DOI: 10.21564/2225-6555.2023.2.293068

Basic Conditions for Application of Necessity as a Circumstance that Precludes Bringing to International Legal Responsibility

Yuri V. Shchokin*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: yuri.v.shchokin@nlu.edu.ua*

Abstract
The article examines a situation of necessity as a circumstance that precludes bringing to international legal responsibility. The relevance of the article is due, on the one hand, to the growing crises in modern international relations, and on the other hand, the lack of comprehensive studies of necessity in the Ukrainian science of international law. The purpose of the article is to determine the specifics of the international legal grounds for states and international intergovernmental organizations to apply to the state of necessity, as circumstance that precludes bringing to international legal responsibility. The article uses general philosophical, general scientific, special scientific and legal methods of research, in particular: dialectical, formal-logical, analysis and synthesis, comparative-legal, and logical-legal. The article analyzes Art. 25 of the draft articles on the responsibility of states for internationally wrongful acts prepared by the UN International Law Commission and submitted to the UN General Assembly in 2001 (UNGA resolution 56/83 (A/RES/56/83) of December 12, 2001). The relevant practice of a number of international courts and arbitrations was analyzed, in particular: the International Court of Justice, the International Center for the Settlement of Investment Disputes, the International Tribunal for the Law of the Sea. The main conditions for the lawful use of necessity are identified, and a forecast of the areas of its further application is given.

Keywords*: necessity; international legal responsibility; an essential interest, circumstance precluding wrongfulness.*

Основні умови звернення до стану необхідності як обставини, що виключає притягнення до міжнародно-правової відповідальності

Юрій Вадимович Щокін*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: yuri.v.shchokin@nlu.edu.ua*

Анотація

У статті досліджується стан необхідності як обставина, що виключає притягнення до міжнародно-правової відповідальності держав, міжнародних міжурядових організацій та інших суб'єктів міжнародного публічного права. Актуальність статті обумовлена, з одного боку, численними кризами, що посилюються в сучасних міжнародних відносинах, а з іншого – відсутністю комплексних досліджень стану необхідності в українській науці міжнародного права. Відтак, мета статті полягає у визначенні особливостей міжнародно-правових підстав звернення держав і міжнародних міжурядових організацій до стану необхідності як обставини, що звільняє від міжнародно-правової відповідальності. У ході дослідження використано загально-філософські, загальнонаукові, спеціально-наукові та правові методи, а саме: діалектичний, формально-логічний, аналізу та синтезу, порівняльно-правовий і логіко-юридичний. У статті наведено аналіз ст. 25 Проєкту статей про відповідальність держав за міжнародно-протиправні діяння, підготовленого Комісією міжнародного права ООН та поданого на розгляд Генеральній Асамблеї ООН у 2001 р. (резолюція ГА ООН 56/83 (A/RES/56/83) від 12 грудня 2001 р.). Проаналізовано відповідну практику низки міжнародних судів та арбітражів, зокрема: Міжнародного суду ООН, Міжнародного центру з врегулювання інвестиційних спорів, Міжнародного трибуналу з морського права. Виділено основні умови правомірного використання стану необхідності, надано прогноз сфер його подальшого застосування.

Ключові слова: *стан необхідності; міжнародно-правова відповідальність; істотний інтерес; обставина, яка виключає притягнення до міжнародно-правової відповідальності.*

Introduction

Modern ideas about a state of necessity as a circumstance that allows avoiding international legal responsibility for committing an internationally illegal act were formed only by the end of the 20th century. First of all, this circumstance, from a content point of view, was separated from force majeure and distress. Thus, in the disputes settlement practice of the 19th and the first half of the 20th centuries, it was qualified as force majeure (for example, the statement of the Ottoman Empire about the existence of force majeure in the form of complex internal and external events (rebellions and wars), which caused significant financial costs for it, which prevent the timely repayment of its debts to the Russian Empire for the payment of contributions as a result of the Russo-Turkish War of 1877–1876 [1]; in the case of the Belgian company – *Société commerciale de Belgique* (Belgium v. Greece, 1939), Greece qualified as force majeure its difficult economic situation, which prevents it from paying the Belgian company the financial debt previously established by the arbitration court [2]). But similar legal relations were considered nothing but the state of necessity in the second

half of the 20th – at the beginning of the 21st centuries. In this sense, the decision in the case of *Rainbow Warrior* (1990), in which the Court of Arbitration assessed France's assertion that its actions were forced by force majeure, distress and necessity, is considered to be a turning point in this sense. To top it off, the appeal to necessity for military purposes – as a military necessity [3] – to justify the violation of the laws and customs of war was excluded, which was also enshrined in Art. 25 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts of 2001 [4] (hereinafter – Draft 2001), and were duplicated in Art. 25 of the Draft Articles on the Responsibility of International Organizations of 2011 [5] (hereinafter – Draft 2011), prepared by the UN International Law Commission (hereinafter – ILC).

