from the verb “to do,” denotes any behaviour or conduct carried out by an agent, whether positive (an overt act) or negative (failure or abstention from performing a duty). In legal contexts, “act” includes any conduct that generates legal consequences or liability<sup>18</sup>.

“Lawful”: derived from “shar’” (law/religion/custom), meaning permitted or sanctioned by law, religion, or custom<sup>19</sup>.

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<sup>10</sup> Ian Brownlie, *Principles of Public International Law*, 7th ed., Oxford University Press, 2008.

<sup>11</sup> Thomas M. Franck, *Fairness in International Law and Institutions*, Oxford University Press, 1995.

<sup>12</sup> André Nollkaemper, *Attribution of Forcible Acts to States: Connections Between the Law on the Use of Force and the Law of State Responsibility*, in “*International and Comparative Law Quarterly*”, Vol. 53 (2004), pp. 615–640.

<sup>13</sup> *Lisān al-Arab*, entry *Mas’ūliyya*, ed. Ibn Manzur.

<sup>14</sup> Pierre-Marie Dupuy, *International Responsibility Today: Essays in Memory of Oscar Schachter*, *Recueil des Cours*, Vol. 307 (2004).

<sup>15</sup> *\*Lisān al-‘Arab*, *ibid*.

<sup>16</sup> *Ibid*.

<sup>17</sup> Al-Wahhab Al-Khallaf, *‘Ilm Uṣūl al-Fiqh*, Dar al-Qalam, Kuwait, 1978.

<sup>18</sup> Jean Salmon (ed.), *Dictionnaire de Droit International Public*, Bruylant, 2001, entry “Act.”

#### **2.1.1.2. Technical Definition**

International responsibility for wrongful acts is defined as the legal consequence arising from a state's breach of a binding international obligation, whether through a positive act or through failure to perform what international law requires<sup>20</sup>. For such responsibility to arise, the act or omission must be attributable to the state under the rules of general international law, giving rise to a legal duty to bear the consequences and to provide reparation for the harm caused.<sup>21</sup>

International legal doctrine has established that international responsibility requires not only the occurrence of harm but also two essential elements: (i) an act by the state that constitutes a breach of an international rule, and (ii) attribution of that act to the state as a recognised subject of international law. Together, these elements generate a legal obligation on the state to bear the consequences of its conduct<sup>22</sup>.

Accordingly, international responsibility for wrongful acts may be defined as: \**“a legal status arising from a state's breach of its international obligations attributable to it, whether through a prohibited act or failure to perform a required duty, obliging it to bear the consequences of compensation for the harm and to restore matters to their prior state.”*<sup>23</sup>

#### **2.1.2. Legal Determinants of Wrongful Acts**

International responsibility arises only where a set of legal conditions—termed the objective determinants of responsibility—are met<sup>24</sup>. Not every apparent breach of international obligations necessarily results in state accountability. Two fundamental requirements must be satisfied: first, the act must constitute a violation of international law; second, the act must be attributable to the state under recognised rules of attribution<sup>25</sup>.

#### **2.2. Weakness of International Commitment and Its Consequences**

Despite the existence of a number of international conventions aimed at combating terrorism and ensuring compensation for its victims, states' commitment to implementing these instruments remains weak and inconsistent<sup>26</sup>. This undermines the effectiveness of such rules in delivering justice to those affected. Legal, political, and economic challenges obstruct enforcement mechanisms, thereby preventing the principle of reparation from being effectively applied and reducing victims' chances of receiving fair compensation that reflects the magnitude of the harm suffered<sup>27</sup>.

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<sup>19</sup> Ibid., entry “Licite / Lawful.”

<sup>20</sup> James Crawford, “Revising the Draft Articles on State Responsibility,” *European Journal of International Law*, Vol. 10, No. 2 (1999), pp. 435–460.

<sup>21</sup> ILC, Draft Articles (2001), Commentary to Article 2.

<sup>22</sup> Roberto Ago, “The Internationally Wrongful Act of the State,” *Yearbook of the International Law Commission*, Vol. II (1971).

<sup>23</sup> Giorgio Gaja, “The Position of Individuals in International Law: An ILC Perspective,” *European Journal of International Law*, Vol. 21 (2010), pp. 11–14.

<sup>24</sup> ILC, Draft Articles (2001), Part One, Chapter II.

<sup>25</sup> *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Reports 1970.

