



THE SCOPE OF THE PRINCIPLE OF PROPORTIONALITY IN INTERNATIONAL HUMANITARIAN LAW

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Article history:	Abstract:
<p>Received: 30th March 2024 Accepted: 26th April 2024</p>	<p>The principle of proportionality is considered one of the fundamental principles of international humanitarian law in particular, as this principle is considered the basis for a large number of the rules of this law. Despite the importance of this principle, it has not received the importance of researchers and scholars in this specialty. The principle of proportionality is based on a basic idea, which is the excessive use of force and violence in some cases. There are also limits that must be adhered to by states, ensuring that their actions are acceptable and not excessive in the use of force. Taking into account humanitarian cases and providing them with a high degree of protection, and thus, moral, religious and social considerations have a great role in establishing this principle. The many flagrant violations of the rules of international humanitarian law occurring as a result of military operations have led to the necessity of thinking about establishing legal mechanisms in order to develop Protection for civilians. Accordingly, we will explain how to deal with the principle of proportionality, although it is difficult to clarify all its features in this research, but it is an attempt to highlight the importance of resorting to this principle.</p>
<p>Keywords: The principle of proportionality, international humanitarian law, use of force, violence, military necessities.</p>	

INTRODUCTION:

The law includes international standards and contributes to improving the rules of protection for persons not participating in military combat, during operations, which are widespread and restrict the means and methods of warfare used against areas under armed military conflicts.

The principle of proportionality is considered one of the most important principles of international humanitarian law, which seeks to keep civilians away from the effects of wars and armed conflicts, to prevent violations and alleviate suffering. Accordingly, the principle of proportionality is considered one of the most prominent principles of international humanitarian law. The principle of proportionality means a means of limiting the damage resulting from armed military operations, by using weapons that are proportionate to the military operation to achieve the desired goal.

The use of military necessity to achieve victory over the other party must be within a legal framework, and states are not free to use whatever weapons they wish, or methods that may lead to the destruction of the opponent's infrastructure as an enemy. Rather, states must choose the means that are appropriate for this goal. So that it does not cause excessive damage that is not necessary.

At the international legal level, the Hague Regulations Concerning the Laws and Customs of Land Warfare of 1907, specifically in the text of Article 22, approved this principle, which stipulated: "The belligerents do not have an absolute right to choose the means of causing harm to the enemy." As stated in the provisions of the Additional Protocols of 1977 attached to the four Geneva Conventions, to enhance respect and ensure the principle of proportionality in military conflicts, to avoid harm to civilians.

Research Problem:

The principle of proportionality is based on an assumption that may be considered problematic, which is to establish and define a precise standard for proportionality in terms of its concept or definition and characteristics. On the other hand, how effective and mandatory is this standard?

Therefore, in our research, we seek to answer a large and fundamental problem, which is:

- What place does the principle of proportionality occupy in international humanitarian law?

Research Methodology:

The nature of the research requires following the basic legal analytical approach, where the principles of customary international humanitarian law, the convention, and the rules that arise based on this law are analyzed, as far as the principle of proportionality is concerned. We also relied on the basic approach to this principle, to know its historical and intellectual origins and the factors that led to resorting to this principle.

Search Plan:

We will divide the research into an introduction, two topics, and a conclusion. In the first topic, we will address: the concept of the principle of proportionality. In the second requirement, we will discuss: the legal nature of this principle.

The conclusion will contain a summary of the most prominent results reached in the research and the proposals emerging from it.

In light of the above, we will examine the principle of proportionality in terms of its importance and legal nature in two claims, as follows:

First Topic: Concept of the Principle of Proportionality

First Section: What is the Principle of Proportionality?

Second Section: Characteristics and Forms of the Principle of Proportionality

Second Topic: Legal Nature of the Principle of Proportionality

First Section: Principles Related to the Principle of Proportionality

Second Section: Rules for the Protection of Civilians

First Topic

Concept of the Principle of Proportionality

The principle of proportionality was not a result of coincidence, but rather it was one of the means and methods of fighting used in armed conflicts, and the inhumane effects that accompanied them in past periods, which were the main motivation towards reviewing the legality of some types of weapons.

