A Survey on the position of the principle of proportionality in the International Criminal Court

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ABSTRACT: How to determine and apply punishments has been one of the major topics in the field of criminal law, because after it became clear what is punishment and it came to the conclusion that punishment is justified, we need to determine how to allocate this punishment. Nearly one and a half decades have been passed since the establishment of the International Criminal Court and many changes have taken place in international criminal law theory during the past fifteen years, on the other hand and as mentioned, the International Criminal Court consists of all countries in the world and it should be work in conjunction with their practices and theoretical concepts or be flexible when uses the opinions or the procedures in all legal systems. The concept of the proportionality is an abstract one that has entered the field of law, so identifying and providing objective explanations is necessary for better understanding of this theory and its application in various areas of law. On the other hand the concept of proportionality in the field of international criminal law should be a compilation of all existing attitudes. "Principle of proportionality" is presented as a peremptory rule of international criminal law in Articles 76,78 and Article 145 of the Statute of the International Criminal Court Rules of Procedure with strong evidences which is the relationship between crime and punishment that should be based on the type and extent of injury, the victim, the criminal and circumstances of the offense and all sense of justice in the international community and state of crime scene to restore lost mental balance of humanity and deterrence and would be based on universal values and determinations in order to achieve the objectives of effective and helpful criminal laws. Investigating various crimes within the jurisdiction of the principle of proportionality of punishment in the International Criminal Court seeks to explore the question such as: What place the principle of proportionality has taken in the International Criminal Court? Why there so little penalties imposed by the Court and which sometimes seem disproportionate? And whether the penalties are in accordance and consistent with modern theories of applying more severe penalties in order to reduce crimes? All of the so called questions are helpful in understanding the procedures of the International Criminal Court.

KEYWORDS: crime, punishment, the principle of proportionality, the International Criminal Court, Criminal Justice
1. INTRODUCTION

Since the first days of the appearance of views and ideas of criminal justice, always different views on the use of the sanctions have been proposed, some radical theorists discount punishment and prefer other strategies such as social security measures or do community service and compensation of crime, while conservative ideologues and especially the view that has been known under "New Right theories" have been proposed extensive use of virtualization and also toughen punishments. Historically in the past there were no bounds to punish and it was tried to face any crime with a maximum penalty applicable to it, a study on the type and amount of punishment that was imposed on the offender by the civilizations of Mesopotamia reflects the inexcusable severity of punishment in ancient times [15]. the usage of severe penalties and absurd practice continued until the eighteenth century scientists began to introduce criminal law reform in the field of crime and punishment. Cesare Beccaria published a paper entitled "Crimes and Punishments" which was the beginning of a new reforms and was welcomed by other scientists in Europe, he criticized those thoughts that considered severely punishments can intimidate offenders and those at risk of committing delinquent behavior, offered wise usage of punishments and proposed the principle of proportionality between crime and punishment in this era which is one of theories developed in accordance with the aforementioned principle of equality of penalties applicable to the offenders who have committed the crime. Today, in the legal systems of many countries, "the human right of not to be subjected to disproportionate punishment" is considered as one of the fundamental principles of citizenship in the realm of criminal law. This right which arises directly from human inherent dignity has been identified in many international regional and national human rights instruments. In international and regional level, Article 5 of the Universal Declaration of Human Rights (1948), Article 7 of the International Covenant on Civil and Political Rights (1966), Articles 2 and 4 of the International Convention against torture, inhuman and barbaric behaviors, (1984), Article 5 (2) of the American Convention on Human Rights (1969), Article 3 of the European Convention on Human Rights (1950), Article 5 of the African Charter on Human Rights (1981) and Article 49 of the Charter of Fundamental Rights of the European Union (2000) have emphasized offenses and penalties and the principle of proportionality and have banned disproportionate punishment explicitly or implicitly. In fact, predicting such provisions in international human rights system indicates that the use of absolute criminal law and the state monopoly on crime, rational use of sentencing, prosecution and punishment of citizens have been spent.[9] It seems that the most important failure of the above-mentioned principle is derived from its philosophical definition, because enters a concept
into issues of criminal law that there is no clear definition for it, the concept of proportion actually leads different things to the mind in different cultures, note that in some legal systems, such as the Islamic penal system the proportion is considered to have the same punish for crime. and therefore retribution institutions such as the legal entity is frequently used in this legal system, while the western legal systems have separated the situations of crime and punishment and know that punishment is not necessarily a form of crime which is imposed to the criminal, These differences of opinion persists until two important events have been occurred in the area of criminal law, the first one was making suggestions concerning criminal punishment and conservatism, on the other hand, the need to combat international crimes forced the establishment of World Court to make some jurisdictions to important international crimes, In conjunction with the Criminal Court it should be noted two essential points that the Criminal Court must be formed based on convergence of entire penal systems, something that is virtually impossible due to lack of consensus on the appropriateness of penalties. In addition, the concept of fairness and proportionality are quite subjective and objective application of these concepts are involved in the criminal justice system, However, the International Criminal Court has proceeded to sentencing, in some important cases, such as the case of Thomas Lubanga in the Democratic Republic of Congo, and Mathieu Chui and … now and when the Court has procedures in connection with the case, making real investigation between the proportion of objectively committed crimes and court verdict will be possible for us. In this connection questions of these kinds may be raised in mind: whether the principle of proportionality was observed in the above-mentioned cases? How the concept of proportionality in penalties issued by the Court does is different from order of great legal systems? Is votes of radical theory has been used by court in order to reduce penalties? Or modern right theories are widely used in system of penalties considered by the Court? And finally whether the Court uses the concept of proportionality suggested by Western legal systems or prefers a combination of the chosen philosophical concept of proportionality? What are components of the International Criminal Court for distinguishing appropriate penalties and punishments from disproportionate ones? These questions have the ability to be included in the study and the researcher aims to respond to them.

