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Summary record of the 1617th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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think that the Commission was required to consider extreme cases in which the very survival of a State was at stake. Nor was it required in that context to consider obligations that arose under *jus cogens* and humanitarian law, or related to the fundamental sovereignty and integrity of the State. Rather, the Commission should deal with situations in which a State was unable, for some very pressing reason, to fulfil a given obligation, normally an obligation that was set forth in a convention and, consequently, was of somewhat lesser importance. It was in such situations that the State had to decide whether, in certain circumstances, it should disregard its obligation in order to protect an essential interest.

16. Mr. Francis had raised an important point regarding the interaction between political, social and economic factors. In a world order that left much to be desired, States sometimes had urgent social needs that prevented them from complying with, for instance, obligations of a financial kind or obligations which arose under contracts with private persons; in such cases, the treaty or contractual obligations of the State had to yield before its overriding interests. In his view, however, a State could not derogate from all norms. It could derogate from only a certain category of norms, for a certain time, and in cases in which an essential State interest was imperilled.

17. The preclusion of the wrongfulness of an act of the State did not, of course, remove the obligation to compensate for the damage caused by an act that would otherwise have been unlawful. In that regard, he agreed entirely with Mr. Quentin-Baxter (1615th meeting) that compensation should be viewed not only in monetary terms but also as a means of restoring, in so far as possible, the *status quo ante.*

18. In the light of those considerations, he considered that a carefully and restrictively worded draft article would certainly command wide support in the Sixth Committee of the General Assembly. However, a provision should be expressly incorporated in paragraph 1 of the draft article to the effect that the existence of a state of necessity must be proved. In other words, it must be established that the State had acted as it had because there had been no other way of protecting an essential interest threatened by a grave and imminent peril.

19. Also, in the Spanish version of sub-paragraph 3 (*b*), the word "*texto*" should be amended to read "*instrumento*", in line with the original French text. In that connexion, he endorsed the remarks made by Mr. Díaz González at the previous meeting: it was regrettable that the reports presented by special rapporteurs should lose some of their clarity in translation.

20. Mr. VEROSTA said that the wording of paragraph 1 of draft article 33 should be more restrictive, in order to emphasize the exceptional nature of a state of necessity. In his opinion, it was not really certain that the example of financial difficulties given by Mr. Ago came within the framework of state of necessity.

21. The use of the words "invoke it as a ground" in paragraph 2 showed that Mr. Ago had some doubts about the absolute nature of the principle laid down in paragraph 1. If the wording of paragraph 1 was to be retained as it stood, it would be more accurate to refer, in paragraph 2, to an "exception". Mr. Ago had, moreover, agreed that the Drafting Committee might consider the text from that point of view. The same paragraph should also contain a provision on the burden to be borne by the injured State, the purpose being, once again, to attenuate the absolute nature of the rule.

22. He supported the text sub-paragraph 3 (*a*), but wondered whether it was desirable to retain in sub-paragraph 3 (*b*) such absolute wording as that proposed by Mr. Ago, who had not cited among the examples included in the report any of the dramatic situations in which some States had actually found themselves. He had in mind, in particular, the case of the Danubian Empire, which had been bound to Germany by a convention dating from before the First World War and, despite strong domestic pressure as from 1916 onwards, had refused to plead necessity in order to free itself of its obligations; the fact that it had kept its word had led to its downfall. Another example was the case of the Kingdom of Italy, which had been linked to Germany and Japan during the Second World War by a convention which had not provided for state of necessity; yet, in 1943, the Fascist Grand Council had decided to depose Mussolini and to change sides. In his opinion, those examples militated in favour of the inclusion of less absolute wording in sub-paragraph 3 (*b*).

The meeting rose at 12.35 p.m.

1617th MEETING

Monday, 23 June 1980, at 3.15 p.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.

