



The Concept of Proportionality in the Context of International Humanitarian Law and Its Customary Basis

Amer Abdulhusein Abbas¹, Ahmed Aubais Alfatlawi²

¹Faculty of Law, University of Kufa, Najaf, Iraq.

E-mail: ammera.alhchaim@uokufa.edu

²Faculty of Law, University of Kufa, Najaf, Iraq.

E-mail: ahmeda.alfatlawi@uokufa.edu.iq

Abstract

Understanding the development of the IHL rule on proportionality in treaty law can help states and organizations ensure compliance with international humanitarian law during armed conflicts. Recognizing proportionality as a customary IHL rule can guide decision-making processes in military operations to minimize harm to civilians and civilian objects. The paper provides an overview of the development of the IHL rule on proportionality in treaty law. It discusses the existence of proportionality as a customary IHL rule. The paper discusses the development of the rule on proportionality in international humanitarian law (IHL) in treaty law. It also explores the existence of proportionality as a customary rule in IHL. The findings indicate that proportionality is a pragmatic principle designed to restrict the extent of harm caused by military actions. The principal mandates that the military advantage sought must be commensurate with the tools and techniques of battle used. The efficacy of this approach becomes apparent during combat operations, as the conflicting parties must exert maximum effort to strike a balance between the military advantage gained and the accompanying collateral damage. We have also shown the conventional character of the idea, as validated by the legal decisions of international courts. Given the significance of the idea, it is desired that world legislators clearly include the principle in the documents of international humanitarian law. Furthermore, it is anticipated that the International Committee of the Red Cross will prioritize the concept in its regular publications and elucidate its significance.

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1. Introduction

Two primary concepts, proportionality and humanity, are not just crucial within the intricate domain of International Humanitarian Law (IHL), but they are also closely connected. While these concepts are distinct, they share a common objective—to reduce the atrocities of armed war. This article examines the concepts in a comparative manner, investigating their origins, applications, and the continuing academic discussions around them.

The concept of proportionality in International Humanitarian Law (IHL) is a fundamental aspect of *jus in bello*, the legal framework regulating behavior during armed conflicts. The requirement stipulates that any assault must not result in an excessive number of civilian deaths or destruction in comparison to the expected military benefit. The principle mentioned is enshrined in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions. It states that an attack likely to result in unintentional harm to civilians,

damage to civilian property, or a combination of both would be considered excessive if the expected military advantage is not significant enough to justify it.

Nevertheless, implementing this idea is neither simple nor easy. Military leaders are tasked with making intricate judgments during combat, carefully considering the possible military advantages compared to the potential harm to civilians.

On the other hand, the principle of humanity is more extensive and basic. The principle of humanity is fundamental to International Humanitarian Law (IHL). It mandates that all individuals, whether combatants or civilians, must be treated with compassion and respect. The Martens Clause, initially introduced in the 1899 Hague Convention, embodies the principle that in situations not covered by the Regulations adopted by the High Contracting Parties, both populations and belligerents are still subject to the principles of international law. These principles are derived from the established customs between civilized nations, as well as from the laws of humanity and the demands of public conscience.

The concept of humanity acts as a moral guide, directing the understanding and implementation of International Humanitarian Law (IHL) even in scenarios that are not specifically addressed by current treaties. The principle of proportionality is one of the most important fundamental principles on which international humanitarian law is based. A compromise principle seeks to strike a balance between two conflicting ideas or interests. The first is represented by military necessity and what it allows the warring party to use multiple methods and means of combat that enable it to defeat the opponent and achieve victory, and the resulting losses and damages to combatants, civilians or property. The other interest is represented by what humanitarian considerations require, which prohibit - as much as possible - the use of brutal or unusual methods and means of combat to prevent excessive injuries and spare civilians, as well as helpless soldiers - the wounded and sick - and others covered by special protection from the horrors and damages of conflict. This is the spirit and philosophy of the law, as proportionality balances between the importance of the objective to be achieved - the military objective - and the means used to achieve it.