In a general framework, the principle of proportionality is based on the balance between the expected effects of using a weapon and the military goal to be achieved. In other words, presenting this balance to political and military leaders, before they decide to use weapons, and assessing whether the humanitarian consequences are greater than the consequences of victory and victory in battle.

The principle of proportionality - in accordance with international humanitarian law - aims to limit the harm of military operations, provided that the effects of the methods of warfare used are proportional to the desired military advantage, and that the parties to the armed conflict are obligated according to international laws to take into account the negative effects of military behavior that can be reasonably predicted ⁽¹⁾. In order to reach the truth of the concept of the principle of proportionality, it is necessary to explain the extent to which this principle contributes to providing international protection and its embodiment on the ground, for both civilians and civilian objects during combat operations, while explaining the preventive and deterrent nature that contributes to putting an end to violations of the principle of proportionality, which are mainly in the establishment of international responsibility, whether civil for states or criminal for individuals, so we devoted the first section to studying the nature of this principle, and the second section to explaining the characteristics and forms of the principle of proportionality.

⁽¹⁾ **Khalid Salman Al-Mahdawi, International Humanitarian Law, “its principles, provisions, and applications,” The Legal Library, Baghdad, 2019, p. 131.**

First Section

What is the Principle of Proportionality?

International humanitarian law is defined as "a set of rules and principles that place restrictions on the use of force in times of armed conflict, in order to limit the effects of violence on combatants beyond the extent required by military necessities, and to spare persons who do not directly participate in the actions." The concept of proportionality does not deviate from this framework drawn up by the definition of international humanitarian law, as it - that is, the principle of proportionality - represents the spirit that runs through the body of international humanitarian law, and infuses in its rules and principles the activity on which it is fundamentally based ⁽²⁾.

The law aims to find a compromise between two contradictory considerations. On the one hand, the result that each fighter or combatant aims to achieve is victory over the other party. He must be given a position that allows him to use all the capabilities and means to achieve this. On the other hand, humanitarian considerations require the necessity of respecting Human life by avoiding the types of suffering that accompany humans during periods of armed conflict.⁽³⁾

Although international humanitarian law is relatively new, it has a long history, as it constitutes a set of international norms that define the categories covered by protection and regulate the use of weapons during armed conflicts, whether international or non-international ⁽⁴⁾. "International custom" is one of the most important sources of international law. It paved the way for many of the rules and principles that were included in international treaties, and this is what Article (38) of the Statute of the International Court of Justice addressed and considered it a source of basic international law in its first paragraph (b) by saying: "... well-established international customs." It is like a law indicated by the frequency of use..."

It is noteworthy that this principle was addressed in Rule (14) of the list of customary rules in international humanitarian law, saying: "An attack that may be expected to cause incidental loss of life or injury to civilians, damage to civilian objects, or a combination of Losses and damages, and would be excessive in exceeding the direct and tangible military advantage expected to result from it."⁽⁵⁾

Despite the lack of stability on a comprehensive and specific definition of the principle of proportionality, jurists in international humanitarian law have sought to give a definition of this principle. The jurist "Pietro Ferri" defined it as: "The principle of proportionality seeks to limit the harm caused by military conflicts so that it requires that the effects, means and methods of war are consistent with the desired military advantage."⁽⁶⁾

It can also be defined as: "How to deal with the goal to be achieved after determining the legitimacy of this goal, and by virtue of the principle of distinction, the principle of proportionality determines the means and level of intervention to achieve a balance between military and humanitarian necessity, and that any defect in the application of this principle exposes the state to violating international law under the title of use." Excessive force.⁽⁷⁾

In order to have an in-depth understanding of this principle, important questions must be asked about what this principle is and how it emerged? How is it understood when applied to methods and means of combat in general? To answer these questions, we will address the matters that led to the emergence of this principle, as well as clarifying the most important interpretations that have been exposed to it. The main reason behind the emergence of the principle of proportionality is the eternal conflict between two ideas: the first allows the use of methods and means of combat, to the extent that enables combatants to achieve the military goal and defeat the opponent ⁽⁸⁾.

(2) Jaafar Abdel Salam, International Humanitarian Law in Islam, a collection of articles published under the title: Humanitarian Law, Dar Al-Mustaqbal Al-Arabi, 1st edition, 2002.

