**Principle of proportionality**

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The main purpose of international law is to foster justice, stability and peace globally, since international law regulates relations among nations and their citizens to provide them with enhanced protection of not only their domestic laws but also global laws and conventions.

Since October 7, Israel has infringed various international law regulations, something that should alarm everyone regarding the scope and protections of international law in the modern era. This article will explore numerous case laws regarding proportionality in an armed conflict, genocide, and an array of international law provisions concerning proportionality and how the diabolical Israeli regime is unabashedly violating them.

The Principle of Proportionality, as stipulated in Article 51(5)(b), and repeated in Article 57, of Additional Protocol (AP) I of the Geneva Convention (GC), deems attacks whose damage to civilian life is greater than the military advantage gained as being in violation to the said articles. Furthermore, AP II of the GC and under the statute of the International Criminal Court “intentionally launching attacks, in knowledge, they are going to cause incidental loss of life or injury to civilians or damage civilian objects… which are clearly excessive in relation to the concrete and direct overall military advantage anticipated constitute crimes in International Armed Conflicts”.

It is noteworthy that the bombing of hospitals, schools, universities and holy sites is not only considered to be excessive in relation to the overall military objective but it has also been evident that there was sufficient prior knowledge that the destruction of such places would inevitably cause loss of life and injury to civilians and civilian objects.

It is imperative to contextualize that Israel and Palestine have ratified the GC and its Additional Protocols, therefore making them erga omnes partes – which means that states that are in dispute owe an obligation to one another as well as the international community by their ratification since the subject concerns the world and the doctrine of erga omnes partes must be adhered to in order to reach coherence.

The case of Prosecutor v Prlic at al holds wanton destruction of cities, towns or villages or devastations not justified under military necessity as acts that violate laws or customs of laws. This is said to include destruction of property on a large scale, destruction not justified under military necessity, and perpetrators acting with intention to destroy property in question or being reckless as to its destruction. The fact that Israel has been continuously bombing Gaza since October 7 and that the entire city has been destroyed indicates that there was an intention to destroy the said properties, and the fact that it has continued to do so is proof that the acts are not justified under the theory of military necessity.

Case law has further stipulated that two types of special protections are provided to buildings of cultural, historical and religious nature. These protections are contained in Articles 52 and 53 of the AP I. Article 52 has explicitly provided that places of worship and schools are not to be used for an actual contribution to military action. Furthermore, Article 53 prohibits hostile acts which are directed towards places of worship and it has also been provided that even in cases of military necessity, there can be no derogation from this provision.

As per the report provided by the religious affairs ministry of Palestine, since the start of the hostilities 26 mosques have been destroyed and on October 25, an Israeli air attack bombed people sheltering in the Greek Orthodox Saint Porphyrius Church. Also, on Oct 11, the IDF confirmed that they had bombed the Islamic University in Gaza. The blatant breaches of international law by bombing and destroying the said sites illustrates the disregard Israel has for its international law obligations. Also, as these sites were being used for purposes of shelter and as they fall in categories laid in Art 53, Israel derogating from these duties made its conduct disproportionate.

The Israel Target Killing Case provided a test that sniper shooting at terrorists – and in this act an innocent civilian neighbor or passerby was harmed – would be considered as proportionate. However, air strikes, bombing buildings and innocent residents and passersby being harmed would be considered as disproportionate. Applying this to the current situation in Gaza, it is evident that Israel’s constant bombing, which has resulted in the death of nearly 10,000 residents (including more than 4000) clearly does not fulfil the tests of proportionality laid down in the said case law.

Although it is noteworthy that international law does give Israel the right to self-defence, proportionality is widely accepted to be a necessary condition of justified self-defence. It can be concluded that Israel has not stayed within the ambit of proportionality, and must therefore be prosecuted for the war crimes they have committed. If no action is taken then virtually and practically it will be a big failure of international law.

Furthermore, applying this to Article 2 of Convention on the Prevention and Punishment of the Crime of Genocide, these acts form the intention to perform genocide on Israel’s part. This is because the acts are being committed with the intent to kill the people of Gaza, cause serious bodily or psychiatric harm to them and to deliberately inflict on them conditions of life designed to bring about its physical destruction in whole (or in part at the very least).

Jus cogens obligation also known as peremptory norms as per the UN Charter’s Chapter V expresses absolute restriction on genocide, torture or other inhumane treatment, prolonged arbitrary detention and racial discrimination. Based on recent events in Gaza, all aforementioned peremptory norms are being violated to the highest level by Israel. These rights are non-derogatory; nevertheless, Israel continues to violate them for personal gain and use the defence of collateral damage which cannot be justified to any extent.

The ICC should also apply the Tokyo trial precedent to find the Israeli regime guilty of dropping 13000 kilotons of bombs in a region, which is evidently a lot smaller than Hiroshima geographically and has led to conventional war crimes such as ethnic cleansing, genocide and acute violations of international law which restricts them to take such egregious measures.

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