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Summary record of the 725th meeting

Topic:
Special missions

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of their functions, always be treated as diplomatic missions but must, in some cases, be treated as consular missions." When speaking at the previous session, he had not had in mind any separate recognition for special missions which fulfilled quasi-consular functions. He had not wished to suggest that there should be two sets of regulations for special missions, to parallel the two Vienna conventions. His purpose had merely been to point out that, for the purpose of drafting the substantive provisions on special missions, the Commission could not only draw inspiration from the Convention on Diplomatic Relations, but could also bear in mind the contents of the Convention on Consular Relations.

65. Attention had been very aptly directed by Mr. Tunkin to the fourth paragraph of the preamble to the 1961 Vienna Convention which stated that the purpose of diplomatic privileges and immunities was " to ensure the efficient performance of the functions of diplomatic missions as representing States ".[13] It was interesting to compare that language with the words used in the corresponding preambular paragraph of the 1963 Vienna Convention: " to ensure the efficient performance of functions by consular posts on behalf of their respective States ".[14] There was clearly a difference between the members of a diplomatic mission which represented the State and officials who acted on behalf of their State. An examination of the various types of special mission included in the Special Rapporteur's list in paragraph 86 of his report showed that many of them could properly be said to act " on behalf of " their State rather than as " representing " it. However, that distinction would not necessarily have a bearing on the question of privileges and immunities. His own view was that the legal regulation of privileges and immunities should follow a single pattern, and draw a distinction between the different categories of staff of a mission, along the lines of both the Vienna conventions.

66. Mr. BARTOŠ, Special Rapporteur, said he did not regard the functional theory as meaning that privileges and immunities should apply only to acts performed by international agents, but that such agents should be able to carry out their tasks in full liberty and under conditions safeguarding the prestige and dignity of the State they represented. For it was impossible to limit the acts of members of special missions to certain acts they performed in the exercise of their functions. The functional theory should accordingly be taken as a basis, but the representative character of special missions should also be taken into account to some extent.

67. Moreover, while it was true that there were many kinds of special mission, the decisive factor in his opinion was not the rank of the head of the mission, but the task assigned to the mission. The essential consideration was the full powers granted to agents representing a State. On that point, he had for the time being based his work on the Vienna Convention which had, with some exceptions, abolished the former distinctions between diplomatic staff of higher rank and subordinate administrative and technical staff of diplomatic missions. Thus special missions could be divided into several categories according to their functions and according to the functions of the various members of the same mission, but rank could not be taken as the criterion for doing so.

68. The debate had revealed certain weaknesses in his report and he would bear them in mind. With regard to the point which the Secretary to the Commission had rightly drawn attention to, he himself had also drawn certain conclusions from United Nations practice; that was a theoretical basis, but the practical object was to ensure that members of special missions were free to perform their functions.

The meeting rose at 12.55 p.m.

725th MEETING

Friday, 15 May 1964, at 10 a.m.

Chairman: Mr. Herbert W. BRIGGS

Special Missions
(A/CN.4/166)
(continued)

[Item 4 of the agenda]

1. The CHAIRMAN invited the Commission to continue consideration of item 4 of the agenda.

2. Mr. BARTOŠ, Special Rapporteur, said he would first put a preliminary question to the Commission, namely, whether the rules governing special missions should be rules of international comity or rules of law. In his opinion they should be rules of law. From that followed a second question: whether the draft should take the form of an additional protocol to the Vienna Convention on Diplomatic Relations or of a separate convention. The study he had just made had led him to the conclusion that the difference between special missions and resident diplomacy was too great for an additional protocol to be adequate. He was therefore in favour of drafting a separate instrument, to be linked to the Vienna Convention by a cross-reference, which would contain a body of residual rules but would leave States free to conclude bilateral agreements. The draft should not contain *jus cogens* rules, except perhaps a few broad substantive rules concerning, for instance, the need for a State's consent to receive a mission and the freedom of a mission to perform its functions.

[13] *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, Vol. II, p. 82.

[14] *United Nations Conference on Consular Relations, Official Records*, Vol. II, p. 175.

3. Mr. ROSENNE said that the two questions put to the Commission by the Special Rapporteur were closely linked. With regard to the second, in paragraph 9 of his report (A/CN.4/166), the Special Rapporteur quoted a passage from the Commission's report on its fifteenth session which showed that the draft articles could take the form of an additional protocol to the Vienna Convention of 1961, a separate convention, or some other appropriate document. Articles 20 and 23 of the Commission's Statute were relevant to the third possibility; however, the Special Rapporteur had not considered it.