(3) See: Dr. Ahmed Abu Al-Wafa, categories covered by the protection of international humanitarian law, research published as part of a collection of research published in one book entitled "International Humanitarian Law," a guide to implementation at the national level, presented by: Dr. Ahmed Fathi Sorour, Publications of the International Committee of the Red Cross Mission, Cairo, 3rd edition, 2006, p. 146.

(4) Amer Ali Samir Al-Dulaimi, Military Necessity in International and Internal Armed Conflicts, 1st edition, Al-Academies for Publishing and Distribution, Amman, Jordan, 2015, p. 147.

(5) John Marie Henkers, Customary International Humanitarian Law, Rules, Volume 1, International Committee of the Red Cross, Geneva, 2007, p. 41.

(6) Adam Abdul-Jabbar Abdullah, Protecting human rights during international armed conflicts between legality and law, Al-Halabi Human Rights Publications, Beirut, 1st edition, 2009.

(7) Ahmed Abis Nehme, International Humanitarian Law, Zain Legal Publications, Beirut, 1st edition, 2019, p. 90.

(8) Emily Broad, Jessica Corsi, "Cluster munitions and the proportionality test, Memorandum to delegate of convention of conventional weapons". IHRC, Human Rights Watch, 2008, p3.

As for the second idea, it criminalizes - as much as possible - the infliction of injuries on those who do not participate in military operations, meaning "civilians" or those under special protection, while calling for alleviating the unjustified pain and injuries that may be inflicted on fighters⁽⁹⁾.

The basis of this principle is valid when applied to armed conflicts in general, to alleviate the scourge of armed conflicts, by emphasizing the humanitarian aspect that must not be lost from the imagination of military leaders and political decision-makers in countries. It is true to say that the equation upon which the principle of proportionality is based is extremely difficult, as it seeks balance and harmonization between the conduct of military operations and achieving the military objective on the one hand, and respect for the principles affirmed by international humanitarian law on the other hand⁽¹⁰⁾.

The principle of proportionality originally arose after the development of the principle of superfluous injury, unnecessary harm and suffering, and the St. Petersburg Declaration of 1868 is the first international legal instrument that affirmed the principle of proportionality by texting: "The contracting or acceding parties reserve the right to come to an understanding later, whenever a precise proposal is made to introduce improvements in the armament of armies thanks to scientific progress, to preserve the principles they have established and to reconcile military necessities with the laws of humanity."⁽¹¹⁾

From what was mentioned above, it becomes clear that the St. Petersburg Declaration of 1868 referred to reviewing the legality of the use of all weapons. Doubt may be raised regarding it suggesting its failure to reconcile military necessities with humanitarian requirements.

This is what the jurist Maurice Aubert said: "States do not accept the idea of destroying their armies, and they also do not accept prohibiting or restricting the use of their weapons as long as they use them, unless the military necessity of it is taken into account." While the jurist "Bluntchli" went to a different meaning by saying: "International law opposes the arbitrary disposal of individuals, and does not allow ill-treatment or violence against them. The enemy can only take the means permitted by the law and required by military operations, and war is not an end in itself. Rather, it is a means of achieving rights or achieving the state's goals and interests. The opposing forces in war do not have the absolute right to use force. War must be limited and stop as soon as it is unable to achieve the military goal⁽¹²⁾.

A prominent example of violating the principles of international humanitarian law, which govern the conduct of military operations, specifically the principles of (military necessity and proportionality), is the destruction by "Israel" of an electrical power plant and many roads, bridges and buildings, in response to the loss of one of its members near the borders of the Gaza Strip. Gaza in 2006, as this operation coincided with a series of collective punishments imposed on civilians in Gaza, measures that are completely inconsistent with the principle of military necessity that it requires trying to release the missing soldier. Also, these behaviors contradict the jus cogens rules in humanitarian law, which is the rule of distinguishing between civilian and military targets.