2. The Concept and Historical Development of Proportionality

To fully comprehend the principle of proportionality, including its logic and philosophy, it is essential to thoroughly examine its idea and evolution and understand its legal character and critical manifestations. The following sections will systematically address these aspects.

2.1. The emergence of proportionality and its historical development

The principle of proportionality appeared with the signs of the emergence of the customary law of war in the conflicts and battles of peoples and nations in ancient times. It is based on the basic idea that there is no excessive use of force and violence over what is necessary to achieve the desired goal. Rather, there are limits to that - which are required by humanitarian requirements - that armies must adhere to. It aims to achieve balance and lack of bias between military necessities and humanitarian considerations. Social and ethical considerations played a major role in creating the principle and its emergence until it became a moral and religious value and rule in the cultures of previously civilized peoples and nations. It also became part and customary rule of the customary law of war (Youshaib Salim, Principle Proportionality in international law, a master's thesis submitted to Muhammad Al-Siddiq bin Yahya Jihal University - Faculty of Law and Political Science, under the supervision of: Azouzi Abdel Malik, 2016-2017, p. 8. - Photocopy - - PDF <http://dspace.univ-ji1el.dz....website>).

In ancient China, the common principle regarding the nature of war was that: The purpose of war is not to inflict excessive suffering. In India, its epics and laws - the Karamayana and the Mahabharata - 200 BC - and the Law of Manu - forbade weapons of excessive destruction and poisoned arrows (Mahmoud Sharif Bassiouni, International Law Al-Husani, Dar Al-Nahda Al-Arabiya, Cairo, 2nd edition, 2016, pp. 14-16). Among the ancient Greeks - the proportionality was embodied in the symbolic addresses between the gods, and the opposition between humanity and necessity - as the jurist Jean Pictet mentioned - was the eternal conflict between Creon and Antigone (Creon is the god and ruler of the Greek city of Thebes, who sets the law and punishes those who violate it, and Antigone represents Courage and conscience in Western literature, especially in opposition to unjust authority). For reasons related to the state, Creon sees it as his

duty to maintain order and law in the city, while Antigone applies the unwritten law, which transcends the written law and affirms the priority of the individual) (Jean S. Pictet) Principles of International Humanitarian Law, research published in the book: Lectures on International Humanitarian Law, edited by: Sherif Atlam. Previous reference, p. 53).

In the Levant, after the emergence of Islam, Islamic law contributed to establishing the principle in reality and strengthening it by limiting the use of excessive force and restricting military necessities - as mentioned above - in order to achieve the goal of war. Without going too far or exceedingly causing unjustified injuries, damage, or casualties among civilians, the principle of proportionality has been referred to in several Qur'anic verses, such as the Almighty's saying:

((So whoever attacks you, attack him in the same way as he attacked you, and fear God...)) (Surat Al-Baqarah, verse 194.) And the Almighty says: ((And if you punish, then punish with the same as that with which you were punished. And if you are patient - indeed, it is better for the patient.)) (Surat An-Nahl, verse 126) Much evidence of this has been mentioned in the hadiths and actions of the Messenger (may God bless him and grant him peace), including his (may God bless him and grant him peace) saying: ((I am the Prophet of Mercy and I am the Prophet of Epic)) (Muhammad bin Hibban, Sahih Ibn Hibban, Al-Resala Foundation, Beirut, 1414 AH, vol. 14). (p. 220, Hadith No. 6314), as he was precise in choosing the word, so he gave mercy to the epic as an expression of sympathy and compassion, and the epic, even if it means intense fighting and great war, is not a war of conquest, oppression, and authority, but rather it is to ward off temptations and achieve safety, and in that is control. of the behavior of warriors and an explanation of the purpose of war in Islam. In fact, the Messenger (PBUH) summarized in his previous saying the role of international humanitarian law (Muhammad Talaat Al-Ghunaimi, A Look at Islamic International Humanitarian Law, research published in the book: Essays on International Humanitarian Law and Islam, collected and arranged by Amer. Al-Zamali, previous reference, p. 25), and in application of this principle, Islam has forbidden many cruel and devious ways and means of fighting, such as treachery or throwing poison into the enemy's waters, or sabotaging crops and killing animals unnecessarily. It has also prohibited attacking clerics, sheikhs, women and children, until it was reported. He (PBUH) became angry when he was inspecting the dead and found a murdered woman among them. He (PBUH) said: ((What was this fighting)) (Muslim bin Al-Hajjaj, Sahih Muslim, Dar Al-Kutub Al-Ilmiyyah, Beirut, 1st edition, 2000, vol. 6, p. 43. He (PBUH) also forbade the killing of a man - a hired worker - and his offspring. In addition to other things that are recorded in his biography (may God bless him and grant him peace) and the biography of the Rightly Guided Imams after him (Saeed Salem Juwaili, previous reference, p. 34).