2. THE INTERNATIONAL CRIMINAL COURT

Although the implementation of international criminal court and its justice have been made in the twentieth century and the first steps are taken in this time, but this believe was rooted in history and human beings’ longstanding ambitions [23]. The cornerstone of
international criminal court was established at Nuremberg and Tokyo international courts. Continuity of accepted principles in these courts was crystallized by establishing international tribunals on former Yugoslavia and Rwanda on 1990s. At the end of the twentieth century and with the establishment of the International Criminal Court as a completed loop for the former ad hoc measures, related rules have been flourished. In 1993 and 1994 pursuant to resolutions of the Security Council to investigate crimes committed in the former Yugoslavia and Rwanda international courts were also were established. Until the Diplomatic Conference which was held on July 17, 1998 in Rome, the statute of the International Criminal Court was signed by the majority of representatives of participating countries and entered into force in July 2002. After the adoption of the Statute of the Court in Rome Diplomatic Conference, the international community acts anxiously and with great sensitivity and ongoing interventions in order to pursue the establishment of the Court. The statute of the Court has been received ratification, acceptance, approval or accession and would be in force from the first day of the next month or after the sixty day from the date of deposit.

3. THE PRINCIPLE OF PROPORTIONALITY

Proportionality between crime and punishment is the outcome of thoughts delivered by Beccaria an Italian scientist. He is a follower of the philosophy of social contract and in his famous thesis emphasis on proportionality between crime and punishment and the criminal justice system contact. After scrutinizing and reflecting contract and the philosophical basis of punishment, Beccaria concluded that the punishment fit with the crime can be determined only on the basis of rules and this right merely belongs to the legislative authority or the representative of the community with regard to the social contracts. He knows fair criminal laws those which guarantee social peace and to the extent necessary for the health of the community, otherwise knows them as dishonest laws [21].

3.1. Concepts

3.1.1. Base

"Base" is an Arabic word meaning foundation, root and essence [8]. which means a legal law or rule that must be followed. Or generally must be followed. In another definition, every general principle is its own evidence, and does not need to trust or prove
While this definition has a European origin, but its basic resources are also approved in Iran (jurisprudence). All science, live based on their principles and values and legal survive is not an exception to this rule, but more than many other sciences is self-reliant and based on its own principles.

3.1.2. The proportionality

Proportion roots in "fitness" "which is a verb concept of two parties. The word means to connect together, celebrate together the existence of a relationship between one or two things or bulging ratio in a two-fold format [7].

3.1.3. The proportionality between crime and punishment

Proportionality exists between crime and punishment and is a relationship that is established between crime and punishment and the aspect of the relationship between the two variables are qualified and deserved. In other words, when justice and proportionality between crime and punishment, it will be observed that the perpetrator who has committed a serious crime is entitled to equally deserve and severe punishments. As well as when a small crime has been conducted, appropriate, proportionate and fair punishment, more or less lawful should be made. Some express the same concept in the form of criminal justice and has been defined it as the "Comparing damages imposed on society which is morally wrong and followed by determining the sentence has been defined [2]. In a division, it can be tailored to fit the subject of divided legislative and judicial ones. The legislative proportion says how to fit in regulations and decisions has created by law-making and communication between crime and punishment.

