

RELATED INTERNATIONAL LEGAL RULES BY PROPORTIONALITY PRINCIPLE IN HUMANITARIAN INTERNATIONAL LAW

1. AMMAR ESSA KAREEM

(ammar.law@tu.edu.iq) Tikrit University, College of Rights.

2. DAWOD SALMAN ABED

(dawood.salman@tu.edu.iq) Tikrit University, College of Political Science.

3. NADHER AHMED MINDEEL

Tikrit University, College of Rights

Extract

The enormous number of blatant infringement of the principles of global helpful regulation and the experiencing endured by regular people during the direct of military tasks prompted the need to contemplate giving lawful means and instruments to foster worldwide security for regular citizens and regular citizen objects during furnished clashes and to rebuff every one of the people who perpetrated these infringement and consider them responsible, whether they were pay or It was criminal for the person.

Along these lines, worldwide compassionate regulation oversees various essential rules that states should maintain. These standards are among the essential wellsprings of the law of furnished struggle, the most conspicuous of which is the rule of proportionality. Proportionality is a major standard in global regulation that expresses that the authenticity of a not set in stone by regarding the harmony between the goal And the means and technique used to accomplish it, as well as the outcomes of this work. This rule infers the commitment to survey the setting prior to deciding the lawfulness or lawlessness of an activity. This assessment is the obligation of those accomplishing the work. In case of conflict or uncertainty, the courts can evaluate current realities and accordingly decide its lawfulness.

Proportionality is critical in evaluating the contention for military need while surveying the legitimacy of the utilization of equipped power. It applies specifically in instances of real individual or aggregate self-protection, in instances of a state's plan of action to outfitted power to reestablish public request and security in the midst of inward unsettling influences and in instances of global and non-worldwide furnished clashes.

Keywords: *influences, compassionate, aggregate, Proportionality, contention*

INTRODUCTION

The principles contained in international humanitarian law are among the important principles in international law, due to the seriousness and importance of the areas it manages and the goals it seeks to achieve. The international community protects the rights of victims of armed conflicts, as it is an effective means through which international organizations and courts can issue decisions and judgments regarding the implementation of these principles and direct blame and responsibility to those who violate them.



The guideline of proportionality is one of the most significant of those standards, as the obligation to its substance limits the hand of victimizers in equipped struggles whose impacts worldwide helpful regulation looks to lessen, and satisfies responsibility in a considerable lot of the standards on which that regulation is based. This rule is among different standards of regulation, and eliminates equivocality from a portion of its viewpoints, concerning the troubles experienced in a portion of its cases in the articulation, and the disarray it raises.

The guideline of proportionality is a rule that consolidates two inconsistent thoughts. The first is addressed by the necessities of battle as far as debilitating the foe's solidarity, accomplishing the ideal military benefit and accomplishing triumph, which is known as the rule of military need. The second is addressed in humankind and all that the human soul expects to accomplish worldwide security for regular folks and notables. regular citizens during threats.

It is thusly critical in evaluating the contention of military need while surveying the lawfulness of the utilization of equipped power. It applies specifically in instances of authentic individual or aggregate self-protection, in instances of a state's response to furnished power to reestablish public request and security in the midst of inner aggravations and in instances of worldwide and non-global contentions.

So, the principle of proportionality is a basic principle of international humanitarian law, to which the credit is due in the formation of a large number of rules of this law, whether customary or the rules contained in the relevant conventions and treaties. This principle is no longer confined to a general idea that necessitates taking into account humanitarian considerations in exchange for military necessities at all, meaning that the principle did not stop at the limits of generalities that suggest respect for this principle in a vague and unclear aspects and forms, but it began to take shape in the form of legal rules, which arose from Through international custom or in the form of international agreements and treaties, these rules are specific and have their own controls, conditions and limits that appear in them.

The significance lies behind the investigation of the issue of the standard of proportionality in global compassionate regulation, as it is the main guideline among the standards on which worldwide helpful regulation is based, which gives security to regular folks and non military personnel items and looks to create and update them by forbidding aimless assaults and committing the gatherings to equipped clash to go to all vital endlessly lengths when they In any furnished assault, it likewise forces various limitations on the clashing gatherings in picking strategies and method for fighting and weapons, so the clashing gatherings can authentically accomplish the ideal military benefit while giving assurance to regular folks and regular citizen objects and not to utilize extreme power.

Therefore, we will deal in this research with the rules that this principle contributed to its emergence in two demands.