Although most Islamic jurists accepted the principle of necessity as presented in the well-known rule: "Necessities make prohibited things permissible," they nevertheless required proportionality between the force used and the effects resulting from it with another rule governing it, which is: "Necessities are estimated according to their proportion," which is consistent with the principle of proportionality. .

In the Middle Ages, the concept of the principle took root theoretically after the spread of the Christian religion in the Western world and the emergence of the so-called just war in the Roman Empire. The spirit of chivalry that prevailed in Europe in that era contributed to highlighting and consolidating the principle of proportionality, represented by the protection of women and not finishing off a knight who fell from his horse or His sword was broken, just as the ideas and theories of the theologians who were pioneers of international law with a humanitarian nature, such as Victoria, Suarez, Bellarmann, and Grosius, had the greatest impact on the spread of the principle and its spread, especially since they were affected by the disasters and tragedies left by Christian wars - such as the Thirty Years' War - 1618 - 1648 - (Fritz Kalshofen - Lisabeth Testfeld, op. cit, p. 17).

After a customary process full of principles, international efforts culminated in the codification of the norms and rules of law by referring to it in the second - historically - instrument of international humanitarian law, in the Saint Petersburg Declaration - 1868 - which, when addressing the issue of weapons developed for armies, emphasized reconciliation between the necessities of war and the laws of humanity. Then followed international instruments that referred to the principle implicitly or with the concept of violation (Bouchaib Slim, previous reference, pp. 20-21).

2.2. Definition of the principle of proportionality

Proportion - linguistically -: similarity, similarity, and closeness, and it is the source of the verb: fit, and there is a suitable occasion between them, that is, a problem, and the proportionality of the two things: similarity, closeness, and compatibility, and proportionality in speech: taking into account the counterpart by combining something with what suits it, and it is one of the mathematical, financial, and rhetorical terms as well. It indicates participation and interaction between the two parties, and ratio: the rhythm of attachment between two things (Pietro Ferri, Dictionary of International Law in Armed Conflicts, translated by: Manarova, 1992, op. cit., pp. 88-89).

As for proportionality in legal terminology, although it is not defined in the texts of the law, some of the law's commentators and jurists have taken care of that. The jurist - Pietroferri - defined it as: ((a principle that aims to limit the harm resulting from military operations, so that it requires that the effects, means and methods... The war used is proportional to the desired military advantage) (Pietroferri. Dictionary of the International Law of Armed Conflict, translated by Manar Wafa, published in International Humanitarian Law: A Guide for Academia, prepared by Sherif Atlam, published by the International Committee of the Red Cross, Cairo, 2006, Book Three, p. 88).).