3.2. History

Historically, however, the theory of "proportionality of punishment or merit sanctions have ancient and the punishments like "Retribution", " death" and "intermediate punishment" indicates that there were current in the law of ancient Mesopotamia (Westbrook, 1382, pp. 96-97). At the same time, acknowledging and formally pointing to this principle does not have a long history in laws and regulations. Maximum history of it may return the time of passing the Magna Carta in England in June 1215 AD by the King of England.

Article 20 of the Charter, which is considered as one of the most important documents in the history of human rights, on the need for proportionality in punishment has decreed that "free man would not be punished for the crime, except based on its size and for misdemeanor criminal offenses, he will receive a great big punish [12]. After this Charter,
the principle of proportionality was stressed explicitly or implicitly in the UK Bill of
Rights (1689), Constitution the United States of America (1791), the French Declaration
of the Rights of Man and Citizen (1793) and other documents related to human rights.

3.3. Theoretical frameworks

In law, the concept of proportionality variable based on "fitting of crime and
punishment" has been changed in relation to the credibility of locations, and when it is
occurred. Perhaps the punishment would be considered fair in one time and place and in
another time and place it would be considered inappropriate. Also, a punishment might be
appropriate at a time and place in connection with a crime but in connection with another
crime, it would be disproportionate. So the concept of proportionality is primarily a
relative concept and different cultures and different times or places validate this concept
differently [17].

As mentioned above, the purpose of the proportionality does not necessarily mean
making a reduction in punishment, although it does not mean increasing the amount of
punishment, but its aim is to match them properly [17].

In ancient age, the severity of dealing with crimes as well as imposing criminals to high
punishments of prevailed a kind of inequality which was criticized by Beccaria and by
inspiring with his ideas, the French Revolution law has been adopted in 1791 according to
Beccaria’s criminal law with an emphasis on the principle of equality of penalties and a
fixed punishments system without the influence of individual differences in the penalties.
But later it was proved that the principle of equal punishment was a false idea based on
this notion that all criminals who committed the same crime create a single risk for the
community. So, the Penal Code of 1810 put it aside and considered punishment as a
means to prevent crime through creating a public’s fear, but in this field was inspired from
the Bentham's ideas, instead of Beccaria's. Bentham has believed that the severity of
punished should be enough based on resulting discomfort it can be increased and thus be
able to prevent the crime. A few years later from the publication of Penal Code in 1810,
the concept of principality which was in favor of Bentham ideas according to which
punishment should create fear among the public and act as a means to prevent crime, was
attacked severely by the schools of absolute justice. According to this theory, the right of
society in punishing criminals would not be a school-based "social benefit" or "social
protection" but something that is necessary in terms of morality and justice [16].

Classical school, while accepting the right of society to punish and making socially
useful and necessary punishment, believed that the punishment should not exceed the
extent that justice requires: "Punishment should not be much more than what is useful and
fair or more than enough”. According to this school, because man is free and autonomous creature, so the punishment for the perpetrators should be determined according to the degree of their responsibility. Positive school also refused to assume moral responsibility to punish perpetrators and believed that it is necessary for social defense but should not be too severe. Because the principle of "saturation of crimes" was believed that severe punishment is ineffective in terms of crime prevention in the future. In particular, it should be noted that "demanding excess punishment for criminals' leads to the basic problem hidden; this means that the criminal justice on punishment is likely to reach their maximum performance and threat and fear of punishment does not enjoy their previous power. However, the effectiveness of the penalties imposed on offenders is the new concern of criminologists [16].

4. NECESSITY OF OBSERVING THE PRINCIPLE OF PROPORTIONALITY

Legal views and schools have been raised around the foundation and purposes of the punishment are divided in three overall categories that include: retribution, utilitarianism, imprisonment and combining views.

So naturally a penal system of determining officials and policymakers relatively will follow one of these three perspectives and in this case 3 conceivable modes or premise would be possible.

The first assumption is that the penal policy perspective should be located at the top of retribution nation. So in this case the principle of proportionality would be relevant for offenses and punishment from legislator point of view and will be particularly important as a result of decisive and necessary retribution perspective and therefore it is important to discuss them in detail. Because the criterion for determining the type of punishment is retribution of crime and based on this assumption that at least its followers know it includes equitable retribution, Justice is fully respected and every offender will be punished as his/her entitlement. Entitlement that has root in the act of committing. So as Beccaria has said, lawmakers should not apply last grade punishment to crimes of first grade [1].