Second Section

Characteristics and Forms of the Principle of Proportionality

First: Characteristics of the principle of proportionality: This principle in international humanitarian law has many characteristics, which can be summarized as follows:

1. The principle of proportionality is characterized by flexibility and non-rigidity, as it is based on taking into account personal and financial circumstances at the moment of making the military decision.
2. It is also characterized by obligating the parties to the conflict to make every effort to achieve a balance between the military advantage and the required and expected effects.
3. The principle of proportionality is raised in the realistic phase, that is, during combat operations.
4. The principle of proportionality in armed conflicts is based on two basic principles in international humanitarian law: the principle of humanity and military necessity.

The humanitarian goal seeks to protect civilians from the dangers of armed military conflicts, which were previously not subject to the law, as blood was shed and the majority used all their means of injustice, arbitrariness and revenge. On this basis, ideas tended to reduce the severity of armed conflicts, so the principle of chivalry came. It is a

⁽⁹⁾ **Muhammad Tay, Imam Ali and the Modern Laws of War, Al-Ghadeer Studies and Publishing, 1st edition, Beirut, 2009, p. 85.**

⁽¹⁰⁾ **International Committee of the Red Cross, International Law Concerning the Conduct of Military Operations, The Hague Conventions and Certain Other Treaties, Geneva, 2nd edition, 2001, p. 169.**

⁽¹¹⁾ **Ahmed Abis Nehme, previous reference, p. 93.**

⁽¹²⁾ **Hussein Ali Al-Daridi, International Humanitarian Law: Its Birth, Scope, and Sources, Wael Publishing House, Beirut, 1st edition, 2012, p. 426.**

principle derived from chivalry and honor in dealing with the enemy, just as the heavenly religions commanded sanctity and compassion⁽¹³⁾.

The rule of humanity obliges the opponent (the other party) to direct his attacks exclusively against combatants, and against military targets alone. As for military necessity, he defined it the majority of international law jurists consider it "a situation that is considered necessary to the extent that it does not leave sufficient time for the conflicting parties to choose the means used in their immediate military actions." As for the rule of necessity, it means that armed conflict is permissible only to dictate the will of the other opponent and to weaken his military power only, with the aim of dictating its conditions. Any use of force in excess of this amount is considered illegal, and Professor Muhammad Al-Majzoub defines it as using means of violence and force to the extent necessary to achieve the purpose of the conflict. Conflict, that is, exhausting the other party and weakening its military power⁽¹⁴⁾.

Second: Forms of the principle of proportionality: This principle has two forms, namely proportionality in means and proportionality in attack. As for (proportionality in means), the armed forces sometimes take measures in times of armed conflict against protected persons that may not be consistent with the principles of protection included in international law. Humanitarian transfer, including forced transfer, in addition to the seizure and destruction of the other party's property. In the case of forced transfer, the Fourth Geneva Convention of 1949 prohibits the forced individual or group transfer of civilians, but it provides an exception to it, which is if the security of the civilian population requires it or for compelling military reasons, in this case The situation must be that the measure taken against the civilian population is consistent with its purpose, and does not result in a serious violation of Article (147) of the Fourth Geneva Convention.

As for the other form, which is (proportionality in the attack), it is in cases of protection of civilians and civilian objects, which includes the protection of cultural and environmental property. The First Additional Protocol of 1977 attached to the Geneva Conventions prohibited attacking civilians and civilian objects, as this criminalization was absolute, as long as the person or civilian objects did not contribute to armed military action⁽¹⁵⁾.

As for the protection of environmental and cultural property, the 1954 Hague Convention for the Protection of Cultural Property defined cultural property as: "A- Immovable or movable property of great importance to the cultural heritage of peoples. B- Buildings officially and effectively designated for the protection of cultural property. C- Centers containing a large collection of cultural property"⁽¹⁶⁾.

Regarding the impact of the principle of proportionality on the protection of cultural property, the Protocol attached to the aforementioned convention of 1999 stipulates in Article (13) thereof: "To take available precautions in choosing the means and methods of attack with the aim of ending military use and avoiding damage to cultural property... and limiting it to the narrowest possible scope". This article requires parties to an armed conflict to take appropriate precautions in the event of an attack on cultural property used for military purposes, in order to avoid damage to that property⁽¹⁷⁾.

(13) Muhammad Al-Majzoub, Public International Law, Al-Halabi Legal Publications, Beirut, 6th edition, 2007, p. 847.