Professor Abdul Aziz Al-Khattabi defined it as: "Destroying the opponent's military capabilities with the least possible damage, including the use of the least possible amount of destructive weapons. This requires managing military capabilities and building strategic and tactical capabilities in a way that ensures the destruction of the opponent's military capabilities without any excessive uses of armed force." Or causing any harm to persons and non-military targets) (Abdulaziz Ramadan Al-Khattabi, Means of Enforcement of International Humanitarian Law, Dar Al-Fikr Al-Jami'i, Cairo 2014, pp. 80-81) as defined by the advisor to the International Committee of the Red Cross - Brigadier General Osama Damj - by saying: ((It is how to deal with the target to be attacked after determining the legitimacy of this attack thanks to the principle of distinction. The principle of proportionality determines the means and level of intervention to achieve a balance between military and humanitarian necessity. Any defect in the application of this principle exposes the perpetrator to the reality of violating the law under the title of excessive use of force.) (Osama Damj, Forbidden Weapons in International Humanitarian Law, research published in the book: The Annual Scientific Conference of the Faculty of Law at Beirut Arab University on International Humanitarian Law - Prospects and Challenges -, Al-Halabi Legal Publications, Beirut, 1st edition, 2005, p. 215).

These definitions - despite their importance and circulation among researchers - did not clarify what proportionality is - as is clear - and did not define its concept accurately. The first definition focused on its goal, and the other two definitions mixed the concept with application. To avoid these problems, we can approach the definition of the principle as: ((the idea Basic humanity approved by divine laws and international norms, upon which the philosophy of international humanitarian law is based.

It states: the necessity of balance, symmetry, approximation, and non-excessiveness between the losses and damages incurred or expected from the use of armed force - methods and means of combat - and what is required by the importance and value of the tangible military advantage - the desired military goal - to break or repel the enemies and achieve victory.

In light of the advanced definitions, proportionality requires restricting military necessities in favor of humanitarian considerations. It is, in fact, a deterrent and preventive device and means that works to curb violence and force in the methods and means of combat. Therefore, the principle requires military commanders, when planning or embarking on an armed action, to take all measures and precautions. It is necessary to reduce losses and spare civilians and property - as much as possible - from the harms of the conflict (Bouchaib Slim, op. cit., p. 13). This is on the one hand, and on the other hand, not to excessive use of armed force, so that the use of that force is consistent and proportional to the importance of the military advantage to be achieved. There is no excess or negligence, and thus it is a measure for determining legal and legal relativity, and a balance between the force used for military superiority and the consequences of its destruction that may affect civilians as a result of the attack on military installations (Mohamed Fahad Al-Shalalda, International Humanitarian Law, Mansha'at Al-Ma'arif, Alexandria, 2011, p. 73).

3. Characteristics of the principle of proportionality and its customary basis

This topic is divided into two sections: the first concerns the characteristics and conditions of the principle of proportionality, while the second deals with its customary basis.

3.1. Characteristics of the principle of proportionality

The principle of proportionality is characterized by several characteristics that can be summarized as follows:

- 1- The principle of proportionality is raised, and its effectiveness is highlighted during combat operations, whether when planning an attack, anticipating it, or during an armed clash.
- 2- The principle of proportionality is characterized by flexibility and non-rigidity, as all material and personal considerations and circumstances are considered when making a military decision.
- 3- The principle of proportionality requires the parties to the conflict to make maximum efforts to achieve a balance between the military advantage - the desired military goal - and the side effects that are expected to result from that targeting (Haider Kazem Abd Ali - Zainab Reda Jabour, *The Principle of Proportionality in International Humanitarian Law*, research Published in *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences - University of Babylon*, eighth year - second issue, 2106, p. 578.).
- 4—The principle of proportionality does not permit the infliction of incidental damage to protected groups or objects, and its justifications are only covered by advantages of a military nature, not for political or economic-non-military benefits (Nels Melzer, *International Humanitarian Law*, coordinated by Etienne Coster, published by the International Committee of the Red Cross—ICRC -, Geneva, 2016, p. 98).