The First Requirement

Rules For Organizing Fighting Styles

Fighting has methods that the warring parties follow, and we can look at these methods from two important perspectives. The first aspect is that these methods aim in and of



themselves to achieve victory and dominance over the enemy, so the armies and fighters are interested in taking care and developing them a lot. As for the second aspect, these methods may come out. In some of its cases, it is not abiding by the principle of proportionality, so it is necessary to refine it in a way that achieves its goal without prejudice to what the principle imposes, which we will discuss in two branches, the first of which we devote to the prohibition of fighting methods that cause unjustified injuries or pain, and the second to indicate the method of prohibiting Starvation as a method of fighting.

First branch

Principle of prohibition of combat methods that cause undue injury or pain

War under international humanitarian law is no longer, as the previous era, only a means to humiliate peoples and abuse them, but the only legitimate goal of war is to weaken the enemy's military power and remove the largest possible number of armed forces from the battlefield by the most humane means. The military and with the enemy's surrender, it is not permissible for this matter to go beyond wounding him, and if it is possible to investigate his wound, then the matter should not go beyond his capture. It is the only principle in the principles of international humanitarian law that came to protect combatants and their right not to inflict undue pain¹.

This principle has its historical roots that go back to ancient human civilizations², In addition to the historical roots of this principle, it was mentioned in many international agreements, it was mentioned in the Declaration of San Petersburg 1868 AD that (it must be for the civility to alleviate as much as possible the disasters of war, and the sole purpose must be to weaken the military power of the enemy, and it is sufficient for this purpose to isolate the largest number of men from combat, and this may be exceeded...)³, The same approach followed after the First Geneva Convention of 1949, as it stipulated in Article 50: "Grave breaches ... are those that include one of the following acts, if they are committed

1 Dr.. Hussein Ali Al-Daridi, International Humanitarian Law: Its Birth, Scope and Sources, 1st Edition, Wael Publishing House, Amman, Jordan, 2012, pg. 438.

2 In the Indian civilization, the use of serrated and pointed weapons and incendiary arrows was prohibited because they are means of warfare that exceed the purpose of war, and in the Chinese civilization (Confucius) he called for the necessity of restricting the conduct of the combatants in combat, while the ancient African civilization knew the law of honor that obliges the fighter to inform his opponent in advance. In the case of hostilities before its outbreak, and just as it is forbidden to wage war until after the opponent has completed his military preparation, and among the Greeks, some philosophers (Alexander Desos) believe that the mere end of the war becomes insane, as did the Roman philosophers such as Cicero and (Sink) who tried to make war more Humanity by replacing the idea of (woe to the defeated) to the idea (that the enemies when they are wounded become brothers), and therefore finishing them represents cruelty A brutality that transcends the purpose of war and transcends the principle of unjustified suffering. See: Dr. Jean Baktet, Principles of International Humanitarian Law, published by the International Committee of the Red Cross, Geneva, 1975, p. 14.

3 Dr.. Omar Saad Allah, International Humanitarian Law, Opinions and Documents, 1st Edition, Majdalawi House, Amman, Jordan, 2002, p. 357.



against protected persons or property protected by the Convention: willful killing, torture or inhuman treatment, including private experiments.” knowing life, and intentionally causing severe pain or serious harm to physical and health integrity...”⁴, This was then confirmed by the first additional protocol in Article 35 q2, if it stipulates (it is prohibited to use weapons and means of combat that cause unjustified injuries or pain)⁵.

After we touched on the most important international humanitarian law conventions that referred to this principle, it is necessary to give a definition of it and to clarify the most important components of this principle. Therefore, the elements of this principle are represented by the terms excessive pain or unnecessary suffering⁶.

The two terms have almost the same meaning. The words “excessive” and “unnecessary” mean more than what is required or not required and unnecessary. But what is the meaning of these two terms from a purely medical point of view? It seems very difficult at present to give an objective definition of suffering, or to give absolute values that allow comparison between individuals. Pain, for example, which is one of the many manifestations of suffering, varies from person to person. Not only does the standard of pain differ from person to person, but it varies in the same person sometimes, depending on the circumstances, so all experts in the field of medicine prefer to use the word “wounds” or “damage caused by weapons” instead of the word “suffering”, which is difficult to define precisely.⁷.

From a legal point of view, some may see that the idea of excessive pain or unjustified suffering refers to more than just pain or suffering that literally afflicts a person.⁸, According to them, the principle of excessive pain or unnecessary suffering, as stated in the text of Article (23-e) of the Hague Regulations and Article (35-2) of Additional Protocol I, means in the first degree, any infringement on physical or mental integrity or The lives of persons who are legally subject to lawful acts of violence as referred to in customary international law relating to war and the provisions of Additional Protocol I of 1977. It also means damage to physical objects. The concept of “damages” was mentioned in the deliberations that led to the adoption of the Declaration (St. Petersburg 1868), which adopted the concept of “undue suffering”⁹.

