



# Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation (International Litigation in Practice)

By Diane A. Desierto

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States invoke economic crises and security threats to justify treaty non-compliance. The most dramatic recent examples of this phenomenon include necessity defences in international investment law; emergency derogations in international human rights treaties; exceptions for non-conforming measures in international trade law; and doctrinal misapplications of necessity in jus ad bellum and jus in bello. *Necessity and National Emergency Clauses* is the first to trace the doctrine's genealogy from medieval Christian and Islamic religious history to post-Westphalian practices, the International Law Commission's codifications, and modern treaty formulations. Recognizing the doctrine's thematic linkage with the State's sovereign right to delimit international obligation, the volume proposes analytical criteria to assess the lawfulness and legitimacy of interpretations of necessity and national emergency clauses within specialized treaty regimes. This volume is intended for law students, legal scholars, arbitrators, international judges, and other international law practitioners interested in deriving interpretive solutions to treaty controversies on the doctrine of necessity. Diane Desierto was awarded the 2010-2011 Ambrose Gherini Prize, the highest prize awarded in the field of International Law by Yale Law School, for her JSD dissertation, upon which this book is based."

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### Editorial Review

#### Review

Diane Desierto's new book, *Necessity and National Emergency Clauses: Sovereignty in Modern Treaty Interpretation*, critiques the ILC's effort to codify the international law of state necessity, arguing that the ILC's formulation should be given little weight as a restatement of customary international law. Tracing the history of necessity over the centuries, Desierto shows that the classical conception of necessity as a sovereign right to self-preservation evolved significantly from Machiavelli to Grotius to Schmitt and beyond... While these insights regarding the context-sensitive character of necessity defenses might seem modest on first impression, Desierto shows that they have far-reaching implications, calling into question some recent arbitral decisions on economic emergencies and challenging scholarly efforts to defend torture and humanitarian intervention based on appeals to necessity... By clarifying how law-appliers should go about evaluating state necessity defenses, Desierto's study also offers broader insights for international legal theory. Desierto's fine-grained analysis in *Necessity and National Emergency Clauses* offers an invaluable model for how law-appliers should go about answering this question [whether the applicable treaty regime authorizes emergency measures in a given context]. - *American Society of International Law Cables*, Evan Criddle, Syracuse University College of Law Associate Professor "This volume offers a very comprehensive analysis of the necessity doctrine and national emergency clauses in relation to treaty compliance. Desierto's insights should form a baseline for future analysis of the interpretation of the necessity doctrine in international law. This work is undoubtedly a step forward, and an original contribution as it provides interpretive answers to treaty controversies related to the doctrine of necessity." - *Revue quebecoise de droit international*, Georgios Andriotis, Research Associate and LL.B. Candidate at Universite de Montreal, Faculty of Law"

#### About the Author

**Diane A. Desierto**, JSD (2011), LLM (2009), Yale; LLB cum laude (2004), BS Economics summa cum laude (2000), UP Law/Econ; 2010-2011 Yale Fellow (Judges Simma/Sepulveda-Amor) International Court of Justice; teaches international law in UP Law and advises Philippine government agencies. Diane Desierto was awarded the 2010-2011 Ambrose Gherini Prize, the highest prize awarded in the field of International Law by Yale Law School, for her JSD dissertation, upon which this book is based.

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