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GLAWCAL COMMENT #192

**The doctrine of necessity: Valid ground
for exoneration?**

Based on

**Vassilis Paliouras “State of Necessity
and Sovereign Insolvency”**



gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Vassilis Paliouras "State of Necessity and Sovereign Insolvency" in Antonio Segura Serrano (Ed.) "The Reform of International Economic Governance".

why is that the case and to learn more about the nuances related therewith, Vassilis Paliouras invites the readers to search for answers in his chapter.

"The doctrine of necessity is a peculiar invention of public international law, which enables the invoking State to escape from its responsibility for violating international law. Originally, the doctrine of necessity evolved as a part of *ius ad bellum* and one of the references to this doctrine which caught the eyes of the public at large in the recent times was made when the US government justified the killing of Al-Kaida leader Osama bin Laden on the Pakistan territory in 2011. However, as Vassilis Paliouras in his chapter "State of Necessity and Sovereign Insolvency" in the book "The Reform of International Economic Governance" suggests, the doctrine of necessity might find its application also in the events of financial and economic crisis. The approach of judicial bodies to this issue is not straightforward. Should it be possible to justify the failure of a State to meet its obligations towards private creditors by making references to the doctrine of necessity, or is it only an attempt destined for failure, attempting to apply the doctrine of necessity to wrong and unsuitable subject matters? The historical overview of relevant jurisprudence suggests that the fear of the inappropriate use of the doctrine of necessity to avoid the payment of debts by a State played a role already in the 18th century. However, the voices arguing that the doctrine of necessity might be referred to also in the case of economic constraints under certain circumstances appeared also in the course of time. In general, the threshold for the application of the doctrine of necessity in the case of insolvency of a State is set very high. To find out

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