ITJ | The International Tax Journal

# The theory of social risks as a basis for compensation: A study of the concept and elements

**Dr. Hadj Amar Naimi** [1], and **Dr. Samsar Aissa** [2]

[1] Faculty of Law and Political Science, University of Ghardaia, Algeria.
Email: naimi.hadjamar@univ-ghardaia.dz
[2] Faculty of Law and Political Science, University of Ghardaia, Algeria.
Email: samsar.aissa@univ-ghardaia.dz

**Abstract---**This study aims to shed light on the theory of social risks as a basis for compensation, by clarifying the reasons that have led jurisprudence and the judiciary to adopt this theory. It explores the definition of social risk according to doctrinal criteria, explains its characteristics, and proceeds to analyze and elaborate on the essential elements required for the establishment of this theory and for compensating those harmed by such risks. The study concludes that this responsibility is legal in nature, and that compensation based on it exists—or does not exist—strictly in accordance with the legal provision that establishes it.

**Keywords---**Social risks, compensation, legal liability.

## INTRODUCTION:

The State's liability has traditionally been established for damages caused either by wrongful acts or by lawful acts, based on various foundations—beginning with fault, which was at the time the primary basis of liability, then moving to the theory of risks, which established the State's liability for its lawful actions that inherently involve certain special risks, and finally reaching the theory of breach of equality before public burdens.

However, societal evolution has contributed to the emergence of new types of risks such as traffic accidents, natural disasters, epidemics, diseases, acts of violence, and terrorism. These risks have continued to develop and diversify because their source lies within society itself. This evolution exposed the inability of the traditional bases of liability to guarantee compensation for individuals harmed by such risks. Therefore, it became necessary for the State to fulfill its role in protecting individuals and

**How to Cite**:
Naimi, H. A., & Aissa, S. (2025). The theory of social risks as a basis for compensation: A study of the concept and elements. *The International Tax Journal*, *52*(6), 4349–4355. Retrieved from https://internationaltaxjournal.online/index.php/itj/article/view/416

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

Submitted: 03 August 2025| Revised: 15 October 2025| Accepted: 05 December 2025

maintaining security and stability within society by intervening to compensate victims of social risks. This contributed to establishing the theory of social risks as a new basis for compensation, supplementing the previous foundations.
The importance of this topic lies in its treatment of the theory of social risks through clarifying its concept and components. Accordingly, we raise the following question: ***What is meant by social risks?***
To answer this question, we employ the descriptive method by exploring various doctrinal opinions on defining social risks, outlining their characteristics, and analyzing their constituent elements.
Our study is divided into two sections: the first is devoted to the concept of social risks, and the second to clarifying the elements of this theory.

## I. THE CONCEPT OF SOCIAL RISKS

Human beings are exposed to numerous risks that form an integral part of their existence within society, as these risks may affect their property or their physical well-being. These risks stem from multiple and diverse sources. Some arise from natural phenomena such as earthquakes, volcanic eruptions, and floods. Others result from international conflicts, including wars and their negative effects on individuals and property. Additionally, certain risks emerge from political causes, such as those associated with demonstrations, acts of vandalism, and violence.
There are also risks linked to physiological factors—including aging, illness, and death. One must not overlook the risks arising from traffic accidents, as well as economic risks such as unemployment and similar challenges. Given the multiplicity of these risks and the diversity of their sources and causes, formulating a comprehensive and precise definition becomes difficult.
For this reason, legal scholars have sought to establish criteria for identifying social risks, and some have defined them based on their inherent characteristics.

### First Requirement: Defining Social Risks Based on Doctrinal Criteria

Jurists have differed in defining social risk. Some defined it on the basis of its source and cause; others defined it according to its impact on the individual's material aspect; while another group relied on the criterion of professional activity. These approaches will be addressed successively in this requirement.

