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Personal Accountability for Deliberate Abuse of State Power in International Investment Law

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A Proposal for an International Convention

I. Introduction

International investment law is founded upon a relatively simple juridical structure. States undertake obligations towards foreign investors and investments; when those obligations are breached, the responsibility of the State may be determined by an international tribunal and compensation may be awarded.

That structure is capable of dealing with the consequences of governmental conduct for the investor. It is much less capable of dealing with the responsibility of the human actor who deliberately caused the violation.

Suppose, for example, that a minister or senior official intentionally uses the machinery of the State to confiscate an investment, destroy a business, procure a discriminatory regulatory measure, fabricate proceedings against an investor, retaliate against an investor for asserting legal rights, or deliberately frustrate compliance with an arbitral award. The conduct may be attributable to the State. The investor may obtain an award against the State. The State – and ultimately its taxpayers – may be required to pay compensation.

Yet the official who deliberately engineered the wrongful conduct may bear no personal responsibility under international law.

This produces an apparent asymmetry. International law is capable of looking through the State to individuals where genocide, crimes against humanity, war crimes, corruption and certain other internationally regulated conduct are concerned. But international investment law ordinarily stops at the State.

The question considered in this paper is whether the international community could appropriately fill that gap by adopting a convention imposing personal responsibility upon public officials who deliberately abuse governmental authority in a manner causing serious violations of international investment obligations.

The argument advanced here is that such a convention is conceptually possible, but only if its ambit is carefully confined. The objective should not be to expose officials personally whenever their governments lose investment cases. It should be to identify and deter an exceptional category of misconduct: **the intentional abuse of public authority for an improper purpose resulting in serious internationally wrongful economic injury.**

Such a regime would occupy a presently underdeveloped space between the law of State responsibility and a developing international law of personal responsibility.

II. The Existing Gap in International Law

The starting point is the distinction between **attribution to the State** and **personal responsibility of the official**.

Under the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, the conduct of State organs is attributable to the State. Article 7 importantly provides that conduct may remain attributable even where the organ or official exceeds authority or contravenes instructions, provided the person acts in an official capacity.

Thus a minister cannot necessarily remove wrongful conduct from the sphere of State responsibility merely by saying that he exceeded his authority.

The consequence, however, is principally the responsibility of the State. Article 31 requires the responsible State to make full reparation for injury caused by its internationally wrongful act.

Article 58 then provides that the State Responsibility Articles are:

> 'without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.'

This is significant. The State Responsibility Articles do not deny the possibility of individual international responsibility; but neither do they establish a general regime creating such liability.

There are, of course, established fields in which international law does penetrate the governmental structure and imposes or requires personal accountability. International criminal law is the most obvious example. International anti-corruption conventions provide another. But there is presently no general international rule under which an official becomes personally liable simply because, acting intentionally and abusively, he causes his State to commit an investment treaty violation.

The proposed convention would therefore constitute **progressive development of international law**.

Its central proposition would be that State responsibility and individual responsibility can coexist:

> **the State remains responsible internationally for conduct attributable to it, while an official who intentionally abuses State power in defined circumstances may independently incur personal responsibility.**

III. Why Personal Responsibility Might Be Justified

The case for such a regime rests upon three propositions.

First, exclusive reliance upon State responsibility can generate a moral hazard. If an official deliberately abuses governmental authority, any resulting damages award is ordinarily borne by the State. The economic consequence therefore falls upon the public rather than necessarily upon the person who deliberately caused it.

Secondly, compensation alone may inadequately address intentional wrongdoing. Investment law is essentially reparative. It seeks to compensate injury. It is not primarily designed to sanction the individual abuse of sovereign power that produced that injury.

Thirdly, deliberate governmental abuse differs qualitatively from governmental error.

A regulator who misconstrues a treaty, a minister who adopts a measure subsequently held disproportionate, or a judge whose decision ultimately results in an international wrong is in an entirely different position from an official who deliberately employs public authority to extort, confiscate, retaliate, discriminate or fabricate proceedings against an investor.

International law need not treat these situations identically.

