

**THE 2011 EGYPTIAN REVOLUTION AND THE DEFENCE OF
NECESSITY: CASE NOTE ON THE AWARD IN *UNIÓN FENOSA
GAS, S.A. V. EGYPT*, AUGUST 31, 2018**

*Janice Lee**

ABSTRACT

*Necessity has long been used in investment arbitration as a defence to preclude the wrongfulness of a State's conduct in times of crisis. However, tribunals have often taken a strict view of this defence, ruling that for the defence to be available, the contested act must have been the only way for the State to protect an essential interest. The award in *Unión Fenosa v. Egypt* continues this trend. The tribunal therein refused the application of the defence of necessity, as against the backdrop of the 2011 Egyptian revolution. This Case Note analyses the tribunal's ruling in terms of the necessity defence, and its potential implications for similar arbitrations where States have had to act in a swift, decisive manner in times of crisis.*

KEYWORDS: *necessity, defence, investment arbitration, Arab Spring, energy crisis, Egyptian revolution, state responsibility, force majeure*

* LL.M., Queen Mary University of London; Juris Doctor, University of the Philippines. Janice is a foreign lawyer with the International Arbitration Group of Eversheds Harry Elias. The views expressed in this post are the author's and do not reflect those of any organisation. The author can be reached at: janice.chualee@gmail.com.