Document:-
**A/CN.4/SR.1619**

**Summary record of the 1619th meeting**

Topic:
**State responsibility**

Extract from the Yearbook of the International Law Commission:-
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less essential interest. In the "*Torrey Canyon*" case it had not been necessary to ask if Great Britain's interest in avoiding serious pollution of its coast really took precedence over the flag State's interest in avoiding the destruction of the wreck.

42. As to practice he noted that, taken as a whole, the cases could be divided into two categories. In some cases, the state of necessity had not ultimately been recognized, but the parties or judges had recognized the validity of the principle. In others, the parties or the judge had found that the conditions for the existence of a state of necessity had existed. Thus, in the *Russian indemnity* case (see A/CN.4/318/Add.5–7, para. 22) both parties had admitted that, if the situation of the Ottoman Empire had been such as its Government described, state of necessity could have justified the debtor State's refusal to fulfil its obligation to pay a certain sum at a given moment. In the *Société Commerciale de Belgique* case (*ibid.*, paras. 28 *et seq.*) the existence of conditions of applicability of state of necessity was recognized by the parties.

43. One member of the Commission had inquired whether a rule which apparently favoured the developing countries might not turn to their disadvantage, since they might be inclined to invoke an excuse of necessity in order to avoid paying their debts, which would impair their creditworthiness. He (Mr. Ago) pointed out that unwillingness to pay a debt was not enough to support the plea of state of necessity: the situation had to be one of extreme peril.

44. Referring to other cases mentioned in his report, he said that in the case of fur seal fisheries off the Russian coast (*ibid.*, para. 33), the measures taken by the Russian Government would normally have been unlawful, but in the absence of such measures an ecological disaster would have occurred, which would have prejudiced not only Russia's interests but also those of the other States concerned. The preclusion of wrongfulness was therefore entirely justified. In the case of properties of the Bulgarian minorities in Greece (*ibid.*, para. 32), as in the General Company of the Orinoco case (*ibid.*, para. 39), it had not been necessary to apply any pre-established criterion of comparison for the purpose of determining which interest should take precedence and the applicability of the plea of necessity was accepted. In all those cases, therefore, no subjective aspect had complicated the situation. The importance and frequency of the difficulties which might arise out of some subjective elements should not, therefore, be exaggerated.

45. With regard to the drafting of article 33, he said that a negative formulation might give more force to the rule. However, the positive formulation would have the virtue of conforming to that of the other articles in chapter V of the draft; furthermore, in that drafting, it was a negative formulation which was employed for the exception to the obligations created by peremptory norms. That was a question which the Drafting Committee should examine in the light of specific proposals.

46. So far as *jus cogens* was concerned, he said it would be wrong to think that the only possible example was aggression. No State could invoke a state of necessity to justify its committing genocide, or apply a policy of *apartheid*, etc. All the rules of *jus cogens* acted as a bar to the plea of state of necessity. As regards the use of armed force falling short of aggression, he said that, admittedly, his proposal was perhaps somewhat cautious, but was it really arguable that some of the prohibitions mentioned by members of the Commission formed part of the existing *jus cogens*? There were, of course, forms of behaviour involving the use of force in another State's territory which were clearly covered by *jus cogens*, but in other less clear-cut cases, surely it would be going too far to deny the admissibility of the plea of necessity altogether. To go that far would prevent a State from entering the territory of another State to remove a danger of fire on its own territory. The Commission had the choice between the cautious solution he had proposed and a yet more cautious, but perhaps extreme solution.

47. Some members of the Commission had asked what would happen if the Commission refrained from mentioning the state of necessity. Would its silence mean that the notion of state of necessity was inoperative in international law? Since state of necessity was recognized in all legal systems, the Commission's silence might, on the contrary, have the effect of allowing the concept to play a dangerous role, whereas by recognizing it the Commission could fix strict limits. In any case, by failing to take a clear decision on state of necessity, the Commission would only be rendering a disservice to the cause of international law.

48. The CHAIRMAN suggested that draft article 33 should be referred to the Drafting Committee.

*It was so decided.*[6]

*The meeting rose at 1 p.m.*

[6] For consideration of the text proposed by the Drafting Committee, see 1635th meeting, paras. 42–52.