The challenge is therefore to establish individual responsibility for the latter without chilling legitimate governmental decision-making in the former.

IV. The Central Principle of Liability

The proposed convention might establish the following primary rule:

Proposed Article: Individual Responsibility

A public official incurs individual responsibility under this Convention where, in the exercise or purported exercise of public authority, that official intentionally abuses such authority for an improper purpose, knowing that the conduct is substantially likely to cause the State materially to violate an international obligation owed to a protected investor or investment, and that conduct causes or substantially contributes to such violation and serious resulting injury.

This formulation contains six distinct requirements.

1. Public authority

The defendant must be:

- a public official;
- an officer or employee of the State;
- a person exercising governmental authority; or
- a person directing or controlling another person exercising such authority.

The definition should be functional rather than formal. Outsourcing governmental action should not permit avoidance of responsibility.

2. An underlying international obligation

There must be an applicable international obligation owed by the State in relation to the investment.

The convention should not itself attempt to rewrite substantive investment law. The underlying obligation could arise under:

- a bilateral investment treaty;
- an investment chapter of a trade agreement;
- national legislation incorporating international protections;
- an investment contract where international law governs;
- or another applicable international instrument.

3. Abuse of public authority

It would not be enough that the official's decision was unlawful or mistaken.

There must be an **abuse of public power intentionally committed for an improper purpose causing the State to fail in its investment law responsibilities**.

4. Improper purpose

The exercise of governmental authority must have been directed towards a defined improper objective.

5. Heightened mens rea

The convention should require intention and knowledge, not negligence.

6. Causation and gravity

The misconduct must have caused or substantially contributed to the State's violation and to serious injury.

The cumulative nature of these requirements would be essential.

V. Why 'Malice' Should Not Be the Operative Legal Standard

It might initially appear attractive to impose responsibility where an official acts 'intentionally and maliciously'.

'Malice', however, is an uncertain concept across different legal traditions.

A multilateral convention should instead employ the more juridically manageable concept of:

intentional abuse of public authority for an improper purpose.

The convention could define improper purposes to include conduct intended:

1. to obtain an improper personal financial or other advantage;
2. improperly to confer an advantage upon another person;

3. to coerce or extort an investor;
4. deliberately to confiscate or destroy an investment otherwise than for a genuine public purpose;
5. knowingly to discriminate against an investor on a ground prohibited by the applicable international obligation;
6. to retaliate against an investor for exercising contractual, judicial, arbitral or other legal rights;
7. deliberately to frustrate compliance with an international award or binding determination;
8. knowingly to fabricate evidence or procure sham judicial, regulatory or administrative proceedings;
9. deliberately to use regulatory, fiscal, licensing, prosecutorial or judicial authority for a purpose materially different from that for which the power was legally conferred.

The concept would therefore be objective enough to permit adjudication while retaining the essential moral content underlying the notion of malice.

VI. The Convention Must Protect Legitimate Government

The viability of the proposal depends at least as much upon what the convention excludes as upon what it prohibits.

States would understandably be unwilling to accept a treaty under which ministers, regulators, judges and civil servants faced personal proceedings merely because a governmental measure subsequently resulted in an adverse investment award.

The convention should therefore state expressly that individual responsibility does not arise solely because:

- an official made an error of law or fact;
- an official's interpretation of an investment treaty was subsequently rejected;
- the State was found to have violated an investment obligation;
- a regulatory measure proved disproportionate;
- administrative procedures were defective;
- an official acted negligently;
- an official reasonably relied upon legal, technical or professional advice;
- a measure was adopted bona fide for health, environmental, financial, taxation, national-security or comparable public purposes;
- a judge or prosecutor exercised judicial or prosecutorial functions bona fide, notwithstanding subsequent international responsibility of the State.

An adverse investment award should therefore **never create a presumption of personal culpability**.

This safeguard also reflects the continuing importance of preserving regulatory autonomy within investment law.

The convention would concern **abuse of sovereign authority**, not legitimate exercises of sovereign authority that happen to generate international responsibility.

VII. Three Categories of Prohibited Conduct

For drafting purposes it may be useful to distinguish three broad categories.

