

**REPORT  
OF THE  
COMMITTEE ON RELATIONS  
WITH THE  
HOST COUNTRY**

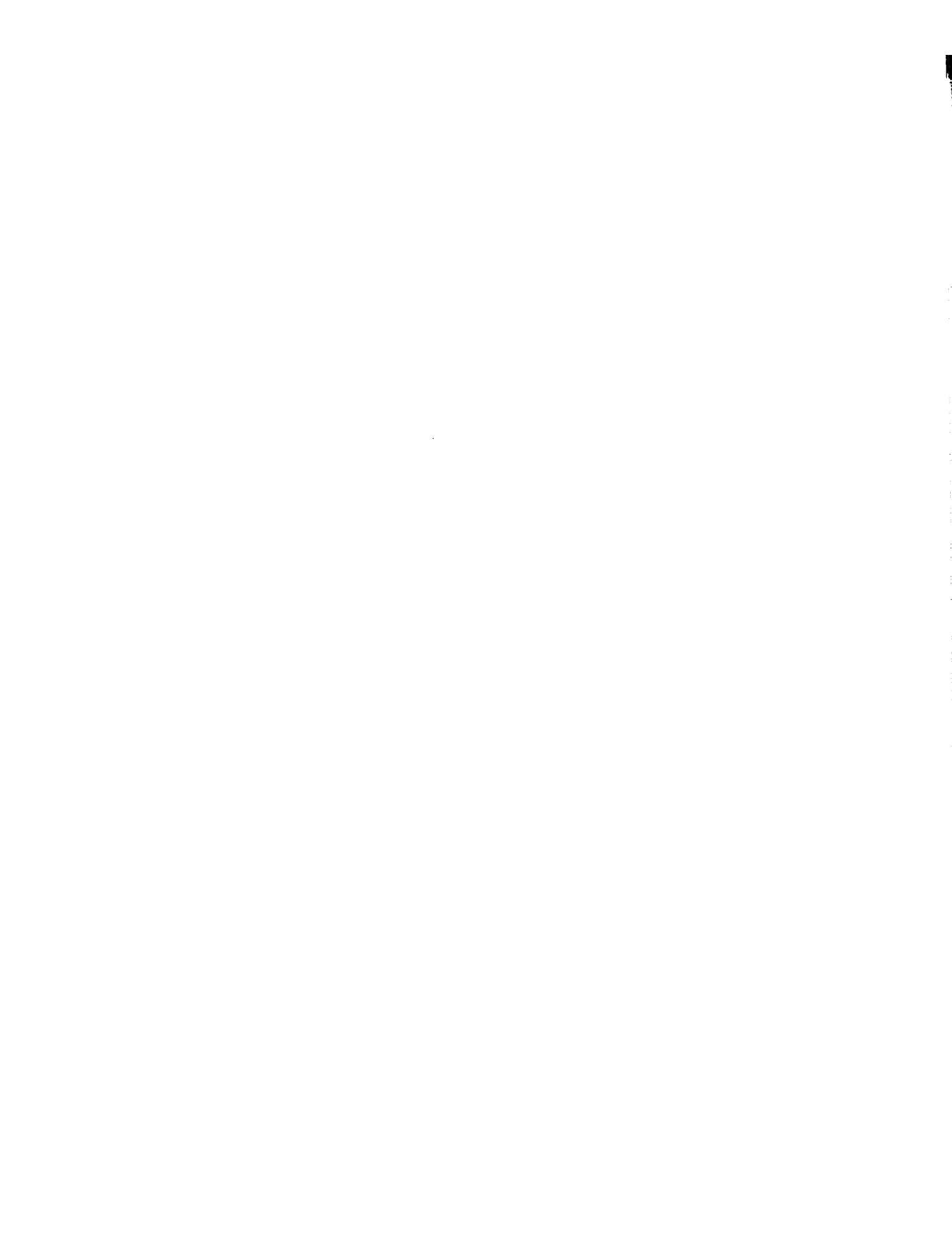
**GENERAL ASSEMBLY**

OFFICIAL RECORDS: THIRTY-SEVENTH SESSION

SUPPLEMENT No. 26 (A/37/26)



**UNITED NATIONS**



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New York, 1983

**NOTE**

**Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.**

[10 January 1982]

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## I. INTRODUCTION

1. By its resolution 2819 (XXVI) of 15 December 1971, the General Assembly established the Committee on Relations with the Host Country. At its thirty-sixth session, the General Assembly decided, by resolution 36/115 of 10 December 1981, that the Committee should continue its work, in conformity with resolution 2819 (XXVI), and decided to include in the provisional agenda of its thirty-seventh session the item entitled "Report of the Committee on Relations with the Host Country". The Committee's recommendations are contained in section IV below.

II. MEMBERSHIP, TERMS OF REFERENCE AND ORGANIZATION  
OF THE WORK OF THE COMMITTEE

2. The Committee's membership in 1982 was as follows:

Bulgaria	Ivory Coast
Canada	Mali
China	Senegal
Costa Rica	Spain
Cyprus	Union of Soviet Socialist Republics
France	United Kingdom of Great Britain and Northern Ireland
Honduras	
Iraq	United States of America

3. Mr. A. V. Mavrommatis (Cyprus) continued to serve as Chairman until the Committee's first meeting of the year, which was the 90th meeting, on 11 March 1982; at that meeting, the Committee elected by acclamation Mr. Constantine Moushoutas (Cyprus) as Chairman. Mrs. E. Castro de Barish (Costa Rica) served as Rapporteur throughout 1982 and the representatives of Bulgaria, Canada and the Ivory Coast continued to serve as Vice-Chairmen.