Unfortunately, the domestic doctrine of international law did not pay due attention to the study of the peculiarities of international legal grounds for the appeal of states and international intergovernmental organizations (hereinafter – IGOs) to necessity. As a rule, this type of circumstances, which exempts from international legal responsibility, is presented only in the most general terms in the educational literature, which, of course, is clearly not enough. It is necessary to systematize the international legal practice, which not only preceded the adoption of the relevant provisions of the 2001 and 2011 Drafts, but also after their transfer of the ILC for consideration to the UN General Assembly.

The purpose of this article is to reveal the specifics of the international legal grounds for states to refer to necessity as a circumstance that exempts them from international legal responsibility.

Literature review

As noted above, the state of necessity as a circumstance that allows one to avoid international legal responsibility has not almost been studied in the Ukrainian doctrine of international law. Moreover, there have not even been any reviews of existing international judicial practice on this issue. While in the foreign doctrine of international law, necessity is studied comprehensively, since it is often the subject of consideration by international judicial and arbitration bodies. In particular, I would like to highlight the works of such scholars as N. Hayashi [3], A. Reinisch [6], R.D. Sloan [7], M.Ch.H. Thjoernelund [8], M. Vasiljević and M. Jovanović [9].

Materials and Methods

The research was carried out using a complex of general philosophical, general scientific and legal methods, such as: dialectical, formal-logical, analysis and synthesis, comparative legal and logical-legal.

The *dialectical method* was used to analyze the behavior of participants of international disputes and conflicts, in which they are forced to justify their behavior by appealing to necessity.

The *formal-logical method* was used to analyze Article 25 of the Draft 2001 and Article 25 of the Draft 2011, as well as the corresponding legal positions of the International Court of Justice, the International Center for Settlement of Investment Disputes and the International Tribunal for the Law of the Sea.

The *method of analysis and synthesis* made it possible to study the positions of the conflicting legal relations subjects, in which they turned to justifying their illegal behavior by a state of necessity.

The *comparative legal method* was necessary to compare the wordings of Articles 25 of the 2001 and 2011 Drafts.

The *logical-legal method* was used to formulate the conclusions to this article.

Results and Discussion

Necessity as a customary norm of general international law

Before the final version of the norm of Art. 25 of the Draft 2001, concerning the state of necessity, the conditions for reference to it were outlined by the International Court of Justice in the judgment on the case of *Gabčikovo-Nagymaros Project* (Hungary v. Slovakia, 1997):

"In the present case, the following basic conditions set forth in Draft Article 33 are relevant: it must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations; that interest must have been threatened by a "grave and imminent peril"; the act being challenged must have been the "only means" of safeguarding that interest; that act must not have "seriously impair[ed] an essential interest" of the State towards which the obligation existed; and the State which is the author of that act must not have "contributed to the occurrence of the state of necessity". Those conditions reflect customary international law" [10, para. 52, pp. 40-41].

Article 25 of the Draft 2001 established the following conditions for addressing the state of necessity:

"1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

(a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
(b) does not seriously impair an essential interest of the State or
States towards which the obligation exists, or of the international community as a whole.
2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:
(a) the international obligation in question excludes the possibility of invoking necessity; or
(b) the State has contributed to the situation of necessity".

According to the ILC, appeal to the state of necessity is a generally recognized customary norm of general international law. This statement is based on the position of the International Court of Justice, formulated by it in the judgment on the abovementioned case of *Gabčikovo-Nagymaros Project* (1997) [11, p. 82]. Other international and arbitration bodies generally support it.