A. Corrupt Abuse

This would cover the familiar situation where an official uses public authority for private gain.

The United Nations Convention against Corruption already demonstrates that States can agree upon international obligations concerning criminalization, international cooperation, asset recovery, extradition and mutual legal assistance in relation to abuse of public office.

The OECD Anti-Bribery Convention similarly demonstrates that treaties can require States to criminalize defined conduct involving public officials and establish mechanisms of enforcement and international cooperation.

B. Deliberate Predatory Abuse

This is the more innovative category.
An official may receive no bribe and derive no personal economic benefit, yet intentionally use State power to:

- destroy a particular investment;
- force its transfer;
- drive the investor from the jurisdiction;
- retaliate against the investor;
- confer its assets or commercial position upon a favoured competitor;
- or otherwise defeat the protections the State has undertaken internationally to observe.

The convention would recognise this as an international wrong of the individual even in the absence of corruption.

C. Deliberate Obstruction of International Justice

A third category would concern conduct designed to defeat international adjudication itself, including:

- fabrication of evidence;
- destruction or concealment of material evidence;
- intimidation of witnesses;
- interference with arbitral proceedings;
- deliberate concealment of State assets contrary to legal obligations;
- or deliberate frustration of compliance with final awards.

This category protects not merely an investor but the integrity of the international dispute-resolution system.

VIII. Civil Responsibility or International Crime?

A fundamental design choice is whether the prohibited conduct should constitute an international crime.

There are powerful reasons not to begin there.

Genocide, crimes against humanity and war crimes occupy a particular position in international law because of their extraordinary gravity. Deliberate economic abuse by State officials, serious though it may be, should not casually be assimilated to them.

A more proportionate structure would distinguish between:

International personal responsibility

The convention itself could establish direct individual responsibility attracting:

- compensation;
- restitution;
- disgorgement;
- financial penalties;
- disqualification;
- and asset confiscation.

Domestic criminal responsibility for aggravated cases

States Parties could additionally undertake to criminalize specified aggravated conduct domestically, including:

- bribery;
- extortion;
- fraudulent appropriation;
- deliberate fabrication of evidence;
- obstruction of justice;
- and perhaps certain egregious forms of predatory abuse of office.

The model would therefore combine direct international public-law responsibility with treaty-mandated domestic criminal enforcement.

This would be more practicable than immediately creating a new category of international crime.

IX. Separating State Proceedings from Proceedings Against the Individual

The official should not ordinarily become an additional respondent in the underlying investment arbitration.

The investor-State proceeding determines principally whether the **State** has violated an international obligation.

Questions concerning the personal culpability of an official involve a different inquiry:

- What did the official know?
- What was his purpose?
- Was the authority deliberately abused?
- Did he personally cause the violation?
- Was the conduct sufficiently serious?
- Are there defences personal to him?

These matters require procedural protections different from those ordinarily applicable in investment arbitration.

A two-stage architecture is therefore preferable.

Stage One: Investor v State
The ordinary investment tribunal determines:

- the relevant international obligations;
- whether they were breached;
- attribution to the State;
- causation;
- and loss.

Stage Two: Proceedings concerning the official
A separate competent body considers:

- intention;
- knowledge;
- improper purpose;
- abuse of authority;
- personal participation;
- and individual consequences.

The determination of the first tribunal could be given substantial or even conclusive effect concerning the existence of the underlying State breach, where due process permits.

It should not, however, establish individual culpability automatically.

X. An International Public Integrity Chamber

The convention could establish a permanent adjudicative body provisionally described as an:
International Public Integrity Chamber

A permanent institution would have significant advantages over ad hoc arbitration.

Personal responsibility should develop through coherent jurisprudence. Different tribunals should not evolve materially different standards of intention, abuse and improper purpose.

The Chamber might comprise:

- judges elected by States Parties;
- representation of the principal legal traditions;
- fixed, preferably non-renewable terms;
- strict independence requirements;
- a Registry;
- an independent Commissioner or Prosecutor;
- a Trial Chamber;
- and an appellate mechanism confined principally to questions of law, jurisdiction, procedure and serious factual error.

