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On the Use and Abuse of Necessity in the Law of State Responsibility

Robert D. Sloane 447

Article 25 of the International Law Commission's Articles on State Responsibility defines necessity as a general "circumstance precluding wrongfulness" in the law of state responsibility. It has been adopted rapidly and almost uniformly, but with scant independent analysis, as a putative codification of international custom. This essay argues that with reference to the ILC mandate, the definition reflects far more "progressive development" than "codification" of general international law. It also questions the definition's advisability, coherence, and normative appeal in theory and practice.

Agora: *Kiobel*

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