Therefore, the term unjustified pain is known in international humanitarian law (as a greater harm that can be avoided to achieve legitimate military objectives) and is also

4 Article 50 of the First Geneva Convention of 1949.

5 The second paragraph of Article 35 of the Additional Protocol to the Geneva Conventions of 1977.

6 John Marie Henkris, Customary International Humanitarian Law, 1st Edition, International Committee of the Red Cross, Cairo, 2007.

7 Sama Sultan Al-Shawi, The use of depleted uranium weapons and international law, PhD thesis submitted to the Council of the College of Law, University of Baghdad, 2004, p. 27.

8 Ahmed Obais Al-Fatlawi, The Legality of Using Some Conventional Weapons in the Light of International Humanitarian Law, research published in the Kufa Journal of Legal and Political Sciences, 2009, p. 34.

9 Sama Sultan Al-Shawi, previous source, pg. 28



intended (the non-use of means and methods of warfare that cause unjustified pain to the fighters)¹⁰.

As defined by the International Court of Justice in its advisory opinion in 1996 on the legality of the use or threat of weapons (as the humanitarian rule that prohibits the use of means and methods of warfare that cause human tragedies and pain that exceed the legitimate aim of the war or exceed the legitimate military objectives)¹¹.

As we referred to the international agreements that mentioned this principle, the International Committee of the Red Cross played its role as well by holding a conference in Montreux, Switzerland in 1996, which was entitled (Excessive Injuries and Unjustifiable Pain), where a group of experts studied the effects of weapons and injuries that caused by them over the last fifty years and concluded that weapons such as gunshots and ammunition undoubtedly lead, under certain circumstances, to an increase in deaths or serious injuries. Weapons, it is a matter that depends on the nature of the weapon, how it is used, and other factors such as its proximity to the place of the explosion and the place of injury to the body. On the other hand, the weapon may have different effects based on the technology of the weapon (i.e. depending on its design), for example, explosive bullets that are usually fatal and chemical and biological weapons that cause With certain diseases or abnormal physiological conditions and laser weapons that cause permanent blinding and that have no medical treatment, there is no doubt that these weapons play their role in causing disfigurement or serious injuries. Damage or that causes justifiable pain.¹².

Therefore, in 1999, the International Committee of the Red Cross made several proposals to work on the project for undue injuries or suffering at a conference it held for governmental experts in international humanitarian law and medical personnel. In addition, it is necessary to balance the military advantage with the effects of the weapon¹³.

At the end of talking about this principle, it must be noted that this principle is not limited to persons, but also includes funds, as it includes prohibitions in a broad way. We find that in the 1907 Hague Regulations and the First Additional Protocol of 1977 annexed to the Geneva Conventions, expressions have been added indicating that this principle is not limited to Pain and damage to persons, such as the expressions “unjustifiable injuries” or “unjustified suffering,” so they are not limited to personal aches, but also include damage to civilian objects. Thus, the principle of prohibiting unjustified pain includes pain and aches that affect

10 Dr.. Adam Abdul-Jabbar Abdullah Bidar, Protection of Human Rights during International Armed Conflicts between Sharia and Law, 1st Edition, Al-Halabi Human Rights Publications, Beirut, 2009, p. 283.

11 Dr.. Haider Kazem Abd Ali, and Zainab Reda Jabr, The principle of proportionality in international humanitarian law, research published in the Journal of Al-Mohaqiq Al-Hilli for Legal and Political Sciences, second issue, eighth year, 2016, p. 586.

12 Osama Damj, Weapons Prohibited in International Humanitarian Law, research published in the book Horizons and Challenges, Al-Halabi Human Rights Publications, 1st Edition, Lebanon, Issue One, 2005.

13 Robin M. Copeland and Peter Herby, Reviewing the Legality of Weapons, A New Introduction to the Excessive Injuries and Unwarranted Pain Project, International Review of the Red Cross, No. 835, Geneva 1999, p. 5.



the physical and mental integrity or the lives of persons During armed conflict, as well as the prohibition of damage, destruction and pollution to the environment and civilian objects¹⁴.

The relationship of proportionality with that rule clearly shows, for any pain that entails a military advantage or advantage so as to provide a justification for its acceptance can be dealt with as long as it is within the limits of acceptance and not excessive. Unjustifiable suffering, excessively harmful to the opponent, and outside the framework of proportionality between humanitarian considerations and military advantage shall be prohibited¹⁵.

Some judges of the International Court of Justice go to the adoption of the principle of proportionality when comparing the pain to the military advantage (that the pain is superfluous and unnecessary, as it was much more than the degree of pain justified by the military advantage that the user of the weapon seeks to achieve, and a balance should be found between the degree of pain caused Use of Weapon and Desired Military Advantage)¹⁶.