## 1619th MEETING

*Wednesday, 25 June 1980, at 10.20 a.m.*

*Chairman:* Mr. C. W. PINTO

*Members present:* Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

*Also present:* Mr. Ago.

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## State responsibility (*continued*) (A/CN.4/318/Add.5–7, A/CN.4/328 and Add.1–4)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)

ARTICLE 34 (Self-defence)

1. The CHAIRMAN invited Mr. Ago to introduce draft article 34 (A/CN.4/318/Add.5–7, para. 124), which read:

*Article 34. Self-defence*

**The wrongfulness of an act of a State not in conformity with an international obligation to another State is precluded if the State committed the act in order to defend itself or another State against armed attack as provided for in Article 51 of the Charter of the United Nations.**

2. Mr. AGO said that not until relatively recent times had the concept of self-defence, one long recognized in national legal systems, made its way into international law and acquired certain connotations associated with the concept as elucidated in internal law by the general theory of law. Admittedly, the classical writers on international law had drawn a distinction between "just war" and "unjust war", but—aside from the fact that an identification between what they meant by "just war" and self-defence would be entirely arbitrary—he was reluctant to take the view that the distinction had been based on the law current at that time. It had relied on ideas that were more akin to ethics rather than law. Emmerich de Vattel, for example, had mentioned two causes for a just war, namely, defence against an armed attack and, above all, reaction to a "wrong", by which Vattel had meant the violation of a subjective right suffered by a State. Again, it had to be remembered that a more recent entire period of the history of international law had been marked by legal positivism, a theory which had prevented the concept of self-defence from evolving since it had regarded war in all its forms as lawful. It had sometimes been said that war had to be defensive in character, but the assertion had been made more to gain the support of public opinion for the actions undertaken than as a declaration of a principle of law to be respected. For example, in 1914 some Governments, anxious to keep up their image at home and abroad, had maintained that certain manifestly offensive wars were defensive in character. It was only in the inter-war years and during the Second World War that self-defence had gradually taken on its present form in international law.

3. Like state of necessity, self-defence had to be differentiated from the other circumstances that precluded wrongfulness. First of all, the concept of self-defence should be confined to a defensive reaction against an armed attack by another State, and should exclude an attack by private individuals. Without that restriction, the concept would be far too vague. Self-defence could exist in international law only as an exception to a general prohibition of the use of armed force by a State. However, just as there could be no exception without the rule, there could be no rule without the exception. In national legal systems, self-defence was also defined in terms of another factor: the centralization of the use of force, which Kelsen had regarded as a State monopoly on the use of that force. In internal law, self-defence therefore was based on the general ban on the use of armed force by a subject of law and on the State monopoly on the use of force. It followed that the area reserved for self-defence was a very restricted one. Only by derogation from the general rule banning the use of force, and not withstanding the existence of the monopoly in question, could an individual be authorized to resort to armed force in self-defence; what was more, the situation had to be one involving urgent necessity and one in which the organs of the State were not able to intervene.

4. In international law, the first of those requirements regarding self-defence had been fulfilled by the general ban on resorting to the use of force for the purposes of aggression. On the other hand, it was questionable whether the second requirement had been fulfilled. Admittedly, the Charter of the United Nations had been drafted with the aim of achieving centralization of the power to resort to the use of force. Such centralization was provided for in Chapter VII of the Charter, but the system envisaged therein had not been completely effective. Nevertheless, it did not follow that the concept of self-defence had no standing in international law, for the first requirement, the prohibition of the use of force, was by far the most essential.

5. Self-defence could now be considered as the sole form of armed self-protection or self-help still recognized by international law. On the other hand, it should not be thought that self-defence had to be justified by the concept of self-protection or self-help, just as state of necessity was not justified by the concept of self-preservation. For the purposes of establishing the existence of self-defence in international law, it sufficed to demonstrate that it was enunciated by a rule in force in the international legal system. It is true that among the circumstances precluding wrongfulness some writers specifically mentioned self-protection or self-help, a notion which, however, in his opinion, came under the heading of legal technique but did not constitute a special circumstance precluding wrongfulness. According to the theory of law, the term "self-protection" is defined as the system for safeguarding subjective rights adopted in a human community which had not been institutionalized to such an extent that a higher authority had a monopoly on the use of force. In such cases, subjective rights could be exercised only by the holders of those rights. On the other hand, that concept of self-protection encom-

passed both self-defence and the adoption of countermeasures against the State committing a wrongful act. In considering the question of the application of countermeasures, the Commission had taken the view that armed reprisals were no longer admissible in modern general international law. Although not unanimously accepted, that view was none the less the prevailing one. Both self-defence and the application of countermeasures were manifestations of self-protection or self-help, but they were different from each other in that self-defence alone could include recourse to armed force.