4. In paragraph 28, the Special Rapporteur rejected the idea of an additional protocol, a conclusion with which he (Mr. Rosenne) fully agreed. The draft articles to be formulated by the Commission should be as complete and as self-contained as possible, although some reference to the 1961 Vienna Convention, particularly in the commentary, might be appropriate.

5. He doubted very much whether the form of a separate convention was appropriate. The Commission should consider the effects of the severance of diplomatic relations on the operation of a convention on special missions, bearing in mind that special missions were frequently sent to a receiving State with which the sending State did not have diplomatic relations, or with which diplomatic relations had been suspended.

6. Another point which deserved consideration was how a convention on special missions would operate where there was no recognition between the sending State and the receiving State. A case in point was that of the special mission sent by the Federal Republic of Germany to Israel to attend the eighteen-month trial of Eichmann. The Commission also should not overlook the situation that would arise if one of the States concerned was not a party to the proposed convention.

7. The Special Rapporteur's first question, relating to the nature of the draft articles, was connected with the question whether the matter was an appropriate one for regulation by a general multilateral treaty within the meaning of that term as defined in article 1 (c) of the Commission's draft articles on the law of treaties.[1]

8. He agreed that the draft articles on special missions could contain elements of *jus cogens* in the limited sense indicated by the Special Rapporteur, and provisions from which States would be able to depart at will; the latter should, in his view, be in the form of residual rules. The provisions of article 47, paragraph 2, of the Vienna Convention of 1961,[2] and article 73 of the Vienna Convention of 1963,[3] were hardly adequate in that respect. In fact, there existed a considerable number of bilateral treaty provisions on the subject of special missions and no clear pattern emerged from them with regard to the policy of States. There was a wide difference between what a State would ask for its own special missions and what it was prepared to grant to the special missions it received, varying with the circumstances of each particular case and with the relations between the two States at the time of the agreement to send and receive the mission. Such lack of uniformity could hardly be fortuitous and he thought that the formulation of a general code might create additional difficulties for States.

9. Nor was it sufficient to state that the rules to be formulated would be residual rules. The concept of a residual rule needed elucidation. It could be held that the residual rules applied where two States agreed to send and to receive a special mission, without agreeing on any details; it could also be held that the residual rules applied only in the absence of a contrary provision in the agreement between the parties. An example of such a provision was to be found in the agreement signed at Moscow on 13 November 1945 between Yugoslavia and the USSR, concerning the conditions of work of Soviet experts assigned to Yugoslavia.[4] Article 5 of that agreement read: " The assigned experts shall be entitled to import into Yugoslavia free of duty personal and household effects for private and professional use." Where there was a simple clause of that kind covering one particular point, the question would arise whether all the residual rules were excluded or only those relating to customs exemptions.

10. Another conception of residual rules was that of a set of rules made available to States for incorporation in their own agreements as desired.

11. The Commission should also bear in mind the problems to which a convention would give rise with regard to entry into force and the transformation of international obligations into provisions of domestic law. He therefore suggested that the draft articles should be submitted to governments and that the Commission should review them in the usual manner in the light of government comments with a view to adopting a text which would not be self-executing, but would need the agreement of States to bring it into effect on a bilateral basis.

12. Mr. TABIBI said that the two Vienna conventions dealt with matters on which there were well accepted usages. The topic of special missions presented greater difficulties, one of them being that it was related to a number of other topics, including relations between States and international organizations, international conferences, permanent diplomatic missions and representation at various levels.

13. Another difficulty was that members of special missions often represented their countries in other capacities as well. He himself was frequently instructed by his Government to perform a special mission on his way to or from an international conference at which he had acted as its representative.

14. He agreed with those members who thought that the question of visiting heads of State was outside the scope of the topic. Certain usages were emerging in the matter and could perhaps be codified at a later

[1] *Yearbook of the International Law Commission, 1962*, Vol. II, p. 161.

[2] *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, Vol. II, p. 87.

[3] *United Nations Conference on Consular Relations, Official Records*, Vol. II, p. 187.

[4] United Nations *Treaty Series*, Vol. 116, p. 146.

stage. For present purposes, however, it should be remembered that heads of State did not carry out negotiations; that was usually left to the specialists who accompanied them.

