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gLAWcal
COMMENT #202

**DANCING ON THE ROPE: THE ROLE OF
PROPORTIONALITY IN INTERNATIONAL
ECONOMIC LAW**

Based on

**Valentina Vadi "A history of success :
proportionality in international eco-
nomic law"**



gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Valentina Vadi "A history of success : proportionality in international economic law" in Antonio Segura Serrano (Ed.) "The Reform of Inter- national Economic Gover- nance".

"The principle of proportionality might be found in various, seemingly unrelated, fields of law. It is well-established principle of EU law, the jurisprudence of the European Court of Human Rights constantly revolves around the margin of appreciation when trying to balance the competing interests and the elements of corresponding reasoning might be found in the constitutional law of national States as well. Even the quasi-judicial bodies operating under the auspices of the World Trade Organization embraced this principle of proportionality when trying to reach fair settlement of disputes. Valentina Vadi in her chapter "A History of Success: Proportionality in International Economic Law" in the book "The Reform of International Economic Governance" edited by Antonio Segura Serrano subjected this topic to a closer scrutiny in an attempt to find a response to the question whether the proportionality analysis might be also valuable in the field of international economic law and investment treaty arbitration. Es-

tablishing proportionality as a universal principle in these fields of law might contribute also to the overcoming of fragmentation of international law and it would also open a way to the consideration of non-economic interests in decision-making procedures. In the realm of international economic law there are several specific and unique aspects which need to be taken into account and properly addressed. For instance, with respect to investment law, the questions arise whether the use of proportionality analysis might not lead to the overprotection of foreign investments and investors' rights or whether it might not lead to the restriction of the regulatory powers of the State. Despite of this uncertain status of proportionality review in the realm of international economic law, the decisions of investment tribunals have already on certain occasions integrated such reasoning when they emphasized the public interest and the role of Government's responsibility towards the countries' populations. It seems that the careful metaphorical dancing on the rope, balancing the weight of competing interests, is necessary when making any kind of decisions. The field of international economic law does not seem to be an exception in this regard. However, the extent to which it is applied in this field of law might differ from other fields of law. Some tribunals and courts are already skilled rope dancers. Some of them still need to train a bit. The chapter written by Valentina Vadi might serve as an interesting manual for both the rope dancers and their audience.



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To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.

Email: research@glawcal.org.uk

Website: glawcal.org.uk

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