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 33 (State of necessity)[1] (*continued*)

1. Mr. YANKOV said that he agreed with Mr. Ago's analysis of the main constituent elements of the concept of state of necessity, namely, the intentional aspect, the innocence of the injured State, and the relationship with other circumstances precluding wrongfulness. He had been particularly impressed by the analysis of the exceptional nature of the "excuse of necessity". In that connexion, he noted that the interest of a State which was at stake must be "of exceptional importance to the State seeking to assert it" (A/CN.4/318/Add.5–7, para. 12); and, further, that the concept of state of necessity was not necessarily linked to the existence of the State, since an erroneous identification of that concept with the concept of self-preservation might "create a false picture of the question" (*ibid*). It seemed to him, however, that the requirement that the state of necessity must be of an exceptional nature was partly a subjective condition, for it was extremely difficult to detect any objective criterion. In his view, that point deserved further consideration.

2. In referring to the interest of the State which would call into play a plea of necessity, Mr. Ago had normally used the term "essential interest". There again, it was difficult to find the legal yardstick by which that interest could be determined. Clearly it had to be, as provided for in draft article 33, "comparable or superior to the interest which it was intended to safeguard", but the same question involving a subjective judgement arose in any given circumstances. For example, in certain areas of the law on the protection of the environment, different values had been found to obtain depending on the national, political, economic and other priorities of the State concerned. What was perhaps qualified as a superior ecological interest could none the less be challenged on the ground of the economic or political interest which, for certain countries, prevailed. As Mr. Ago had observed, it was relative rather than absolute values that were involved, but the basic problem of measuring that relativity remained. Mr. Ago's reasoning was very convincing, but there was a missing link in the series of propositions, and that link would have to be supplied before the notion of an essential interest could be regarded as having a valid basis.

3. He endorsed the basic requirement that a state of necessity could only be invoked if an essential State interest was threatened by a grave and imminent peril. He also agreed that the situation "must be entirely beyond the control of the State whose interest is threatened" (*ibid.*, para. 13), and that the measures taken by the State must be "the only means available to it for averting the extremely grave and imminent peril which it fears" (*ibid.*, para. 14); in other words, it "must be impossible for the peril to be averted by any other means, even one which is much more onerous but which can be adopted without a breach of international obligations" (*ibid.*). Once again, subjective judgement would be paramount in determining whether the act in question was indeed entirely beyond the control of the State whose interest was threatened. In his view, therefore, there was no reliable basis on which that element could be accepted as part of the concept of necessity.

4. He agreed with the limitation on the concept of necessity referred to in paragraph 16 of the report, since the area involved was one in which evidence could be adduced. He also agreed with the limitation referred to in paragraph 17, since, while there might be difficulties in producing evidence, the area was one which afforded a greater degree of certainty and was less open to unilateral interpretation.

5. A further limitation to the concept of necessity was provided by the rules of *jus cogens*. In that connexion, he welcomed Mr. Ago's reference to the prohibition of the use of force against the territorial integrity and political independence of a State and to the prohibition of acts of aggression. He considered, however, that other peremptory rules of international law recognized by the international community as norms from which no derogation could be permitted should be treated on the same footing. He would be grateful for Mr. Ago's views on that point. For instance, should the rule *pacta sunt servanda* apply, which was laid down in article 26 of the Vienna Convention,[2] or the rule laid down in article 27 of the same Convention, whereby the internal law of a State could not be invoked as justification for the failure of that State to perform its obligations under a treaty? His own view was that in such cases the treaty obligation would prevail and no state of necessity could be invoked.

6. In the light of those limitations, it seemed to him that the concept of state of necessity would operate, first, with regard to financial obligations, secondly, with respect to obligations relating to the protection of the environment and, thirdly, possibly in the case of obligations relating to international communications and other technical areas of international co-operation. For example, if a State was threatened by the spread of a cholera epidemic, the international health regulations of WHO would apply. Those regulations provided that a neighbouring State could introduce certain restrictions but could not close its frontiers or prevent the normal operation of transport and communications. If the neighbouring State, considering that its interests were comparable or even superior to those of the first State, did not comply with its obligations, it would invoke the state of necessity and the relative importance of the two interests would be weighed, with the result that the responsibility of the State which had closed its borders in order to prevent the spread of cholera would be precluded. Such a case had, in fact, been referred to arbitration.

