

## NECESSITÀ E PROPORZIONALITÀ NELL'USO DELLA FORZA MILITARE IN DIRITTO INTERNAZIONALE\*

In the first two chapters of her work, Gabriella Venturini, professor at Milan University, retraces the development of the principles of necessity and proportionality in *jus ad bellum* prior to and after the prohibition of the use of force. Her well-chosen arguments, drawn in particular from international practice, show that even from the perspective of *jus ad bellum* (not only of *jus in bello*) the exercise of self-defence continues to be governed by these two restrictive principles.

*Review* readers will be especially interested in the other two chapters, which concern *jus in bello*. After recalling, in the third chapter, that international humanitarian law (IHL) applies to any recourse to force among States, even outside of a war in the traditional sense, the author turns, in the fourth chapter, to the principles of necessity and proportionality in humanitarian law. Professor Venturini shows that the principle of military necessity, in its connotation as a rule which precludes the illicitness of an act, henceforth plays but a minor role and is applicable only in cases where a rule of humanitarian law explicitly provides for its own waiver in the event of military necessity. Conversely, as a means of restricting acts of violence, the principle of military necessity and that of proportionality deriving therefrom still play a paramount part in humanitarian law. These two principles, already recognized in the Hague Conventions, not only underlie many of the provisions of Protocol I on the conduct of hostilities and on the protection of the civilian population, but also were further developed and defined by these same provisions which, in turn, are better understood in the light of the aforesaid principles.

In dealing with various problems in relation to these principles, the author puts forward a particularly interesting thesis on reprisals, holding that even in cases where the latter are not prohibited under IHL, they are legitimate only when a party to the conflict, confronted with an enemy breach of humanitarian law, is faced with the military necessity of committing an analogous violation (of equal proportions) to avoid being defeated as a result of the military advantage derived by the enemy from that breach.

Lastly, the work deals with a familiar objection, namely that in situations of self-defence, respect for the principles of necessity and proportionality in both *jus ad bellum* and *jus in bello* would place the victim of an aggression at a disadvantage. The author convincingly shows that this disadvantage is only apparent and that, in both cases, respect for the two principles is essential,

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\* Gabriella Venturini, *Necessità e proporzionalità nell'uso della forza militare in diritto internazionale* (Necessity and proportionality in the use of military force under international law), Milano, Giuffrè, 1988, 193 pp. [Italian, with English and French summaries.]

particularly in limited conflicts. However, here too, a clear distinction must always be drawn between *jus ad bellum* and *jus in bello*.

In conclusion, this meticulously researched work, supported by numerous references to legal texts and State military manuals, enables us to discover or rediscover two principles of *jus ad bellum* and *jus in bello* which have often—and rightly—been contested when they have been advanced as justificatory principles. However, as shown by the author, they retain their full importance as restrictive principles. It is a pity that this work of interest is currently available only to readers familiar with Italian, particularly since the brief English and French summaries naturally fall short of conveying its full scope.

Marco Sassòli

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