### Section One: Social Risk According to Its Source

A group of jurists relied on the criterion of cause and source to define social risk. They focused on analyzing its underlying causes and considered any risk that arises as a result of life within society to be a social risk. In other words, risks whose primary origin is living within the community are deemed social risks. According to this view, risks that are closely linked to social life fall under the concept of social risks. Thus, social risk has been defined as “a risk that arises from living in society,[1]” or “a risk resulting from life in the community,[2]” or “those risks that arise from social life, whose essential source lies in communal living; therefore, any risk arising from living within the group is considered a social risk due to its close connection with life in society, such as traffic accidents, workplace accidents, aging, and illness. On this basis, society must direct its efforts toward protecting its members from risks inherent to social life.[3]”

### Section Two: Social Risk According to Its Economic Impact

Some jurists have defined social risk through its effects and consequences on the individual’s financial situation. They defined social risk as anything that negatively affects the economic status of the

---

[1] ʿAllāl Ṭaḥṭāḥ, Ḥawādiṯ al-ʿAmal bi-Naẓariyyat al-Akhṭār al-Ijtimāʿiyya wa-Qawāʿid al-Masʾūliyya, Master’s Thesis in Private Law, Faculty of Law, University of Algiers, 2004/2005, p. 26.

[2] Khālid al-Sayyid Muḥammad ʿAbd al-Majīd Mūsā, Sharḥ Niẓām al-Taʾmīnāt al-Ijtimāʿiyya al-Saʿūdī al-Jadīd wa-Lāʾiḥatihi al-Tanfīdhiyya, Maktabat al-Qānūn wa-l-Iqtiṣād, Riyāḍ, Kingdom of Saudi Arabia, 1st ed., 2014, p. 24.

[3] al-Qāḍī Ḥusayn ʿAbd al-Laṭīf Ḥamdān, al-Ḍamān al-Ijtimāʿī: Aḥkāmuhu wa-Taṭbīqātuhu — Dirāsa Taḥlīliyya Shāmila, Manšūrāt al-Ḥalabī al-Ḥuqūqiyya, Bayrūt, Lebanon, 1st ed., 2005, p. 172.

individual, whether by reducing income or increasing expenditures—whether the cause is physiological, such as illness, aging, or death, or economic, such as unemployment, medical treatment costs, or increasing family burdens. Thus, social risk has been defined as "an event that negatively affects the individual's economic position by causing an interruption or reduction in income, or an increase in financial burdens. This negative impact may result from physiological causes such as illness, disability, or old age, which lead to a decrease or loss of income. It may also take the form of increased financial obligations due to illness, such as medical expenses or rising family responsibilities,[4]" or as "an event that adversely affects a person's economic status by reducing or interrupting income or increasing financial burdens, and this effect may be due to physiological causes such as illness, disability, or aging, and may also appear in the form of increased financial expenses resulting from illness, such as treatment costs.[5]"

**Section Three: Social Risk According to Professional Activity**
Another group of jurists defined social risk according to their view of professional activity. They defined social risk as "any event that forces a person to cease performing their work, whether temporarily or permanently. In this sense, a social risk may be a physiological event faced by the individual, such as illness, disability, aging, or death; it may also be related to professional life, such as unemployment, workplace injuries, or occupational diseases[6]," or as "any event that leads to loss of employment or a reduction in the standard of living of any person engaged in a professional activity, regardless of the nature of that activity[7]," or as "any event that compels a person to stop working—entirely or partially, permanently or temporarily—such as illness, aging, death, unemployment, or workplace injuries. Some scholars have also linked the loss of employment to the event affecting the individual, defining it as any event that results in the loss of employment and the reduction of the standard of living of any person engaged in a professional activity, whatever its nature.[8]"

**Second Requirement: Defining Social Risks Based on the Characteristics of Social Risk**
The modern nature of social risk and its evolution alongside the development of societies has posed significant challenges and difficulties in formulating a comprehensive definition of it. The previous criteria failed to provide an accurate concept due to the divergence of viewpoints. Therefore, we aim to derive a definition based on examining its characteristics and distinctive features.