Its jurisdiction would arise solely under the convention.

The institution need not form part of the International Criminal Court. Indeed, institutional separation would emphasize the fundamentally different character of the regime.

XI. The Role of the Investor

An investor should be entitled to lodge a complaint and provide evidence.

It should not ordinarily have an unrestricted right unilaterally to prosecute an official internationally.

That might permit personal proceedings to become a tactical weapon in investment disputes and could exert an inappropriate chilling effect upon officials.

Instead, an independent **Convention Commissioner** might perform a filtering function.

The Commissioner would authorise proceedings only where satisfied that there are reasonable grounds for concluding that:

1. a relevant international obligation existed;
2. a serious State violation has occurred or can credibly be established;
3. there is substantial evidence of intentional abuse by an identifiable official;
4. the case meets a prescribed gravity threshold; and
5. proceedings would serve the objects of the convention.

A manifestly political, speculative or tactical complaint could be dismissed at this stage.

XII. Complementarity With National Legal Systems

International adjudication should probably be complementary rather than exclusive.

Domestic legal systems should retain the primary opportunity to investigate and adjudicate misconduct by their officials.

An international proceeding might therefore become admissible where:

- the State is unwilling genuinely to investigate;
- the State is unable genuinely to proceed;
- domestic proceedings are being used to shield the official;
- there has been unjustified delay inconsistent with genuine accountability;
- the domestic process lacks the independence necessary for the particular case;
- or the conduct has such substantial international dimensions that international adjudication is justified under criteria prescribed by the convention.

The Rome Statute's complementarity structure provides a conceptual analogue. Article 17 gives importance to genuine national investigation and prosecution before international jurisdiction operates.

The analogy need not be imported mechanically, but the principle is valuable:

international jurisdiction should reinforce, rather than unnecessarily supplant, functioning domestic institutions.

XIII. Jurisdiction

States Parties should establish national jurisdiction over conduct covered by the convention where:

1. the conduct occurs wholly or partly within their territory;
2. the alleged offender is their national;
3. significant elements of the resulting injury occur within their jurisdiction;
4. proceeds or property derived from the offence are situated within their territory;
5. the alleged offender is present within their territory and is not extradited;
6. such jurisdiction is otherwise permitted under international law.

The convention could adopt an **extradite-or-submit-for-prosecution** mechanism in appropriate aggravated cases.

Existing anti-corruption treaties provide useful models. The OECD Anti-Bribery Convention, for example, contains provisions addressing extradition and mutual legal assistance, while UNCAC establishes broad machinery for international cooperation.

XIV. Immunity

The question of official immunity cannot be left to implication.

It lies at the centre of the proposed regime.

If an official could respond to proceedings by asserting that the alleged wrongful act was performed in an official capacity and therefore attracted immunity, the convention might defeat its own purpose.

The treaty should therefore address **functional immunity, or immunity ratione materiae**, expressly.

Between States Parties, one possible provision would state:

Proposed Rule
Functional immunity attaching to the official character of an act shall not bar proceedings brought in accordance with this Convention in respect of conduct constituting an offence or wrong under the Convention.

The status of persons enjoying personal immunity ratione personae – particularly incumbent Heads of State, Heads of Government and Foreign Ministers – is considerably more difficult.
Possible solutions include:

1. preserving personal immunity during office but suspending limitation periods;
2. permitting proceedings following the termination of office;
3. providing an express treaty waiver as between States Parties; or
4. creating distinct rules for proceedings before the international Chamber and proceedings before foreign national courts.

This area requires particular care. The International Law Commission completed significant work in 2026 on draft articles concerning immunity of State officials from foreign criminal jurisdiction, confirming that the subject remains both technically difficult and politically sensitive.

A new convention should engage with that work expressly rather than assume that existing customary law provides an easy answer.

XV. Modes of Participation

Responsibility should not be confined to the person who physically performs the governmental act.

The convention should extend to a person who intentionally:

- orders;
- directs;
- solicits;
- induces;
- knowingly aids or assists;
- conspires in;
- or causes another official to commit the prohibited conduct.

