The concept of necessity in WTO law

Propositions relating to the dissertation

1. The concept of necessity in international law has neither significantly departed from nor has added many new elements to the definitions and interpretations of the concept as refined by philosophers and state practices since the Roman era. Some of the elements of the concept of necessity – such as the justification/excuse divide, the obligation to seek alternatives, balancing the protected interest with the harmed interest and compensating the affected party – have remained constant.
2. The Permanent Court of International Justice and other tribunals of the 20th century which analyzed different types of state defenses to unlawful actions distinguished necessity from other defenses (such as self-defense, *force majeure*, distress) and expanded its application to areas beyond the traditional situations of war or public emergency such as finance, investment, the environment, law of the sea, diplomacy and national security. In the same context, the GATT/WTO dispute settlement organs not only distinguished necessity from the other defenses in international law but also distinguished it from its customary international law ("CIL") definition as contained in the Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA").
3. The possibility for applying the concepts of necessity in CIL and WTO law, either in circumscribed spheres or as mutually exclusive alternatives, indicates that there is a possibility to cross-fertilize elements of these two concepts of necessity either to apply to another field of PIL or to develop a more coherent understanding and application of the concept in PIL.
4. The text, context, object/purpose and the trend of interpretations thus far developed for the necessity provisions in a number of WTO agreements supports the claim that the 'weighing and balancing' test – with its minimally differing application in the different agreements – may be identified as the 'concept of necessity in WTO law'.
5. Law, domestic or international, does not operate in the void. It is used either to create new realities or confirm/do away with existing realities.
6. In the context of nation building, law should not be considered just as another of the components of nation building (peace, work ethic, infrastructures, an uncorrupt system, respect to human dignity etc.), but as the value that establishes, standardizes and limits those components.
7. The ends that law strives for are justice, peace and security; law is just the means.
8. This dissertation contributes to science through its finding out the possibility for different definitions of the same concept which operate in different fields to interinfluence each other. This dissertation also matters to social issues in that it has shown how the concept of necessity can be used in the context of state actions to protect societal values additional to those already identified in international law.
9. The response to COVID-19 highlighted a number of challenges, including the limits of state measures and fairness in distribution of vaccines to the poor of the world, which international law could not address comprehensively so far. It is time to debate whether a new field of PIL – international pandemic law – needs to develop.
10. Unless the Global South contemplates finding a shorter path to catch up with the geometrically progressing speed of sustainable globalization, the gap between the rich and the poor will continue to widen and with it the impact of poverty and underdevelopment to all nations of the world.