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

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

7. On balance, therefore, it seemed to him that state of necessity was a vulnerable concept, first, because of the possible confusion with other circumstances precluding wrongfulness and, secondly, because of the dubious parameters of the concept, which relied more on subjective judgement than on objective criteria. Subjective judgement was the backdoor through which unjustified breaches of international obligations could enter. Mr. Ago had indeed quite rightly expressed concern on that score. But there remained a serious possibility that the concept of state of necessity would have an adverse impact on the stability of the international legal order. Accordingly, it was right to say that a State claiming to be released from an international obligation, on the ground that it had an interest which it unilaterally averred to be "essential" must inevitably "suffer a rebuff, lest the entire system of international legal relations should be annihilated" (*ibid.*, para. 11).

8. The concept of state of necessity would, moreover, inevitably widen the area of disputes, particularly in times when the world financial situation was volatile, and it would also exacerbate the conflict between State interests and subjective rights as recognized under international law; the question of ecological considerations and national priorities was a case in point.

9. From the discussion, he noted that there was a trend which favoured caution. That being so, another approach might be to confine the circumstances precluding wrongfulness to concepts which were based either on objective criteria or on a standard of sufficient evidence. His own inclination was to adopt a cautious approach at that stage and to include in the commentary a passage to the effect that the concept of state of necessity was applicable only to the question of the degree of international responsibility and to circumstances mitigating rather than precluding that responsibility. He further considered that the matter should be referred to Governments, on the basis of whose comments the Commission could then endeavour to find a solution. The concept of state of necessity as outlined by Mr. Ago was both tenable and logical, but was it viable?

10. Mr. JAGOTA noted that, in his report, Mr. Ago had explained that the controversial nature of the concept of state of necessity was due to the fact that many legal writers had been unable to agree on the basis for such a plea or had been concerned at the possibility of its continued abuse. Mr. Ago had, however, pointed out that, in practice, any concept was open to abuse. Even though they fully realized that many thieves went unpunished, States retained an internal law of theft, because they realized that such a law was necessary and useful to society. By the same token, the concept of state of necessity should be considered on its merits, regardless of the abuse to which it might give rise. Mr. Ago had suggested that the question of abuse could perhaps be dealt with when the concept and its constituent elements were defined. Mr. Ago had also pointed out that most cases of abuse had occurred in connexion with the use of force against another State's territory—particularly after the Second World War, since when aggressive war had become an international crime under *jus cogens*. Since rules of *jus cogens* were to be excluded from the operation of the concept of necessity, the mischief inherent in the doctrine of necessity had, in effect, been removed.

11. One point to be decided by the Commission was whether to use the term "necessity", "state of necessity" or some other term. It was quite clear that there was a difference between "necessity" and "state of necessity", just as there was between "war" and "state of war", and the Commission should therefore mark its preference. The terminology used in draft article 33 would also have to be standardized.

12. Mr. Ago had said that a state of necessity was not a right, but a factual situation precluding wrongfulness. Consequently, the Commission should consider the concept under that heading rather than under the heading of a right which flowed from international law. He had likewise said that the concept must be pleaded and proved by the State which invoked it, to the satisfaction of those called upon to determine whether or not the plea was justified.

13. So far as the substantive aspects of the concept were concerned, Mr. Ago had explained that it was designed to protect an exceptional or essential State interest, as opposed to any interest regulated by treaty, and his report cited a number of examples to indicate the type of case in which a plea of necessity could be invoked. However, in view of the subjective elements involved in the concept, there was a danger that a plea of necessity might suffer the same fate as a plea of vital interest, and it was therefore necessary to determine the difference between a vital and an essential interest, and whether the subjective element of the latter should in fact be retained. His own initial impression had been that Mr. Ago would soften the subjective element by referring to the other elements surrounding the concept, which would be objective in nature. Those objective elements would in turn affect the restrictive conditions imposed on the operation of the concept of necessity.

14. What were those conditions? The first was that the essential interest must be threatened by a grave and imminent peril, and the second that the State must have exhausted all possible remedies, so that it had no other choice but to act as it did. The concept was, however, further refined in relation to countermeasures. If a State was injured as a result of another State's breach of its international obligation and that other State invoked a plea of necessity, the former State was an innocent State: any damage done to the innocent State must be less or comparatively less than the damage that would have been caused to the State invoking necessity. Implicit in that analysis was the recognition that the innocent State might be able to claim compensation—depending on the facts of the case—for the damage it had suffered as a result of the

justifiable act of another State: therein lay the difference between countermeasures and necessity. The question of compensation was not, however, expressly referred to in draft article 33. Possibly, therefore, the draft article should include a cross-reference to mark the distinction between countermeasures and necessity—or some reference to the matter should be embodied in Part 2 of the topic.