15. The Commission was called upon to complete diplomatic law by adding a new chapter to the two Vienna conventions, and it should therefore bear in mind the need to promote friendly relations between States; it should reconcile the need to protect members of special missions with the need to safeguard the rights of both the receiving and the sending State.

16. He had noted the interesting points raised by Mr. Rosenne with regard to the form which the draft articles should take. Personally, he doubted the wisdom of taking a decision at that stage; it should be postponed until the Commission had examined the draft articles on special missions and the report on relations between States and inter-governmental organizations.

17. The Commission should also consider whether it was necessary to appoint a separate rapporteur for the law governing international conferences.

18. Mr. VERDROSS said he thought the first of the Special Rapporteur's questions — whether the rules governing *ad hoc* or temporary diplomacy should be rules of law or rules of international comity—could be answered at once, for under its Statute the Commission was clearly expected to draft rules of law.

19. A separate convention seemed the better choice and the more logical one. Although there were certain analogies between temporary and resident diplomacy, they were not very precise, and special missions really formed a separate class.

20. As to the problems mentioned by Mr. Rosenne and Mr. Tabibi, it would be better to discuss them when the Commission came to consider the articles submitted by the Special Rapporteur.

21. Mr. YASSEEN thought the Commission should produce draft rules of law constituting the ordinary law of *ad hoc* diplomacy. Admittedly, it might be said that such law was special law, inasmuch as it was established largely by bilateral agreements; but that was no obstacle to its formulation, any more than the existence of many bilateral conventions on consular law had been an obstacle to the drafting of the Vienna Convention on Consular Relations. Of course, a State would still be free to derogate from the general convention constituting the ordinary law on the subject by means of bilateral agreements, so long as such derogations did not conflict with *jus cogens* rules.

22. With regard to the form to be adopted — an additional protocol or a convention — the more *ad hoc* diplomacy was studied the clearer it became that its similarity to resident diplomacy was much more apparent than real. The Commission should therefore prefer an instrument which was sufficiently independent to emphasize the separate character of *ad hoc* diplomacy, but did not preclude certain references, which might be useful, to the other relevant conventions, in particular the Vienna Convention on Diplomatic Relations.

23. Mr. CASTRÉN said that the question what form the Special Rapporteur should give to his draft was already settled, because the Commission was called on once again to draft a set of articles, in other words a body of rules of law, some of which might be rules of *jus dispositivum*. The Special Rapporteur himself had adopted that form in his report. Some speakers at the previous meeting had urged the desirability of using the terminology of the 1961 Vienna Convention on Diplomatic Relations as far as possible in the draft; that was precisely what the Special Rapporteur had tried to do, and in other respects too the articles in his draft were satisfactorily worded.

24. With regard to the relation that the new draft should bear to the 1961 Vienna Convention, he agreed with the Special Rapporteur that the Commission should not merely prepare an additional protocol to that Convention. He even thought it should draft a convention completely independent of the two Vienna conventions. Hence there would be no need to link the new convention to the previous ones by a cross-reference. It would be sufficient to refer to the 1961 Convention in the preamble.

25. In his section on general and final clauses, the Special Rapporteur had suggested adopting only two articles of the 1961 Convention. There was no reason why they should not be incorporated word for word in the future convention on special missions, just as the Vienna Convention on Consular Relations contained several provisions similar to provisions of the 1961 Convention. But it would be better to draft a separate convention, as that would make it easier to secure acceptance and would avoid difficulties if one of the Vienna conventions did not enter into force or became obsolete. As the Special Rapporteur had observed, however, it would be better to leave that question aside until the final clauses of the draft were considered.

26. Mr. de LUNA agreed with Mr. Castrén and Mr. Tabibi that it was only after concluding its consideration of the question that the Commission would be able to see how far the articles it had drafted involved inviolable rules of *jus cogens*, or rules of *jus dispositivum* which ranked as residual rules in cases where States had not provided otherwise by bilateral agreements.

27. It would also be well to await the conclusion of the debate before settling the problem raised by Mr. Rosenne, for one point was agreed: the Commission should draft a separate convention, and not an additional protocol to the Vienna Convention on Diplomatic Relations.