The second assumption is when a state legislator obeys the theory of utilitarianism in the penal system which states that the principle of proportionality not only is not relevant in this case but also does not matter and the punishment just should be useful, whether it fit the crime or not. However, due to the failure of the theory of utilitarianism, certainly no state will not put it on the top of its policies.
The third assumption which is included in most legal systems is following a combining view that is verified because of retribution and profit open based on principle of proportionality and its necessity. In the debate over the most important theoretical perspectives, a number of combined precision were expressed that each of one can be applicable based on proportionality between crime and punishment [1]. So today the principle of proportionality between crime and punishment is of utmost importance that cannot be ignored and it is clear from legal points of discussion.

5. THE IMPORTANCE OF THE PRINCIPLE OF PROPORTIONALITY

Although the legislature passes the law and is usually a community representative, but from the perspective of ethics and society, the people and society play a more prominent role in adoption and implementation of laws. First, the law is primarily the result of the valuation in community and legislative actions will be done with respect to this valuation, therefore the laws should be supported by society because of the values and punishing acts of anti-values and the degree of punishment approved for the perpetrators. So criminalization of reprehensible acts that society does not know them as anti-value or not being able fit crimes with punishment as a result of the lack of rule of law, will lead to weak states. The second factor is that the majority part of rules must be respected and implemented by the people. Hence people according to how much that law guarantees justice and the extent of comply to deserve criminal punishment and how to establish proportionality between crime and punishment start to internalize the rules and it converts to become a norm. So the disproportionate law lacks capabilities to be internalized between individuals.

Thus, we can claim that crime and punishment are not abstract issues irrespective from understanding of the people and not punishing people who have done a punishable act, or applying punishment less or even more than he what is entitled to, will not satisfy people. Justice and the fight against crimes are in nature and human and on the other hand the lack of harmony between crime and punishment, whether a crime would be punished by less or more sentences are the best examples of injustice, and as it has been shown in history, this will not be tolerated [13]. The "rule that people does not realize it in accordance with justice and fairness and does not run it willingly or want to escape from it, destroy the order of society, hence the government has to maintain public order and social peace, inevitably, to the extent which is possible for rights and reaching a kind of justice that people adapt it [20].
From the other results of the principle of proportionality which distribute in communities is to prevent crime and commission of further offenses (which, of course, is a kind of vision utilitarian to this principle) If the religious principles are not respected and the person who is entitled a crime receive lighter punishment, certainly the motive for committing the crime will go up in the community and the functioning of intimidation and deterrence will lose their effects, the other hand, if the punishment would be more than the equilibrium, it may also lead to an increase in crimes [20].

6. EVALUATION CRITERIA FOR PROPORTIONALITY LAW

The theory of proportionality between crime and punishment has been always changing and evolving under the influence of various criminal and criminological schools including classical, neoclassical, the realization and defense schools and community schools of criminology. In these developments, the nature and extent of the damage inflicted on the victim and community, social benefits, the importance of the crime, the type of crime committed and the characteristics of the offender, the victim's fault and the comparative study of crime and punishment are the most important criteria which will be considered briefly herein.

6.1. The harm done criteria

This criterion that emphasizes on the amount of damage inflicted on the victim and society is the oldest evaluation criteria for determining appropriate punishment on criminal law. One of the most prominent features of the old criminal law in determining appropriate penalties for offenders was according to the extent of the damage which was the result of a criminal act. In ancient times mental state of the offense basically would not be considered. Criminal was punished not because it was reprehensible, not only because the device was crime. in ancient times, blameworthy mental state mental element of the offense and basically not considered. Criminal was punished not because it was reprehensible, but because the device was crime. This thought caused that some of the legal systems punish all tools and objects such as animals and humans which make damage [4].

6.2. Social benefits
This measure which focuses on the extent of the damage inflicted on the victim and society is the oldest evaluation criteria for determining the appropriate punishment on the criminal law. One of the features of the old criminal law was to determine appropriate penalties for offenders depending on how much damage has been incurred and the results of the crime. During the above mentioned era, mental state and psychological elements basically were not considered. This criterion caused the punishment of tools and objects, including animals in addition to humans. For example, in murder, the victim's death was the only factor in achieving mass, and thus, there was only a mass murder that included all the killings types and as a result of such thinking the same penalty was used for a wide range of crimes. In short, the damage inflicted on the community and victim is the single criteria to assess the proportionality [5]. The founder of social benefit theory believe that the sole purpose of punishment is to deter offenders from arrival to society and making future damage and restore other citizens go to the gangs. Caesar used Beccara says that the intended inhibition of pain is achieved when the punishment of the offender's income is more than the profits from the offense committed [16].