Perhaps it is appropriate to point out that some jurists have argued that it is not possible to apply the principle in an accurate practical manner since the comparison and similarity between military advantage and the damage to civilians is illogical because it is a comparison between a moral matter and a material one, as the losses that inflict on civilians cannot be accurately calculated. The desired military advantage cannot be estimated according to objective standards and controls, as it is left to the estimates of the warring party, which often claims the existence of significant and direct military advantages in exchange for the protection of civilians, which is what the jurist - R. BAXTER - indicated when he raised the issue of weapons causing unjustified suffering. He said: ((The criterion of proportionality should consider the military advantage that can be gained, which requires a comparison between two things as there is no standard for comparison between them. Do we think about the number of injured civilians as a justification for gaining an area of land? This is something that does not occur to anyone.)). He went on to exemplify this by dropping bombs from aircraft or artillery shells, as it is difficult to find a proportional relationship between injured civilians and their property and the military gains achieved by the advantage (Bouchaib Slim, *op. cit.*, pp. 14-15).

In the face of these difficulties in applying the principle of proportionality, some have decided to replace it with what is known as preventive measures to ensure the application of the greatest possible amount of protection for civilians during armed conflicts, provided that they are applied in good faith (Montaser Saeed Hamouda, *International Humanitarian Law - with reference to its most important principles in Islamic jurisprudence*, Dar Al Fikr University College, Alexandria 2006, p. 164).

In fact, despite the difficulty of the proportionality equation and its failure to achieve it accurately, this does not negate the effectiveness of the principle and does not undermine its importance, nor does it lead - as some have suggested - to replacing it with what are called preventive measures and requiring their application in good faith, because the principle of proportionality itself includes those measures that require taking precautions. Whether in attack or procedures - as will be shown in its forms - and an approach that achieves the equation of proportionality depends, in addition to the skill and experience of military commanders, the awakening of their consciences and good intentions, knowing that the diversity of doctrines of combat and the resulting difference in what is not permissible to use in terms of methods and means of combat contributed. This complicates the matter and makes it difficult to achieve the proportionality equation.

In the face of all these difficulties and differing opinions, some researchers mentioned conditions for proportionality to play its role and its equation to be achieved, the most important of which are:

1- The military command has complete and adequate control over all military operations and sources of fire to prevent serious violations of the law.

2- Limiting the operations necessary to break and defeat the enemy, not destroying and eliminating it. For example, destroying 60% of the enemy's human and military capabilities is sufficient to conquer and overcome the enemy. Accordingly, there is no justification after that for destroying the rest of the individuals and their equipment, and therefore it is not permissible to plan or issue orders. That would lead to genocide.

3- Refrain from military operations that cause unjustified damage or suffering or those that cause widespread damage, such as indiscriminate attacks that are not directed at a specific military target.

Taking complete care to direct military operations against legitimate military objectives, sparing civilians and civilian objects - as much as possible - from the harms of war, and not carrying out deterrence attacks against them (Ahmed Al-Anwar, Rules and Conduct of Combat, research published in the book: Lectures on International Humanitarian Law, edited by: Sharif Atlam (Previous reference, pp. 115-116).

3.2. The customary basis of the principle of proportionality

The principle of proportionality when it first appeared - and as previously mentioned - was characterized by an ethical nature, as it was a moral human value that some nations and societies believed in. Therefore, it was not characterized - at that time - as binding, and its violation only resulted in a weak social penalty of its kind, which often gives way to... Contrary to it. After the advent of Islam, the principle took root. It became stronger in its obligatory nature, as it became a religious rule requiring the violation of an afterlife and a worldly punishment when a ruling religious authority applies Islamic law. Thus, the principle moved from an ethical nature to a mandatory legislative nature for Muslims (Ahmed Kadhim Al-Saadi, op. cit., p. 103). In the biography of the Noble Messenger (PBUH) and the biography of Imam Ali (PBUH) - as will follow - there are many situations and events in which the responsibility of the individual emerged, as well as the responsibility of the state for violating the rules of war, as in the action of Khalid bin Al-Walid, who was sent by the Prophet (PBUH). After the conquest of Mecca, he went to Bani Jadhimah, calling and killing them. The Messenger (may God bless him and grant him peace) disavowed his action and sent Imam Ali (peace be upon him) to fix the matter and compensate them with blood money, and other examples (Ahmed Abu Al-Wafa, The Ethics of War in the Prophet's Biography - A Comparative Study with the Current Rules of International Law Al-Husani - Dar Al-Nahda Al-Arabiya, Cairo, 2009, 272-277).