<sup>26</sup> Samira Al-Haddad, *International Commitment in Combating Terrorism: Reality and Challenges*, *Journal of Legal Studies*, No. 12, 2020, p. 45.

<sup>27</sup> Nour Al-Din Abdullah, *Human Rights and Compensation in International Law*, *Journal of International Law*, Vol. 9, 2019, p. 89.



The weakness of international commitment in this field stems from several factors, including the multiplicity of international actors involved, conflicting state interests, and, above all, the absence of effective enforcement mechanisms compelling states to assume their legal responsibilities—particularly when some of these states are themselves directly or indirectly implicated in supporting terrorism<sup>28</sup>. Hence, studying the causes of this weakness is essential for understanding the current legal framework, identifying the obstacles it faces, and highlighting the impact on limiting victims' access to fair compensation, especially in countries experiencing complex security and political circumstances such as Iraq<sup>29</sup>.

### **2.2.1 International Obligations**

Notwithstanding notable progress in international legal discourse concerning the rights of terrorism victims, binding rules for their compensation still lack clarity and operational mechanisms<sup>30</sup>. This raises critical questions about the effectiveness of the international system in addressing the harms caused by terrorism. For instance, the 1999 International Convention for the Suppression of the Financing of Terrorism obliges states to prevent terrorist financing and criminalise those who support it, yet it fails to provide sufficient tools to guarantee that victims themselves receive compensation.<sup>31</sup>

In the same context, United Nations Security Council Resolution 1373 (2001) represented a major turning point in international counter-terrorism obligations. Adopted under Chapter VII of the UN Charter, it imposed binding duties on states such as freezing terrorist assets and enhancing international judicial cooperation. However, it did not directly address compensation for terrorism victims or the provision of material or moral support to them, thereby exposing a legislative gap in the international legal system that requires urgent attention.<sup>32</sup>

Within the Arab context, a recent Iraqi study stresses that most national legal frameworks rely primarily on limited domestic initiatives without meaningful international support. This leaves affected states such as Iraq unable to secure fair and comprehensive compensation for terrorism victims.<sup>33</sup>

### **2.2.2 The Problem of Coordination and Development**

Bridging this legal gap requires a deep critical reassessment of all international obligations toward terrorism victims, with an emphasis on embedding the principle of compensation within a

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<sup>28</sup> United Nations, International Convention for the Suppression of the Financing of Terrorism, New York, 1999, Article 8. Quoted in: Samira Al-Haddad, op. cit., p. 45.

<sup>29</sup> Thaer Saad Abdullah, The Civil Responsibility of the State for Compensating Damages Resulting from Terrorist Operations in Iraqi Law, *Journal of Middle East Research*, No. 72, February 2022, p. 367.

<sup>30</sup> Abdulaziz Al-Shammari, "Compensation for Damages Resulting from Terrorism in International Law," *Journal of Law and Politics*, University of Karbala, No. 29, 2020, p. 88.

<sup>31</sup> Haidar Al-Zaidi, The Right to Compensation for Terrorist Damages in International Law, *Iraqi Journal of Legal Sciences*, No. 17, 2019, p. 103.

<sup>32</sup> Abdulrahman Al-Sulaiman, The Impact of Terrorism on Contemporary International Law, Dar Al-Nokhba Al-Arabiya, Cairo, 2021, p. 153.

<sup>33</sup> Fawaz Al-Awwamra, International Justice and the Rights of Terrorism Victims, Arab Center for Legal Research, Beirut, 2019, p. 94.

clear and binding international legal framework<sup>34</sup>. This issue has gained particular importance given the growing recognition of terrorism victims as independent legal subjects entitled to protection and redress on the international stage.<sup>35</sup>

The weakness of binding international obligations concerning the compensation of terrorism victims reflects a structural flaw in the system of international justice. Security imperatives are frequently prioritised over the rights of victims, leaving them trapped in a legal vacuum that obstructs their access to redress<sup>36</sup>. From this perspective, the researcher stresses the urgent need for dedicated international rules that guarantee just compensation and impose explicit duties on states and the international community—especially toward heavily affected states such as Iraq, which have borne heavy costs without receiving meaningful international justice<sup>37</sup>.