However, in the doctrine of international law it is sometimes criticized. For example, R. S. Sloane considers this international custom to be invalid. He substantiates his opinion by the fact that neither the International Court of Justice nor the ILC carried out a comprehensive assessment of the evidence of the existence of general state practice and *opinio juris* in the use of necessity as a circumstance exonerating from international legal responsibility. In particular, the scientist draws attention to the fact that initially the International Court in the *Gabcikovo-Nagymaros* case referred to the unsubstantiated position of the ILC expressed during the preparation of the Draft 2001, and then the Commission itself in 2001 referred to this judgment of the Court without analyzing any other evidence. Later, the Court referred to the opinion of the ILC in an advisory opinion regarding *the construction of a wall on Palestinian territory* (2004) again [7, pp. 452-453].

On the one hand, one cannot help but note the scientist's attentiveness when studying materials related to establishing the existence of international legal customs. On the other hand, one can point to other judgments of the International Court of Justice, in which it "without evidence" established the existence of customary rules of general international law (for example, in the judgment on the *Barcelona Traction* case (Belgium v. Spain) of 1970 – the illegality of acts of aggression and genocide, obligations to protect fundamental human rights, including protection from slavery and racial discrimination [12, para. 33, p. 32]; in the judgment on the case of *US diplomatic and consular staff in Tehran* (US v. Iran) 1980 – the immunity of diplomatic agents and diplomatic premises [13, para. 62, p. 31]; in the judgment on the case of *the arrest warrant of April 11, 2000* (Congo v.

Belgium) 2002 – the immunity of senior officials of states [14, para. 53, p. 21]).

Other international judicial bodies are doing the same. For example, the prohibition of torture was also, almost "without evidence", recognized as a norm of general international law in the practice of the International Tribunal for the Former Yugoslavia (*Anto Furunzija* case, 1998 [15, para. 139]) and the European Court of Human Rights (*Al-Adsani* case, 2001 [16, para 59]).

In such cases, international courts usually do not conduct an in-depth and comprehensive examination of the evidence. They rather proclaim the existence of such norms, because according to their opinion they are fully consistent with the dominant at a certain moment professional legal and moral views, the dominant international legal consciousness. In contrast, bilateral international customs, which do not have any comparable wide application, are established solely on the basis of an analysis of varied practice and numerous examples of *opinio juris* [See: 17; 18, pp. 191-236].

Necessity, to my opinion, fully applies to those norms that have been hard-earned by both domestic and international practice, and therefore are firmly entrenched in international legal consciousness as international customs.

Appeal to necessity for exemption from international responsibility for an internationally wrongful act is allowed only in exceptional cases, when there are no other options for behavior other than those that violate international obligations. As stated in Art. 25 is "the only means to protect a substantial interest". This approach is due to the fear of misuse of the reference to the state of necessity. In this regard, the Tribunal of the International Center for Settlement of Investment Disputes (ICSID) in § 317 of the decision in the case of *CMS Gas Transmission Company v. Republic of Argentina* (2005), commenting on Art. 25 of the Draft 2001, noted:

"<…> there is also consensus to the effect that this ground is an exceptional one and has to be addressed in a prudent manner to avoid abuse. The very opening of the Article to the effect that necessity "may not be invoked" unless strict conditions are met, is indicative of this restrictive approach of international law. Case law, state practice and scholarly writings amply support this restrictive approach to the operation of necessity. The reason is not difficult to understand. If strict and demanding conditions are not required or are loosely applied, and State could invoke necessity to elude its international obligations. This would certainly be contrary to the stability and predictability of the law" [19].

From a practical point of view, the "exclusivity" and "uniqueness" of the state of necessity entails a number of consequences. Firstly, this is the

recognition of the criteria of necessity as objective and not subjective, which implies their assessment not so much by the parties to the dispute/conflict, but by third parties, as far as possible, not interested subjects. For example, in the theory and practice of international law, there is a general position that the appeal to necessity within the framework of the case in connection with the sinking of the Liberian supertanker "Torrey Canyon" off the coast of Great Britain in 1967 did not cause protests, no matter how from one of the interested parties, and from other governments not involved in this incident (to avoid pollution of its coast, Great Britain burned an oil slick in the sea by bombing). The UK's actions were assessed as being forced out of dire necessity and received widespread international political support [11, p. 97].

Secondly, a search is carried out for other possible options for the behavior of the offending state in the emergency situation that has taken place. Only if this search turns out to be negative can it be argued that the line of behavior chosen by this state in a situation of necessity was the only possible one.

