

CICR

Necessity in the law of armed conflict and in international criminal law / Gabriella Venturini

Document type:	Article
Title:	Necessity in the law of armed conflict and in international criminal law
Author zone:	Gabriella Venturini
Host item entries:	Netherlands yearbook of international law,
Languages:	English
	Photocopies. - Bibliographie : p. 75-78
Abstract:	<p>Necessity performs two distinct functions in the Law of Armed Conflict. In a wider sense, it stands as a restraining principle of LOAC, permitting the use of legally regulated violence only to the extent necessary to achieve the aims of war. In a narrower sense, it operates as a circumstance precluding wrongfulness, enabling a belligerent to perform some acts that, as a rule, would be prohibited. As far as the general principle of restraint is concerned, the main debate presently regards the definition of military objective and the requirement of definite military advantage, while the permissive function of necessity in armed conflict mainly displays its effects with regard to obligations related to the protection of (public, private, cultural) property. In International Criminal Law, the plea of military necessity (or of 'the necessities of the conflict') should only justify actions undertaken by a responsible actor after a wary evaluation of the situation in the battlefield. The plea of duress, where the accused argues that in committing the acts complained of, he/she acted under an immediate threat, should be accepted with more flexibility. As concerns State Responsibility, a critical issue is represented by the relationship between military necessity and the use of force. While jus in bello must always be applied equally by belligerents, states must respect the requirements of self-defence in order to be regarded as acting lawfully under jus ad bellum. However, the legality of the use of force is irrelevant in the area of individual criminal responsibility. Those who are engaged in an armed conflict are not concerned with its legality and therefore their behaviour must be exclusively judged on the basis of the standard prescribed by LOAC.</p>
Authors:	Venturini, Gabriella
Keyword in English:	MILITARY NECESSITY INTERNATIONAL CRIMINAL LAW STATE RESPONSIBILITY INTERPRETATION OF THE LAW RESPONSIBILITY/LIABILITY
Keyword in French:	NECESSITE MILITAIRE DROIT INTERNATIONAL PENAL RESPONSABILITE D'ETAT INTERPRETATION DU DROIT RESPONSABILITE

Call number	Disposability / Due date
345.25/242 (Br.)	Available