

The concept of necessity in WTO law

Citation for published version (APA):

Andemariam, S. W. (2022). *The concept of necessity in WTO law: lessons from and for the other fields of International Law*. [Doctoral Thesis, Maastricht University]. Maastricht University. <https://doi.org/10.26481/dis.20220707sa>

Document status and date:

Published: 01/01/2022

DOI:

[10.26481/dis.20220707sa](https://doi.org/10.26481/dis.20220707sa)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

www.umlib.nl/taverne-license

Take down policy

If you believe that this document breaches copyright please contact us at:

repository@maastrichtuniversity.nl

providing details and we will investigate your claim.

Impact Paragraph

The purpose of this impact paragraph, according to Article 22 of Maastricht University's 2020 Regulation Governing the Attainment of Doctoral Degrees is to reflect "in layman's terms (for a wide target group), on the scientific impact of the results of the research described in the thesis, as well as, if applicable, the social impact anticipated or already achieved". By providing examples, Article 22 defines scientific impact as the "short-term and long-term contribution of the results of scientific research to shifting insight and stimulating science, method, theory and application within and between disciplines" and social impact as "short-term and long-term contribution of the results of scientific research to changes in or development of social sectors and to social challenges". Article 22 provides four questions that can serve as a guideline for preparing the impact paragraph. Short answers have been provided to each of the four guiding questions.

1. (Research) What is the main objective of the research described in the thesis and what are the most important results and conclusions?

The main objective of the research is to analyze the concept of necessity in the context of fragmentation and coherence of international law and examine the possibility for interinfluence between the concepts of necessity in WTO law and customary international law as the two fields of public international law where the concept of necessity has been extensively applied.

The research found out that although there are basic differences in the substance and scope of these two concepts of necessity (i.e., fragmentation), there is a possibility to minimize the differences (i.e., coherence) by identifying elements of the concept of necessity in WTO law that can be adopted by the concept of necessity in customary international law and *vice versa*. This dissertation does not, however, argue that there should be a single concept of necessity in international law

Specific to WTO law, the research also found out that the concept of necessity that the WTO's Appellate Body first developed for the General Exceptions of the GATT 1994 in the *Korea – Various Measures on Beef (2001)* dispute (the 'weighing and balancing' test) which was uniformly applied to interpret the concept of necessity in a number of other legal texts of the WTO Agreement can be taken as the 'concept of necessity in WTO law'.

1. (Relevance) What is the (potential) contribution of the results from this research to science, and, if applicable, to social sectors and social challenges?

The potential contribution of the results from this research to science is its finding out the possibility for different definitions of the same concept operating in different fields to learn from, and make use of the elements of, each other. The research has

also shown how to predict possible future interpretation of a concept (necessity in this dissertation) based on the trend of interpretation developed so far.

Regarding contribution of the results of this research to social sectors and social challenges, the research is related to the concept of necessity which, both at domestic and international levels, allows states to take measures which are otherwise unlawful because of mainly social values and interests such as protection of public morals and order, protection of human, animal or plant life or health, protection of the environment, and the protection of essential security interests. New social factors and challenges that need protection at the expense of violating a state's treaty obligation may arise in the future. This research focuses on how the necessity argument in different international tribunals can be enhanced by looking into ways to ensure coherence of the different (particularly the two key) concepts of necessity so far developed under different fields of international law. The more coherence is assured in the different concepts of necessity, the more states can have assurance on the protection of any social value or challenge.

2. (Target group) To whom are the research results interesting and/or relevant? And why?

The primary consumers of the results of this research are members of the academic community who focus on international law generally and WTO law specifically.

The results of this research, which reflect heavily on the interpretation and practices of the concept of necessity in WTO law, are also relevant to Members of the WTO especially those that are involved in WTO disputes where necessity is raised as an issue.

WTO panels and the Appellate Body (should the latter be reinstated, or, failing that, any other body with appellate authority within the WTO system) can also be interested in the results of this research because the main objective of this research is to see how the 'weighing and balancing' test developed for interpreting necessity in a number of WTO agreements can benefit from the elements of the concept of necessity in customary international law.

Chapters 4 and 6 of this dissertation showed how the two relatively developed concepts of necessity in international law (the concept of necessity in WTO law and the concept of necessity in customary international law) can be used as alternative interpretations for necessity-related disputes arising under other fields of international law (especially international investment law and international environmental law). The results of this dissertation can, therefore, be relevant to states involved in non-WTO litigation before other international tribunals where necessity becomes an issue.

The tribunals presiding over these non-WTO disputes may also be interested in the results of this dissertation which have suggested alternatives for interpreting the respective necessity provisions in the specific fields of international law in litigation.

3. (Activity) In what way can these target groups be involved in and informed about the research results, so that the knowledge gained can be used in the future?

The main means that the results of this research can be made available to the target groups and involve them is through academic writings and presentations in regional and international conferences.

The results of this research can also be extracted and developed into litigation strategies by states and law firms involved in international disputes where the concept of necessity becomes an issue.