Thus, the International Court of Justice, in its advisory opinion on *the legal consequences of the construction of a wall in the occupied Palestinian territory* (2004), based on the materials presented to it, did not agree that "the construction of a wall along the chosen route was the only way to protect Israel's interests from the danger which he cited as a justification for its construction" [20, para. 140, pp. 194-195]. In fact, Israel itself stated that "the only purpose of the wall is to enable it to effectively combat terrorist attacks from the West Bank" (Jordan River – Yu. Shchokin) [20, para. 116, p. 182]. The International Court did not indicate exactly what other options Israel could have used to protect its essential interest. However, in the course of studying the materials of the case, the Court also drew attention to the fact that the construction route of the wall runs through territories illegally occupied by Israel; and that this construction was originally intended to change the demographic composition of these territories in favor of the Jews; and to significant restrictions on the rights and freedoms of Palestinians in connection with this construction, and to a number of other factors.

In the aforementioned ICSID Tribunal case *of CMS Gas Transmission Company v. Republic of Argentina* (2005), the defendant's plea of necessity was also rejected. The focus was on the Argentine State of Emergency Law, designed to bring under control the extremely difficult economic and social situation in the country. The Tribunal did not deny the "catastrophic proportions" of the economic crisis, but noted: "As is often the case in international affairs and international law, situations of this kind do not

exist in black and white, but in many shades of gray". The Tribunal did not agree that the measures taken by the Argentine government were the only way to protect its essential interests:

"323. <...> The views of the parties and distinguished economists are wide apart on this matter, ranging from the support of those measures to the discussion of a variety of alternatives, including dollarization of the economy, granting of direct subsidies to the affected population or industries and many others. Which of these policy alternatives would have been better is a decision beyond the scope of the Tribunal's task, which is to establish whether there was only one way or various ways and thus whether the requirements for the preclusion of wrongfulness have or have not been met.

324. The International Law Commission's comment to the effect that the plea of necessity is "excluded if there are other (otherwise lawful) means available, even if they may be more costly or less convenient", is persuasive in assisting this Tribunal in concluding that the measures adopted were not the only steps available" [19].

It should be noted that in the decision in the case of *LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Republic of Argentina* (2006) The ICSID Tribunal, on the issue of the legality of Argentina's appeal to necessity in relation to the same socio-economic crisis, came to a diametrically opposite conclusion [21].

Substantial interest

The next key concept is "substantial interest". The state of necessity protects only the essential interest of the state that committed the international offense. This concept is also used in the context of subparagraph "b" of paragraph 1 of Art. 25 of the Draft 2001, as applied to States that have suffered damage as a result of this offense, or to "the international community as a whole".

Of course, the concept of "substantial interest" is evaluative. Its content depends on specific factual circumstances – the material and non-material interests of the interested states. The position of the Commission on this matter is as follows:

"<...> The extent to which a given interest is "essential" depends on all the circumstances, and cannot be prejudged. It extends to particular interests of the State and its people, as well as of the international community as a whole. Whatever the interest may be, however, it is only when it is threatened by a grave and imminent peril that this condition is satisfied. The peril has to be objectively established and not merely apprehended as

possible. In addition to being grave, the peril has to be imminent in the sense of proximate" [11, p. 83].

According to M. Vasiljević and M. Jovanović, this position of the ILC made it possible to objectify the concept of significant interest. Since the existence of a significant interest must be established taking into account all the circumstances of each specific case, its initial assessment may be revised. On this basis, as scientists note, the importance of a subjective assessment of the appeal to necessity on the part of the interested state is reduced [9, p. 10]. To finish the thought of scientists – as a result, the importance of assessment on the part of other subjects of international law increases, including those who did not directly participate in controversial (conflict) international legal relations.

To illustrate this approach, in addition to the examples above, reference may be made to the 1998 *fisheries jurisdiction case* (Spain v. Canada). Canada argued that "the arrest of [the] Estai was necessary to put an end to the overfishing of halibut Spanish sailors" [22, para. 20, p. 15]. This catch was permissible under the Northwest Atlantic Fisheries Organization (NAFO) Convention (the Convention on Future Multilateral Fisheries Cooperation in the Northwest Atlantic Ocean), but was contrary to Canada's domestic 1994 Act on the Protection of Coastal Fish Stocks. The norms of the Act were stricter than the norms of the Convention. Canada insisted on their compliance, since, in its opinion, the standards of the Convention did not sufficiently take into account the difficult situation with the conservation of its coastal fish stocks.