**Section One: Social Risk as a Threat to Security and Stability Within Society**
Social risks are among the challenges that affect both the individual and society in an interconnected manner, as their effects create pressure on the State, compelling it to intervene by enacting special legislation to address them. It is well established that society only concerns itself with what serves the interests of the community; it has no regard for whether the victim ultimately receives compensation or not. This situation has led those harmed by such risks to unite in solidarity due to their shared sense of injustice stemming from not receiving compensation. With the growing number of victims unable to confront social risks—far exceeding previous levels—they have come to pose a threat to public order and societal security, as the defense of personal interests increasingly took on a collective character through associations, unions, demonstrations, and gatherings. This, in turn, led society to concede to assisting victims, making the burden of compensation an inevitable obligation[9].

The effects of social risks appear directly on the individual, as well as on those who depend on them. For example, when a worker suffers an injury that prevents him from working, his family faces serious

[4] Simātī al-Ṭayyib, al-Taʾmīnāt al-Ijtimāʿiyya fī Majāl al-Ḍamān al-Ijtimāʿī, Dār al-Hudā, ʿAyn Millīla, Algeria, 2014, p. 20.
[5] Khālid al-Sayyid Muḥammad ʿAbd al-Majīd Mūsā, previous reference, p. 25
[6] Qujjālī Murād, Niẓām al-Taʿwīḍ ʿan Intihāk al-Ḥaqq fī al-Salāma al-Jasadīyya, Doctoral Dissertation in Law (Private Law), Faculty of Law, University of Algiers 1, Algeria, 2014–2015, p. 59
[7] Simātī al-Ṭayyib, previous reference, p. 21.
[8] Khālid al-Sayyid Muḥammad ʿAbd al-Majīd Mūsā, previous reference, p. 23.
[9] Filālī ʿAlī, al-Iltizāmāt: al-Fiʿl al-Mustaḥiq li-l-Taʿwīḍ, Moufem Publishing, Algeria, 2nd ed., 2007, pp. 339–341.

hardship due to the loss or reduction of income, in addition to the medical expenses that increase financial burdens. Thus, leaving the worker without compensation negatively impacts his standard of living. Furthermore, unemployment represents one of the most serious secondary effects, as the individual may turn to illicit sources of income in the absence of work—such as theft or committing various crimes—thereby threatening the safety and security of society as a whole. Based on this, State intervention becomes necessary to preserve social stability and protect society from such threats[10].

**Section One: Social Risk as a Burden Whose Effects Are Borne by the State Instead of Individuals**

The system of civil liability developed gradually, yet it remained unable to adequately compensate the victim, which led to the emergence of the concept of social risk as an alternative solution. This concept arose due to the failure of personal liability to fully achieve its compensatory purpose, contributing to the introduction of new mechanisms aimed at distributing compensation in a direct and collective manner to mitigate the effects of damages resulting from social risks, rather than focusing solely on the liability of the person who caused the harm[11].

Changes in ideological thinking contributed to shifting society's perspective toward the individual, as the State began to assume a greater role in economic and social intervention to ensure greater protection for individuals. People no longer face social risks alone, especially since some of these risks may have severe or indeterminate consequences. Accordingly, the State organized solidarity among individuals through the establishment of social insurance systems.

The State's assumption of responsibility for compensating social risks takes two main forms: either through organizing social solidarity among individuals by creating insurance systems, or by directly undertaking compensation through the establishment of compensation funds partially financed by its budget, or through compensation paid directly from the State's budget.

## II. ELEMENTS OF THE THEORY OF SOCIAL RISKS

For any type of liability to be established, all of its elements must be present; the absence of any element leads to the absence of liability, even if all other conditions are met. This is because the lack of one element naturally prevents the full realization of the others. Unlike liability based on fault, risk, or the theory of breach of equality before public burdens—which are founded on only three elements: the harmful act, the damage, and the causal link—liability based on the theory of social risks is established through four complete elements. Two of these are material elements, which we will clarify in the first requirement, while the second requirement will be devoted to the non-material elements.

**First Requirement: The Material Elements**

The first material element consists of the act that caused the damage, which must not be attributable to the State. This act must also result in damage.