We close from the previous that this guideline is one of the significant standards of worldwide compassionate regulation. Basically from a compassionate and moral perspective, combatants must be taken into consideration, even if they are from the opponent, as this does not preclude that this opponent is a human being in the end and has the right to life and not to be disabled and disfigured by weapons. The international community should take into account this aspect more than it is just texts. What is happening in the world now and in the past is the most horrific picture that the whole world laments. Therefore, we demand from the international community, the Security Council or effective organizations in this field to take the necessary measures through which it is possible to protect humanity and preserve The most basic of rights, which is the right to physical integrity.

Second Branch

Prohibition of starvation of the civilian population

International humanitarian law does not specifically refer to economic sanctions, nor does it address their effects on the civilian population. However, when sanctions are imposed in the context of an international or internal armed conflict, the general rules relating to the protection of civilians from the effects of military operations apply¹⁷.

The principle of proportionality in this rule can be observed by not releasing the hand of military necessity that is required in some cases for the purpose of achieving a military objective, which may be the seizure or occupation of a particular city and this depends on besieging it and preventing the entry or exit of materials to it with the aim of breaking the

14 Montaser Saeed Hammouda, *International Humanitarian Law with reference to its most important principles in Islamic jurisprudence*, Dar Al-Fikr Al-Jami'i, Cairo, 2006.

15 Maher Jamil Abu Khawat, *Protection of Journalists and Media During International Armed Conflicts*, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 168.

16 Dr.. Haider Kazem Abd Ali, a previous source, pg. 587.

17 Anna Segal, *Economic Sanctions, Legal and Political Constraints*, Article published in the *International Review of the Red Cross*, No. 835, 1991, available at: <https://www.icrc.org/ar/doc/resources/documents/misc/5r2agc.htm> The date of the visit is 12/18/2021.



power of its defenders and weakening the power of The resistance they have, and it is in itself a legitimate goal in the armed conflict, but is the only goal that should be reached according to the St. Petersburg Declaration, but If the siege results in harm to civilians, reaching the point of cutting off the necessary supplies, which are indispensable for their permanence, survival and health, then this action becomes prohibited, and reaches the point where it constitutes a war crime.

International humanitarian law has warned those involved in armed conflict against starving the civilian population and adopting it as a method of warfare, which is a basic principle that guarantees the receipt of foodstuffs. Therefore, states parties to an armed conflict may not destroy or sabotage objects and sources from which civilians receive food. We find this rule in the Fourth Geneva Convention of 1949 if Article 23 states that the warring parties allow supplies of medicines and other medical supplies to reach the civilian population exclusively, regardless of whether they are from the restricting party, as well as permit the free section of food, dress and tonics essential for kids younger than fifteen, pregnant ladies and the maternity .

The Second Additional Protocol of 1977 also referred in Article 14 to the prohibition of starvation of the civilian population as a method of warfare and, in addition, the destruction of objects and property indispensable to the survival of civilians, such as the destruction of farms, the crops that produce it, livestock, and the destruction of drinking water facilities and irrigation networks, Thus, this method may not be used as a method of war against the civilian population, as it is considered a war crime under the Statute of the International Criminal Court, as stated in (San Remo Manual) in Article 102 Regarding international law applicable in armed conflicts at sea (a blockade is prohibited from declaring or imposing a blockade if: (a) the sole purpose of which is to starve the civilian population or prevent it from obtaining materials necessary for its survival, or (b) the damage to the civilian population is excessive or is expected be excessive in comparison with the concrete and direct military benefit expected from the blockade.)¹⁸.

Therefore, global philanthropic regulation gave the right to helpful associations that help survivors of furnished clashes, and the Red Cross specifically, as the support in worldwide compassionate regulation, to supply the non military personnel populace with materials important forever, including staples, as the Fourth Geneva Convention of 1949 specifies (the arrangements of this Convention will not be a deterrent to exercises compassionate activity which the International Committee of the Red Cross or some other fair-minded compassionate body might do, with a view to the protection and relief of civilian persons, subject to the consent of the parties to armed conflict)¹⁹, Protocol has confirmed The first is on the condition that the conflicting parties agree to the assistance of the civilians by the International Committee of the Red Cross or other impartial humanitarian organizations²⁰.

18 Dr.. Haider Kazem Abd Ali, a previous source, p. 589.

19 Article 10 of the Fourth Geneva Convention of 1949.

20 Paragraph 1/ of Article 81 of Additional Protocol I of 1977 to the Geneva Conventions of 1949.



Therefore, international humanitarian law obligated the warring parties - who are satisfied with humanitarian organizations to provide assistance to civilians - to provide all means leading to the delivery of their aid to them, such as facilitating and allowing the rapid passage of these things. It facilitates quick furthermore, unhampered entry of all help transfers and hardware and work force on them, which are provided to them as per the arrangements of this part, regardless of whether this help is planned for the regular citizen populace of the foe).