A minister should therefore not escape liability by directing a subordinate formally to sign the decision.

There should, however, be caution before incorporating broad doctrines of command responsibility. The purpose of the convention is to address **intentional abuse**.

Mere failure adequately to supervise subordinates should not ordinarily attract the same form of international personal responsibility.

XVI. Standard and Burden of Proof

Because the allegations concern serious personal misconduct by public officials, an ordinary civil standard may be insufficient.

For international pecuniary or public-law responsibility, the convention might adopt a standard of: **clear and convincing evidence**

For any proceeding carrying genuinely criminal punishment:
proof beyond reasonable doubt

Intent and improper purpose may necessarily be inferred from circumstantial evidence.

The convention should nevertheless expressly provide:

> **Intent, knowledge or improper purpose shall not be inferred solely from the fact that the State has been found to have violated an international obligation.**

This safeguard would be fundamental.

XVII. Remedies Against the Individual

The International Public Integrity Chamber might be empowered to order:

1. Restitution
Where the individual remains capable of restoring property or reversing consequences within his personal control.

2. Compensation
For the portion of injury legally attributable to the individual's culpable conduct.

3. Disgorgement
Any financial or other measurable benefit obtained through the abuse.

4. Confiscation
Property representing proceeds of the misconduct, subject to protection of bona fide third parties.

5. Financial penalties
Proportionate to gravity and means.

6. Reimbursement to the State
Where the State has satisfied an investment award arising from the official's deliberate misconduct.

This could become one of the convention's most important consequences.

Where taxpayers have been required to compensate an investor because an official deliberately abused public power, the State could acquire an internationally recognized right of recourse against that official.

7. Disqualification
The convention might permit temporary or permanent disqualification from designated public functions, implemented through domestic law.

8. Criminal penalties
For offences criminalised domestically pursuant to the convention, national courts could impose imprisonment or other penal sanctions.

XVIII. Preventing Double Recovery

The convention should prevent an investor recovering twice for the same injury.

Where an investor has already received complete compensation from the State:

- an award against the official should ordinarily reimburse the State to that extent; or
- amounts recovered from the official should be credited against amounts still owed by the State.

Where the State fails to satisfy an award, the convention might permit recovery directly against the responsible official within carefully prescribed limits.

This creates a coherent triangular structure:

Investor → claim against State

State → responsibility to repair internationally wrongful conduct

Culpable official → personal responsibility for deliberate abuse

and, where appropriate:
State → recourse against culpable official

XIX. Enforcement of International Judgments

A system of personal responsibility would be ineffective unless its judgments could be enforced internationally.

Here investment law itself provides an instructive model.

Article 54 of the ICSID Convention requires each Contracting State to recognise an ICSID award as binding and enforce its pecuniary obligations as if the award were a final judgment of a court of that State.

A comparable rule could be adopted for final judgments of the proposed Chamber:

> **Each State Party shall recognize a final judgment rendered under this Convention as binding and shall enforce its pecuniary obligations within its territory as if the judgment were a final judgment of its highest competent national court.**

Unlike execution against States, execution against the private assets of an individual would not ordinarily raise sovereign-immunity problems, although ordinary procedural protections and third-party property rights would remain applicable.

XX. Asset Tracing and Recovery

One of the principal lessons of international anti-corruption law is that adjudication without asset recovery may accomplish little.

States Parties should therefore undertake to assist one another in:

- tracing assets;
- identifying beneficial ownership;
- freezing property;
- obtaining banking information;
- securing records;
- preserving electronic evidence;
- restraining transfers;
- enforcing confiscation orders;
- returning recovered proceeds;
- and protecting bona fide third parties.

UNCAC provides a particularly important model because asset recovery and international cooperation are central components of its architecture.

The OECD framework likewise demonstrates that mutual legal assistance and extradition can be integrated into a specialized international economic-law regime.

XXI. Provisional Measures

Proceedings concerning deliberate abuse are particularly vulnerable to destruction of evidence and movement of assets.