After the principle was established and spread among nations, it became a customary rule from which it is not permissible to deviate, as most international law jurists believe that the principle of proportionality represents a customary standard in international humanitarian law. (Ahmed Kazem Al-Saadi, previous reference, p. 104). Accordingly, we will discuss at this point the approval of the principle in international custom and international instruments.

1- The principle of proportionality in international custom:

Most of international humanitarian law principles and rules - including proportionality - are derived from international custom. Indeed, the entire law is customary law in origin, and it is known that the existence and emergence of international customary rule requires two factors - two pillars - which are the frequency of use, that is, the practice of regular and representative states in general, and the belief in its obligation. The legality of this practice, whether required, prohibited, or permitted depending on the nature of the rule, necessarily becomes a legal belief (John Marie Henkerts, A Study on Customary International Humanitarian Law - A Contribution to Understanding and Respecting the Rule of Law in Armed Conflict ((Summary)), translation: Hassan Al-Jamal, published by the International Committee of the Red Cross - ICAC -, Beirut, 4th edition, 2009, p. 5. The Statute of the International Court of Justice described customary international law as: ((a general practice accepted as law)) (ibid., p. 5), and the principle of proportionality is considered one of the most important principles of customary law that is mutually agreed upon and applicable during armed conflicts, whether the conflict is international or internal, as it is binding on all warring parties. The

International Court of Justice has confirmed the customary nature of the principle in its famous fatwa regarding the threat of nuclear weapons or Its use - 1996 -: ((--- Because many of the rules of international humanitarian law applicable in armed conflict are fundamental to respect for the human person and primary considerations of humanity, these basic rules must be adhered to by states whether they have ratified the conventions that contain them or not. Because they constitute inviolable principles of customary international law (Haider Kazem Abd Ali - Zainab Reda Jabour, op. cit., p. 581). Many of the court's judges also referred to the customary nature of the principle in their studies on the side effects of nuclear weapons in extreme circumstances of self-defense (some of the court's judges were confused between proportionality in the context of the right to resort to war and it in the law of war, and this confusion leads to transforming the principle From a principle restricting the actions of states to a principle that can be invoked to justify levels of injury and destruction, and therefore differences of opinion emerged in the context of its application.

Yasmin Mousa, op. cit., pp. 69-73. See: Louise Doswald-Beck International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons, research published in the International Review of the Red Cross: Website - www.ICRC.Org Consult the website (dated 4/15/2022) The International Committee of the Red Cross also demonstrated the truth about the customary nature of the principle in its report on the customary rules applicable in international and non-international armed conflicts, in Rule - 14 - entitled Proportionality in Attack. The customary nature of the principle was also demonstrated by many countries in handbooks. The military manual issued by the senior military commands for their armies.

This is also what has been confirmed by the jurisprudence of international criminal courts, both temporary and permanent (Jeanne Marie Henckarts - Louise Dawes Wald-Buck, Customary International Humanitarian Law, published by the International Committee of the Red Cross - iCRC, Brent Wright Advertising Press, Cairo 2007, Part 1, p. 41 -44-

The customary rule - 14 - stipulates that: ((An attack that may be expected to cause loss of civilian lives or injuries among them, or damage to civilian objects, or a combination of these losses and damages, and which is excessive in exceeding what is expected to result from it) is prohibited. A tangible and direct military advantage. Perhaps the question that can be asked here is: What is the legal value of the customary nature of the principle? How is it distinguished from its conventional nature?

