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Title: Note by Charles Lysaght, Assistant Legal Adviser in the Department of Foreign Affairs, regarding justifiable killings under the Criminal Law of England, and the relevance of this law to the actions of soldiers. .

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Note by Assistant Legal Adviser, Mr. Charles Lysaght

To justify killing under the Criminal Law of England as embodied in the Common law it must be shown that such killing was necessary to safeguard life or prevent grievous bodily harm. The test of such necessity is objective so that the killer or his commanding officers are not the judges of it as may be inferred from Lord Balniel's statement. However in judging necessity allowance must be made for the fact that the circumstances might have appeared differently to the killer than they do after sedate and meticulous examination. It is a part subjective, part objective test. Applying this, a soldier shooting to kill would be guilty of homicide unless, in the circumstances as they appeared to him, he had a reasonable apprehension that there was a danger to life if he did not do so. A suspicion that a person possessed firearms would not amount to such reasonable apprehension.