The Chamber, or national courts acting at its request, should therefore have authority to order appropriate provisional measures, including:

- preservation of documents;
- preservation of electronic data;
- freezing of identified assets;
- restraint against transfers to connected persons;
- preservation of beneficial-ownership information;
- and measures for witness protection.

Such powers should be subject to judicial authorization, proportionality and review.

XXII. Relationship Between State and Individual Responsibility

Two provisions should lie at the heart of the convention.

First:

> **The responsibility of an individual under this Convention is without prejudice to the international responsibility of the State.**

Secondly:

> **The attribution of conduct to a State under international law shall not preclude the personal responsibility of an individual who participated in that conduct where the requirements of this Convention are independently established.**

These provisions reconcile the proposed regime with the existing law of State responsibility.

An official could not protect the State by claiming personal wrongdoing.

Equally, a State could not protect the official merely by accepting international responsibility itself.

The two forms of responsibility would operate concurrently but independently.

XXIII. Transparency and Public Accountability

Proceedings should presumptively be public.

This is not simply a dispute concerning private commercial interests. It concerns allegations that governmental power has deliberately been abused.

International investment law has already moved significantly towards transparency. The UNCITRAL transparency framework demonstrates the acceptance of publication and public access in treaty-based investor-State proceedings.

The case for transparency is even stronger where personal abuse of public authority is alleged. Exceptions would remain necessary for:

- legitimate national-security information;
- trade secrets;
- protected personal data;
- witness protection;
- and information whose publication would prejudice fair proceedings.

XXIV. Safeguards Against Political Abuse

A convention aimed at abuse of State power could itself become an instrument of political pressure unless carefully constrained.

At least the following safeguards would be necessary:

1. an independent screening authority;
2. a high evidential threshold;
3. a defined gravity threshold;
4. a strict mens rea requirement;

5. protection against retrospective liability;
6. full rights of defence;
7. equality of arms;
8. independent adjudicators;
9. appellate review;
10. protection against duplicate proceedings;
11. rules governing competing national jurisdictions;
12. protection for bona fide regulatory, judicial and prosecutorial action;
13. sanctions for knowingly fraudulent complaints;
14. procedural rules preventing investors from using threatened personal proceedings as leverage in settlement negotiations.

The integrity of the regime would depend upon these protections.

XXV. Proposed Structure of the Convention

A convention could be organised as follows:

Part I – General Provisions
Purpose, scope, definitions and relationship with other international law.

Part II – Substantive Individual Responsibility
The prohibited conduct, mental element, improper purpose, causation, modes of participation and exclusions.

Part III – Relationship With State Responsibility
Attribution, independence of State and individual responsibility, effect of investment awards and prevention of double recovery.

Part IV – International Public Integrity Chamber
Composition, jurisdiction, Commissioner, admissibility, investigation, trial, evidence, appeal and procedural rights.

Part V – National Implementation
Domestic offences, jurisdiction, limitation periods, national investigation and complementarity.

Part VI – International Cooperation
Extradition, mutual legal assistance, evidence gathering, transfer of proceedings and inter-agency cooperation.

Part VII – Remedies and Asset Recovery
Compensation, restitution, disgorgement, confiscation, State recourse and enforcement.

Part VIII – Immunities and Special Status
Functional immunity, personal immunity, serving senior officials and treaty waiver.

Part IX – Recognition and Enforcement
Automatic recognition of judgments and execution in States Parties.

Part X — Institutional and Final Provisions
Conference of States Parties, monitoring, amendment, reservations, dispute settlement, signature, ratification and entry into force.

XXVI. A Possible Core Offence

The essence of the convention could ultimately be contained in a provision along the following lines:

Article X – Deliberate Abuse of Public Authority Affecting Protected Investment

1. A public official commits an offence under this Convention where that person, in the exercise or purported exercise of public authority:

    (a) intentionally abuses that authority for an improper purpose;

(b) knows that the conduct will, or is substantially likely to, cause the State materially to violate an international obligation protecting an investor or investment;
(c) intends such consequence or consciously accepts its substantial likelihood; and
(d) thereby causes or substantially contributes to serious injury.