To answer this, we say: Considering the above, the customary nature of the principle of proportionality makes it a general, abstract, and comprehensive legal rule, and therefore it is binding on everyone - states or organized armed groups - and it must be adhered to and applied in all armed conflicts, whether international or internal, and in this way the rule is distinguished. The customary rule is superior to the treaty or convention rule. It is superior to it, because the binding force of the treaty rules is limited to the treaty and ratifying states only, and does not extend to other states and organized armed groups recognized by law (Haider Kazem Abd Ali - Zainab Reda Jewar, op. cit., p. 582) Unless that agreement rule was originally a customary rule, as is the case with the principle of proportionality and other basic principles and rules in international humanitarian law, where the character of the customary nature remains continuous and inherent in the customary rules and does not disappear from them even if they are codified or written in the form of the rule of the Salah Jubair Convention. Al-Busaisi, The Role of the International Court of Justice in Developing the Principles of International Humanitarian Law, Arab Center for Scientific Studies and Research for Publishing and Distribution, Cairo, Dar Al-Salam Legal Library, Baghdad, 1st edition 2017, p. 103), and this is one of the features and characteristics of the customary rule.

Hence the importance of searching for customary rules in international law in general and international humanitarian law in particular in the first place, that is, because of their binding force and generality, which is what prompted the International Committee of the Red Cross to seek to explore, codify and publish them, in addition to the contribution of customary rules in directing the behavior of states in their international relations. And urge them to ratify international agreements when they are hesitant. Relying on them also facilitates the work of international criminal courts to adjudicate the cases brought before them, in addition to the important role that international custom plays in filling the gaps in the law and its shortcomings and

solving many of the legal problems that obstruct the application of the law. Or develop it (Saeed Salem Juwaili, previous reference, pp. 83-84).

4. Conclusions and Discussion

Proportionality is a core principle in International Humanitarian Law (IHL) that aims to balance military necessity and humanitarian concerns. It ensures that the damage inflicted on civilians and objects during armed conflict is not disproportionately high compared to the expected military benefit. The origins and evolution of the concept in treaty law highlight its importance as a customary norm in International Humanitarian Law (IHL). Proportionality, albeit subjective and inaccurate, is a crucial measure for safeguarding people in times of armed conflict. The concept is evident in several legal frameworks, including countermeasures, national public interest, and global public interest, which demonstrate its wide-ranging relevance and significance in international law. Within the targeting process, it is necessary to use the proportionality rule, considering both indiscriminate attacks and precautionary steps to guarantee adherence to International Humanitarian Law (IHL). The implementation of the concept is often subject to discussion owing to its reliance on evaluative judgments and the unique circumstances of each situation, which makes achieving consistent application difficult. The concept's significance in international relations is emphasized by its impact on diplomacy and interactions between national and international organizations, emphasizing the need for governments to foster adherence to International Humanitarian Law (IHL) to maintain a strong international relations framework. Upon concluding our investigation, we have arrived at many significant findings, the foremost of which are: The idea of proportionality is a pragmatic approach that seeks to limit the harm caused by military actions. The principle states that the results of the means and techniques of war must be proportionate to the intended military benefit. The efficacy of this idea becomes apparent during combat operations, as the conflicting parties must exert the utmost effort to strike a balance between the military advantage and the accompanying collateral consequences. We have also shown the conventional character of the idea, as supported by the legal decisions of international courts. Given the idea's significance, the international legislator is expected to include the principle in international humanitarian law instruments. Furthermore, it is anticipated that the International Committee of the Red Cross will prioritize the concept and promote its significance in its regular publications.

