

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

**GENERAL ASSEMBLY**

OFFICIAL RECORDS: THIRTY-THIRD SESSION

SUPPLEMENT No. 26 (A/33/26)



**UNITED NATIONS**



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New York, 1978

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.

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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-second session, the General Assembly decided by resolution 32/46 of 8 December 1977 that the Committee should continue its work, in conformity with resolution 2819 (XXVI), with the purpose of examining on a more regular basis all matters falling within its terms of reference, and decided to include in the provisional agenda of its thirty-third session the item entitled "Report of the Committee on Relations with the Host Country".
2. The Committee's report is divided into seven sections. The Committee's recommendations are contained in section VII.

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

3. The Committee's membership in 1978 was as follows:

Bulgaria	Ivory Coast
Canada	Malta
China	Senegal
Costa Rica	Spain
Cyprus	Union of Soviet Socialist Republics
France	United Kingdom of Great Britain and and Northern Ireland
Honduras	United States of America
Iraq	
4. The Committee's officers in 1978 were the following:

Chairman: Mr. Z. Rossides (Cyprus)  
Rapporteur: Mrs. E. Castro de Barish (Costa Rica)
5. The list of topics provisionally adopted by the Committee in 1972 was retained in 1978 and is as follows:
  - (1) Question of security of missions and the safety of their personnel;
  - (2) (a) Comparative study of privileges and immunities;
  - (b) Obligations of permanent missions to the United Nations and individuals protected by diplomatic immunity;
  - (c) Exemption from taxes levied by states other than New York;
  - (d) Possibility of establishing at United Nations Headquarters a commissary to assist diplomatic and Secretariat personnel;
  - (e) Housing for diplomatic personnel and for Secretariat staff;

- (f) Transportation;
  - (g) Insurance;
  - (h) The 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;
  - (i) Education and health;
  - (j) Question of provision of an identity document for members of the families of diplomatic personnel, non-diplomatic staff of missions, and members of the United Nations Secretariat in New York;
  - (k) Acceleration of customs procedures;
  - (l) Entry visas issued by the host country.
- (3) Study of the Convention on the Privileges and Immunities of the United Nations,
  - (4) Consideration of, and advice to the host country on, issues arising in connexion with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,
  - (5) Consideration and adoption of the Committee's report to the General Assembly.

6. During the period under review, the Committee held seven meetings (A/AC.154/SR.69-75). The Working Group established by the Committee in 1972 1/ did not meet during the period covered by this report.

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1/ Official Records of the General Assembly, Thirtieth Session, Supplement No. 26 (A/10026), para. 6.



III. CONSIDERATION OF, AND ADVICE TO THE HOST COUNTRY ON, ISSUES ARISING IN CONNEXION WITH THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED STATES OF AMERICA REGARDING THE HEADQUARTERS OF THE UNITED NATIONS

7. By a note verbale dated 3 February 1978 (A/AC.154/161), the Permanent Mission of Viet Nam to the United Nations transmitted a statement regarding the request made by the United States Government, on the grounds of the abuse of the privileges of residence within the scope of section 13 (b) of the Headquarters Agreement between the United Nations and the United States, for the departure from the United States of Ambassador Dinh Ba Thi, Permanent Representative of Viet Nam to the United Nations. The specific grounds for the request, namely, the alleged involvement of the Permanent Representative in an espionage case, were characterized by the statement as a complete fabrication. The charges thus made were categorically rejected by Viet Nam, which considered the action taken by the United States to be altogether contrary to the Charter of the United Nations and the Headquarters Agreement as well as an offence to and slander against Viet Nam.

8. At the 69th meeting of the Committee, on 9 February 1978, Mr. Dinh Ba Thi, speaking as an observer from Viet Nam, said that on 3 February 1978, three days after mounting what it called the espionage case against the United States, the United States Government had fabricated his alleged involvement therein as grounds for the request that he leave the country without delay. This illegal decision, which was an insult to his country and to him personally, had been firmly rejected by his Government and his Mission.