2. For the purposes of paragraph 1, an improper purpose includes the intentional use of public authority:

(a) to obtain an improper advantage for oneself or another;
(b) to coerce, extort or retaliate against a protected investor;
(c) deliberately to confiscate, destroy or transfer an investment otherwise than pursuant to a bona fide public purpose implemented in accordance with law;
(d) knowingly to employ judicial, administrative, fiscal, regulatory or prosecutorial processes for a purpose materially foreign to that for which the authority was conferred;
(e) deliberately to obstruct proceedings or compliance with a binding international award.

3. No individual responsibility shall arise merely by reason of:

(a) an error of law or fact;
(b) negligence;
(c) a finding that the State has violated an international obligation;
(d) the bona fide exercise of legislative, regulatory, judicial, prosecutorial or administrative authority.

4. The prosecution shall bear the burden of proving every element of responsibility according to the standard prescribed by this Convention.

This is only a first drafting formulation, but it captures what should be the essential dividing line between ordinary governmental responsibility and personal abuse.

XXVII. The Broader Jurisprudential Significance

The proposed convention would represent more than an adjustment to investment arbitration.

It would address a structural issue in international law.

Traditional international responsibility is substantially organized around States. International criminal law, by contrast, recognizes that some conduct cannot adequately be understood solely as conduct of an abstract State and therefore attaches consequences to individuals.

Between these two domains lies a substantial category of intentional misuse of sovereign authority capable of inflicting severe economic injury without constituting an existing international crime.

Investment law provides a particularly suitable field in which to consider this problem because three elements already exist:

1. defined international obligations binding upon States;
2. international adjudicative mechanisms capable of determining breach;
3. established mechanisms for international recognition and enforcement of monetary awards.

What is absent is the third dimension: accountability of an official whose deliberate misuse of State authority caused the violation.

The proposed convention would supply that dimension.

XXVIII. Beyond Investment Law

If the principle became established, its logic might ultimately have wider application.

Comparable questions can arise where officials deliberately abuse public authority in relation to:

- international trade;
- customs;
- sanctions;
- public procurement;
- cross-border intellectual property;
- international financial obligations;
- foreign property;
- or other treaty-protected economic rights.

It would nevertheless be prudent to begin with investment law.

The existing body of primary obligations, adjudication and enforcement provides a comparatively mature foundation upon which a carefully constrained regime of personal accountability could be constructed.

XXIX. Conclusion

International law has long accepted that the State acts through human beings.

The law of State responsibility attributes their official conduct to the State, including in appropriate circumstances conduct exceeding their authority. Yet attribution solves only one part of the problem.

Where an official has not merely made an error but has **deliberately abused the coercive power of the State for an improper purpose**, there is a legitimate question whether international law should continue to treat the resulting wrong exclusively as that of the State.

A carefully designed convention could answer that question without undermining governmental authority.

Its governing principle should be narrow:

> **Personal international responsibility should attach not to the official who merely causes a State to breach investment law, but to the official who intentionally abuses public authority for an improper purpose, knowing that the abuse will or is substantially likely to defeat an international protection, and thereby causes serious injury.**

Around that rule would need to be constructed rigorous safeguards, an independent adjudicative mechanism, complementarity with domestic legal systems, express treatment of official immunity, international cooperation, asset recovery and an effective system for recognition and enforcement.

The resulting architecture would preserve the existing responsibility of the State while adding a second proposition:

> **public power belongs to the State, but deliberate abuse of that power need not be institutionally anonymous.**

It would thereby bring together three strands of international law that have until now largely developed separately:

> **State responsibility, international investment protection, and individual accountability.**

The proposal is therefore not merely that an investor should obtain another defendant from whom compensation may be recovered. Its deeper purpose would be deterrence and integrity in the exercise of sovereign power.

The underlying principle is straightforward. International law should continue to protect governments that govern – even when they err. But where governmental authority is intentionally converted into an instrument of predation, retaliation or deliberate illegality, the international legal order could reasonably ask not only:

> **'What is the responsibility of the State?'**

but also:

> **'Who deliberately caused the State to act in this way, and should that person answer for it?'**