References

- [1] Abdul Aziz Ramadan Al-Khattabi, Means of Enforcing International Humanitarian Law, Dar Al-Fikr Al-Jami'i, Cairo 2014.
- [2] Ahmed Abu Al-Wafa, The Ethics of War in the Prophetic Biography - A Comparative Study with the Current Rules of International Humanitarian Law - Dar Al-Nahda Al-Arabiya, Cairo, 2009.
- [3] Ahmed Al-Anwar, Rules and Conduct of Warfare, research published in the book: Lectures in International Humanitarian Law, edited by: Sherif Atlam, published by the International Committee of the Red Cross - Cairo.
- [4] Ahmed Kazem Al-Saadi, The Principle of Proportionality in International Humanitarian Law, Arab Center for Studies and Research - Cairo, 1st ed., 2019.
- [5] Bouchaib Salim, The Principle of Proportionality in International Law, Master's Thesis submitted to the University of Mohamed Seddik Ben Yahya Jihl - Faculty of Law and Political Science, Supervised by: Aazouzi Abdelmalek, 2016-2017, - Photocopy - - PDF <http://dspace.univ-ji1el.dz...> Website.
- [6] Frits Kalshoven - Elisabeth Testfelde, Controls Governing the Waging of War, Translated by: Ahmed Abdel Aleem, Published by the International Committee of the Red Cross, Cairo, 2004.
- [7] Haider Kazem Abdul Ali - Zainab Reda Jabour, The Principle of Proportionality in International Humanitarian Law, a research published in Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences - University of Babylon, eighth year - second issue, 2016.
- [8] Jean . S. Bakte, Principles of International Humanitarian Law, a research published in the book: Lectures in International Humanitarian Law, edited by: Sharif Atlam. From the publications of the International Committee of the Red Cross - Cairo - 2001.

- [9] John Marie Henckaerts - Louise Doswald-Beck Customary International Humanitarian Law, Published by the International Committee of the Red Cross - Cairo, 2007.
- [10] John Marie Henckaerts, A Study on Customary International Humanitarian Law - A Contribution to Understanding and Respecting the Rule of Law in Armed Conflict ((Summary)), Translated by: Hassan Al Gamal, Published by the International Committee of the Red Cross - ICAC -, Beirut, 4th ed., 2009.
- [11] Mahmoud Sharif Basyouni, International Humanitarian Law, Dar Al-Nahda Al-Arabiya, Cairo, 2nd ed., 2016.
- [12] Montaser Saeed Hamouda, International Humanitarian Law - with reference to its most important principles in Islamic jurisprudence, Dar Al Fikr Al Jami, Alexandria 2006.
- [13] Muhammad bin Habban, Sahih Ibn Habban, Al-Risala Foundation, Beirut, 1414 AH, Vol. 14.
- [14] Muhammad Fahd Al-Shalaldehy, International Humanitarian Law, Al-Maaref Foundation, Alexandria, 2011
- [15] Muhammad Talat Al-Ghanimi, A Look at Islamic International Humanitarian Law, a research published in the book: (Articles in International Humanitarian Law and Islam), compiled and arranged by Amer Al-Zamali, previous reference, p. 25.
- [16] Muslim bin Al-Hajjaj, Sahih Muslim, Dar Al-Kutub Al-Ilmiyyah, Beirut, 1st ed., 2000, p. 6.
- [17] Nils Melzer, International Humanitarian Law, Coordination: Etienne Koster, Published by the International Committee of the Red Cross - iCRC -, Geneva, 2016.
- [18] Osama Damj, Prohibited Weapons in International Humanitarian Law, research published in the book: Annual Scientific Conference of the Faculty of Law at Beirut Arab University on International Humanitarian Law - Prospects and Challenges -, Al-Halabi Legal Publications, Beirut, 1st ed., 2015.
- [19] Petroferi. Dictionary of International Law of Armed Conflicts, translated by Manar Wafa, published in International Humanitarian Law: A Guide for Academic Circles, prepared by Sherif Atlam, published by the International Committee of the Red Cross, Cairo, 2006, Book Three.
- [20] Saeed Salem Juwaili, Principles of International Humanitarian Law and its Relationship to National Legislation, National Center for Legal Publications, Cairo, 1st ed., 2002.
- [21] Salah Jabir Al-Busaissi, The Role of the International Court of Justice in Developing the Principles of International Humanitarian Law, Arab Center for Scientific Studies and Research for Publishing and Distribution, Cairo, Dar Al-Salam Legal Library, Baghdad, 1st ed. 2017.
- [22] Yasmine Musa, Does the Right to Resort to War Superior to the Law of War, research published in the book (International Humanitarian Law in Contemporary Armed Conflicts), prepared by Omar Makki, from the publications of the International Committee of the Red Cross - Cairo, 2007.