6. Another distinction should be made, moreover, between self-defence and state of necessity. The conduct of a State that sought to excuse its act by pleading a state of necessity must necessarily have been aimed at safeguarding an essential interest of that State vis-à-vis a threat to a State that might even be totally innocent. On the other hand, a State that relied on the concepts of countermeasures or self-defence had acted against a State which had committed a breach of international law. In the case of countermeasures, the wrongful act might well be one of a whole range of breaches of international obligations other than an act of aggression, whereas in the case of self-defence it was clearly a question of an act of aggression. Nevertheless, the factor that really distinguished action adopted in the form of countermeasures from action taken in self-defence lay in the purpose of the actions at the time at which they occurred. In the first instance, the aim was to punish, to secure enforcement or to issue a warning against repetition of a particular act, whereas in the second instance the aim was to prevent an act of aggression from taking place. Moreover, the time at which a reaction in the form of countermeasures took place was logically that of the implementation (*mise en oeuvre*) of the responsibility occasioned by an internationally wrongful act. However, action taken in self-defence preceded the implementation of the responsibility and took place at the moment when the wrongful act was actually being carried out. That action was defensive in character; it had to prevent the act from taking place.

7. The twofold rule concerning the prohibition of the use of armed force and the lawfulness of resistance by armed force to an aggression had made its appearance as of 1925. The international instruments of that time that could be taken into account fell into two categories, depending on whether or not they made any explicit reference to self-defence. It could therefore well be asked whether an instrument that was silent on that point and that contained a general ban on the use of armed force was also intended to prohibit the use of force in the form of self-defence.

8. One of the instruments that mentioned self-defence was the Protocol for the Pacific Settlement of International Disputes, adopted at Geneva on 2 October 1924 (see A/CN.4/318/Add.5–7, para. 97). The Protocol, which had never entered into force, had contained an interesting provision authorizing "resistance to acts of aggression", an expression that clearly referred to self-defence. The Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy (*ibid.*) had been signed at Locarno on 16 October 1925 and had imposed an obligation on France and Belgium, and also on Germany, to refrain from attacking or invading each other or resorting to war against each other. It had been added that the obligation did not apply in the case of exercise of the right of "legitimate defence", in other words, of resistance to a violation of the provision in question, or to a flagrant breach of articles 42 or 43 of the Treaty of Versailles, if such breach constituted an unprovoked act of aggression and, by reason of an assembly of armed forces in the demilitarized zone, immediate action was necessary. The purpose of the treaty had been to preserve the security of the frontier between Belgium and France on the one hand, and Germany on the other. However, the Treaty of Versailles had also imposed on Germany the obligation to demilitarize the Rhineland. For that reason, the treaty of 1925 had envisaged, as action in self-defence, resistance not only to armed attack but also to any occupation of the demilitarized zone by Germany. The treaty had been the first to set forth in clear terms the twofold rule prohibiting recourse to armed force and legitimizing recourse to self-defence. During the same period, the rule had also been embodied in bilateral agreements and model treaties of reciprocal assistance and non-aggression prepared in 1928 by the League of Nations.

9. The Covenant of the League of Nations was among the treaties that did not mention self-defence. That instrument had prohibited recourse to war but had not dared to go any further, so that there had been a number of lacunae. States had been urged to settle their disputes by peaceful means, and when necessary, to submit the dispute to the Council of the League, but if the Council was not unanimous in providing a solution, they could, within a period of three months, legitimately resort to the use of armed force. The relevant provisions of the Covenant had been interpreted restrictively by some writers and more widely by others. Whatever the case, and although self-defence was not mentioned in the Covenant, at that time no one had doubted that a State which suffered an attack was entitled to resort to force in order to defend itself.