### **3- The Legal Framework for Compensating Victims of Terrorism in Iraq**

The Iraqi legal system has undergone notable transformations with regard to victims' rights, beginning with reliance on judicial compensation based on general rules, and later developing into specialised legislation. The most significant of these are the Martyrs' Foundation Law No. 2 of 2016, and the Law No. 20 of 2009 on the Compensation of Victims of War Operations, Military Mistakes, and Terrorist Operations (as amended), in addition to executive regulations and instructions that elaborated on the details of these rights and mechanisms for obtaining them<sup>38</sup>. This legislative trajectory reflects a growing official awareness of the need to protect victims, entrenching the concept of "legal care" through the establishment of a legal and institutional framework concerned with delivering justice and restoring part of the rights denied to victims<sup>39</sup>.

Although this framework constitutes tangible progress compared with earlier legislative stages, it still faces multiple challenges in practical application. These include disparities in responsiveness and the bureaucratic and procedural complexities that hinder the fulfilment of the primary goal of compensation: reparation and the restoration of human dignity. Against this backdrop, the significance of this chapter lies in analysing the foundations of Iraq's compensation system, exposing its shortcomings and gaps, and assessing the adequacy of the existing legal framework in meeting the actual and legal needs of terrorism victims in Iraq.<sup>40</sup>

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<sup>34</sup> Abdulrahman Al-Sulaiman, *The Impact of Terrorism on Contemporary International Law*, Dar Al-Nokhba Al-Arabiya, Cairo, 2021, p. 161.

<sup>35</sup> Mohammed Al-Jaafari, *International Law and Human Rights*, Dar Al-Fikr Al-Arabi, Amman, 2018, p. 123.

<sup>36</sup> Fawaz Al-Awwamra, *op. cit.*, p. 165.

<sup>37</sup> *Ibid.*, p. 166.

<sup>38</sup> Ahmad Adel Abdul-Jabbar, *The Legal System for Compensating Victims of Terrorism in Iraq: A Critical Perspective*, *Journal of Legal Studies*, No. 13, University of Karbala, 2021, p. 93.

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<sup>40</sup> Hassan Ali Hassan, *Transitional Justice and Compensation for Victims of Terrorism: A Study in International Law and Iraqi Legislation*, *Journal of the College of Law, University of Baghdad*, No. 28, 2020, p. 113.

### 3.1.Legislative Foundations

#### 3.1.1. The Legal Framework for Compensating Victims of Terrorism in Iraq

The Iraqi legal system has undergone significant transformations concerning victims' rights, beginning with reliance on judicial compensation based on general legal principles, and later moving toward the enactment of special legislation. Notable among these are the Martyrs' Foundation Law No. 2 of 2016, the Law on Compensation for Victims of War Operations, Military Mistakes, and Terrorist Operations No. 20 of 2009 and its amendments, in addition to executive regulations and instructions that detailed these rights and mechanisms for obtaining them.<sup>(38)</sup> This legislative sequence reflects the growing official awareness of the need to protect victims, embedding the concept of "legal care" through the establishment of a legal and institutional framework aimed at delivering justice and securing part of their lost rights<sup>41</sup>.

Although this framework represents tangible progress compared to earlier legislative stages, it continues to face numerous challenges in practical application. These include inconsistencies in response levels, bureaucratic and procedural complexities that hinder the primary goal of the compensation system—namely, reparation and restoration of human dignity. Against this backdrop, the importance of this chapter lies in analysing the foundations of the legal system for compensation, identifying its shortcomings and gaps, and assessing the adequacy of the existing framework in meeting the real needs and legal entitlements of terrorism victims in Iraq<sup>42</sup>.

#### 3.1.2. The Legislative Basis

Compensation for damages resulting from terrorist operations constitutes both a legal and moral obligation upon the state. This obligation is rooted in constitutional and legislative principles that require the authorities to take necessary measures to secure victims' rights and enable their families to obtain fair and just compensation. It is framed within the broader pursuit of the principle of "reparation," which embodies the state's respect for human rights and contributes to embedding social justice in Iraq after 2003—a period marked by political and security upheavals that left behind a tragic human reality of thousands of victims, including martyrs, the wounded, and the displaced<sup>43</sup>.

##### First : The Constitution

The Iraqi Constitution of 2005 is the supreme source of legislation in the country. Its provisions include explicit references affirming the right of victims of terrorism to compensation and care. Article 132 stipulates: *"The State shall guarantee the care of the families of martyrs and those who sustained damages as a result of military operations, military mistakes, and terrorist operations, and shall compensate them in a manner that ensures fairness, regulated by law."* From this provision, it is clear that the state's obligation is not limited to providing care alone but extends to granting full and fair compensation that achieves justice for victims and contributes to

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<sup>41</sup> Saadoun Jawad, Social Security for Victims in Iraqi Legislation, Journal of Legal and Political Sciences, No. 32, Al-Nahrain University, 2022, p. 64.