In the *Gabčikovo-Nagymaros Project* case (Hungary v. Slovakia, 1997), Hungary justified the suspension of certain works under the 1977 Treaty by citing a threat to the environment, which it qualified as a "state of environmental necessity". In particular, based on numerous studies, it stated that in the Gabcikovo/Dunakiliti area, additional water releases would lead to a decrease in the groundwater level and siltation of the Dunakiliti branches, which would lead to a deterioration in water quality. In surface waters, "risks of eutrophication would have arisen, particularly in the reservoir; instead of the old Danube there would have been a river choked with sand, where only a relative trickle of water would have flowed. The network of arms would have been for the most part cut off from the principal bed. The fluvial fauna and flora, like those in the alluvial plains, would have been condemned to extinction" [6, para. 40, p. 35]. The consequences of the construction and operation of the Nagymaros Dam would be similarly catastrophic – erosion of the river bed downstream, a drop in water levels and, as a result, a significant reduction in the production of bank filtration wells, which provide two-thirds of the water supply to the city of Budapest [10, para. 40, p. 36].

In the *Saiga* case (1999), Guinea, citing necessity, defended its right to apply its customs legislation in the maritime exclusive economic zone in order to protect against "the considerable fiscal losses a developing country like Guinea is suffering from illegal off-shore bunkering in its exclusive economic zone" [23, para. 130, p. 55].

The use of the concept of "substantial interest" in relation to the victim of an international offense or the international community as a whole (clause "b" clause 1 of Article 25 of the Draft 2001) is intended to reasonably assess the interests of other subjects of these legal relations of responsibility: what they consisted of and to what extent they were affected their "substantial interests" as a result of the offender protecting his "substantial interest". According to the ILC, "the interest relied on must outweigh all other considerations, not merely from the point of view of the acting State but on a reasonable assessment of the competing interests, whether these are individual or collective" [11, p. 84].

In a number of cases, reference to necessity is excluded (clause 2 of Article 25 of the Draft 2001). Firstly, this may be due to the nature of the content of the violated international legal obligation (subsection "a", para. 2 of Article 25). For example, necessity cannot be invoked to justify violations of international humanitarian law conventions. Secondly, reference to necessity is excluded if the offending state itself contributed to its emergence (subsection "b", paragraph 2 of Article 25). Thus, the International Court of Justice rejected such a reference of Hungary due to the fact that its behavior contributed to the emergence of an alleged "situation of environmental necessity" [10, para. 57, pp. 45-46].

IGO's appeal to necessity

The right to refer to necessity belongs not only to states, but also to international intergovernmental organizations. In the Draft 2011 it is also enshrined in Art. 25, which almost completely repeats the above-mentioned norm of Art. 25 of the Draft 2001. It should be emphasized that the very possibility of appealing to IGOs to such a state caused controversy even at the stage of work on the Draft 2011 [6]. It was clear from the outset that IGOs could not claim to protect an "essential interest" analogous to the "essential interest" of sovereign states, much less the international community. Any interests of international organizations, as secondary subjects of international law, depend on the interests of their member states. As A. Reinisch correctly notes: "It is hard to maintain that international organizations should have a vested right to prolong their existence should their members no longer consider them useful" [6, p.181].

Nevertheless, this right was assigned to IGO in the Draft 2011. The ILC, commenting on its Art. 25, emphasized the extreme paucity of practice on it, and its forcedness to meet a number of organizations that insisted on its consolidation (EU, IMF, WIPO, World Bank, UN Secretariat). At the same time, the Commission modeled a situation in which the IGO's reference to necessity could be completely acceptable:

"Thus, when an international organization has been given powers over certain matters, it may, in the use of these powers, invoke the need to safeguard an essential interest of the international community or of its member States, provided that this is consistent with the principle of speciality. On the other hand, an international organization may invoke one of its own essential interests only if it coincides with an essential interest of the international community or of its member States" [24, p. 75].

Thus, the content of the norm of Art. 25 of the Draft 2011 is largely a result of the progressive development of the law of international responsibility. While the norm of Art. 25 of the Draft 2001 is its codification.

