

Table of Contents

List of Abbreviations

xiii

1. Introduction	1
1.1 ICJ Jurisprudence	4
1.2 Scholarship	7
1.3 State Practice	8
1.4 Provenance of Necessity and Proportionality	9
1.5 Approach of the Current Study	13
1.6 Initial Observations	17
1.6.1 The Nature and Function of Necessity and Proportionality	17
1.6.2 The Purposes of the Right of Self-Defence	20
1.6.2.1 Halting, Repelling or Preventing an Armed Attack	20
1.6.2.2 An Overriding Defensive Purpose	21
1.6.2.3 Fulfilling the Defensive Purpose	22
2. Necessity	25
2.1 Introduction	25
2.2 Necessity in Other Areas of International Law	26
2.3 General and Specific Necessity	30
2.3.1 A Novel Taxonomy	30
2.3.2 General and Specific Necessity and ICJ Jurisprudence	32
2.3.3 General Necessity, Specific Necessity and Armed Attack	35
2.4 General Necessity—Other Options Open to a State	38
2.4.1 General Principles	38
2.4.2 State Practice	42
2.4.2.1 Defending States	42
2.4.2.2 Reactions of Other States	46
2.4.2.3 Proving General Necessity?	50
2.4.3 ICJ Jurisprudence and Alternative Measures	52
2.4.4 A Temporal Distinction—Ongoing, Imminent and Completed Armed Attacks	55
2.5 General Necessity—Imminence, Immediacy and Duration	55
2.5.1 The Timing of the Armed Attack	57
2.5.1.1 Ongoing Armed Attacks	57
2.5.1.2 Imminent Armed Attacks	58
2.5.1.3 Completed Armed Attacks	71
2.5.2 The Timing of the Defending State's Response to an Armed Attack	72
2.5.2.1 An Immediate Need to Respond	72
2.5.2.2 An Ongoing Threat	76

2.6	Specific Necessity—Targeting	84
2.6.1	A <i>Jus ad Bellum</i> Military Target	84
2.6.2	IHL and a <i>Jus ad Bellum</i> Connection with the Armed Attack	88
2.6.3	Prior Complaints and the Effectiveness of the Defensive Measures	93
2.7	Conclusions	95
3.	Proportionality	97
3.1	Introduction	97
3.2	Proportionate to What?	100
3.2.1	Quantitative or Teleological Proportionality?	101
3.2.1.1	Alternative Models and Academic Opinion	101
3.2.1.2	State Practice—Consideration in Abstract Terms	104
3.2.1.3	State Practice—Specific Incidents and the Quantitative Model	107
3.2.1.4	State Practice—Specific Incidents and the Teleological Model	111
3.2.1.5	State Practice—Pleadings Before the ICJ	115
3.2.1.6	ICJ Jurisprudence	117
3.2.2	A Mixed Model of Proportionality	122
3.3	Applying Proportionality and Identifying ‘Excessiveness’	125
3.3.1	Scale, Nature, Methods and Means	127
3.3.2	Timing—A Distinct Element of Proportionality?	130
3.3.3	Geography	132
3.3.3.1	ICJ Jurisprudence	133
3.3.3.2	State Practice	134
3.3.3.3	Principle and General Application	136
3.3.4	Effects of the Use of Force on the Defending and Attacking States—General Considerations	137
3.3.4.1	The Defending State	137
3.3.4.2	The Attacking State	138
3.3.5	Civilian Harm	139
3.3.6	Effect on Third-Party Rights	146
3.3.6.1	General Considerations and State Responsibility	146
3.3.6.2	Neutrality and Former Belligerent Rights	147
3.3.7	Effect on the Environment	153
3.4	Overlaps and Distinctions	155
3.4.1	<i>Jus ad Bellum</i> Proportionality v IHL Proportionality	155
3.4.2	<i>Jus ad Bellum</i> Proportionality v <i>Jus ad Bellum</i> Necessity	162
3.4.2.1	Proportionality and General Necessity	162
3.4.2.2	Proportionality and Specific Necessity	163
3.5	Overall Assessment and Enduring Application	166
3.6	Conclusions	171

4. Necessity and Proportionality and Armed Attacks by Non-State Actors	172
4.1 Introduction	172
4.2 Necessity and Armed Attacks by NSAs	176
4.2.1 The Host State and Alternative Measures	176
4.2.2 'Unwilling or Unable'	182
4.2.3 Targeting the Host State—State Practice	185
4.2.3.1 Operation Enduring Freedom	185
4.2.3.2 Global Coalition Action in Syria	187
4.2.3.3 UNSC Involvement—A Limiting Factor	202
4.2.4 NSA Armed Attacks—Timing and Imminence	205
4.2.4.1 Temporal Duration of the Right of Self-Defence	205
4.2.4.2 Imminence	206
4.3 Proportionality and Armed Attacks by NSAs	208
4.3.1 A More Permissive Response vis-à-vis Terrorist NSAs	209
4.3.2 Geography	213
4.3.3 Effect on the Host State and its Citizens	215
4.3.3.1 General Considerations	216
4.3.3.2 Global Coalition Action in Syria	220
4.4 Conclusions	226
5. Conclusions	227
<i>Bibliography</i>	235
<i>Index</i>	249