28. In so far as the choice was between a separate convention and a set of model rules to be followed in bilateral agreements, both formulas certainly had advantages; but the history of diplomatic relations had shown that the second had not produced satisfactory results. On the other hand, a separate convention, even though its ratification might cause some difficulties, had an authoritative status and might very well serve as a model. It offered the advantage of being binding on the States which had ratified it. Many conventions remained in force when diplomatic relations were

broken off or even during an armed conflict. It should be remembered that most missions were sent to a State without their status being fixed beforehand by bilateral agreement. A mere set of model rules would not be binding, whereas a convention would. Those were merely preliminary remarks, however; the Commission would be better able to weigh the advantages of one solution against the other at a later stage in its work.

29. Mr. ELIAS said that the history of the subject clearly showed that the Commission was called upon to draw up a body of legal rules; it might perhaps draft only a few, but they would be rules of law for the guidance of States. If necessary, some of the rules adopted might indicate whether it was permissible for States to contract out of them. The Commission would then be laying down the minimum provisions on the subject of special missions.

30. With regard to the second question put to the Commission by the Special Rapporteur, the historical antecedents suggested that the draft articles on special missions should constitute an independent set of rules, neither ancillary nor subsidiary to the Vienna conventions. Of course, as pointed out by the Special Rapporteur, appropriate cross-references would be made where necessary to one or other of the Vienna conventions. When work had been completed on the four parts of diplomatic law — diplomatic relations, consular relations, special missions and relations between States and inter-governmental organizations — the Commission might wish to consider whether to revise them in order to ensure that they formed a coherent body of diplomatic law.

31. The Commission should not defer decisions on too many questions; it was necessary to give guidance to the Special Rapporteur, who had included a number of tentative or alternative solutions in his draft articles.

32. Mr. TUNKIN said that the Special Rapporteur's first question was very easy to answer: the Commission was called upon to codify or to draft rules of international law.

33. The next two questions — the document's final form and its relation to the Vienna Convention — were closely linked, and the answer to them depended on the kind of articles the Commission drafted. If a great many of the rules were identical with those of the Vienna Convention on Diplomatic Relations, the Commission might consider drafting an additional protocol to that Convention; but if the rules on special missions differed from those of the Convention, that very fact should lead the Commission to seek another solution.

34. He therefore shared the opinion of the Special Rapporteur, which had been endorsed by several previous speakers, that the Commission should not take any decision at present. Draft articles should be prepared with the necessary references to the Vienna Convention on Diplomatic Relations. When it had examined the articles, the Commission would decide whether those references should be retained, or be replaced by appropriate clauses. It had been the Commission's consistent practice not to decide on the form of a document until it had examined the articles.

35. Sir Humphrey WALDOCK said that he largely shared Mr. Tunkin's views. The Commission must draft a set of legal rules on special missions. As States had considerable latitude in making their own arrangements in respect of diplomatic and consular relations as well as special missions, the Commission should follow the example of the two Vienna conferences and refrain from trying to determine which rules governing special missions had the character of *jus cogens*.

36. The decision on whether the rules should take the form of a protocol attached to the Vienna Convention on Diplomatic Relations, a separate convention or model rules, would be a political one; the Commission's own task was to prepare a self-contained draft that would enable States to understand the nature of the problem and how it should be regulated. The Special Rapporteur had already provided the Commission with an admirable document on which it could base its study, and the detailed examination of the individual articles would show where a reference back to the Vienna Convention on Diplomatic Relations would be appropriate and where different rules were required. The Commission had been engaged in a similar process during the final stages of examining its draft Convention on Consular Relations, when it had had to decide which provisions could be modelled on those of the Vienna Convention on Diplomatic Relations, which had already been adopted by States.

37. Mr. EL-ERIAN said he shared the opinion of those members who considered that an independent set of legal rules in the form of a draft convention was what was needed; that opinion was strengthened by the considerations set out in paragraph 28 of the Special Rapporteur's report. There was great diversity in the rules being applied and the Commission would be rendering a real service to the international community if it succeeded in introducing some measure of uniformity.

38. From personal experience he could confirm the justice of Mr. de Luna's argument in favour of a draft convention rather than a set of model rules. In his official capacity he had found himself relying on the provisions of the Vienna Convention on Diplomatic Relations as a standard, even though that instrument had not yet been ratified by his country and was not legally binding on it.

39. He agreed with Mr. Elias that the Commission ought not to defer taking a provisional decision to incorporate the draft articles in a draft convention, because such a decision would undoubtedly influence the course of the discussion and would give the Special Rapporteur the guidance he needed.