9. Speaking also as an observer from Viet Nam, the Legal Counsel of the Mission of Viet Nam to the United Nations said that the naming of the Ambassador, Mr. Dinh Ba Thi, as an unindicted co-conspirator in an indictment returned by a federal grand jury sitting in Alexandria, Virginia, on 31 January 1978, was based solely on the charge that one of the two persons indicted by the grand jury had visited the Mission in December 1977. This was altogether insufficient since the receipt of such visits fell among the normal activities of any mission to the United Nations. The United States Mission had given the Secretary-General to understand that there existed other evidence against the Ambassador. But this evidence was kept secret, which was inadmissible. The action against Mr. Dinh Ba Thi was therefore a violation of basic rules of international law and, if generalized, would permit the court of any country freely to slander or blackmail any other country considered to be an enemy. In taking such an illegal action, which was unprecedented in the history of the United Nations, the host country had exploited the uncertainty surrounding the rules concerning persona non grata declarations in both the Headquarters Agreement and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. 2/ The United States had breached section 13 (b) of the

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2/ Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations (United Nations publication, Sales No. E.75.V.12), vol. II, p. 207.

Headquarters Agreement by not consulting the Government of Viet Nam beforehand. It had also violated Article 105, paragraph 2, of the Charter. In view of the exceptional circumstances, the General Assembly should give the United Nations, represented by the Secretary-General, responsibility for settling the matter and require the host country to consult the United Nations before declaring any representative persona non grata. It was in that spirit that Mr. Dinh Ba Thi had written to the Secretary-General on 2 February 1978 and held a discussion with him on 6 February. The Socialist Republic of Viet Nam, whose position was supported by the vast majority of Member States, believed that at its next session the General Assembly should condemn the host country for its unlawful action and devise provisions supplementary to the Headquarters Agreement and the Vienna Convention which would ensure the independence of the United Nations vis-à-vis the host country by expressly laying down the principle of priority of the privileges accorded by the United Nations to its Members over a declaration of persona non grata by the host country.

10. The representative of the host country said that the United States Government had requested the departure of the Ambassador, Mr. Dinh Ba Thi, only after the most serious consideration of the matter. The right to compel the departure of a member of a mission accredited to the United Nations whenever privileges of residence were abused, which the United States derived from its sovereignty, had been preserved by section 13 (b) of the Headquarters Agreement, which nevertheless, in order to ensure the responsible exercise of this right, provided that a request for the departure of a diplomat could be made only upon the authorization of the Secretary of State after consultation with the Member State concerned. It had been the consistent practice of the United States to keep the Secretary-General informed with respect to any case in which the host country made such a request. Contrary to what had been asserted by Mr. Dinh Ba Thi, each of those conditions had been scrupulously observed in his case. The request for his departure had indeed been made with the approval of the Secretary of State, which had been given after bringing the matter to the attention of Viet Nam. The Secretary-General had also been kept informed of the matter as it progressed. A discussion had been held with the Secretary-General on 1 February, and further discussions with his senior officials later that week. The United States Government had attempted to discuss the situation with the Permanent Mission of Viet Nam, but after an initial contact on 1 February the Mission had refused to engage in further discussions. Views had been exchanged with the Vietnamese Embassy in Paris, and it had been emphasized that the United States was requesting the departure of Mr. Dinh Ba Thi only because of his involvement in the case in question. Even though the United Nations had been established in New York for a generation and the community formed in New York by diplomats, staff members and their families numbered more than 29,000 persons, including over 400 persons with diplomatic status, less than one case a year had occurred in which abuse of residence privileges had led the United States to seek the departure of anyone in accordance with the Headquarters Agreement. On the whole, there had been the greatest mutual respect for the rights of the United Nations and of the host country. The small number of requests for the departure of diplomats - less than 32 - showed that the diplomatic community had behaved with great correctness and that the United States had exercised its rights with due restraint. The fact that the case involving Mr. Dinh Ba Thi was before the courts of the United States severely limited the possibility of discussing the relevant evidence. A seven-count indictment had been returned against Ronald Louis Humphrey, an employee of the United States Information Agency, and Truong Dinh Hung, a national of Viet Nam. It charged them with conspiring and acting to deliver material relating to the

national defence to the Government of Viet Nam. Mr. Dinh Ba Thi was one of five persons named as unindicted co-conspirators in the indictment. The two persons indicted would be tried in Alexandria before the United States District Court for the Eastern District of Virginia. The United States, which had never previously asked for the departure of the Permanent Representative of a Member State accredited to the United Nations, had been compelled by the circumstances to take action in the case under consideration. The Grand Jury had, in naming Mr. Dinh Ba Thi as a co-conspirator, acted on the basis of precise evidence of his personal involvement in a case relating to the security of the United States. Despite the gravity of the matter, the representative of the host country hoped that it would not seriously affect the process of normalization of relations, which the United States and Viet Nam had declared to be in their mutual interest. The action of his Government, though unfortunate, in no way impaired the right of Viet Nam to send a new Permanent Representative immediately, so that its Mission might participate fully in the work of the United Nations. His Government hoped that a new Permanent Representative would shortly be named, so that the incident could be closed.