4. At its 91st meeting, on 3 May 1982, the Committee adopted a revised list of topics, which reads as follows:

1. Question of the security of missions and the safety of their personnel.
2. Consideration of, and recommendations on, issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, including:
  - (a) Entry visas issued by the host country;
  - (b) Acceleration of immigration and customs procedures;
  - (c) Exemption from taxes;
  - (d) Possibility of establishing a commissary at United Nations Headquarters to assist diplomatic personnel and staff.
3. Responsibilities of permanent missions to the United Nations and their personnel, in particular the problem of claims of financial indebtedness and procedures to be followed with a view to resolving the issues relating thereto.
4. Housing for diplomatic personnel and for Secretariat staff.
5. Question of privileges and immunities:
  - (a) Comparative study of privileges and immunities;
  - (b) Convention on the Privileges and Immunities of the United Nations and other relevant instruments.



6. Host country activities: activities to assist members of the United Nations community.
7. Transportation: use of motor vehicles, parking and related matters.
8. Insurance, education and health.
9. Public relations of the United Nations community in the host city and the question of encouraging the mass media to publicize the functions and status of permanent missions to the United Nations.
10. Consideration and adoption of the Committee's report to the General Assembly.

5. During the period under review, the Committee held five meetings (90th to 94th). At its 91st meeting, the Committee decided to hold at least six meetings per year.

6. At the 90th meeting of the Committee, the role of its Bureau was confirmed as the body designated to take up matters that had formerly been the concern of the Working Group. The Working Group had been charged with the consideration of all topics before the Committee with the exception of the question of the security of missions and the safety of their personnel, which the Committee had kept under permanent review in plenary meeting. It was also decided that the proposals or recommendations made by the Bureau would be transmitted to the Committee for its adoption and consequently reflected in the latter's report. The Bureau consists of the Chairman, the Rapporteur and the three Vice-Chairmen, and of a representative of the host country who attends Bureau meetings ex officio. During the period under review, the Bureau held 13 meetings. Six of these meetings were devoted to the task of revising the list of topics, which had remained unchanged since 1975 although work had been completed on some items and others were no longer of interest to Governments. In presenting an up-to-date list the Bureau also considered the urgency and importance of some items and listed them accordingly.

### III. TOPICS DEALT WITH BY THE COMMITTEE

#### A. Question of the security of missions and the safety of their personnel

##### 1. Communications received

7. In its note verbale dated 2 November 1982 (A/AC.154/230), the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations stated that, during the period from 15 to 29 October, Zionist hooligans comprising about 3,000 people assembled daily in the vicinity of the Mission. Attempts were made to break through the barriers around the entrance to the Mission and threats and insults were yelled at Soviet citizens. In this connection, the USSR Mission drew attention to the ongoing telephone calls threatening to blow up the Mission building and to place bombs under the diplomatic cars. The note stated that as many as 270 telephone calls were received a day. The USSR Mission lodged a protest and demanded that the host country take the necessary steps to establish normal conditions for the work of the Mission and stressed the need for rigorous observance by the United States of the elementary norms of international law.

8. By a note verbale dated 26 November 1982 (A/AC.154/233), the United States Mission informed the USSR Mission that they had requested a police report concerning the alleged hostile actions directed at the USSR Mission during the month of October 1982. According to the police report, student groups of not more than 50 persons had conducted a daily vigil in the vicinity of the Mission. Only once had the demonstrators moved into the protected area around the Mission premises but they had been forcibly removed. An agreement with the demonstrators ensured against a recurrence of such incidents. A police detail was always present to maintain the peace in the Mission area. The United States Mission further regretted the inconvenience caused by numerous threatening telephone calls. Those illegal and irresponsible actions were being investigated by the competent police authorities. The note added, however, that assistance in the investigation by placing a "trap" on the Soviet Mission telephone had been rejected by the Soviet Mission. The note stated further that the host country had met its obligations under the norms of international law, that throughout the demonstrations Soviet Mission personnel were not prevented from entering or leaving their building, and that, during the period under review, no physical attack against Mission personnel or damage to Mission property had taken place. The United States Mission assured the USSR Mission that the host country would continue to take the necessary measures to safeguard Soviet personnel and properties.

9. In a letter dated 30 November 1982 addressed to the Chairman of the Committee (A/AC.154/234), the United States Mission drew attention to its efforts to provide maximum protection for the diplomatic community. Among the results was the establishment of a Terrorism Task Force in 1980, which succeeded in arresting Croatian terrorists, FALN terrorists, and anti-Castro Cuban terrorists known as Omega-7. Fixed police posts had been established outside missions where the threat potential was greatest, others were being patrolled by police cars. Concerning the attempted assassination of the Permanent Representative of Cuba, a two-year investigation, which cost \$2 million, had resulted in the arrest of members of a Cuban terrorist organization who had been charged with the crime. That showed the determination and commitment of the United States Government against persons responsible for terrorist acts. The letter also stated that the United States

fully recognized its duties and responsibilities with respect to the protection of foreign diplomats in New York City and was committed to carrying out its obligations.