10. The most decisive step towards outlawing recourse to war had been taken with the signature, on 27 August 1938, of the General Treaty for Renunciation of War as an Instrument of National Policy, more commonly known as the Briand–Kellogg Pact or the Pact of Paris (*ibid.*, para. 100). The aim of that treaty had been to fill the gaps in the Covenant of the League of Nations and, more specifically, to declare an absolute prohibition on recourse to war. In the treaty, the parties had condemned recourse to war for the solution of international controversies, renounced it as

an instrument of national policy in their relations with one another, and agreed that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin should be sought only by peaceful means. Apparently, the prohibition of recourse to war had not absolutely prevented the possibility of the use of armed force for more limited purposes. The main point, however, was whether armed self-defence against a violation of that prohibition against war had also been prohibited. The diplomatic correspondence that had preceded the conclusion of the Briand–Kellogg Pact clearly showed that that had not been the case. F. B. Kellogg, the American Secretary of State, had himself explained that renunciation of war did not exclude the right of self-defence. It had not seemed necessary to him to make an express reservation regarding self-defence, as that reservation had been considered implicit in any instrument banning war, but it was wiser, in his opinion, not to mention that exception explicitly, so as not to weaken the impact that the solemn declaration outlawing war was intended to have on public opinion.

11. At the time, some authors such as Lamberti Zanardi had taken the view that self-defence already formed the subject of a customary rule of international law, a rule that would have authorized any State suffering an act of aggression committed in breach of the instruments in question to resort to armed force in self-defence. Such a customary rule, however, would have been inadequate to guarantee the right recourse to self-defence once treaties absolutely prohibiting recourse to war were concluded. If a treaty confined itself to providing that the parties fully renounced recourse to war, in any form and in any circumstances whatsoever, it could legitimately have been presumed that such an instrument also signified a departure from the customary rule relating to self-defence. The fact was, rather, that the rule banning recourse to the use of armed force and the rule providing for self-defence had then gradually both become peremptory rules of international law. Once they existed in general international law, it was no longer possible to derogate from them. No contractual rule prohibiting recourse to armed force could cause a departure from the peremptory rule allowing self-defence.

12. Like most of the writers on the topic, he was convinced that the international community had accepted the principle of a complete ban on war, the use of armed force or even of the use of any kind of force, as a principle of general international law that had been in existence before the Charter of the United Nations and was independent of that instrument. The principle was therefore binding on all States. Article 2 of the Charter had simply set forth a principle that already existed in the *opinio juris* of States, overwhelmed by the horrors of the Second World War. The principle had been duly confirmed by the International Military Tribunals of Nürnberg and Tokyo, which had considered whether self-defence could excuse certain acts committed by Nazi Germany. At that time, while they had replied negatively in the specific case, they had expressly recognized that any legal prohibition of the use of force was necessarily limited by the right of self-defence.

13. The history of the matter therefore showed that self-defence now had won recognition in the international legal system. There existed a twofold rule whereby any recourse to armed force was prohibited, but a State that was a victim of a violation of such a prohibition was authorized to resort to force to defend itself or others. Those two rules were enunciated in Article 2, paragraph 4, and Article 51 of the Charter of the United Nations. Thus, by the end of the Second World War and at the time of adoption of the Charter, both general international law and the law of the United Nations system had included that twofold peremptory rule.

14. That raised some problems, however, which were essentially connected with the existence of that twofold rule in general international law and also in the Charter of the United Nations. It was legitimate to ask what the relationship was between the two expressions of principle, whether the content of the rules in the two systems was identical, and which rule the Commission should call upon in formulating its draft articles.

15. Aside from any matters of drafting, he found it difficult to imagine that there could be any difference in substance between the rules in the two systems. In his view, the authors of the Charter could not have had any intention of departing from the *opinio juris* of the time. He emphasized, however, that Article 51 of the Charter incorporated the principle of self-defence in the system set out in Chapter VII of the Charter, the chapter concerning action with respect to threats to the peace, breaches of the peace and acts of aggression, which must necessarily affect the concept of self-defence.

16. Article 51 of the Charter could be divided into two parts, the first part dealing with the preservation of the right of self-defence and the second with the adaptation of self-defence to the system then being established. The first part, which made it possible to say that the exercise of self-defence constituted a circumstance precluding wrongfulness, did not appear to presuppose any divergence between the Charter system and general international law. There was, however, a conflicting school of thought according to which the idea of self-defence embodied in general international law was broader than the straightforward case of resistance to an act of aggression. The authors of the Charter had simply wished to refer, as an example, to only one of the possible cases of recourse to force in self-defence.