40. Mr. AMADO said he was in agreement with all those had spoken before him, and in particular with Mr. Yasseen. It was certainly out of courtesy, and also to show how barren was the ground he had had to clear, that the Special Rapporteur had appeared to hesitate between the intention to draft legal rules and the intention to stay within the bounds of the comity of nations. No one knew better than the Special Rapporteur that

the Commission's task was to draft rules of international law.

41. He was grateful to Mr. Rosenne for systematically seeking out the difficulties and pointing them out to the Commission. Like Mr. de Luna and Mr. El-Erian, he (Mr. Amado) thought that the Commission should decide at once whether to draft a protocol or a convention; in any case, its decision need not be more than provisional.

42. Sir Humphrey Waldock had rightly drawn attention to the question of the attitude to be adopted towards the existing conventions, especially the Vienna Convention on Diplomatic Relations. But the Commission should not let itself be obsessed with the Vienna Convention; its draft should be as independent as possible, though there would be no objection to cross-references.

43. "Temporary" diplomacy, to use the adjective suggested by Mr. Tunkin, had taken root and become a tree in the forest of law. The Commission should therefore formulate, on the basis of the text prepared by the Special Rapporteur, rules of law which were general, but nevertheless sufficiently precise.

44. Mr. TUNKIN said that the Commission was preparing a document which was separate and would in any case remain so; the only problem was to what extent it would be linked to the Vienna Convention. It was too early to decide whether it would take the form of a protocol or of a convention; the Commission should prepare draft articles which, for the time being, it could regard as being intended for a convention.

45. Sir Humphrey WALDOCK said he agreed with Mr. Tunkin; the Commission already had before it a draft convention prepared by the Special Rapporteur. In saying that the report constituted an admirable basis for the Commission to work on, he had meant to suggest that the Commission should provisionally approve of the subject being handled in that form on the lines indicated by the Special Rapporteur, and should defer consideration of the question how and to what extent the draft should be linked to the Vienna Convention on Diplomatic Relations until the articles had been discussed in detail.

46. Mr. ROSENNE said that the two previous speakers had helped to clarify the issue: any differences of view that had emerged were perhaps more superficial than real. In his opinion, the draft articles already provided a satisfactory basis for discussion and their formulation on first reading would not be greatly affected by the question what legal form they should ultimately be given: that could be decided later. The situation was not the same as in the case of the law of treaties, because the Vienna Convention already provided a framework for rules on special missions.

47. Mr. TSURUOKA said he approved of the method of work suggested by Mr. Tunkin and Sir Humphrey Waldock. The Commission could now tackle the heart of the problem; the time to decide on the form of the document would come later.

48. The CHAIRMAN,* speaking as a member of the Commission, said that his views accorded closely with those of Mr. Tunkin and Sir Humphrey Waldock.

49. Mr. BARTOŠ, Special Rapporteur, said that he was firmly opposed to the idea that the question under study pertained to the comity of nations. It was clear that, under its Statute, the Commission was required to formulate rules of law that were general in scope — rules of principle. He had raised the question of international comity because he knew from experience that States always tended to claim the right to privileges and immunities for members of their own special missions, but contested that right where the special missions of other States were concerned. The matter was already subject to law; in some cases the general principles of international law had been applied and in others rules based on analogy.

50. As to the choice between model rules and a draft convention, his opinion was that the Commission should draft an instrument — a convention. Although a broader view could be taken in model rules, they were seldom very successful. Moreover, a draft convention could be changed into model rules or a convention could be taken as a model. But the preparation of a draft convention demanded greater caution.

51. On the question whether the new rules would be rules of *jus cogens* or of *jus dispositivum* he did not entirely agree with Sir Humphrey Waldock. At the two Vienna conferences the aim had been to ensure that the rules embodied in the two new conventions could not be amended by bilateral agreements; only the broadening of the conventions had been authorized. The question had even been the subject of a formal vote during the drafting of the Convention on Consular Relations, when India and Yugoslavia had submitted an amendment, the effect of which had been to leave earlier conventions in force even if they conflicted with the Convention on Consular Relations.[5] Moreover, States were free only to broaden, not to restrict the application of the rules of the Convention. *Jus cogens* had been created, but not *jus cogens superveniens*. That was why he had inquired whether the Commission proposed to draft residual rules or strict rules. He had not reached a definite opinion on that point. The topic was a new one, not only in regard to practice, but also by reason of the nature of temporary missions. He had therefore proposed leaving some latitude to States.