2. Consideration of the general question of security

10. At the 90th meeting of the Committee, the representative of the USSR drew the attention of the Committee to the many hostile acts against missions and their personnel. Those hostile acts were mainly directed against representatives of socialist countries and other progressive States. Referring to the recommendations of the Committee, which the General Assembly had endorsed last year while condemning terrorist acts against missions and their personnel, he felt that the host country had not taken all measures to ensure the safety of diplomatic personnel and to halt acts of terrorism and hostility. Despite the assurances given, the host country had not implemented those recommendations as could be seen from the attempt to blow up a Soviet Mission car and other incidents his mission had encountered last year. He said that diplomats in Vienna and Geneva had not experienced the kind of problems as they existed in New York. He stated that study on the question of how host countries in Europe would discharge their responsibilities in that respect would be useful. The representative of the host country stated that he welcomed any study dealing with the security situation in other host countries. He felt that the record of mission security in New York was quite good, taking into account the climate of violence and terrorism occurring all over the world. The Committee decided, on the initiative of the USSR representative, to request the Secretariat to prepare a comparative study on the security of missions in New York, Geneva and Vienna. By this request the Committee members demonstrated that the question of security would remain at the forefront of the Committee's attention. The Secretariat had undertaken preparatory steps for the compilation of the necessary data. It is expected that the comparative study will be issued as a document of the Committee on Relations with the Host Country by the beginning of next year. Whether a separate study should also be prepared to include the security of Headquarters and other duty stations in general has still to be decided.

B. Consideration of, and recommendations on, issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations

11. By a letter dated 15 July 1982 addressed to the Chairman of the Committee (A/AC.154/225), the Cuban Mission transmitted a letter dated 11 July from the Minister for Foreign Affairs of Cuba addressed to the Secretary-General, which referred to a statement regarding the request made by the United States Government for the departure of two members of the Permanent Mission of Cuba to the United Nations on the grounds of abuse of the privileges of residence within the scope of section 13 (b) of the Headquarters Agreement. The action taken by the United States was characterized by Cuba as contrary to the Headquarters Agreement and as an offence against Cuba.

12. In a letter dated 30 July 1982 (A/AC.154/226), addressed to the Chairman of the Committee, the Permanent Representative of the United States Mission provided its understanding of the incident. According to the letter, the two Cuban

diplomats had violated the Trading With the Enemy Act, thereby abusing their privileges of residence. Consequently the United States was compelled to ask for their departure in accordance with article 13 (b) of the Headquarters Agreement.

1. Entry visas issued by the host country

13. At the 93rd meeting, the Chairman of the Committee reported that the question concerning the provision of visas for non-governmental organizations during the twelfth special session of the General Assembly, the second special session devoted to disarmament, had been brought to the attention of the Bureau. The Bureau had been informed that the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations encompassed the granting of visas for non-governmental organizations whenever an organization was specifically invited by the United Nations to participate in a meeting, and when organizations in consultative status with the Economic and Social Council came to Headquarters in fulfilment of their responsibilities under the consultative relationship. Difficulties arose whenever bodies of the Assembly requested the participation of non-governmental organizations in a very general form because the relevant guidelines were lacking. The Bureau had agreed that the matter should be studied further by the host country and the representatives of the non-governmental organizations in order to formulate precisely the problem to be presented to the Committee together with concrete suggestions and recommendations. If the Committee wished to hear the views of Member States and non-governmental organizations it could so decide. The representative of the USSR complained that the visa question had not been addressed during the previous meetings and suggested that representatives of non-governmental organizations be heard for clarification of the matter. The representative of the host country stated that the host country did issue visas to all those invited by the United Nations to attend the special session on disarmament. Every individual United Nations invitee was granted a visa. Others, not invited by the United Nations, were required to comply with the United States Immigration and Nationality Act. Many were granted visas. Others, not invited by the United Nations who could not comply with the conditions specified under the United States Immigration and Nationality Act, were denied visas.

2. Acceleration of immigration and customs procedures

14. In response to a request by the delegation of Costa Rica for granting diplomats permission to use the airport facilities reserved for crew members, the Bureau considered the matter repeatedly and exchanged views and suggestions with the representative of the host country. As a result, the United States informed the Chairman of the Committee, in a letter dated 8 October 1982 (A/AC.154/227), that persons with diplomatic privileges and immunities arriving at Miami International Airport and at John F. Kennedy International Airport would be allowed to use the crew lines.

3. Exemption from taxes

15. In a letter dated 8 October 1982 addressed to the Chairman of the Committee (A/AC.154/228), the Alternate Representative for Special Political Affairs of the United States Mission informed the Committee that the State of New Jersey was

issuing diplomatic and consular permits for sales tax exemption. Application should be directed to: Tax Counselor's Section, State of New Jersey, West State and Willow Streets, Trenton, New Jersey 08625.

