Proportionality in international humanitarian law

van den Boogaard, J.C.

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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
Proportionality in International Humanitarian Law

Principle, Rule and Practice
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