<sup>42</sup> Hassan Ali Hassan, Transitional Justice and Compensation for Victims of Terrorism: A Study in International Law and Iraqi Legislation, Journal of the College of Law, University of Baghdad, No. 28, 2020, p. 113.

<sup>43</sup> Taha Baqir Al-Samarrai, Introduction to Iraqi Constitutional Law, 1st ed., Baghdad: Al-Sanhouri Legal Library, 2016, p. 204.



repairing the harm sustained, within a legal framework that organises and ensures the implementation of these rights<sup>44</sup>.

This constitutional text represents the cornerstone of the legal system for compensation. Iraqi constitutional jurisprudence holds that reference to a regulatory law does not merely grant discretionary authority to the legislator but compels him to set forth detailed rules and practical mechanisms to operationalise this provision and transform it into enforceable procedures. Thus, the provision is not simply a political direction or a moral declaration but rather a binding constitutional obligation that the legislator must translate into legislative reality to fulfil its purpose—ensuring justice for victims and securing their rights<sup>45</sup>.

Article 30/2 of the Constitution further requires the state to guarantee social and health protection in cases of illness and disability, which includes victims of terrorist operations who suffer from the loss of a breadwinner or the inability to earn a livelihood. Consequently, the state is obliged to integrate such victims within the social protection system and provide compensations that ensure them a dignified life while safeguarding their economic and social rights<sup>46</sup>.

## **Second:Special Laws**

The Iraqi legislator enacted a number of special laws to regulate the issue of compensating victims of terrorism, building upon the relevant constitutional principles. Chief among these are the Law on Compensation for Victims No. 20 of 2009 and the Martyrs' Foundation Law No. 2 of 2016, which together form a legal framework to protect victims' rights and ensure they receive appropriate compensation.<sup>47</sup>

### **1. Law No. 20 of 2009 on Compensation for Victims of War Operations, Military Mistakes, and Terrorist Operations**

This law represents the primary legal framework regulating compensation for victims of terrorism in Iraq. It established clear standards for financial and moral compensation, applicable to both individuals and institutions. Article 2 of the law obliges the government to compensate all those who sustained damages as a result of war operations, military mistakes, or terrorist operations, covering both physical and material harm<sup>48</sup>.

The law also established subsidiary committees in the provinces and central committees in Baghdad tasked with receiving compensation requests, investigating them, and assessing damages in preparation for issuing compensation decisions. It granted the right of families of deceased victims, the injured, and property owners to submit claims for various forms of compensation, including retirement pensions, financial grants, and allocation of residential land. The law was amended by Law No. 57 of 2015, which expanded the categories of beneficiaries

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<sup>44</sup> Abdul-Munim Ahmed Majid, *Explanation of the Provisions of the Iraqi Constitution of 200*, 1st ed., Baghdad: Dar Al-Thaqafa Al-Jami'iyya, 2017, p. 233.

<sup>45</sup> Rafid Abdul-Hussein Jabr, *The Iraqi Constitutional System After 2005*, 1st ed., Baghdad: Al-Zawraa Publications, 2019, p. 142.

<sup>46</sup> Hassan Abdullah Al-Janabi, *The Legal System for Compensating Victims of Terrorist Operations in Iraqi Law*, 1st ed., Baghdad: Dar Al-Nahj, 2020, p. 91.

<sup>47</sup> Abdulrahman Al-Kubaisi, *Commentary on the Law No. 20 of 2009 on Compensation of Victims (and its Amendments)*, 1st ed., Baghdad: Dar Al-Thaqafa Al-Qanuniyya, 2022, p. 134.

<sup>48</sup> Mohammed Hassan Al-Kaabi, *Administrative Procedures for Compensating Victims of Terrorist Operations in Iraq*, 1st ed., Baghdad: Dar Al-Zawraa, 2022, p. 61.

and simplified certain procedures—reflecting gradual progress in the state’s response to victims’ demands. Nevertheless, its practical implementation still faces major challenges, particularly regarding financial allocations and the speed of administrative decision-making in compensation files<sup>49</sup>.