15. The report dealt with two basic exceptions to the concept of necessity, the first of which related to *jus cogens* and the second to treaties under which necessity could not be invoked, either expressly or by implication. So far as the first of those exceptions was concerned, Mr. Ago, referring to Article 2 (4) of the Charter of the United Nations, had posed the question whether all uses of force, including the threat of force, were aggressive, but had also pointed out that the Commission was not competent to interpret the Charter. The Commission was, however, expected to pronounce on certain matters, for example, whether the use of force which was less than aggressive against another State was permitted. If it was permitted, the question of necessity did not arise; but if it was prohibited, the question was whether that prohibition could be extinguished by a plea of necessity. The report, which did not refer to that question, could perhaps have been more specific in its treatment of the exception.

16. The treatment of the second exception to the concept of necessity—that based on treaty provisions—was, on the other hand, excellent, and Mr. Ago's analysis of treaty provisions and practice provided a valuable indication of the way in which certain treaties could be modified or suspended in times of emergency. Thus, a treaty could provide expressly for a variation of its terms on specific grounds. Such a provision could be cast in positive terms, to the effect that a state of necessity could be invoked in regard to certain articles, the operation of the concept then being excluded by implication in the case of the other articles, or, conversely, in negative terms.

17. Paragraph 80 of the report seemed to contain a somewhat categorical statement, and he was particularly doubtful about the last sentence. He was, however, prepared to accept the statement subject to any further comments he might wish to make after he had studied the report more fully. He was also prepared to agree to draft article 33, subject to the restrictions and conditions outlined by Mr. Ago.

18. With regard to the text of draft article 33, he said that an effort should be made to standardize the terms used as far as possible. He wondered why, in paragraphs 2 and 3, the word "necessity" was placed in quotation marks, whereas in the title, it was not. He suggested that the words "or contributed to" should be inserted after the word "caused" in paragraph 2, in order to place the onus on the claimant State for using all its resources to avoid the occurrence of the situation of necessity. Similarly, the words "or of it did not take effective steps to avoid that grave or imminent peril" might also be added at the end of the paragraph. In sub-paragraph 3 (*a*), the words "and in particular if that act" might be replaced "or if the act relates to an international crime or".

19. Mr. BARBOZA associated himself with the comments made by Mr. Díaz González at the 1615th meeting regarding the Spanish version of the report, which contained a number of mistranslations.

20. In a report that was even more brilliant than the Commission had come to expect of him, Mr. Ago had set out a wealth of material that made it possible to decide whether or not the draft should include an article on state of necessity, a matter that was of great controversy because of the abuses that it had occasioned in the past. Like Mr. Ago, the Commission should take the necessary precautions not only to prevent similar abuses from occurring in the future but also to pinpoint the nature of the opposition to the concept of necessity and to restrict its scope in law.

21. Mr. Ago had engaged in a threefold process of refinement of the concept, firstly by considering whether it had any connexion with natural law. It was true that, in the past, cases of acts where unfair advantage had been taken of weaker States had often involved a very general plea under natural law, with no reference to the restrictions thereon or to the exceptions to those restrictions. His rejection of any link with natural law had led Mr. Ago to consider whether there was a customary rule that embodied the principle of state of necessity, since the existence of a relevant customary rule placed the matter under the heading of positive law. Secondly, in paragraphs 7, 9 and 10 of the report Mr. Ago had then discussed and rejected the idea that state of necessity constituted a subjective right and, thirdly, he had gone on to express opposition to the idea of a right of self-preservation. Quite properly, Mr. Ago preferred to speak of "essential interest", an approach that was more consistent with the philosophy underlying the concept of state of necessity and was more comprehensive in that it took account of all instances in which a state of necessity might arise.