17. According to that school of thought, general international law thus allowed for recourse to armed force in a number of cases, and the authors of the Charter had chosen to cite only one example, while the

Charter system referred to general international law as regards the others. It could be thought that self-defence was but one example drawn from general international law. If that opinion was wrong, and, therefore, the scope of the rule was the same in general international law and in the United Nations system, all of the problems would be solved, and the Commission would have to codify the question by reference to the Charter. On the other hand, if that school of thought was right, the Commission would have to take account of general international law, and the concept of self-defence it was required to codify would be much broader than that set forth in the Charter, for Article 51 merely cited one example.

18. He had taken care to discuss that school of thought at some length in section 6 of his report. By way of illustration, he mentioned the opinion of Bowett, reproduced in the last foot-note to paragraph 111 of that document, for it tended to give a particularly broad definition of the concept of self-defence. He also pointed out that Mr. Schwebel, in a course at the Hague Academy of International Law,[1] had given a very clear account of the opinions of the writers of that school without however associating himself with them. The arguments they invoked were numerous, and they considered, in particular, that the use of force was possible in the following instances: in countering a threat of aggression (notion of preventive self-defence); in a case of use of force not involving recourse to arms; in a case of opposition or of reaction to action wrongfully harming the State's subjective rights, even without the use of force; and in the case of a threat to the State's vital interests.

19. Without wishing to go too far into the interpretation of the Charter, he (Mr. Ago) considered that the writers who followed that school of thought had been misled by an outmoded and incorrect use of the concept of self-defence that involved something more than self-defence. It was not surprising that they cited *The "Caroline"* case, regarding it as one of self-defence, while in fact, as the Commission had observed in its work on state of necessity, the case was altogether different, because the State which had been the victim of the action had not committed the slightest aggression and the aim had in fact been simply to move against private individuals for fear of their acts. The fact that private action was being prepared against a State on the territory and without the knowledge of another State did not constitute aggression on the part of that other State. Care should be taken to avoid any misguided use of the concept of self-defence and to seek at all times to distinguish clearly between the three closely related, but none the less distinct, concepts of *force majeure*, state of necessity and self-defence.

20. The writers on the topic did not for the most part share the opinion of the authors in question, mentioned in paragraph 114 of the report. Certain mental reservations could also be discerned among some of them when they maintained that general international law recognized a broader concept a self-defence than did the Charter. When the Commission had considered the question of countermeasures adopted for the purpose of sanctions, it had been obliged to note that the United Nations system deprived States acting individually of one possibility open to them under earlier international law, namely, the possibility of using armed force when applying countermeasures. Hence, the idea that the concept of self-defence was wider in general international law than it was in the Charter seemed to reopen the possibility of the use of armed force under the pretext of self-defence in the case of infringement of a right, for such a possibility would be excluded as a countermeasure and because the United Nations system did not in fact offer all of the guarantees it had seemed to promise in the beginning.

21. In his opinion, it was not possible to go so far as to change the existing law in that way. It might admittedly be desirable to change the United Nations system and make it more restrictive or more flexible. No such change appeared to have been made so far, however, and distorting the concept of self-defence was not the best way of bringing about such a change. With the prevailing doctrine, he did not think the authors of Article 51 of the Charter could have had any intention of departing from the concept of self-defence recognized by general international law, namely, self-defence allowed only as a response to aggression and not as a reaction to other unlawful acts. He therefore considered that the Commission's point of departure should be a concept of self-defence which, in substance, was identical in general international law and in the United Nations system.

22. It should be emphasized that general international law was none the less useful in solving certain other problems, such as that of the concept of collective self-defence. For some writers, that concept merely denoted the juxtaposition of a number of courses of conduct adopted in individual self-defence, whereas for others the authors of the Charter had simply wished to affirm that a State could legitimately come to the defence of another State which suffered armed attack and invited or consented to help, even outside the context of any regional mutual assistance agreement.

23. The concept of self-defence was in itself strict enough to make it unnecessary to define the requirements in any great detail. Nevertheless, doctrine generally required three characteristics in order for an action to be qualified as self-defence: it must be necessary, it must be proportional to the objective it was supposed to achieve, and it must take place immediately.

