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Document type:	Article
Title:	Analogy at war : proportionality, equality and the law of targeting
Author zone:	Gregor Noll
Host item entries:	Netherlands yearbook of international law,
Languages:	English
General Note:	Photocopies
Abstract:	<p>This text is an inquiry into how the international community is understood in and through international law. My prism for this inquiry shall be the principle of proportionality in international humanitarian law, relating expected civilian losses to anticipated military advantage. To properly understand proportionality, I have to revert to the structure of analogical thinking in the thomistic tradition. Proportionality presupposes a third element to which civilian losses and military advantage can be related. In a first reading, I develop how this tradition of thought might explain the difficulties contemporary IHL doctrine has in understanding proportionality. If military commanders misconceive the third element as the sovereignty of their own state, they will invariably apply the proportionality principle in a paternalistic manner. This would obviate the most rudimentary idea of equality among states and do away with the common of an international community. In a second reading, I shall explore whether this third element could instead be thought of as a demos, while retaining the existing framework of analogical thinking. My argument is that this secularizing replacement is possible. Practically, its consequence would be a radical change in the task of the responsible military commander determining proportionality. That commander would now need to rethink civilians endangered by an attack as a demos whose potentiality must be preserved.</p>
Authors:	Noll, Gregor
Keyword in English:	PRINCIPLE OF PROPORTIONALITY INTERPRETATION OF THE LAW PHILOSOPHY
Keyword in French:	PRINCIPE DE PROPORTIONNALITE INTERPRETATION DU DROIT PHILOSOPHIE

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