22. The report did not offer any definition of "essential interest", but paragraph 2 afforded useful examples, such as a grave danger to the existence of the State itself, its political or economical survival, the continued functioning of its essential services, the maintenance of internal peace, or the preservation of the environment of its territory, etc. Admittedly, the view had been expressed that too great an element of subjectiveness was involved in comparing State interests, but for his own part he believed that, like *force majeure* or any other concept in international law, the assessment of a state of necessity inevitably entailed some degree of subjectiveness. Obviously, it would not be possible for the Commission to establish some kind of scale of interests, yet no great difficulties should

arise in determining which interest was higher in a specific case.

23. On the question of whether or not there was a rule of positive law, and more particularly a customary rule, embodying the principle of state of necessity, it was evident that learned opinion was less divided than might have been supposed. Some writers adopted a negative position by rejecting the principle but none the less recognizing its application in certain areas of international law. Other writers took a positive position and affirmed the existence of the principle but specified very restrictive conditions in order to prevent abuses from being committed. Hence, it could be seen that there was some common ground. Much more important, however, was the fact that the practice of States did acknowledge the principle of necessity. Particularly valuable in that regard were the learned opinions of judges, arbitrators and Government agents, opinions from which it was apparent that the actual principle of necessity had never been denied. They had simply held that the requisite conditions for the validity of a plea of necessity had not been met in a particular case. Again, most important of all, the cases cited in the report were more significant than doctrine alone because they bore witness to the practice of States. In his view, an appropriate rule did exist in customary international law and it was not only reflected but partly developed in draft article 33, which had a logical place in the structure of the draft.

24. Mr. Šahović (1615th meeting) had correctly pointed out that chapter V of the draft enumerated the exceptions to draft article 33, and more especially to paragraph 3, subparagraph (*b*) thereof. At its thirty-first session, the Commission had, after wide-ranging discussion, strictly limited the concept of *force majeure* to cases of material impossibility—in other words, to cases in which the obligation could not be performed because of some irresistible external force or an unforeseeable event. However, other situations had been described as involving a relative impossibility to perform the obligation, and they had at one time been covered both in learned opinion and in State practice by the concept of *force majeure*. Nevertheless, at that session, the Commission had agreed to an article on a particular instance of necessity, namely, the necessity of an organ of the State provided for in article 32, concerning distress.

25. Article 33 therefore filled a gap in the draft and acted as a counterpart to article 32. Since the Commission had accepted the principle of necessity in the case of an organ of the State, there was no reason for it to reject the principle of necessity in the case of the State itself. Furthermore, the provisions of article 33 lent flexibility to the rules on State responsibility and avoided the kind of situation exemplified by the adage *summum jus, summa injuria*. The principle of necessity was, so far as he was aware, one that existed in all legal systems. Consequently, it had to be incorporated in the draft, subject to the limits and conditions wisely indicated by Mr. Ago, for they would prevent any abuse of the plea of necessity in the future.

26. The obvious but none the less essential point of departure in considering article 33 was the premise that the obligation had already been breached and could not be performed. What was done could not be undone. Consequently, a new legal relationship arose between the defaulting State and the State towards which the obligation had existed, something that was readily apparent in obligations *not to do*. To take the case of the hunting of fur-seals in the Bering Sea (see A/CN.4/318/Add.5–7, para. 34), for example, if the Government of the United States of America had sent vessels to prevent operations by the Canadian sealers, the obligation would have been breached, and the only course would have been to establish a new legal relationship between the United States Government and the Canadian Government in which the obligation of the United States Government would have been to make reparations. However, Canada could have taken countermeasures—for instance, by blocking United States funds. On the other hand, if the United States Government had claimed and justified a state of necessity, the obligation would have been breached, but the conduct on the part of the United States would have been lawful and any countermeasure on the part of the Canadian Government would have been wrongful. If any damage had been caused, there would have been an obligation to make reparation, but that matter came under the topic of international liability for injurious consequences arising out of acts not prohibited by international law.