## **2. Martyrs’ Foundation Law No. 2 of 2016**

In addition to Law No. 20 of 2009, the Iraqi legislator enacted the Martyrs’ Foundation Law No. 2 of 2016, which provides special compensations for the families of martyrs killed in organised terrorist acts. This law broadened the definition of a “martyr” to include anyone who lost their life due to terrorism, thereby expanding legal protection to cover such victims and their families and guaranteeing their rights to compensation and care in a more comprehensive manner.<sup>(48)</sup>

The law grants a wide range of benefits to the families of martyrs, including retirement pensions, financial grants, priority in government employment for family members, scholarships, health services, and the allocation of residential land. It also provides exemptions from taxes and customs fees for certain beneficiaries. Furthermore, the law vested the relevant institution with oversight powers to monitor the implementation of these rights in coordination with concerned ministries, ensuring the realisation of justice and protection of beneficiaries’ interests.

Despite these legislative efforts, the legal framework remains incomplete, plagued by fragmented provisions and inconsistent application. The researcher argues that existing laws, though important, require comprehensive review aimed at clarifying concepts, expanding the scope of beneficiaries, and simplifying procedures—thereby achieving the essential goal of effective compensatory justice.

Compensation for damages arising from terrorist operations constitutes both a legal and moral obligation borne by the state. This obligation rests on constitutional and legislative foundations that bind authorities to adopt the necessary measures to ensure victims’ rights and enable their families to obtain fair and equitable compensation. It falls within the broader framework of achieving the principle of \*reparation\*, which reflects the state’s respect for human rights and contributes to consolidating the concepts of social justice in Iraq after 2003—a period marked by severe security and political upheaval that produced a painful human reality, with thousands of victims including martyrs, wounded persons, and displaced populations<sup>50</sup>.

## **3.2. Financial and Administrative Challenges**

### **Weakness of Enforcement Mechanisms**

Despite the international recognition of the right of terrorism victims to receive compensation, such recognition lacks effective enforcement mechanisms, rendering it closer to non-binding recommendations rather than genuine legal obligations<sup>51</sup>. The absence of specific enforcement tools—such as international funds or supervisory bodies—confines this right to theoretical discourse without providing tangible guarantees of justice for victims.

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<sup>49</sup> Abdul-Karim Abdullah Ali, *Commentary on the Martyrs’ Foundation Law No. 2 of 2016*, 1st ed., Najaf: Al-Irshad Legal Library, 2019, p. 33.

<sup>50</sup> Taha Baqir Al-Samarrai, *Introduction to Iraqi Constitutional Law*, 1st ed., Baghdad: Al-Sanhouri Legal Library, 2016, p. 204.

<sup>51</sup> Athir Jabbar Al-Moussawi, *The Legal Organisation of Compensation for Victims of Terrorist Acts in Iraq*, *Journal of the Islamic University College*, No. 19, 2021, p. 128.

### **First: Absence of Specialised Bodies**

The lack of a specialised international body dedicated to compensating victims of terrorism constitutes a major obstacle to achieving justice. Although the right of victims to compensation is recognised internationally, no international institution currently exists with the authority to compel states to implement this right. Instead, responsibility for compensation is divided among several bodies, such as the United Nations and regional organisations, which results in overlapping jurisdictions and coordination difficulties, thereby undermining the effectiveness of the international system in providing real and effective protection for victims<sup>52</sup>.

This situation generates ambiguity in identifying the party responsible for compensating victims, forcing them into a cycle of legal and administrative procedures that are often ineffective. Some states take advantage of this lack of clarity to evade their legal obligations, relying on institutional gaps and the absence of an international body capable of enforcing compliance with duties owed to victims<sup>53</sup>.

### **Second: The Problem of Coordination and Development**

The complexities of coordination among states, along with overlapping political and economic interests, represent a fundamental barrier to the effectiveness of compensation enforcement mechanisms. Many states merely exhibit formal or superficial commitment, while lacking genuine political will or sufficient financial resources to implement these obligations in practice<sup>54</sup>.

As a consequence, some states have resorted to temporary or informal compensation measures, while others have ignored victims' demands entirely—thus aggravating their suffering and opening the door to further violations. The absence of binding enforcement mechanisms, including clear sanctions against non-compliant states, remains one of the central obstacles to the effectiveness of the international system in this domain<sup>55</sup>.