Conclusions

The 2001 and 2011 Drafts consider necessity as exceptional circumstances in which the state seeks to protect its essential interest from a serious and unavoidable event only through failure to fulfill the relevant international legal obligation, which does not seriously damage the essential interest of the state or states in respect of which the said obligation existed, or the international community as a whole.

The interpretation of the concept of "substantial interest" reveals the content of exceptional circumstances in connection with which the interested party declares the necessity. Although it is evaluative, the ILC has pointed out the importance of examining all circumstances of each individual case. This, according to a number of scientists, allows us to talk about the objectification of the concept of essential interest, in which a revision of its initial assessment is allowed due to the positions of other states, including those that are not directly related to a particular international conflict.

Appealing to the state of necessity by interested wrongdoing subjects (states or international organizations) to avoid international legal responsibility is a generally recognized customary norm of general international law. This is confirmed, among other things, by the practice of international courts, in which they directly state this. Although, as a rule, they do not analyze the relevant evidence of custom, this approach is generally consistent with their own practice of establishing other customs of general international law.

Article 25 of the Draft 2011, which establishes the conditions for appealing to the necessity for IGOs, despite the complete identity of Art. 25 of the Draft 2001, is the result of the progressive development of international law. At the time of the adoption of the Draft 2011 there was not enough practice to take into account the numerous nuances of the behavior of international intergovernmental organizations in the international arena when using necessity. The doctrine indicated possible problems in the application of Art. 25 due to the characteristics of international intergovernmental organizations as secondary subjects of international law. First of all, we are talking about their complete dependence from the wills and interests of their member states.

References

[1] Russian Claim for Interest on Indemnities (Russia v. Turkey), Award of Tribunal, 11 November 1912. (November 11, 1912). *Permanent Court of Arbitration.* The Hague. Retrieved from https://jusmundi.com/en/document/decision/en-russian-claim-for-interest-on-indemnities-russia-turkey-award-monday-11th-november-1912.

[2] Societe Commerciale De Belgique (Belgium v. Greece), P.C.I.J., Ser A./B., No. 78, Judgment of 15 June 1939. (June 15, 1939). Retrieved from https://jusmundi.com/en/document/decision/en-societe-commerciale-de-belgique-judgment-thursday-15th-june-1939.

[3] Hayashi, N. (2010). Requirement of Military Necessity in International Humanitarian Law and International Criminal Law. *Boston University International Law Journal*, 28(1), 39-140. Retrieved from https://www.prio.org/publications/4447.

[4] Resolution of the UN General Assembly No. 56/83 (A/RES/56/83) "State responsibility for internationally illegal acts". (December 12, 2001). Retrieved from https://undocs.org/ru/A/RES/56/83.

[5] Resolution of the UN General Assembly No. 66/100 "Responsibility of international organizations". (December 9, 2011). Retrieved from https://undocs.org/ru/A/RES/66/100.

[6] Reinisch, A. (2006). Editorial: How Necessary is Necessity for International Organizations. *International Organizations Law Review*, 3, 177-183. Retrieved from https://brill.com/view/journals/iolr/3/2/article-p177_1.xml?ebody=previewpdf-89782.

[7] Sloan, R.D. (2012). On the Use and Abuse of Necessity in the Law of State Responsibility. *The American Journal of International Law,* 106(3), 452-453. https://doi.org/10.5305/amerjintelaw.106.3.0447.

[8] Thjoernelund, M.Ch.H. (2009). State of Necessity as an Exemption from State Responsibility for Investments. *Max Plank Yearbook of United Nations Law*, 13, 423-480. Retrieved from https://www.mpil.de/files/pdf2/mpunyb_11_llm_thesis.pdf.

[9] Vasiljević, M., & Jovanović, M. (2016). Necessity as a Ground for Precluding Wrongfulness in International Investment Law. *Belgrade Law Review.* Year LXIV, 3, 5-24. https://doi.org/10.5937/AnaliPFB1603005V.

[10] Case Concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia), Judgment of 25 September 1997. (September 25, 1997). *International Court of Justice. Reports*. Retrieved from https://iilj.org/wp-content/uploads/2016/08/Case-Concerning-the-Gabc%C3%ADkovo-Nagymaros-Project-Hungary-v.-Slovakia.pdf.