The Second Requirement

Rules for the protection of civilians

The rules for the protection of civilians take up a large scope of the rules of international humanitarian law. Therefore, we will limit ourselves to the rules that are directly related to the principle of proportionality. Through two sections, we will discuss in the first the prohibition of indiscriminate attacks, and in the second we will discuss the prohibition of destroying and seizing the property of the opponent.

First branch

Ban indiscriminate attacks

The term indiscriminate attacks was mentioned in Additional Protocol I to the Geneva Conventions of 1977 and specified in paragraph (4) and paragraph (5) of Article 51 that dealt with examples of types of indiscriminate attacks. The two paragraphs stipulate the following: Paragraph (4) prohibits indiscriminate attacks and is considered an indiscriminate attack A- Those that are not directed at a specific military objective B- Or those that use a method or means of combat that cannot be directed at a specific military objective C- Or those that use a method or means of combat whose effects cannot be limited as required by this Protocol and Then, in every case, it would strike military targets, civilians, and civilian objects without discrimination.

Paragraph (5) The accompanying sorts of assaults, among others, are viewed as unpredictable assaults: a-The assault by siege, by anything techniques or means, which manages various obviously isolated and particular military targets situated, in a city or town, or another city containing a concentration of the civilian population or civilian objects as a single military objective.

(b) An attack that may be expected to cause loss of regular citizen life or injury, or harm to non military personnel articles, or that might cause a combination of such misfortunes and damage, will overstep the tangible and direct military advantage expected from that attack).

The International Court of Justice also mentioned indiscriminate attacks in its 1996 Advisory Opinion on the Threat or Use of Nuclear Weapons when it stated, "...States shall not make civilians the object of attack and, accordingly, never use weapons incapable of distinguishing between civilians and military objectives"²¹.

21 Amer Ali Samir Al-Dulaimi, *Military Necessity in International and Internal Armed Conflicts*, 1st Edition, Academics for Printing and Publishing, Amman, Jordan, 2015, pg. 148.



In this opinion, the International Court of Justice considers this principle to be a customary principle, since the only treaty text contained in Additional Protocol I of 1977²².

As for Additional Protocol II of 1977, according to the Court's opinion, the prohibition against intentionally attacking civilians is automatically a prohibition on indiscriminate attacks, and based on the Court's opinion, any weapon can be subjected to analysis on the basis of the above criterion (weapons unable to distinguish between civilians and military objectives) It is considered a violation and its use is prohibited without there being a treaty provision or even the practice of one of the states prohibiting the use of that particular weapon²³.

In addition to Additional Protocol I of 1977 and the advisory opinion of the International Court of Justice, we find the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons That May Be Deemed Excessively Injurious or Indiscriminate, if this convention is one of the first conventions of the twentieth century that combined the rules of international humanitarian law and arms control Although it was an achievement, it was It caused a lot of disappointments, as it gave great importance to military imperatives at the expense of humanitarian considerations. It is true that it banned some indiscriminate weapons that cause excessive damage, but it was not at the required level. We find the first protocol of it stipulating the prohibition of weapons that cause fragments that cannot be detected by X-rays instead of Text to ban shrapnel weapons As well as the Second Additional Protocol to the Convention if it stipulates the rules for the use of anti-personnel mines without stipulating the total prohibition of this type of weapons, as well as the Third Additional Protocol to the Convention if it provides for the prevention of the use of incendiary weapons against civilians instead of prohibiting the use of these weapons completely in addition to the Convention's omission of the text on many Of the types of weapons such as explosives, pneumatic fuels and small-caliber bullets, in addition to the lack of checking of consistence with the arrangements of the Convention and its limitations on international armed conflict, many countries considered it a neglected agreement and the developing or major countries did not accede to it²⁴.

22 Louise Doswald, International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Threat and Use of Nuclear Weapons, Journal of the International Committee of the Red Cross, March 2016 issue, research published on the website: <https://www.icrc.org/ar/publication/IHL-advisory-opinion-icj-legality-threat-or-use-nuclear-weapons>

23 Vincent Chetay, The Contribution of the International Court of Justice to International Humanitarian Law, Selections from the International Review of the Red Cross, No. 850, 2004, Geneva, p. 14, published on the following link: <https://www.icrc.org/ar/doc/resources/documents/misc/6leddp.htm> Date of visit 17/12/2021.