Therefore, there is an urgent need to establish strong and transparent international enforcement mechanisms to ensure swift and effective compensation for terrorism victims. This could be accomplished by creating a dedicated international compensation fund or by granting an international court jurisdiction to address such cases. Additionally, unified legislation should be enacted to oblige states to implement compensation and to impose sanctions on those that fail to comply<sup>56</sup>.

The researcher concludes that the weakness of international commitment to compensating terrorism victims constitutes a fundamental failure of the international legal system. The lack of effective enforcement mechanisms and clear legal obligations—compounded by political and

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<sup>52</sup>Fouad Salman Al-Rawi, *Compensatory Justice in Iraqi Law*, 1st ed., Baghdad: Dar Al-Hawra, 2018, p. 154.

<sup>53</sup> Hasanain Ali Al-Tamimi, *Emergency Budgets in Iraq and Their Impact on Social Rights*, *Journal of Legal Sciences – University of Baghdad*, No. 4, 2020, p. 92.

<sup>54</sup> Ali Karim Al-Zubaidi, *Financial Guarantees for Victims' Rights in Iraqi Law*, 1st ed., Baghdad: Iraqi Center for Legal Studies, 2021, p. 119.

<sup>55</sup> Alaa Shakir Al-Akeeli, *The Administrative Structure of Compensation in Iraqi Laws: A Comparative Study*, 1st ed., Baghdad: Judicial Institute Publications, 2021, p. 67.

<sup>56</sup> Abdul-Hussein Shaban, *Human Rights and Public Administration in Iraq After 2003*, 1st ed., Beirut: Center for Arab Unity Studies, 2019, p. 101.

humanitarian complexities—has deprived victims of their basic right to justice. Continued weakness in this respect undermines trust in the international system and fosters impunity, underscoring the urgent need for radical reform to establish a stronger and more transparent international order that places victims at its core<sup>5758</sup>

## Conclusion

An in-depth study of the legal framework governing state responsibility for compensating victims of terrorism—whether in the international context or within Iraqi national legislation—has led to several findings and the formulation of targeted recommendations.

### First: Findings

1. The binding international framework suffers from deficiencies in establishing clear responsibility on states for compensating terrorism victims. Most international instruments contain non-binding provisions or set out general principles that fall short of enforceable obligations.
2. Iraqi legislation reveals shortcomings in the scope and inclusiveness of compensation—whether in terms of recognising different types of harm or extending eligibility to broader categories of victims—alongside weak enforcement mechanisms and bureaucratic delays in the disbursement of compensation.
3. There is no specialised international judicial mechanism to hold states or entities supporting terrorism accountable. As a result, compensation for victims remains hostage to political considerations and expediency rather than grounded in justice and fairness.
4. The issue of evidence constitutes a major challenge under international rules, particularly in assigning state responsibility for supporting or being complicit in terrorist acts. This weakens victims' ability to claim compensation outside the domestic framework of the affected state.
5. State responsibility often intersects with the principle of sovereignty, reducing the likelihood of successful compensation claims before international or regional courts, especially in the absence of effective coordination among states in this domain.

### Second: Recommendations

1. The international community should adopt a binding international convention that regulates state responsibility towards terrorism victims, establishing clear standards and enforcement mechanisms to ensure just compensation, moving beyond the voluntary or symbolic nature of existing instruments.
2. Establish a national independent compensation fund with legal personality and financial autonomy, funded by the state budget and international contributions, to be managed with full transparency and under the supervision of independent oversight bodies.
3. Enhance the role of national and international courts in hearing terrorism victims' claims, and activate the principle of *universal jurisdiction* to hold accountable those responsible

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<sup>57</sup>Hasanain Ali Al-Tamimi, Emergency Budgets in Iraq and Their Impact on Social Rights, Journal of Legal Sciences – University of Baghdad, No. 4, 2020, p. 92.

<sup>58</sup>Fouad Salman Al-Rawi, Compensatory Justice in Iraqi Law, 1st ed., Baghdad: Dar Al-Hawra, 2018, p. 154.

for supporting terrorism, whether individuals or states, without regard to territorial or nationality limitations.

4. Amend existing Iraqi legislation on compensation, such as Law No. 20 of 2009 and the Martyrs' Foundation Law, to explicitly include psychological and moral damages, raise compensation amounts commensurate with the nature of harm, simplify administrative procedures for disbursement, and reinforce judicial oversight over executive committee decisions to guarantee transparency and fairness.

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