(14) Ali Naji Saleh, International Sanctions in Chapter Seven of the United Nations Charter, doctoral thesis in law, Faculty of Law, Cairo University, 2004, p. 742.

(15) Article (51), second paragraph, and Article (52), first paragraph, of the First Additional Protocol of 1977.

(16) Article (2) of the 1977 Hague Convention for the Protection of Cultural Property.

(17) Haider Kazem Abdel Ali, The Principle of Proportionality in International Humanitarian Law, Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Volume 8, Issue 2, 2016, p. 579.

Second Topic

Legal Nature of the Principle of Proportionality

International agreements did not explicitly stipulate the principle of proportionality until the year 1977, within the first protocol attached to the four Geneva Conventions of 1949, through what was stipulated in Article (51) in paragraph five (b) by saying: "The following types of attacks are considered, As indiscriminate attacks:... 2- An attack that could be expected to cause loss of civilian life, injury to civilians, or damage to civilian objects, or to cause a mixture of losses and damage, and exceed the tangible military advantage expected to result from that attack directly".

Article (57) in the third paragraph of the same Protocol also mentioned this principle, saying: "To refrain from taking a decision regarding any attack that might be expected, incidentally, to cause loss of civilian life or injury to them, or damage to civilian objects, or To cause a mixture of losses and damages, which exceeds the direct, tangible military advantage expected to result from that attack...."

By studying the two texts above, we find that they are compatible in terms of their definition of this principle. The two aforementioned articles considered the principle of proportionality to be the principle that achieves a balance between the military advantage that is sought to be achieved and the attack with the necessity of respecting the rules of international protection of civilians and civilian objects, since the principle of proportionality is the cornerstone of promoting and developing Rules for protecting civilians during military operations.

First Section

Principles Related to the Principle of Proportionality

Among the important rules regulated by international humanitarian law is respect for civilians and the imposition of their protection. In its general sense, it combines two different ideas. The first is regulating the conduct of military operations, and the other aims to alleviate inhuman suffering during armed conflicts. The means of combat also follow several methods. The conflicting parties, by looking at these behaviors, aim to achieve the goal of victory over the other party, but in many wars and conflicts, the military forces deviate from some cases of adherence to the principle of proportionality, so it is necessary to restore the situation to what it should be, and accordingly, we will in this section, we address the principles criminalized by international humanitarian law in this regard.

First: The principle of prohibiting methods of fighting that cause unjustified injuries or pain: War is no longer under international humanitarian law as it was in the past, when it was a means of humiliating and torturing peoples. Rather, the goal of wars has become to weaken the military capabilities of the other party, and to defeat the enemy from the battlefields. Armed conflict by the most humane means. If it is possible to achieve military victory through the surrender of the enemy, this should not go beyond wounding or killing him. If the matter requires his capture, then resorting to killing him is considered a deviation from the legitimate purpose of war and causing unjustified pain, and this is the rule. Unjustified pain, as this is considered the only principle of this law, came to protect fighters and their right not to inflict unjustified pain ⁽¹⁸⁾.

This principle was mentioned in many international conventions, and was mentioned in the St. Petersburg Declaration of 1868, which states: "It must be the duty of civilization to mitigate the disasters of war as much as possible, and the sole purpose must be to weaken the enemy's military power, and this is sufficient for this goal." Isolating the largest number of men from the fight... This approach was followed by the First Geneva Convention of 1949, as Article (50) of it addressed: "Grave breaches are those that include one of the following acts if they are committed against persons protected or property protected by the Convention: intentional killing, torture or inhuman treatment, including experiments." related to life sciences, and intentionally causing severe pain or serious damage to physical and health safety...."

It is clear that the elements of this principle are represented by the terms excessive pain or unnecessary suffering, and these two terms refer to relatively the same meaning. The word excessive and unnecessary means more than what is required or unnecessary, but it becomes clear that it is difficult to give a specific definition for these terms or an objective definition of suffering, or giving absolute values that allow for comparison between people. Pain, which represents one of the many manifestations of suffering, is evaluated differently from one person to another. The standard of pain does not only differ from one person to another, but also varies within the same person at times, according to circumstances and situations. On this basis, it is preferable to many experts in the field of medicine use the word "wounds" or damage caused by armed conflicts, instead of the word "suffering", which is difficult to define precisely⁽¹⁹⁾.