4. Possibility of establishing a commissary at United Nations Headquarters to assist diplomatic personnel and staff

16. The Bureau devoted considerable time to this matter, but final results have yet to be achieved. Progress has been made regarding a commissary open to persons having diplomatic status. The Bureau has raised with the host country the possibility of having a commissary generally open to the United Nations community.

C. Responsibilities of permanent missions to the United Nations and their personnel, in particular the problem of claims of financial indebtedness and procedures to be followed with a view to resolving the issues relating thereto

17. At the 92nd meeting, the Chairman brought to the attention of the Committee the contents of a letter from an attorney representing a New York landlord who had attempted to collect rent arrears from a United Nations mission. The letter asserted that the Foreign Sovereign Immunities Act, Public Law 94-583, 90 Stat. 2891, of 1976, provides for United States courts to have jurisdiction over United Nations missions in their commercial acts. The Committee expressed concern at the position adopted in the letter and requested further clarification of the legal situation. The representative of the USSR added that, in his view, international law enjoyed priority and prevailed over domestic national law. This view was fully supported by the Legal Counsel. The representative of the host country said that he was aware of the problem and promised to furnish the Committee with the results of the study now being undertaken by the legal section of the United States Department of State on the matter. The Committee agreed to await the official response of the host country.

D. Housing for diplomatic personnel and for Secretariat staff

18. At the 91st meeting, the Chairman called the Committee's attention to the serious housing situation adversely affecting the diplomatic community. Mrs. Sorensen, the New York City Commissioner for the United Nations, affirmed that the Commission was aware of the shortage of housing facilities and the difficulties diplomats encountered in finding space. Recognizing the growing problem of finding housing for United Nations and foreign officials, the United Nations Development Corporation had been asked to survey potential building sites. Preliminary plans called for the construction of an apartment building that would specifically welcome diplomats. However, many elements of the plan were still under discussion. For the time being, Mrs. Sorensen suggested searching outside of New York City, where housing was easier to find and less costly. She also announced the organization of a seminar: "Should you rent or should you buy?" The representative of the host country stressed the desirability of living outside Manhattan. He pointed out, however, that the United Nations Mission was ready to assist diplomats in their efforts to find housing facilities. The representative of the USSR said that the host country should ensure conditions of normal living for diplomatic personnel and Secretariat staff and that it should be up to it to

find the means to solve the problem. The representative of Bulgaria recounted some of the difficulties his Mission had encountered in securing a lease. The representative of Costa Rica, referring to her own experience as well as to that of other members of her delegation, supported the suggestions made by Mrs. Sorensen.

19. In May 1982, a seminar on housing was held by the New York City Commission for the United Nations and for the Consular Corps, the organization of which was noted with appreciation by the Chairman of the Committee at its 92nd meeting. The Chairman promised that the Bureau would continue to be actively involved in this topic.

E. Public relations of the United Nations community in the host city and the question of encouraging the mass media to publicize the functions and status of permanent missions to the United Nations

20. At the 93rd meeting of the Committee, the Chairman reported on a meeting he had with the New York City Commissioner for the United Nations. They had discussed preliminary ideas on how to improve public relations of the United Nations. In that connection, suggestions were made relating to the establishment of a contact group, a campaign to explain that privileges and immunities, courtesies and facilities enjoyed by diplomats were based on reciprocity and were functionally necessary, and the organization of lectures as well as social gatherings. As for the diplomatic community itself, some gestures of good will such as donations and planting of trees were considered.

F. Letter dated 12 October 1982 from the Permanent Observer of the Democratic People's Republic of Korea to the United Nations addressed to the Committee on Relations with the Host Country, to which were annexed two notes verbales addressed to the Legal Counsel

1. Communications received

21. In its two notes verbales, which were, at the request of the Permanent Observer, reproduced as a document of the Committee on 13 October 1982 (A/AC.154/229), the Permanent Observer Mission of the Democratic People's Republic of Korea complained about an incident that had taken place on 5 September 1982. In its first note verbale, dated 10 September, the Permanent Observer Mission stated that on Sunday, 5 September, six diplomats and a staff member of the Mission were in a park in Westchester County when several policemen of the host country surrounded the Mission's car. When one of the Mission members tried to ascertain what was going on, the police tried to arrest him without reason. When the other members protested, they were told that the police were looking for a suspect in a sexual assault incident and that one diplomat was considered a possible suspect. Witnesses of the alleged criminal act, however, were not able to identify the alleged perpetrator. The diplomats were subjected to another stop on their way home. The Permanent Observer Mission registered a strong protest against the acts in question, considering the same as gross violation of international law, the Headquarters Agreement, the Vienna Convention and other relevant resolutions of the General Assembly.

22. In the second note verbale, dated 1 October 1982, the Permanent Observer Mission strongly protested the issuance of a warrant for the arrest of Mr. O Nam Chol on 22 September 1982 and the posting of policemen outside the Mission premises. The United States authorities were requested to take appropriate steps to prevent such acts.

