

## X

### SELF-DEFENCE, NECESSITY AND RESCISSION

(a) There are some who consider the suppression of insurrections as a legitimate case of defense, and maintain that by reason thereof, the State is exempt from responsibility for the damages caused, provided that these do not exceed the limits of actual necessity. This is the opinion stated by the Government of South Africa in its reply to the inquiry of the Preparatory Committee.<sup>1</sup> However, this view is not acceptable. There are various cases in which the State is free from responsibility, and these are: first, self-defense understood in its strict meaning; second, reprisals; and third, cases of necessity. It is considered that damages caused under any of these circumstances do not entail in every case the obligation to indemnify. Self-defense is both a right and a duty of all persons and communities. It implies an undue and unjust assault, either actual or threatened, against which immediate reaction is imperative. In its international aspect the doctrine of self-defense is not, as in the penal jurisprudence, a rule of law with clear and well defined limitations. Upon being exercised, its limits are liable to be exceeded, and its consideration by international courts will always be a very delicate matter. Nevertheless, the doctrine is essential. It cannot be dispensed with as a reason for justification when a State has been forced to prevent or repel an attack without the necessary time to curb it in the usual way. However, this is not the case either with reprisals or the so-called "cases of necessity". Reprisals are the remaining traces of an utterly disorganized community of states. They are not an unavoidable reaction and should be abolished. However, as they could not be banished outright, it would be advisable to restrict them, by subjecting them, when authorized, to certain conditions of tact and discretion, such as have been communicated by the governments of Denmark, Great Britain and Switzerland.<sup>2</sup> In dealing with responsibility, however, the question of reprisals cannot be directly considered. But if severe measures should be provided as regards responsibility arising out of reprisals, there is no doubt but that this would have a

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<sup>1</sup> Point XI of the Inquiry of the Preparatory Committee.

<sup>2</sup> Inquiry of the Preparatory Committee.