**Section One: The Element of an Act Not Attributable to the State**

An act committed by someone other than the State is one for which the State has no involvement in its occurrence. This is contrary to the other foundations of administrative liability, where the source of liability is either a lawful or unlawful act committed by the State. Under the system of liability based on social risks, no conduct—whether wrongful or non-wrongful—is committed by public officials of the State. As such, the State has no hand in the harm suffered by the victim. In this case, the act may be:

- **Human-caused:** meaning that its source is a human act, such as acts arising from riots and mass gatherings (collective violence), acts of terrorism, or harm inflicted upon public officials.

---

[10] Qujjālī Murād, previous reference, p. 69.

[11] Saʿīd Muqaddam, al-Taʾmīn wa-l-Masʾūliyya al-Madanīyya, 1st ed., Klik Publishing, Algeria, 2008, p. 266

- **Nature-caused:** nature may cause certain harms to individuals through phenomena that constitute risks, such as disasters resulting from earthquakes, volcanic eruptions, and floods. These risks may also arise from widespread epidemics and diseases.

**Section Two: The Element of Damage**

Damage is considered the foundation upon which liability is established; it is the essence of liability and the reason for which it exists or ceases to exist, strengthens or weakens. If an act does not cause damage[12], no compensation can be granted. Thus, if damage is absent, compensation is excluded regardless of the severity of the fault[13]. In other words, a person who has not suffered damage cannot claim compensation; otherwise, their claim must be rejected[14].

"Damage is generally defined as the harm sustained by a person as a result of an infringement upon one of their rights or a legitimate interest, whether this right or interest relates to their bodily integrity, emotions, property, liberty, or honor. It is not required that the right be purely financial; damage is realized by any infringement upon a right protected by law, such as the right to life, the right to physical integrity, and the right to personal liberty[15]." Accordingly, damage—being the harm inflicted upon a person as a result of an act not committed by the public administration[16] is itself divided into two types:

- **Material Damage:** Material damage is harm inflicted upon an individual's legitimate material interest. Dr. Ramadan Abdullah Al-Sawi defined it as "the impairment of an interest that has financial value for the victim[17]." This is the most common type of damage in social risks.
- **Moral Damage:** Moral damage is any harm inflicted upon a non-material interest. An individual may suffer moral damage[18], for instance, due to losing their parents in terrorist acts or other circumstances falling under this theory.

Contrary to the general conditions required for any type of damage, damage under the theory of social risks has specific conditions, as its nature and method of assessment are determined according to the legal provision establishing the liability.

**Second Requirement: The Non-Material Elements**

The non-material elements consist of the element of causation and the legal provision that obligates the State to provide compensation.

**Section One: The Element of Causation**

The meaning of causation between the act of the liable party and the damage is that there must be a direct connection between the act committed by the responsible party and the harm suffered by the victim[19]. This element is indispensable for liability to be established, as causation must exist between the act not attributable to the State—that is, the act arising from social risks—and the resulting harm,

---

[12] ʿAlāʾ Muḥsin Shaddān, Aḥkām al-Taʿwīḍ ʿan Iṣābāt al-ʿAmal: Dirāsa Muqārana, Doctoral Dissertation in Law, Faculty of Law and Political Science, Department of Law, University of Algiers 01, Algeria, 2015/2016, p. 251

[13] ʿAlāʾ Muḥsin Shaddān, Aḥkām al-Taʿwīḍ ʿan Iṣābāt al-ʿAmal: Dirāsa Muqārana, Doctoral Dissertation in Law, Faculty of Law and Political Science, Department of Law, University of Algiers 01, Algeria, 2015/2016, p. 251.

[14] Ḥasan ʿAlī al-Dannūn, al-Mabsūṭ fī Sharḥ al-Qānūn al-Madanī – al-Ḍarar, Dār Wāʾil li-l-Nashr, ʿAmmān, Jordan, 1st ed., 2006, p. 199

[15] Mūlāy Muḥammad al-Amīn, al-Ḍarar al-Ṭibbī: Dirāsa Muqārana, Doctoral Dissertation in Legal Sciences, Faculty of Law and Political Science, University of Djilali Liabès, Sidi Bel Abbès, Algeria, 2019/2020, p. 76

[16] Āyt ʿUdayya Balkhayr Muḥammad, al-Masʾūliyya al-Idāriyya ʿalā Asās al-Qānūn, Herodotus Journal for Human and Social Sciences, vol. 05, no. 02 (2021), University of Ghardaïa, Algeria, 01/07/2021, p. 241.

