Proportionality in international humanitarian law

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This study examines the principle of proportionality as it applies in international humanitarian law (IHL). The study first examines international law to determine the category of legal norms in which the IHL principle of proportionality must be placed. Subsequently, the notion of proportionality is analysed in a number of branches of international law. The interrelationship of these notions is clarified in light of the theory concerning principles of international law. The study then turns to an in-depth analysis of the IHL proportionality rule and how this rule must be applied in practice and on different levels of decision-making.

The final conclusion of this study is that in IHL, proportionality is understood both as a general principle permeating the interpretation and application of all IHL rules, as well as an important rule of IHL. In its practical application, the IHL proportionality rule is an inherently imprecise and flexible yardstick that nonetheless helps in protecting the civilian population. This study suggests that the balance of the proportionality assessment should in close cases tilt more towards protecting the civilian population than the wording of the rule may suggest.

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Proportionality in
International Humanitarian Law

Principle, Rule and Practice

Jeroen van den Boogaard
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Proportionality in
International Humanitarian Law

Principle, Rule and Practice

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This book is the result of approximately eleven years of work. I have often compared writing my doctoral thesis with climbing Alpe d’Huez on a child’s tricycle. It is possible; you are convinced that you will reach the summit. But you also know that it’s hard, and that it takes a long time and some suffering to get there. The work was interrupted often as a result of everyday life, teaching obligations, change of jobs, side-projects, many other distractions or, as Geert Tummers once put it: life’s rush-hour. I would first of all like to thank all my friends and colleagues who helped me and encouraged me on my journey. Sometimes, this help was in the form of merely asking when I would finish. Although that is the one question any PhD candidate hates, it is necessary and I have drawn renewed energy from all these conversations. Others have helped me by proof-reading draft-chapters. Thank you very much, Jelle, Mark, Barbara, Sigrid, Kinga and Rogier. I have also been very lucky to encounter superiors at the NLDA and JDV who enabled and even encouraged me to continue working on my dissertation. Thank you very much, Paul, Joop, Geert, Ben, Jeaco, Tjeerd, Ron, Michel, Sander and Mario. I also wish to thank the ACIL for hosting my PhD and more particularly for the generous mr. I. Henri Hijmans grant I had the privilege to receive. Furthermore, I am grateful to Niels van Tol and his colleagues at the Peace Palace Library for letting me work in peace and for providing access to simply anything I was looking for.

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