[11] *Yearbook of the International Law Commission. 2001. Vol. II, part 2: Report of the Commission to the General Assembly on the work of its fifty-third session*. (2007). United Nations, New York, Geneva. Retrieved from https://legal.un.org/ilc/publications/yearbooks/english/ilc_2001_v2_p2.pdf.

[12] Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), Judgment of 5 February 1970. (February 5, 1970). *International Court of Justice. Reports*, 3. Retrieved from https://www.icj-cij.org/sites/default/files/case-related/50/050-19700205-JUD-01-00-EN.pdf.

[13] United States Diplomatic and Consular Staff in Tehran (United States v. Iran), Judgment of 24 May 1980. (May 24, 1980). *International Court of Justice. Reports*, 3. Retrieved from https://www.icj-cij.org/sites/default/files/case-related/64/064-19800524-JUD-01-00-EN.pdf.

[14] Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgment of 14 February 2002. (February 14, 2002). *International Court of Justice. Reports*, 3. Retrieved from https://www.icj-cij.org/sites/default/files/case-related/121/121-20020214-JUD-01-00-EN.pdf.

[15] Prosecutor v. Anto Furundzija, Judgment of 10 December 1998 (Case No. IT-95-17/1-T). (December 10, 1998). *United Nations*. Retrieved from https://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf.

[16] Case of Al-Adsani v. the United Kingdom (Application no. 35763/97), Judgment of 21 November 2001. (November 21, 2001). *Council of Europe. European Court of Human Rights*. Strasbourg. Retrieved from file:///C:/Users/User/Desktop/001-59885.pdf.

[17] Shchokin, Yu.V. (2007). Features of the Formation of Bilateral International Legal Customs. *Problems of Legality*, 87, 147-156.

[18] Shchokin, Yu.V. (2012). *International Legal Custom: Problems of Theory and Practice*. Kharkov: Pravo.

[19] CMS Gas Transmission Company v. Argentina Republic (ICSID Case No. ARB/01/08), Award of 12 of May 2005. (May 12, 2005). *Transnational Dispute Management, 3*. Retrieved from https://www.transnational-dispute-management.com/article.asp?key=513.

[20] Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory. General List No. 131 of 9 July 2004. (July 9, 2004). *International Court of Justice. Reports 2004*. Retrieved from https://www.icj-cij.org/case/131.

[21] In the Proceedings Between LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentina Republic (ICSID Case No. ARB/02/01), Decision on Liability of 3 October 2006. (October 3, 2006). *International Centre for Settlement of Investment Disputes*. Retrieved from https://www.italaw.com/sites/default/files/case-documents/ita0460.pdf.

[22] Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment of 28 May 1998. (May 28, 1998). *International Court of Justice. Reports 1998*. Retrieved from https://www.icj-cij.org/sites/default/files/case-related/96/096-19980528-PRE-01-00-EN.pdf.

[23] The MIV "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment of 1 July 1999. List of cases No. 2. (July 1, 1999). *International Tribunal for the Law of the Sea. Reports* 1999, 10. Retrieved from https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/published/C2-J-1_Jul_99.pdf.

[24] *Yearbook of the International Law Commission, 2011. Vol. II, part 2: Report of the Commission to the General Assembly on the work of its sixty-third session (26 April-3 June and the 4 July-12 August 2011)*. (2011). United Nations, New York. Retrieved from https://legal.un.org/ilc/documentation/english/reports/a_66_10.pdf.

Yuri V. Shchokin
Doctor of Legal Sciences, Professor,
Associate Professor of the European Union Law Department
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine
e-mail: yuri.v.shchokin@nlu.edu.ua
ORCID 0000-0002-8082-2367

Юрій Вадимович Щокін
доктор юридичних наук, професор,
доцент кафедри права Європейського Союзу
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Пушкінська, 77, Харків, Україна
e-mail: yuri.v.shchokin@nlu.edu.ua
ORCID 0000-0002-8082-2367

Suggested Citation: Shchokin, Yu.V. (2023). Basic Conditions for Application of Necessity as a Circumstance that Precludes Bringing to International Legal Responsibility. *Theory and Practice of Jurisprudence,* 2(24), 98-111. https://doi.org/10.21564/2225-6555.2023.2.293068.

Submitted: 30.11.2023
Revised: 10.12.2023
Approved: 22.12.2023
Published online: 28.12.2023