

Under the law of State responsibility ^[1], the state of necessity (not to be confused with the concept of military necessity ^[2]) is a circumstance precluding the wrongfulness of an otherwise internationally wrongful act. The state of necessity can be invoked under precise conditions, laid down in Article 25 of the International Law Commission's Articles on State Responsibility. It traditionally indicates the existence of a situation in which the sole means by which a State can safeguard an essential interest from grave and imminent peril is by violating international law. IHL, as a domain of international law that is intended to apply to emergency situations, contains no room for necessity as a circumstance precluding wrongfulness of a particular course of conduct, except where explicitly stated otherwise in some of its rules.

In a similar manner, in the realm of international criminal law ^[3], the defence of necessity (closely connected to that of duress) may be invoked under specific circumstances by an individual as a ground for excluding individual criminal responsibility ^[4] for a crime.

See State responsibility ^[1]; Individual criminal responsibility ^[4];

(Disambiguation) See Military necessity ^[2];

Chapter 13, State responsibility, IX. 2. c) bb) no defence of necessity ^[5]

Chapter 13, X. 3. Defences, c) defence of necessity ^[6]

CASES

The International Criminal Court (Part A., Art. 31(1)(c) and (d)) ^[7]

International Law Commission, Articles on State Responsibility (Part A., Arts 25(2)(a), 26 and commentary of Art. 25) ^[8]

Belgium, Law on Universal Jurisdiction (Part A., Art. 136(g)) ^[9]

British Military Court at Hamburg, The Peleus Trial ^[10]

United States Military Tribunal at Nuremberg, United States v. Alfred Krupp ^[11]
et al. ^[11] (Section 4. (iii) & (vii)) ^[11]

ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory (Part A., Para. 140) ^[12]

Israel, Methods of Interrogation Used Against Palestinian Detainees ^[13]

ICTY, The Prosecutor v. Strugar (Part B., Paras. 280 and 295) ^[14]

Canada, Ramirez v. Canada ^[15]

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