24 Robert J. Matthew, Convention on Conventional Weapons 1980, A Useful Framework Despite Frustrations, International Committee of the Red Cross, Vol. 83, No. 844, 2001, pp. 12, 11. Published on the following electronic link:

https://www.icrc.org/ar/doc/assets/files/other/0991-1012_mathews.pdf Date of visit 17/12/2021.



As a result of the increase in the use of weapons, especially anti-personnel mines, and the deterioration of the conditions of civilians and the destruction caused to them as a result of the use of these weapons, the International Committee of the Red Cross made an attempt to revive interest in this Convention by holding a series of meetings to study weapons that cause permanent blindness, which constituted a fourth protocol to the Convention. The study also included the evaluation of the Additional Protocol The second is related to anti-personnel mines, as reports submitted by the International Committee indicated that 27,000 people are killed or injured annually by landmines, and that there are 120 million mines scattered in 64 countries. 1995 The review resulted in the Fourth Additional Protocol on permanently blinding weapons and the large part of the review was to study the Second Additional Protocol on anti-personnel mines and after much negotiation it was reached to improve the protocol by extending its scope to internal conflicts and banning undetectable mines in addition to promoting the dissemination of mine rules as well as other provisions on the punishment of violators of this protocol and compliance with its provisions, however, attempts to strengthen the provisions of this convention have not succeeded, and after that the Ottawa Convention of 1997, which prohibited the use, transfer or stockpiling of anti-personnel mines where countries In 2001, 177 countries ratified this convention, while only 85 countries joined the Convention on Conventional Weapons²⁵.

Therefore, it can be said that indiscriminate attacks include a clear violation of the principle of proportionality. Proportionality is based in its foundation on the necessity of reducing civilian losses to the extent that it is acceptable to sacrifice part of that protection if it is justified by military necessity and the corresponding achievement of military advantage. Certainly An indiscriminate attack is not directed at a specific target that does not achieve that basis required by proportionality. Therefore, some believe that the statement of randomness when attacking is a loss of the meaning of proportionality. (Where is the tactical need in consuming the whole populace of denial, contaminating the grounds of adjoining and far off nations, and ruining the indigenous habitat for people in the future ..? If this is the case, we are witnessing the dying out of the Nuremberg era, the victory of the necessity of war, the actual abandonment of the humanitarian rules of armed conflict, and the very meaning of proportionality being lost. And we are getting dangerously close to condoning the crime of genocide, which consists in launching a military campaign aimed at destroying the enemy more than it aims to win a battle or conflict.)²⁶.

Second Branch

Prohibition of excessive destruction or appropriation of opponent's property

The right to property is one of the most important civil rights preserved by global helpful regulation, as this right incorporates the right to own property alone or jointly with others, and the right to respect this property and not to abuse it is prohibited by law²⁷.

25 Mahmoud Sherif Bassiouni, *The Customary Framework for International Humanitarian Law, Interventions, Gaps and Ambiguity, Research within the Book of International Humanitarian Law*, Dar Al-Nahda Al-Arabiya, 2003. p. 223.

26 Dr.. Haid Kazem Abd Ali, a previous source, pg. 593.

27 Dr. Adam Abdul-Jabbar Abdullah Bidar, previous source, pg. 205.



Therefore, international humanitarian law obligated the conflicting parties to protect public civilian property, which includes (roads, bridges, power stations, airports, seaports, cultural properties, places of worship, and the like), and also obligated, in addition to that, to protect the personal civilian property of individuals that could be accessed by the conflicting parties under it (the law International humanitarian law), other than equipment, weapons, ammunition and other military objects that may be seized as spoils of war. International humanitarian law has taken into account the right of civilians to their private property and laid foundations and principles that warring parties must abide by, as the protection of public and private property Equal in terms of importance in international humanitarian law, this law did not differentiate between public and private property, and the first of them is of equal importance²⁸.

In addition to the fact that the international humanitarian law obligating the protection of property (public and private) also referred to the prohibition of the use of this property by the gatherings to the outfitted clash for military purposes, because its use deprives it of its immunity and opens the way for attacking it and causing damage to it²⁹.

But military necessity may necessitate the destruction or seizure of some personal civilian property, in this case the principle of proportionality is relied upon to find a rule on which this seizure is based, as military necessity does not justify seizure or destruction except to the extent necessary to fulfill that necessity, and any excessive It is not permitted by the rules of international humanitarian law, and this means that this rule is based on the principle of proportionality.

