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The Principle of Proportionality in International Law

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Charlotte Sieber-Gasser

Abstract

Whilst the principle of proportionality indisputably plays a crucial role in the protection of fundamental rights, it is still unclear to what extent it applies to other fields in international law. The paper therefore explores the role it plays in selected fields of public international law, beyond human rights. The examination begins in the classical domain of reprisals and in maritime boundary delimitation and continues to analyse the role played in the law of multilateral trade regulation of the World Trade Organization and in bilateral investment protection. In an attempt to explain differences in recourse to proportionality in the various fields, we develop in our conclusions a distinction between horizontal and vertical constellations of legal protection.

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Proportionality In International Law

Valentin Jeutner



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Proportionality in International Law Michael Newton, Larry May, 2014-03-10 Proportionality is intimately linked to the overarching concepts of self defense lawful force and the controlled application of violence It is one of the most visible facets of humanitarian law designed to reduce unnecessary human suffering and avoid excessive damage to property and the natural environment However its application has come under renewed scrutiny and sustained controversy as a result of wars against non state actors and from the extensive use of drones human shields cyber war techniques and counterinsurgency tactics Proportionality in International Law critically assesses the law of proportionality in normative terms combining abstract philosophical and legal analysis with highly emotive contemporary combat cases The principle of proportionality permits actions that are logically linked to the intended goal and thus defines the permissible boundaries for the initiation and conduct of modern wars The case studies discussed in this book are predominantly from the perspective of those who make decisions in the midst of armed conflict bringing analytic rigor to the debates as well as sensitivity to facts on the ground The authors analyze modern usages of proportionality across a wide range of contexts enabling a more complete comprehension of the values that it preserves This book contrasts the applications of proportionality in both jus ad bellum the law and morality of resort to force and within jus in bello the doctrines applicable for using force in the midst of conflicts Proportionality in International Law provides the reader with a unique interdisciplinary approach offering practitioners and policymakers alike greater clarity over how proportionality should be understood in theory and in practice *Proportionality in International Humanitarian Law* Amichai Cohen, David Zlotogorski, 2021-01-18 In *Proportionality in International Humanitarian Law* Amichai Cohen and David Zlotogorski offer a fresh and comprehensive look at the principle of proportionality They discuss various areas in which there are disagreements over the way in which proportionality should be applied and offer original solutions to existing debates Moreover they suggest that when applying proportionality the focus of the analysis should be on the procedures leading to the attack and the precautions taken by the attacking force They also discuss the course states should follow in investigating possible violations of the principle Necessity and Proportionality in International Peace and Security Law Claus Kreß, Robert Lawless, 2021 There are legal limits on the circumstances under which states may use military force to address a perceived or actual threat The concepts of necessity and proportionality are central to these limitations imposed by the law *Necessity and Proportionality in International Peace and Security Law* explores the many ways in which necessity and proportionality arise in the law on the modern battlefield which is rapidly changing complex and ambiguous Revisiting Proportionality in International and European Law Ulf Linderfalk, Eduardo Gill-Pedro, 2021-05-12 This book casts new light on the application of the principle of proportionality in international law Proportionality is claimed to play a central role in governing the exercise of public power in international law and has been presented as the ultimate rule of law It has also been the subject of fierce criticism it is argued that it leads to unreflexive

and arbitrary application of the law and deprives rights of their role as a firewall protecting individuals But the debate on proportionality has tended to focus on the question of how proportionality should be carried out Much less attention has been devoted to the question of who This edited volume bring together scholars from a wide range of areas of international law to consider that question whose interests are at stake when courts and other legal authorities apply the principle of proportionality In so doing this volume casts new light on the role which proportionality can play in international law in shaping and modulating the power relations between the different entities governed by it

Proportionality in International Humanitarian Law Jeroen van den Boogaard, 2023-08-17 This book pleads for a refocus of the International Humanitarian Law proportionality rule to enhance civilian protection *Necessity, Proportionality and the Use of Force by States* Judith Gardam, 2004-11-18 There has been considerable debate in the international community as to the legality of the forceful actions in Kosovo in 1999 Afghanistan in 2002 and Iraq in 2003 under the United Nations Charter There has been consensus however that the use of force in all these situations had to be both proportional and necessary Against the background of these recent armed conflicts this 2004 book offers the first comprehensive assessment of the twin requirements of proportionality and necessity as legal restraints on the forceful actions of States It also provides a much needed examination of the relationship between proportionality in the law on the use of force and international humanitarian law *Irresolvable Norm Conflicts in International Law* Valentin Jeutner, 2017 Many are familiar with the concept of a moral dilemma a situation where a person faces a choice between two mutually exclusive actions This book considers whether situations of this kind could and should exist within the sphere of international law

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International Law on Peacekeeping Hitoshi Nasu, 2009 It is generally considered that the UN Security Council has been galvanised since the end of the Cold War However the existence and development of armed conflicts remain the reality in the international scene Is the upsurge in instances of invoking Chapter VII of the UN Charter truly a sign of the invigoration of the Security Council's authority or mere evidence of its failure to prevent the aggravation of armed conflicts To what extent is the Security Council authorised to exercise the peacekeeping power in order to take a more flexible approach to conflict management from an earlier stage of conflict This book explores the potential of the UN peacekeeping power placing Article 40 of the UN Charter at the centre of the legal regime governing peacekeeping measures It traces the origins of peacekeeping measures primarily in the experience of the League of Nations and identifies Article 40 of the Charter as the primary legal basis for and the legal restraints upon the exercise of the peacekeeping power It examines the regulatory framework within which the United Nations particularly the Security Council is authorised and may even be

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