[17] Ramaḍān ʿAbd Allāh al-Ṣāwī, Taʿwīḍ al-Maḍrūr ʿan Jarāʾim al-Afrād min Qibal al-Dawla wa-Kayfiyyat Tamwīl Maṣādir al-Taʿwīḍ, Dār al-Jāmiʿa al-Jadīda li-l-Nashr, Alexandria, Egypt, 2006, p. 332

[18] Suʿād Būzyān, Khuṣūṣiyyat Rukn al-Ḍarar fī al-Masʾūliyya al-Idāriyya, Majallat al-Ijtihād al-Qaḍāʾī, vol. 13, no. 1, Faculty of Law, University of Benyoucef Benkhedda – Algiers 1, Algeria, 2021, p. 1047.

[19] ʿAbd al-Razzāq Aḥmad al-Sanhūrī, al-Wasīṭ fī Sharḥ al-Qānūn al-Madanī al-Jadīd: Naẓariyyat al-Iltizām bi-Wajh ʿĀmm – Maṣādir al-Iltizām, vol. 2, Manšūrāt al-Ḥalabī al-Ḥuqūqiyya, Beirut, Lebanon, 3rd ed., 2000, p. 990

without being interrupted by any factor that may break the causal link. For example, if a law is enacted requiring the State to compensate residents whose homes collapsed due to floods, the element of causation would be absent if one of the residents contributed to the collapse of their own house.

**Section Two: The Element of the Legal Provision Requiring the State to Provide Compensation**

For liability based on the theory of social risks to arise, a legal provision obligating the State to compensate must exist, since liability based on the theory of social risks is merely a form of liability grounded in law. Its existence depends entirely on the presence or absence of the legal provision establishing it.

## CONCLUSION

Given the inability of traditional rules of administrative liability—founded on the State's wrongful or lawful acts—to protect individuals and guarantee compensation for victims of social risks, and given the inability of jurisprudence and the judiciary to find suitable mechanisms to protect individuals from such risks, whether due to the difficulty in determining the responsible party, their lack of financial capacity, or the severity of the damage, and with the evolution of society's perception of the individual and the changing role of the State, the judiciary has recognized compensation for victims of social risks on the basis of law.

With the emergence of this basis, jurists have fluctuated in defining it comprehensively and exhaustively, constantly attempting to introduce all possible approaches that would allow individuals to obtain compensation for such risks by expanding the concept of social risks as far as possible to encompass all risks individuals face within society.

To guarantee compensation for these risks, a set of elements must be fulfilled, distinguishing this system from previous compensation frameworks by adding a fourth element to the traditional three: the element of the legal provision obliging the State to compensate, since this form of liability is fundamentally rooted in law.