To sum up what is stated in this principle, it must be noted that this principle is not limited to individuals, but also includes money, as it includes the prohibition broadly, as through the Hague Regulations of 1907 and the First Additional Protocol of 1977 attached to the Geneva Conventions, we see that they added phrases indicating However,

(18) Hussein Ali Al-Daridi, previous reference, p. 443.

(19) Sama Sultan Al-Shawi, *The Use of Depleted Uranium Weapons and International Law*, doctoral thesis submitted to the Council of the College of Law, University of Baghdad, 2004, p. 27.

this principle is not limited to the pain and damage caused to individuals, such as the expressions of unjustified injuries or suffering. It is not limited to personal pain, but also includes damage to civilian objects ⁽²⁰⁾.

Second: Prohibiting the method of starving the civilian population: International humanitarian law may not specifically refer to economic sanctions, nor does it address their effects on the civilian population, but when sanctions are imposed due to an armed conflict - whether internal or international - general rules are applied regarding the protection of civilians from the effects of military operations. The principle of proportionality can be observed in this rule through the use of military necessity that is imposed in some cases for the purpose of achieving a military goal, which may lead to seizing or occupying a specific city, and this depends on besieging it and preventing the entry of food supplies into it, with the aim of weakening the enemy party and weakening their ability. Resistance, which in itself is a legitimate goal in armed conflicts, but if this siege results in harm to civilians - it may lead to cutting off necessary and indispensable supplies - this act becomes prohibited and amounts to being considered a war crime in international humanitarian laws ⁽²¹⁾.

Second Section Rules for the Protection of Civilians

The rules for the protection of civilians include a wide range of rules in international humanitarian law, and we will limit our study in this section to the rules that are directly related to the principle of proportionality. The first is the prohibition of destroying and seizing an opponent's property, and the second is the prohibition of indiscriminate attacks.

First: Prohibiting the destruction or seizure of an opponent's property: The right to property is considered one of the most important civil rights addressed in international human rights laws, as the right to property includes a person's right to own property alone or jointly with others, and failure to respect and attack the right to property, It is prohibited under international law ⁽²²⁾.

On this basis, international humanitarian law obligates parties to armed conflict to provide protection for public civilian property, including (roads, bridges, power stations, airports, ports, and the like), and in addition to that, it obliges the parties to protect the personal property of individuals that the enemy party has access to. In addition to equipment, weapons and ammunition that can be seized, as they are spoils of war. International humanitarian law is concerned with the right of civilians to their private property and also sets foundations and principles that parties to the conflict must adopt, as the protection of public and private property is equal in importance in international humanitarian law, since international humanitarian law does not differentiate in importance between public and private property ⁽²³⁾.

There are many methods prohibited in international humanitarian law that affect the lives of civilians, including intimidation of the civilian population, and the use of military siege methods. The First Additional Protocol touched on the prohibition of intimidation of the civilian population, specifically in Article (51), second paragraph thereof, as well as Article (13) In the second paragraph of the Second Additional Protocol, it also included the prohibition of collective punishment and the prohibition of the use of civilians as human shields. Here we raise a question regarding whether the rules of the conduct of hostilities and the principle of proportionality in particular serve as an additional means to restrict the use of the military siege method.

The other prohibition, which is criminalized according to international humanitarian law, is starving civilians - that is, depriving them of food - as one of the methods of war. This rule was mentioned for the first time in the two Additional Protocols of 1977, specifically in the text of Article (57) in the first paragraph of the First Additional Protocol, as well as Article (14) of Additional Protocol II. These rules are considered customary law in international

⁽²⁰⁾ **Omar Saadallah, International Humanitarian Law, Opinions and Documents, Majdalawi Publishing House - Amman, first edition, 2002. p. 357.**

⁽²¹⁾ **Nawal Ahmed Basaj, International Humanitarian Law and the Protection of Civilians and Civilian Objects in Times of Armed Conflicts, Al-Halabi Human Rights Publications, Beirut, 1st edition, 2010. p. 211.**

⁽²²⁾ **Adam Abdul-Jabbar Abdullah, previous reference, p. 283.**

⁽²³⁾ **Article 52 of the First Additional Protocol of 1977 annexed to the Four Geneva Conventions of 1949, which stipulates: "General protection of civilian objects."**

1- Civilian objects shall not be the subject of attack or deterrence attacks. Civilian objects are all objects that are not military objectives as specified in the second paragraph.