27. The same effects were to be seen, although perhaps less clearly, in the case of obligations *to do*. If State A failed to pay, by a specific date, a sum owed to State B, it breached its obligation, because the time element was an essential aspect of the obligation. A court could order *restitutio in integrum*, but if the debtor State justified a plea of necessity, the court might well specify various methods of paying the sum after the state of necessity had ended. Clearly, the consequences of a breach of an obligation depended on whether or not a state of necessity could be shown to have existed. The purpose of draft article 33, therefore, was not to mitigate the responsibility of the State but to preclude wrongfulness, although responsibility might subsist for any damage caused by lawful acts.

28. In that respect, unlike other members of the Commission, he considered that financial obligations represented one of the areas in which a valid plea of necessity could be made. As Mr. Ago had shown, in their replies to the request for information made by the Preparatory Committee for the Conference for the Codification of International Law (The Hague, 1930), a number of Governments had maintained that a State could not deprive its people of essential services in order to perform financial obligations on time. Indeed, under international law non-compliance with financial

obligations had long been ruled out as grounds for armed intervention by creditor States. As a result of coercion used against Venezuela by creditor States, in 1902 Luis María Drago, the Argentine Foreign Minister, had expounded the doctrine that the debts of a sovereign State could not be collected by armed force, a view which he had again expressed at the Second International Peace Conference (The Hague, 1907) and which had led, at the initiative of the United States, to the conclusion of a new convention stipulating that armed force could not be used for the collection of contractual debts, unless the debtor State rejected arbitration or failed to comply with the arbitral award.

29. Lastly, the assertion that urgency was a requisite for establishing the existence of a state of necessity had no basis in the learned opinion on the topic. In that respect, it was important to remember that situations might arise in which a State could not perform its obligation for many reasons other than mere lack of time.

30. As to the text of article 33, the first and second sentences of paragraph 1 should form separate paragraphs, since the first sentence set forth the general principle of state of necessity, whereas the second sentence placed qualifications on the principle. It was one thing to enunciate a principle and another to speak of the cases in which the principle did not apply. In addition, it might be desirable to express the principle in a negative form, in order to meet the concerns of those who wished to put a restrictive interpretation on the concept of state of necessity. Furthermore, paragraph 2 referred to "the occurrence of the situation", but it might well be better to follow the wording of articles 31 and 32, which spoke of the State which "has contributed" to the occurrence of the situation. Such a formulation would cover cases in which States failed to take steps to prevent the particular situation from arising.

31. Mr. TSURUOKA paid a tribute to Mr. Ago's devotion to the cause of codification and the progressive development of international law.

32. Like most of the members of the Commission who had spoken, he approved the main lines of draft article 33. He was in favour of retaining the article on state of necessity, for in the light of the practice of States and of the general structure of the draft, such an article, which would supplement preceding provisions, had to be included. However, he shared the concern of those members who had said that the concept of state of necessity was somewhat vague and open to abuse. Accordingly the areas where it was admissible should be carefully distinguished from those where it was not admissible.

33. As other speakers had said, Mr. Ago had made it clear that the concept of state of necessity operated only exceptionally in international law. If possible, it should become even more of an exception.

34. Some members of the Commission had taken the view that the subjective element should be entirely removed from the definition of cases in which the concept might be applied—which he felt was in itself evidence of a certain subjectivity. Accordingly, if it was not possible to eliminate that element of subjectivity altogether, the Commission should include in its commentary a detailed analysis of the concept, together with a wealth of examples from practice of cases of the application and of the exclusion of the concept, so that States would in that way have criteria enabling them to avoid abuse. There should also be a procedure for recourse to the judgement of a third party in order to avoid or correct any misapplication of the concept.

35. So far as the form of draft article 33 was concerned, he hoped that the language would be brought into line with that of articles 31 and 32 and, in particular, that the wording of article 33, paragraph 2, would be brought into line with that of article 31, paragraph 2, and article 32, paragraph 2, both in English and in French.

36. Lastly, he noted that the question of compensation caused some concern to several members of the Commission. He believed it indispensable that the innocent State should be indemnified, and the best solution would be to add to draft article 33 a paragraph 4 on the following lines:

> "The preclusion of wrongfulness by virtue of paragraph 1 does not imply the preclusion of the obligation to make good the damage occasioned by the act of necessity".

The meeting rose at 5.55 p.m.

1618th MEETING

Tuesday, 24 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.

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*)