24. The aspect of necessity was self-evident. If any means other than armed force was available, it had to

[1] S. M. Schwebel, "Aggression, intervention and self-defence in modern international law", *Collected Courses of the Hague Academy of International Law, 1972–II* (Leyden, Sijthoff, 1973), vol. 136, pp. 479 *et seq.*

be employed before resorting to armed force, the use of which was justified only if it constituted an *ultima ratio*. Moreover, if self-defence was confined to resistance to armed attack, it was unlikely that the State in fact had any means other than recourse to armed force available to it.

25. As far as proportionality was concerned, he emphasized that there was some danger of confusion between reprisals and self-defence. In the case of reprisals, it was obviously necessary to ensure some proportionality between the injury suffered and the injury resulting from any sanctions. In the case of self-defence, it was essential to avoid the error of thinking that there should be some proportionality between the action of the aggressor and the action of the State defending itself. Proportionality could be judged only in terms of the objective of the action, which was to repel an attack and prevent it from succeeding. No limitations that might prejudice the success of a response to attack could be placed on the State suffering the attack. The concept of reasonable action must of course enter into the matter, since self-defence could not justify a genuine act of aggression committed in response to an armed attack of limited proportions.

26. As to the question of immediacy, the reaction could not fail to be immediate if its aim was to halt aggression. That was an inherent aspect of self-defence, and not one of the requirements for the existence of that concept.

27. The concept of self-defence was therefore clear and straightforward: its purpose was necessarily and exclusively that of repelling an attack and preventing it from succeeding. The Commission must, however, determine its attitude with regard to Article 51 of the Charter before resolving the wording of draft article 34. It must decide whether to refer to that provision, paraphrase it, or set out a definition of the principle of self-defence, as in the case of all the other circumstances, without taking the Charter definition into account but ensuring that it was not contradicted. For the sake of prudence, and bearing in mind that the Commission was a United Nations body, he personally had opted in favour of an express reference to Article 51.

28. He emphasized that he had used the French expression "*agression armée*", which was not completely identical with the English equivalent "armed attack" or with the Spanish "*ataque armado*", and the situation was complicated by the fact that a recent instrument contained a definition of aggression, yet the two concepts of aggression and armed attack were not exactly the same. The Commission and its Drafting Committee should choose what they considered to be the most appropriate solution in the light of all the circumstances.

*The meeting rose at 12.55 p.m.*

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# 1620th MEETING

*Thursday, 26 June 1980, at 10.15 a.m.*

*Chairman:* Mr. C. W. PINTO

*Members present:* Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

*Also present:* Mr. Ago.

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## State responsibility (*continued*) (A/CN.4/318/Add.5–7, A/CN.4/328 and Add.1–4)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)

DRAFT ARTICLE 34 (Self-defence)[1] (*continued*)

1. Mr. RIPHAGEN said that there were three options open to the Commission in dealing with the phenomenon of self-defence. It could decide to deal with the matter more or less along the lines proposed in draft article 34; it could choose not to deal with the matter at all, on the grounds that it could not, or should not, add to or detract from the relevant provisions of the Charter of the United Nations; or it could make an explicit reference to international law, as it had done in respect of draft article 30.[2]

2. There were a number of variables influencing the choice. First, if the Commission intended to introduce, at some stage, in Chapter V of part 1 of the draft, an article along the lines of article 42 of the Vienna Convention,[3] it would have to deal with self-defence in some way, even if only by a "saving clause" such as that contained in article 75 of that Convention. If the Commission did not intend to include such an article, the option of not dealing with self-defence at all would be open to it.

3. Personally, he would not be in favour of making Chapter V an exhaustive enumeration of circumstances precluding wrongfulness, because of the danger of inadvertent omission and because the rigidity of such a clause would be particularly unrealistic in the field of international relations. Furthermore, draft articles 33[4] and 34 did not deal with the situation where a state of necessity, in the sense of draft article 33, was caused wholly by the State against which it was invoked. He doubted whether in such a case the rule of proportionality, as expressed in the second sentence of draft article 33, paragraph 1, was fully valid.

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[1] For text, see 1619th meeting, para. 1.

[2] See 1613rd meeting, foot-note 2.

[3] See 1615th meeting, foot-note 3.

[4] For text, see 1612th meeting, para. 35.