We note that the proportionality in this rule takes into account humanitarian considerations, since the prohibition rule that appears in this regard is based on the protection of civilian property in an absolute manner, and it may not be violated except as an exception when the element of military necessity enters into the realistic existence that governs the situation, so the ruling is transformed according to the principle of proportionality in The image of the necessary rule for this instead of the rule of absolute prohibition, and the rule based on proportionality then takes into account in an acceptable manner military considerations without prejudice to humanitarian considerations, and this rule is contained in many agreements of international humanitarian law, it was mentioned in the Hague Regulations on the Laws and Customs of War on Land of 1907 In which it came (in addition to the prohibitions stipulated in special agreements, it is prohibited in particular: to destroy or seize enemy property , Except when the necessities of war inevitably require this destruction or seizure)³⁰, The first, second and fourth Geneva Conventions of 1949 stipulate that the destruction or excessive appropriation of property is among the acts considered grave breaches, of the provisions of those conventions (grave breaches are those that include one of the following acts if committed against protected persons or property protected by the

28 Suhail Hussein Al-Fatlawi and Imad Muhammad Rabie, *International Humanitarian Law*, 1st Edition, House of Culture, Amman, Jordan, 2007.

29 Article 52 of Additional Protocol I of 1977 annexed to the four Geneva Conventions of 1949.

30 Article 23/g of the Hague Regulations relating to the Laws and Customs of War on Land of 1907.



convention:the unlawful and arbitrary destruction or appropriation of property on a large scale not justified by military imperatives)³¹.

As for the Statute of the International Criminal Court, the destruction or seizure of enemy property, unless such destruction or appropriation is necessitated by the necessities of war, is considered a serious violation of the laws and customs applicable in international and non-international disputes, and represents one of the war crimes stipulated in the Statute of the International Criminal Court³².

We find that, the restriction mentioned in the Geneva Conventions of 1949, that made the destruction or appropriation of property must be illegal and arbitrary, represents an unjustified restriction, and that deviating from what is required by the necessities of war is sufficient in determining the legality of seizure and destruction, so the statute of the court came The ICC is free of that restriction, which provides greater security for the property³³.

CONCLUSION

After we dealt with the international legal rules related to the principle of proportionality in international humanitarian law, it is necessary to mention some of the most important findings and proposals that we reached in this research:

RESULTS

1. The principle of proportionality protects civilians and civilian objects as civilians who do not take part in the hostilities and who remain protected by this principle if they do not take part in the hostilities.
2. There was no reference to the principle of proportionality at the outset, except in the international custom, where the four Geneva Conventions, of 1949 did not refer to it, but the first Additional Protocol of 1977 came and referred to it, but this is considered a late reference. The international community should have included this principle a long time ago due to its importance in protecting civilians.
3. The principle of proportionality has helped in the development of the principles of international humanitarian law and the emergence of many principles, including the principle of prohibition of unjustified pain and injury and the prohibition of indiscriminate attacks, the violation of which is a war crime
4. The customary nature of proportionality gave wide application in various types of armed conflicts, as it included non-international armed conflicts that were not covered by most of the rules of international humanitarian law that were limited in many of its conventions to international armed conflicts
5. The principle of proportionality covers much of the lack and ambiguity in the protection rules established for civilians.

31 Article 50 of the First Geneva Convention of 1949, Article 51 of the Second Geneva Convention of 1949, and Article 147 of the Fourth Geneva Convention of 1949.

32 Articles “8/2/b/13” and “8/2/e/12” of the 1998 Statute of the International Criminal Court.

33 Nawal Ahmed Bassaj, *International Humanitarian Law and the Protection of Civilians and Civilian Objects in Times of Armed Conflict*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2010.



6. It is not possible to achieve the necessary protection for the protected groups in an effective and clear manner unless the focus is focused on the exception that was placed on this principle and consider it an exception and not a rule that can be resorted to at any time to justify the violation of the principle of proportionality and exceptions to the principle of proportionality through which many violations can occur International humanitarian law by justifying the conflicting parties that there is a proportionality in the use of force that could lead to tragic consequences for civilians and civilian objects.


SUGGESTIONS

1. In the first Additional Protocol of 1977 in Article 57 and the Hague Convention on Land War of 1907, reference is made to the principle of proportionality, but it is a vague reference. Here it is not clear, as the international legislator did not use the term proportionality literally so that it can be said that it means the principle of proportionality. He referred to the protection of civilians without putting in precise and clear terms that express how the principle of proportionality protects these civilians. We recommend to the international legislator that the issue of the principle of proportionality should be addressed in more clearly, laying down the detailed lines and criteria that define the principle of proportionality and the cases in which it can be resorted to in the use of this principle
2. Emphasizing the issue of (the exception) in evaluating the principle of proportionality among all those in charge of managing and implementing military actions, and thus focusing on protecting civilians and civilian objects and taking into account the use of force before using it, which gives consideration to humanitarian considerations from violation and achieves the desired goal of the principle of proportionality.
3. Expanding the study of the principle of proportionality more, and highlighting its value in international humanitarian law, and this interest in the value of the principle can create rules for the protection of humanity and considerations related to it, in a renewed manner that matches the values that the principle aims to establish and protect.

