

# Preface

I started to think about proportionality in a normative sense many years ago when I read about a US case where two Vietnam veterans had robbed a bank with great brutality, using semi-automatic weapons. The defence pleaded for acquittal, arguing that the actions had been a result of post-traumatic stress, caused by war-time experiences. The implication of the plea was supposedly that they should go free as they were not guilty in the normal sense of culpability. Detention in some institution for the criminally insane seemed not to be suggested. The defence failed, and yet for me the case put in the spotlight how society in criminal law is centred only on the relationship between state and accused, and tends to downplay the consequence of acquittal for possible future victims. Proportionality seemed partly wrongly anchored.

After a while I realised how much my thinking was generally influenced by proportionality and the attendant concept of symmetry. Thus I wrote an article, ‘Three Sources—No River’,<sup>1</sup> in which I attacked the idea in international law that what is not prohibited is allowed—the Lotus Case principle. I attacked this concept because it is logically wrong to assume that a negation of one solution automatically leads to an affirmation of its alternative. If this would be the case almost any suggestion could be upheld depending merely on how it would be presented procedurally. The idea of freedom in absence of proscription wrongly assumes that actions take place in a vacuum, and thus do not affect others. Yet, all actions or omissions have a wider effect, sometimes small, sometimes immense. Atmospheric testing of nuclear weapons on your territory is bad news for your neighbour, no matter how you present it.

My reflections on similar topics lead to other articles on the good neighbour principle and the addressees of human rights obligations<sup>2</sup> and have now lead to ‘The Principle of Proportionality’.

Persons have anchors, just like proportionality, and I want to dedicate this book to my family, the most important anchor of all!!

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<sup>1</sup> Austrian Journal of Public and International Law, 1999, 219.

<sup>2</sup> To the Rescue, All Hands: The Good Neighbour Principle in International Law, Irish Yearbook of International Law, 2006, 167.



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The Principle of Proportionality

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