52. He did not share Mr. Rosenne's pessimism — though it was, incidentally, most useful to the Commission. The question of the obligation to apply substantive rules of international law and that of the existence of relations between States were not closely related. For example, conventions relating to armed conflict had to be applied even where there were no diplomatic relations, and the Vienna Convention on Diplomatic Relations itself specified the duties of States

* Mr. Briggs.

[5] *United Nations Conference on Consular Relations, Official Records*, Vol. II, p. 64.

in the event of such a conflict — even those of States not parties to the conflict.[6]

53. It was a characteristic of international law that when universal rules on a matter existed, they were mandatory even for those who had not signed the relevant instruments. That was shown, for example, by the case-law of the Nuremberg trials. Mr. Rosenne had therefore been right in mentioning the case in which no relations existed; that was a delicate question linked with the recognition of governments. For example, at the time of the Evian negotiations, Switzerland had had to decide how to treat a special mission sent by a provisional government which had not been recognized by all States and which France, in particular, regarded as merely a political party or movement.

54. As Mr. Verdross had said, the Commission was doing pioneer work. It should endeavour to draft rules which would not be imposed on States, but would be acceptable to them as universal rules. Hence it could not confine itself to mere codification, but must undertake the progressive development of international law.

55. A last question, which had been touched on by Mr. Tunkin and Sir Humphrey Waldock, was that of linking the draft articles to the Vienna Convention on Diplomatic Relations. If, on completion of its examination, the Commission found many differences between its draft and the Convention the cross-references would be few and very cautious; but if, on the contrary, it found that the two instruments had many points in common, they might be more closely linked. The Commission's task was to draft an instrument which provided, for the problems of temporary missions, solutions in keeping with the nature of those missions.

The meeting rose at 12 noon.

726th MEETING

Tuesday, 19 May 1964, at 3 p.m.

Chairman: Mr. Roberto AGO

Law of Treaties
(A/CN.4/167)

[Item 3 of the agenda]

1. The CHAIRMAN invited the Commission to take up item 3 of the agenda.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the considerations which had guided him in preparing his third report (A/CN.4/167), covering the application, effects, revision and interpretation of treaties, were set out in the introduction.

3. The articles on revision were almost ready for circulation. When drafting them he had been keenly aware of their close connexion with the articles concerning the priority of conflicting provisions and their effect on third States.

4. He was doing his best to prepare some basic articles on interpretation, but owing to other commitments they were not yet ready. The subject was a vast and difficult one and he was anxious not to penetrate too deeply into the realm of logic and what might be described as the art of interpretation.

5. He urgently needed guidance from the Commission on how far he should deal with issues involving State responsibility, given the decisions already taken by the Commission about that topic, and on whether he should include provisions concerning the obligation on States to bring domestic legislation into line with treaty obligations. His own view was that the latter point would naturally be dealt with as part of the topic of State responsibility, since it was a general principle not confined to treaty obligations.

6. He also needed guidance on whether he should include provisions concerning the effect on the application of treaties of the suspension of diplomatic relations, which was not a matter pertaining exclusively to the law of treaties and might involve the Commission in a discussion of the consequences of the outbreak of hostilities and of non-recognition, which it was perhaps desirable to avoid.

7. The CHAIRMAN, speaking as a member of the Commission, said that the Special Rapporteur had been quite right to leave aside all questions arising out of State responsibility proper, in other words, out of the breach of a treaty; for while the law of treaties comprised everything relating to the treaty itself — its formation, application and effects — the question of breach came within the sphere of State responsibility.

8. The Special Rapporteur had raised another problem: that of the obligation to bring national law into line with the rule of international law followed in the treaty. It had been said that that obligation might come within the sphere of responsibility, but surely it derived rather from the very existence of the rule of international law. Failure to bring national law into line with international law constituted a breach of the obligation. He did not think that question came within the scope of the law of treaties, or for that matter within the scope of State responsibility. He was more inclined to regard it as an aspect of the more general problem of bringing national law into line with the requirements of international law. The problem raised by the Special Rapporteur should be carefully considered, for it was of great importance.

9. Sir Humphrey WALDOCK, Special Rapporteur, said that he had not envisaged that the report on State responsibility would be exclusively concerned with violation of rights and reparation. Presumably it would also cover such points as the justification put forward

[6] *United Nations Conferenc on Diplomatic Intercourse and Immunities, Official Records,* Vol. II, p. 87, articles 44-46.