23. By a letter dated 19 November 1982 addressed to the Chairman of the Committee (A/AC.154/231), the United States Mission requested the circulation as an official document of the Committee of a note verbale dated 19 November 1982 from the United States Mission to the United Nations to the Legal Counsel regarding the inquiry made by the Legal Counsel on behalf of the Democratic People's Republic of Korea to the United Nations concerning its two notes verbales, dated 10 September and 1 October 1982. Referring to the charge of sexual assault made against Mr. O Nam Chol of the Permanent Observer Mission of the Democratic People's Republic of Korea to the United Nations, the note stated that Mr. O Nam Chol did not enjoy diplomatic immunity in this case. While Mr. O Nam Chol enjoyed immunity for official acts connected with his work for the Democratic People's Republic of Korea to the United Nations, the United States Mission found it impossible to conclude that the criminal act Mr. O Nam Chol was charged with had anything to do with his diplomatic function. The United States Mission categorically rejected the charge by the Permanent Observer Mission of the Democratic People's Republic of Korea that the United States had violated international law. The United States Mission also regretted the lack of co-operation in this matter by the Permanent Observer Mission. The United States reproduced in its note verbale an Eastchester police summary of the events concerning Mr. O Nam Chol from 5 September to 22 October 1982.

24. The police summary stated that on 5 September 1982, at 7:15 p.m., a female complainant reported having been attacked and sexually abused by an unknown male Oriental at Twin Lakes. Uniform Patrol, having been directed to the location, met two Eastchester police officers. The latter had subdued a male Oriental who had attempted to flee the area. The complainant pointed to the suspect stating: "That's him". The suspect, while struggling with the officers, shouted at both the complainant and the officers. The frightened complainant stated that she could not identify the male Oriental as her attacker, but said that she was willing to make a statement, at a later date, to the police. The suspect and six other male Oriental companions were requested to identify themselves. One member of the group identified himself and advised the police officers that he and his companions were Korean diplomats and entitled to diplomatic immunity and that he could identify all of his companions at a later date. Subsequently, the seven males were allowed to leave in their vehicles with diplomatic licence plates. On 6 September 1982, detectives contacted the complainant to make arrangements for her to come to the Westchester County Police Department Headquarters, which the complainant did the following day. She signed a sworn deposition in which she stated that she could identify the perpetrator if she were to see him again. The interview was conducted by a police officer and a sex crime investigator. The United States Mission, when contacted, informed the police authorities that the members of the Permanent Observer Mission only enjoyed functional immunity. From 8 September to 12 September 1982, photographs of the scene of the crime were taken and interviews of witnesses and police officers present at the scene were conducted. During the time from 14 September to 16 September 1982, the complainant identified her assailant as Mr. O Nam Chol from a photo array of 26 members of the Permanent Observer Mission. This fact was recorded in a sworn deposition. During the time from 14 September to 3 October 1982, police officers and civilian witnesses

identified Mr. O Nam Chol as the person they had observed at the scene on Sunday, 5 September 1982. Civilian witnesses stated that Mr. O Nam Chol had acted in a suspicious manner prior to the attack. On 21 September, an accusatory instrument was filed with the Eastchester Town Court and a warrant for the arrest of Mr. O Nam chol was issued charging sexual abuse, first degree. On 20 October 1982, the complainant testified before the Westchester Country Grand Jury which handed up a True Bill. On 22 October 1982, a Bench Warrant was issued by the Westchester County Court charging Mr. O Nam Chol with:

Sexual abuse, 1st degree  
Menacing  
Criminal possession of a weapon, 4th degree.

25. By a letter dated 24 November 1982 addressed to the Committee (A/AC.154/232), the Permanent Observer of the Democratic People's Republic of Korea requested the circulation as an official document of the Committee of a memorandum of the same date. By a note verbale of the same date, reproduced as Committee document A/AC.154/235, the representative of the Permanent Observer Mission of the Democratic People's Republic of Korea to the United Nations complained that the host country had failed to issue visas for newly designated members of the staff of their mission, because, as stated, the host country directly linked the visa issue with the matter pertaining to the issue raised in the memorandum of 24 November 1982.

26. This memorandum contains a statement of facts, conclusions and a legal view. The facts referred to were those presented on the matter under consideration in previous notes verbales and in the statement made by the Deputy Permanent Observer at the 92nd meeting (see paras. 21 and 22 above and 27 below of the report), with the exception of the account of a meeting of the Permanent Observer with the Secretary-General on 29 September and a subsequent meeting with an Under-Secretary-General; at those meetings both were requested to render every possible co-operation for a fair solution of the problem, including the utilization of the good offices of the Secretary-General as a mediator. It was also mentioned that on 22 October the United States permitted an indictment and a new warrant of arrest to be issued although the Committee on Relations with the Host Country and its Bureau had taken up the matter and had not completed their deliberations. In its conclusions, the Permanent Observer Mission expressed the following views: police officers and witnesses failed to recognize Mr. O Nam Chol as the perpetrator of the alleged crime. Because of police protection, the female witnesses had nothing to fear from identifying the perpetrator. The failure of the identification must be accepted as truthful. The apologies of the police officers in the presence of the witnesses must be given due weight. Seventeen days passed before a warrant of arrest was issued. The United States Mission had the responsibility to stop the unlawful acts of the local authorities and to protect the members of the Permanent Observer Mission. In respect of the legal position, the Democratic People's Republic of Korea expressed in four theses its opinion that, in failing to recognize and enforce the immunity from criminal process of a diplomat, the United States (a) was in violation of principles of international law that have been accepted by and have governed nations for centuries; (b) was in violation of the international law of diplomatic relations as such has been codified in multilateral conventions; (c) was in violation of generally accepted principles of international law and of conventions and agreements, to which it was a signatory, governing the treatment to be accorded to permanent missions to international organizations; and (d) in failing to recognize and enforce the immunity from criminal process of a