## BIBLIOGRAPHY

### BOOKS


1. Ḥasan ʿAlī al-Dannūn, *al-Mabsūṭ fī Sharḥ al-Qānūn al-Madanī – al-Ḍarar*, Dār Wāʾil li-l-Nashr, ʿAmmān, Jordan, 1st ed., 2006.
2. Khālid al-Sayyid Muḥammad ʿAbd al-Majīd Mūsā, *Sharḥ Niẓām al-Taʾmīnāt al-Ijtimāʿiyya al-Saʿūdī al-Jadīd wa-Lāʾiḥatihi al-Tanfīdhiyya*, Maktabat al-Qānūn wa-l-Iqtiṣād, Riyāḍ, Kingdom of Saudi Arabia, 1st ed., 2014.
3. Ramaḍān ʿAbd Allāh al-Ṣāwī, *Taʿwīḍ al-Maḍrūr ʿan Jarāʾim al-Afrād min Qibal al-Dawla wa-Kayfiyyat Tamwīl Maṣādir al-Taʿwīḍ*, Dār al-Jāmiʿa al-Jadīda li-l-Nashr, Alexandria, Egypt, 2006.
4. Saʿīd Muqaddam, *al-Taʾmīn wa-l-Masʾūliyya al-Madaniyya*, 1st ed., Klik Publishing, Algeria, 2008.
5. Simātī al-Ṭayyib, *al-Taʾmīnāt al-Ijtimāʿiyya fī Majāl al-Ḍamān al-Ijtimāʿī*, Dār al-Hudā, ʿAyn Millīla, Algeria, 2014.
6. ʿAbd al-Razzāq Aḥmad al-Sanhūrī, *al-Wasīṭ fī Sharḥ al-Qānūn al-Madanī al-Jadīd: Naẓariyyat al-Iltizām bi-Wajh ʿĀmm – Maṣādir al-Iltizām*, vol. 2, Manšūrāt al-Ḥalabī al-Ḥuqūqiyya, Beirut, Lebanon, 3rd ed., 2000.
7. Filālī ʿAlī, *al-Iltizāmāt: al-Fiʿl al-Mustaḥiq li-l-Taʿwīḍ*, Moufem Publishing, Algeria, 2nd ed., 2007.
8. al-Qāḍī Ḥusayn ʿAbd al-Laṭīf Ḥamdān, *al-Ḍamān al-Ijtimāʿī: Aḥkāmuhu wa-Taṭbīqātuhu – Dirāsa Taḥlīliyya Shāmila*, Manšūrāt al-Ḥalabī al-Ḥuqūqiyya, Beirut, Lebanon, 1st ed., 2005.

**ARTICLES**

1. Āyt ʿUdayya Balkhayr Muḥammad, *al-Masʾūliyya al-Idāriyya ʿalā Asās al-Qānūn*, *Herodotus Journal for Human and Social Sciences*, vol. 05, no. 02 (2021), University of Ghardaïa, Algeria, 01/07/2021.
2. Suʿād Būzyān, *Khuṣūṣiyyat Rukn al-Ḍarar fī al-Masʾūliyya al-Idāriyya*, *Majallat al-Ijtihād al-Qaḍāʾī*, vol. 13, no. 1, Faculty of Law, University of Benyoucef Benkhedda – Algiers 1, Algeria, 2021.

**THESES & DISSERTATIONS**

1. ʿAllāl Ṭaḥṭāḥ, *Ḥawādiṯ al-ʿAmal bi-Naẓariyyat al-Akhṭār al-Ijtimāʿiyya wa-Qawāʿid al-Masʾūliyya*, Master's Thesis in Private Law, Faculty of Law, University of Algiers, 2004/2005.
2. ʿAlāʾ Muḥsin Shaddān, *Aḥkām al-Taʿwīḍ ʿan Iṣābāt al-ʿAmal: Dirāsa Muqārana*, Doctoral Dissertation in Law, Faculty of Law and Political Science, Department of Law, University of Algiers 01, Algeria, 2015/2016.
3. Qujjālī Murād, *Niẓām al-Taʿwīḍ ʿan Intihāk al-Ḥaqq fī al-Salāma al-Jasadīyya*, Doctoral Dissertation in Law (Private Law), Faculty of Law, University of Algiers 1, Algeria, 2014–2015.
4. Mūlāy Muḥammad al-Amīn, *al-Ḍarar al-Ṭibbī: Dirāsa Muqārana*, Doctoral Dissertation in Legal Sciences, Faculty of Law and Political Science, University of Djilali Liabès, Sidi Bel Abbès, Algeria, 2019/2020.
5. Niḍāl ʿAṭā Badawī al-Duwayk, *al-Taʿwīḍ ʿan al-Aḍrār al-Māddiyya al-Mustaqbaliyya al-Nājima ʿan al-Iṣābāt al-Jasadīyya*, Master's Thesis in Private Law, Faculty of Law, Department of Private Law, Middle East University, Jordan.