6.3. The importance of the committed crime

According to this criterion, "type and extent of the damage inflicted on the victim or the community." "guilt offender" which means that the degree and type of criminal intent and motive to commit the crime are considered as the basic elements of proportionality. The strength of this criterion is its paying attention to psychological element and its different scenarios which push punishment to the justice and merit, as well as the motives of the perpetrator can also help us in identifying the offender's criminal character. Naturally, on the Taking into account the type and extent of damage, type of reasonable proportionality between crime and punishment and established different scenarios of mental element can permit to make justice and deserve it well close [25].

6.4. Type of crime and characteristics of criminal

In considering whether the punishment fits crime or not, another important criterion is "the type of crime committed and the personality characteristics of the criminal" According to this criterion, the first court should consider and examine the type of crime in legal terms (with respect to the subject) and in terms of criminology (taking into account the nature, status and form of the crime) and biological characteristics such as age, gender and health status and then start to evaluate the psychological and sociological elements to impose appropriate social response.

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6.5. The fault of the victim

Based on this criterion the victim can be divided into two categories, including provocateur victim and infract or victim. These are those who incite a criminal to offense with their behavior to due to offending others as rape aggression defenses actually are the victim.

6.6. Comparative proportionality test

This criterion refers to the relative importance of different types of offenses and crimes involving comparative evaluation of the intensity and importance. By taking this measure, the court must study the laws and regulations of the criminal in a legal system or other systems and compare the crimes and punishments, see whether a crime is punished proportional with the similar crime? Otherwise what is the big difference between the particular crime and other similar crimes [16].

7. PROPORTIONAL PUNISHMENTS IN INTERNATIONAL CRIMINAL COURT

Any judicial authority has to invoke resources when issuing his vote. Cited document are the sources of the International Criminal Court. The Statute of International Criminal Court in Article 21 under the applicable law of the Court cites the important resources which are identified and graded, so looking at the used resources for doing analysis of the International Criminal Court and in order to investigate committed crimes or the principle of proportionality in international criminals is very important and we should divide them by statute to consider the applicable laws.

7.1. The principle of proportionality on the basis of International Criminal Court

Statute of the International Criminal Court is a multilateral treaty that is binding for all member states and is located at the top of the hierarchy of the Court's resources. The Statute of the Court which is also known as the Rome Conference statute has been adopted by 120 members from 160 countries represented at the conference in 1998.

Article 76 of the Constitution provides: "If the accused is found guilty, branch of First Instance should apply an appropriate punishment and in this regard and in order to achieve this goal, the evidence presented in the trial related to the punishment of expression will be considered".
In cases where Article 65 does not apply, and before the end of the trial, the Trial Chamber may hear evidence or documentation to punish on its own motion or at the request of the prosecutor or the condemned and feel need to hold another meeting in accordance with the "Code of Procedure and Evidence" [16].

It is considered that the imposition of appropriate punishment commensurate with the crime and sentenced has been referred in Article 76 and for this purpose the investigating authority will be able to hold another hearing, according to the circumstances of the offense and defense arguments against the convicted and then, impose appropriate penalties.

International Criminal Court at the time of determining the punishment should consider mitigating and aggravating such as importance and severity of the crime, the circumstances of the sentenced person, and the defendant's motive. In paragraph 1 of Article 78 of the Statute of the International Criminal Court also emphasizes various consideration factors including the significance and severity of the crime and also the personal circumstances of the offender.

7.2. The principle of proportionality In Rules of Procedure & Evidence

Rules of Procedure & Evidence is approved by members of the Assembly of States Parties and currently is a presenter in the court. A rule of Procedure & Evidence was approved by two-thirds of members with 225 Articles in 09.09.2002 and at the same date of entry came into force. However, Article 21 of the Statute puts on elements of Crimes and Rules of Procedure & Evidence at the same level, in Articles 9 and 51 it is stipulated that in case of existing conflict between the elements of crimes and law and Rules of Procedure & Evidence of the Statute, the Statute shall prevail [24].