member of a permanent observer mission to the United Nations, was in violation of generally accepted principles of international law, as such principles were demonstrated by conventions governing the treatment to be accorded permanent observer missions to the United Nations. With regard to (a), it was stated that complete diplomatic immunity of diplomats from criminal jurisdiction of host countries was among the earliest and most fundamental principles of international law. With regard to (b), it was stated that the purpose of diplomatic immunity was not to protect the diplomat but to protect the State he represented. In order to represent his State freely and without fear of any alleged violation of the laws of the host State, it was insufficient to grant immunity from prosecution for acts connected with his work alone because States bent on intimidation could invade the diplomat's life. The 1961 Vienna Convention on Diplomatic Relations, 1/ to which both sides concerned were parties, accorded full diplomatic immunity from criminal prosecution to representatives of States. Since the 1961 Convention constituted a restatement of customary law it could be relied on as an expression of the modern view as to the universally accepted principles of international law of diplomatic relations. With regard to (c), the memorandum stated that members of the diplomatic staff of permanent missions to the United Nations were to be accorded the same privileges and immunities as diplomatic envoys accredited to the host State. The need to protect envoys to international organizations was even greater in cases where the host State had no diplomatic relations with the Government. The status of envoys to the United Nations was governed by Article 105 of the Charter of the United Nations, by the Convention on the Privileges and Immunities of the United Nations and by the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. According to these legal instruments, the diplomatic staffs of permanent missions to the United Nations were entitled to the same privileges and immunities as diplomatic envoys accredited to the host State. The memorandum stated further that, in particular, the Headquarters Agreement recognized and incorporated the principle that envoys to an international organization were fulfilling the same representative roles and must therefore be accorded the same treatment as envoys to a State. The Headquarters Agreement also evidenced the principle of international law as to the scope of the protection that must be accorded a permanent envoy to the United Nations in order to satisfy the requirements of Article 105 of the Charter. That Agreement also suggested that the members of the mission of the Democratic People's Republic of Korea were entitled to complete diplomatic immunity because the mission was a permanent envoy to the United Nations. Both the Convention on the Privileges and Immunities of the United Nations and the Headquarters Agreement applied to the Permanent Observer Mission because the Democratic People's Republic of Korea was a member State of several subsidiary organizations of the United Nations. Any discrimination among missions would undermine the principle of the sovereign equality of States upon which the United Nations was founded. With regard to (d), the memorandum stated that the principles of international law required that members of the diplomatic staff of permanent observer missions be accorded privileges and immunities equal to those available to the diplomatic staffs of permanent member missions. Observer and member missions were alike inasmuch as each represented the interest of a State. Full diplomatic immunity had become an accepted principle of international law as evidenced by the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations. 2/ Although not yet in force, it constituted compilation and codification of existing international law theory and practice. The modern theory, as reflected in the 1975 Vienna Convention, explained that diplomats should be accorded complete immunity from the criminal laws of the host State because the function of diplomats is to represent their State. Host States must be prevented

from harassing diplomats at will. The United States position not to grant full diplomatic immunity to members of an observer mission duly accredited to an international organization was in violation of international law and threatened the basic fabric of relations between nations. (For further details reference should be made to the cited documents.)

## 2. Consideration of the matter

27. At the 92nd meeting, Mr. Chon Jae Hong, Deputy Permanent Observer of the Democratic People's Republic of Korea, made a number of supplementary observations in connection with the communications received by the Committee. He recalled that neither the alleged victim nor the female witnesses had identified the alleged perpetrator. He insisted that Mr. O Nam Chol had nothing to do with the incident and that he was innocent. He further noted that the warrant of arrest was only issued 17 days after the incident had taken place. That warrant, issued by the Town Justice of Eastchester, charged Mr. O Nam Chol with sexual abuse, first degree, violation of the New York Penal Law, section 130.65, subdivision 1. The Deputy Observer also reported that representatives of his Mission had met with representatives of the United States Mission in the presence of the United Nations Legal Counsel. At the first meeting, on 28 September, the United States representative handed over the warrant of arrest and at the second meeting, on 4 October, the representative of the host country presented an aide-mémoire setting forth the position of the Department of State according to which Mr. O Nam Chol did not enjoy full diplomatic immunity. At the same time, the Permanent Observer Mission of the Democratic People's Republic of Korea requested the good offices of the Secretary-General. The Deputy Observer reiterated that, in his delegation's view, permanent observer missions enjoy complete immunity, hence also immunity from criminal jurisdiction of the host country. He recalled that that immunity was part of customary international law which could be inferred from the existing written conventions, such as the Vienna Convention and the Headquarters Agreement as well as the Charter of the United Nations and the 1975 Vienna Convention on the Representation of States. He viewed the incident under consideration as a precedent that could severely impair permanent observer mission activities. He requested the United States Mission to take the appropriate protective measures for Mr. O Nam Chol in accordance with relevant international conventions to enable his full participation in the work of the United Nations.