SOURCES

First, the books:

- [1] Adam Abdul-Jabbar Abdullah Bidar, Protection of Human Rights during International Armed Conflicts between Sharia and Law, Al-Halabi Human Rights Publications, first edition, 2009.
- [2] Hussein Ali Al-Daridi, International Humanitarian Law: Its Birth, Scope and Sources, 1st Edition, Wael Publishing House, Amman, Jordan, 2012.
- [3] Jean Pictet, Principles of International Humanitarian Law, Publications of the International Committee of the Red Cross, Geneva, 1975.
- [4] John Marie Henkris, Customary International Humanitarian Law, 1st Edition, International Committee of the Red Cross, Cairo, 2007.
- [5] Suhail Hussein Al-Fatlawi and Imad Muhammad Rabie, International Humanitarian Law, 1st Edition, Dar Al-Thaqafa for Printing and Publishing, Amman, Jordan, 2007.

- 
- [6] Amer Ali Samir Al-Dulaimi, *Military Necessity in International and Internal Armed Conflicts*, 1st Edition, Academics for Printing and Publishing, Amman, Jordan, 2015.
 - [7] Omar Saad Allah, *International Humanitarian Law, Opinions and Documents*, Dar Majdalawi - Amman, first edition, 2002.
 - [8] Maher Jamil Abu Khawat, *Protection of Journalists and Media During International Armed Conflicts*, Arab Renaissance House, Cairo, 2008,
 - [9] Montaser Saeed Hammouda, *International Humanitarian Law with reference to its most important principles in Islamic jurisprudence*, Dar Al-Fikr Al-Jami'i, Cairo, 2006.
 - [10] Nawal Ahmed Bassaj, *International Humanitarian Law and the Protection of Civilians and Civilian Objects in Times of Armed Conflict*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2010.

Second - University Theses and Theses:

- [1] Sama Sultan Al-Shawi, *The Use of Depleted Uranium Weapon and International Law*, PhD thesis submitted to the Council of the College of Law, University of Baghdad, 2004.

Third- Research and Articles:

- [1] Ahmed Obais Al-Fatlawi, *The Legality of Using Some Conventional Weapons in the Light of International Humanitarian Law*, research published in the Kufa Journal of Legal and Political Sciences, 2009
- [2] Osama Damj, *Weapons Prohibited in International Humanitarian Law*, research published in the book *Horizons and Challenges*, Al-Halabi Human Rights Publications, 1st Edition, Lebanon, Issue One, 2005
- [3] Robert J. Matthew, *Convention on Conventional Weapons 1980, A Useful Framework Despite Frustrations*, International Committee of the Red Cross, Vol. 83, No. 844, 2001, pp. 12, 11. Published on the following link: https://www.icrc.org/ar/doc/assets/files/other/0991-1012_mathews.pdf
- [4] Robin M. Copeland and Peter Herby, *Review of the Legality of Weapons: A New Introduction to the Excessive Injury or Unwarranted Suffering Project*, International Review of the Red Cross, No. 835, 1999.
- [5] Vincent Chetay, *The Contribution of the International Court of Justice to International Humanitarian Law*, Selections from the International Review of the Red Cross, No. 850, 2004, Geneva, p. 14, published on the following link: <https://www.icrc.org/ar/doc/resources/documents/misc/6leddp.htm>
- [6] Mahmoud Sherif Bassiouni, *The Customary Framework for International Humanitarian Law, Interventions, Gaps and Ambiguity*, Research within the Book of International Humanitarian Law, Dar Al-Nahda Al-Arabiya, 2003.
- [7] Anna Segal, *Economic Sanctions, Legal and Political Constraints*, Article published in the International Review of the Red Cross, No. 835, 1991, available at: <https://www.icrc.org/ar/doc/resources/documents/misc/5r2agc.htm>
- [8] Louise Doswald, *International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Threat and Use of Nuclear Weapons*, Journal of the International Committee of the Red Cross, March 2016 issue, research published on the website:



<https://www.icrc.org/ar/publication/lhl-advisory-opinion-icj-legality-threat-or-use-nuclear-weapons>

Fourth, international agreements

- [1] The Hague Convention of 1907
- [2] The four Geneva Conventions of 1949.
- [3] The Hague Convention for the Protection of Cultural Property 1954.
- [4] Additional Protocol I to the Geneva Conventions of 1977.
- [5] The 1998 Statute of the International Criminal Court.