2- Attacks shall be limited to military targets only. With regard to objects, military objectives are limited to those that make an effective contribution to military action, whether by their nature, location, purpose, or use, and whose complete or partial destruction, seizure, or neutralization, in the circumstances prevailing at the time, provides a definite military advantage.

and non-international armed conflicts, and the Rome Statute also stipulates: "the deliberate use of starvation of civilians as a method of warfare."

Second: Prohibition of indiscriminate attacks: The term indiscriminate attacks was mentioned in the First Additional Protocol attached to the Geneva Conventions of 1977, specifically in Article (51) in its fourth and fifth paragraphs, which dealt with examples of types of indiscriminate attacks ⁽²⁴⁾.

Regarding the position of the International Court of Justice on indiscriminate attacks, in its Advisory Opinion on the Threat or Use of Nuclear Weapons of 1966, which stated: "... the warring parties must not make civilians the target of attack, and accordingly must not resort to weapons that are incapable of discrimination." between civilians and military targets⁽²⁵⁾.

Based on the opinion of the court, any weapon that could be subject to analysis on the basis of the stated criterion (weapons that are unable to distinguish between civilians and military targets) is considered an international violation and its use is prohibited without there being a treaty text or even international practices prohibiting the use of that particular weapon, and there was no The court reminds that the legality in any case depends on the state's discretion as to whether this weapon is consistent with the rule or not.

CONCLUSION AND SUGGESTIONS:

At the conclusion of the research, we summarize several **results**:

1. The principle of proportionality was not mentioned in the four Geneva Conventions, but it was mentioned in the First Additional Protocol of 1977.
2. The customary nature of proportionality gave it broad application within various types of armed conflicts, as it included non-international armed conflicts that were not covered by the rules of international humanitarian law, and which many of its agreements were limited to international armed conflict.
3. This principle primarily protects civilians and civilian objects, as they are civilians who do not participate in armed conflicts.
4. This principle restricts parties to an armed conflict in their use of means of war and fighting, and obligates them to take all necessary measures and procedures in order not to harm civilians and civilian objects.
5. Violating this principle is considered a war crime, which entails international responsibility for the state, or international criminal responsibility for the individual.

Suggestions:

1. This principle was not mentioned literally in international agreements and protocols, but rather it was a superficial reference to it. We suggest that the international legislator, when addressing this principle, be more specific and clear in the issue of mentioning this principle in written texts.
2. We suggest that researchers expand upon writing research related to the principle of proportionality, to show the importance of this principle on the humanitarian level, and to give it great importance in international forums.
3. We suggest that countries enact agreements and make them more stringent in urging not to violate this principle, and not to rely on the principle of reciprocity.
4. Countries support the International Criminal Court so that it acts equally on all who violate this and other humanitarian principles.

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⁽²⁴⁾ **The two paragraphs stipulate the following:**

“(4) Indiscriminate attacks are prohibited and shall be considered indiscriminate attacks

A - Those that are not directed at a specific military target

B - Or those that use a method or means of combat that cannot be directed at a specific military objective, or those that use a method or means of combat whose effects cannot be limited as required by this Protocol and therefore are likely to strike in each case military objectives, civilian persons and objects. Civility without discrimination.

(5) The following types of attacks, among others, are considered random attacks A - A bomb attack, regardless of the methods or means, which treats a number of military targets that are clearly separated and distinct from each other and located in a city, village, town or other city that includes a concentration of civilian population or civilian objects as a single military target.

B - An attack that may be expected to cause loss of civilian lives, injury, or damage to civilian objects, or may cause a combination of these losses and damage, exceeds the tangible and direct military advantage that is expected to result from that attack.

⁽²⁵⁾ **Sama Sultan Al-Shawi, previous reference, p. 90.**

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