28. The representative of the host country, Mr. Charles M. Lichenstein, said the practical solution to the case was for the Permanent Observer Mission to cease harbouring a probable fugitive from American justice. Referring to the facts of the case, the representative of the host country said that neither the victim nor the witnesses had said that none of the Oriental men on the scene were the attacker but that they could not identify any one of the men. The day after the incident, the victim had on her own initiative filed formal charges and was on a later occasion able to identify from photographs Mr. O Nam Chol as the attacker. Compelled by those circumstances, the legal authorities had to take action and had asked the alleged perpetrator to appear before the competent court. However, the representatives of the Permanent Observer Mission of the Democratic People's Republic of Korea had refused to render assistance in the production of Mr. O Nam Chol. The representative of the host country pointed out that permanent observer missions enjoyed only functional immunity, namely, immunity from arrest resulting directly from the discharging of those specific functions for which the mission had been permitted into the United States. He also said that the excursion

on a Sunday afternoon could not be considered an action in performance of an official function and would therefore not fall within the most generous description of the enjoyment of functional immunity. Consequently, the United States did not violate international law and had the right to keep under surveillance the premises of the Mission. He considered the attitude of the Permanent Observer Mission as provocative since there was presumptive evidence that the Mission was harbouring a fugitive from American justice.

29. The representative of the USSR said that, after having heard that the United States had not violated international law since the Observer Mission enjoyed only functional immunity, he would like to ask the United States to explain the legal basis for their view that the Observer Missions enjoyed only functional immunity.

30. The representative of the host country replied that he would be delighted to provide a legal memorandum setting forth the understanding of the United States concerning the legal position with regard to functional and full diplomatic immunity.

31. The representative of the USSR said further that the main difference between Member States and Observers was the difference in degree of participation in the work of the Organization. Both members of Observer Missions as well as members of Permanent Missions were representatives of sovereign States, representing their interests and speaking on behalf of them. The limited participation in the work of the Organization could therefore not entail fewer rights. The representative of the USSR hoped that the problem could be resolved to the mutual satisfaction of the parties concerned and suggested asking the Secretary-General to continue with his good offices to resolve the matter.

32. In response to a request by the representative of Costa Rica to provide a legal opinion, the Legal Counsel made a statement, the contents of which may be summarized as follows.

33. The institution of permanent observer missions developed through practice and could be traced to the designation by Switzerland in 1946 of a permanent observer. The practice never raised problems as to the extent of privileges and immunities to be accorded to those observers, since most of the non-member States concerned enjoyed bilateral diplomatic or consular relations with the host country. With the extension of the institution to other States and its broadening to include intergovernmental organizations, the need was felt to elaborate further on the legal status of observers. In legal opinions of 1975 and 1976, the Office of Legal Affairs advanced the view of functional immunity for observers of an intergovernmental organization. Functional immunity was limited to immunity from legal process in respect of words spoken or written and all acts performed by observers in their official capacity before appropriate United Nations organs. In view of the insufficient development of customary international law in the area of relations between States and international organizations, the International Law Commission prepared a study which contained the framework for the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations. Under that Convention, the privileges and immunities of non-member States observers improved and became equal to those of Member States. However, since that Convention was not yet in force and in view of the fact that a number of States, mainly host countries of international organizations, either abstained or voted against the Convention, it would not be correct to rely on the Convention as a statement of the accepted customary international law in the matter, and there was no obligation to comply with its rules, which were stricter than the existing

ones. In the view of the Office of Legal Affairs, the obligation to recognize functional immunity was stipulated in general terms in Article 105 of the United Nations Charter, which established the principle that representatives of Member States enjoy the privileges and immunities necessary for the independent exercise of their functions. Consequently, certain minimum privileges and immunities appertained to the Organization and its Members without which it would be unable to function independently. Such functional privileges and immunities were to be extended to permanent observer missions, which had developed de facto, including the immunity from legal process in respect of words spoken or written and all acts performed by members of the mission in their official capacity before United Nations organs, as well as inviolability for official papers and documents relating to an observer's relation with the United Nations and inviolability of the premises of the mission and of the residences of its diplomatic staff.

34. The representative of the USSR felt that the legal opinion of the Legal Counsel was not convincing since it was based on an analogy of the privileges and immunities accorded to observer missions of international organizations. He also mentioned that the provisions of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations should be duly taken into account. The representative of the USSR reiterated that representatives of observer missions were representatives of States and that that fact was recognized by the United Nations. The examples given by the Legal Counsel were about observer missions of international organizations, which evidently did not have full diplomatic immunity. The activities of States and the activities of international organizations could not be put on the same footing.

35. The representative of China urged a speedy and reasonable resolution of the incident.

36. The Chairman of the Committee stated that, under General Assembly resolution 2819 (XXVI), the Committee was authorized to advise the host country on issues arising in connection with the implementation of the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. He noted the existence of a divergence of opinion as to the entitlement of full or functional immunity with regard to permanent observer missions. The Committee then decided that its members should continue the consultations among themselves with the aim of achieving a mutually satisfactory solution. In view of the urgent character of the question, the Committee entrusted the Bureau with the task of continuing its consideration and reporting to the Committee about the progress achieved, noting that the activities of the Bureau should not prejudice the good offices of the Secretary-General, which should be continued.