Paragraphs 2 and 3 of Article 145 of the Rules of Procedure & Evidence provide that "All cases would be pursuant to paragraph 1 of Article 78 of the Statute of the Court in sentencing. The second paragraph says: mitigating and aggravating factors to weigh all relevant factors and circumstances of the offense are necessary.

Third paragraph: In addition to the factors mentioned in paragraph 1 of Article 78 of the Statute, the court should be greatly interested in suffering degree particularly damage to the victims and their families, the nature of the unlawful behavior and the means employed to execute the crime, sentenced participation, the intention, conditions affecting the behavior; and location, time and age, education and socio-economic position of the sentenced person".

Article 145 of the Rules of Procedure & Evidence of the International Criminal Court also requires that in addition to the above mentioned elements, when determining the well
the court may pay attention other extra factors such as: Previous convictions of the sentenced, abusing from power and official authority, brutality and criminal penalties.

By investigating these 145 material handling procedure & evidence it becomes clear that the purpose of the concept and the above-mentioned uttered articles is reaching the principle of proportionality with regard to the factors referred to in Article of crimes and punishments, explicitly and implicitly.

7.3. The principle of proportionality in treaties, rules of international law and the general principles of law derived from the legal system

In terms of hierarchy between sources and applicable law in the Statute of the International Criminal Court, applicable international treaties and principles and certain rules of international law, including international law of armed conflict have been set as appropriate. In this regard, paragraph 2 of Article 21 provides that "treaties and applicable international law including the principles and tenets of international law of armed conflict".

It seems the first part of this paragraph refers to international contract law and the second part to common international law [19]. Many treaties in the field of international criminal law develop the common law explicitly or implicitly. For example, this is true in the definition of international crimes by a court in related fields. In many cases, international treaties have been the starting point for the formation of common rules. This is particularly true in the case of Article 3 of common law in Geneva Conventions [24].

The purpose of the general legal principles are those principles that are universally recognized in large legal systems. The general principles of international criminal law are some special principles for international criminal law, including the principle of legality of offenses and penalties, presumption of innocence, the principle of respect for human dignity, the principle of strict interpretation of the principle of non-retroactivity of criminal laws, The principle of prohibition of analogy in criminal matters, the principle of equality of armed forces, the principle of proportionality of crime and punishment and some other articles. Also it can be mentioned the principles of the Nuremberg as a certain principle of international criminal law [24].

Principles and norms of international law can be derived from hands-on practice of governments (through official statements) as well as the rules and regulations of the armed forces [14].

Referred to in paragraph 2 of Article 21 of the international law of armed conflict on a way to enforce many rules such as those mentioned above can pave advanced. It is
possible to cite many such military necessity defense or retaliations that have not been explicitly mentioned in the Constitution of pave [24].

Article 21 of the Statute of the Court has predicted that the Court is unable to rule on the rate cases and with reference to the Statute and Rules of Procedure & Evidence, the International Criminal Court under this article will allow to an extract the general principles of law recognized by civilized world, fixed rules and the required principles. The general principles will be extracted by the Court.

General Principles of Law and international criminal tribunals has repeatedly cited the rules of international law. For example, the case in criminal court for the former Yugoslavia noted Blaskic case in which it was decided that "the principle of proportionality is a general principle of law common to all the legal systems of the world." It seems that the International Criminal Court implicitly recognized in its statutes the principle of proportionality under the heading of "General principles of criminal law".

8. CONCLUSION

Although the implementation of international criminal court and its justice have been made in the twentieth century and the first steps are taken in this time, but this believe was rooted in history and human beings' longstanding ambitions. The cornerstone of international criminal court was established at Nuremberg and Tokyo international courts. Continuity of accepted principles in these courts was crystallized by establishing international tribunals on former Yugoslavia and Rwanda on 1990s. At the end of the twentieth century and with the establishment of the International Criminal Court as a completed loop for the former ad hoc measures, related rules have been flourished. The original concept is a relative one which is influenced by various schools and has accepted many developments in the history of criminal law and criminology criminal, it is a relationship between crime and punishment that is determined based on the type and amount of damage, absolute and relative importance of crime, the type of crime committed, personality of the offender and the victim's fault "Principle of proportionality" is introduced as a peremptory rule of international criminal law in Articles 76.78 and Article 145 of the Statute of the International Criminal Court Rules of Procedure and Evidence of the problem. The International Criminal Court accepted principles of penal systems, including the "principle of proportionality" under the general principles of criminal law.
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