37. Subsequently, the Bureau considered the matter and agreed that a pragmatic approach should be taken to resolve it. At the 93rd meeting of the Committee, the Chairman reported that the Bureau had authorized him to enter into consultation with the parties directly concerned and with the Secretariat in search of a pragmatic solution. It was understood that the consultations with the Chairman should not interfere with other channels already used to resolve the matter. The Chairman regretted to report that at the time of the meeting the position of the parties directly concerned had remained unchanged.

38. The representative of the USSR also regretted the lack of results and said that the situation was not normal. He also expressed the view that one should not only dwell upon the legal arguments but look for a speedy solution of the

situation. He wished efforts to solve the problem to the mutual satisfaction of the parties concerned to continue.

39. The representative of China said that, after going through the material presented both by the United States and the Democratic People's Republic of Korea, he felt that the charges against the North Korean diplomat were based on insufficient evidence.

40. The representative of the host country stressed that the indictment of Mr. O Nam Chol by a grand jury on three felony counts was an important development and justified the request that Mr. O Nam Chol present himself before the court to answer the charges brought against him. He announced that a meeting would take place in the afternoon of 29 November 1982 between a representative of the United States Mission, the district attorney and the attorney representing the Permanent Observer Mission of the Democratic People's Republic of Korea. He reiterated that Mr. O. Nam Chol enjoyed functional immunity for acts directly connected to the work of the mission but that he did not enjoy immunity for those acts not connected with his job. He further said the Mission was harbouring a fugitive from American justice.

41. The Deputy Permanent Observer of the Democratic People's Republic of Korea appreciated the fact that a meeting had been arranged. He stressed the innocence of Mr. O Nam Chol and expressed his strong belief that Mr. O Nam Chol was entitled to full diplomatic immunity and that Mr. O Nam Chol was not a fugitive. Every charge against the Mission on this matter was unjust and could not be linked with other issues.

42. The representative of Costa Rica also hoped that it would be possible to find a pragmatic solution.

#### IV. RECOMMENDATIONS

43. At its 94th meeting, on 6 December 1982, the Committee approved the following recommendations:

(1) Considering that the security of the missions accredited to the United Nations and the safety of their personnel are indispensable for their effective functioning, the Committee notes the assurances given by the competent authorities of the host country, and the constant need for effective preventive actions.

(2) The Committee urges the host country to take all necessary measures without delay in order to continue to prevent any acts violating the security of missions and the safety of their personnel or the inviolability of their property, and in order to ensure normal conditions for the existence and functioning of all missions.

(3) The Committee urges the host country to continue to take measures to apprehend, bring to justice and punish all those responsible for committing criminal acts against missions accredited to the United Nations as provided for in the 1972 Federal Act for the Protection of Foreign Officials and Official Guests of the United States.

(4) The Committee, with a view to facilitating the course of justice, calls upon the missions of States Members of the United Nations to co-operate as fully as possible with the federal and local United States authorities in cases affecting the security of those missions and their personnel.

(5) The Committee calls upon the host country to avoid actions not consistent with meeting effectively obligations undertaken by it in accordance with international law, in relation to the privileges and immunities of States Members of the United Nations.

(6) Appeals to the host country to review the measures with regard to the parking of diplomatic vehicles with a view to facilitating the desires and needs of the diplomatic community and to consider terminating the practice of serving summonses to diplomats.

(7) Welcomes the diplomatic community's readiness to co-operate fully with the local authorities in solving traffic problems and notes, in this regard, the desirability of missions making reasonable efforts to utilize off-street parking facilities.

(8) The Committee expresses the hope that efforts can be undertaken by the host country to ameliorate the housing situation which has created problems for members of the diplomatic community.

(9) The Committee expresses the hope that efforts will be continued and intensified with a view to implementing an information programme in order to acquaint the population of the City of New York and its boroughs with the privileges and immunities of the personnel of the missions accredited to the United Nations and with the importance of the international functions performed by them.

(10) The Committee has been informed that there have been difficulties concerning unpaid bills for goods and services rendered by private persons and organizations to certain missions accredited to the United Nations and certain individual diplomats attached to those missions, and suggests that the Secretariat and others concerned work together to solve these outstanding difficulties.

(11) The Committee wishes to express its appreciation to the New York City Commission for the United Nations and the Consular Corps and those bodies, particularly the New York City Police, which contribute to its efforts to help to accommodate the needs, interests and requirements of the diplomatic community, to provide hospitality and to promote mutual understanding between the diplomatic community and the people of the City of New York.

(12) The Committee considers it necessary that its further meetings be organized both at the request of Member States and as necessary to fulfil its mandate relevant to resolutions of the General Assembly.

(13) The Committee recommends that it should consider problems within its terms of reference pursuant to General Assembly resolutions 2819 (XXVI), 3033 (XXVII), 3107 (XXVIII), 3320 (XXIX), 3498 (XXX), 31/101, 32/46, 33/95, 34/148, 35/165 and 36/115.

#### Notes

1/ United Nations, Treaty Series, vol. 500, No. 7310, p.95.

2/ See Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations, Vienna, 4 February-14 March 1975, vol. II (United Nations publication, Sales No. E.75.V.12) p. 207, document A/CONF.67/16.

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