11. Mr. Dinh Ba Thi categorically denied the allegations of the United States, again pointing out that the sole ground of his being named in the indictment was that one of the persons indicted had allegedly been received at the Mission. Under section 13 of the Headquarters Agreement, before deciding to expel a diplomat, the United States Government was required to consult the Government concerned and the Secretary-General. According to the representative of the United States, his Government had, before the decision was taken, undertaken such consultations in New York and in Paris on 1 February. What had actually occurred in New York was that, at 2.30 p.m. on 1 February, Ambassador McHenry of the United States Mission to the United Nations had come to the Vietnamese Mission with the stated purpose of simply conveying an oral message of his Government. That message accused Mr. Dinh Ba Thi of being a co-conspirator in the espionage case. After hearing the message, Mr. Dinh Ba Thi had rejected the accusation as a pure fabrication. He had put a question to Mr. McHenry concerning the matter, but Mr. McHenry had refused to answer it, saying that he had been instructed merely to transmit an oral message. As the message was defamatory, it had not been accepted. The Mission had been informed that the Vietnamese Embassy in Paris had received the same message, without any consultation. The representative of the United States had thus no grounds for maintaining that proper consultations had been undertaken by his Government.

12. The representative of the Union of Soviet Socialist Republics said that the action against the Ambassador, Mr. Dinh Ba Thi, was unfriendly and hostile to Viet Nam as well as arbitrary and unjustified. The case also set a precedent which threatened the normal activities of Member States and the United Nations itself. In his view, the action was not only based on completely unfounded premises but was also in breach of the Headquarters Agreement. In accordance with section 13 (b) of that Agreement the host country was required to conduct a "consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General". Section 13 (b) also provided that "a representative of the Member concerned, /cr/ the Secretary-General ... shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted". As far as his delegation was aware, the United States authorities had not conducted any consultation within the meaning of the provision quoted with the Government of Viet Nam or the Secretary-General. Their action seemed to aim merely at discrediting a socialist State which for many

years had carried on a heroic national liberation struggle. In its resolution 2819 (XXVI) the General Assembly had called on the United States Government to ensure normal conditions for the work of missions and their personnel. The Committee had been established by that resolution for the purpose, inter alia, of considering matters arising in connexion with the Headquarters Agreement and of consulting the host country on those matters. In the present case, the United States had ignored the Committee, which, throughout its existence, had been obliged to remind the host country of its obligation to ensure the conditions required for the normal functioning of missions and had repeatedly received assurances from the host country that the necessary measures would be taken to that end. The complaint before the Committee contrasted sharply with those assurances. In the belief that the Committee would condemn the unprecedented action against the Permanent Mission of Viet Nam, he expressed his full solidarity with Mr. Dinh Ba Thi and his Government, emphasizing that the dangerous precedent set was incompatible with the Charter of the United Nations and other international agreements to which the United States was a party.

13. The representative of Iraq associated himself fully with Viet Nam. While he appreciated the gesture made by that State in recalling its Ambassador in the interest of avoiding further conflict, he viewed the incident under consideration as a precedent which could severely impair future United Nations activities. The Committee should therefore take steps to ensure that such action on the part of the host country did not recur; it should, in particular, request the General Assembly to clarify section 13 (b) of the Headquarters Agreement and designate an authority to arbitrate in cases such as the one that had occurred. The representative of Iraq further deprecated the baseless media campaign launched against Viet Nam prior to the request for the departure of the Ambassador, Mr. Dinh Ba Thi.

14. The representative of Bulgaria fully supported the position of Viet Nam. In his opinion, the Committee had a mandate to discuss any issue arising from the implementation of the Headquarters Agreement. However, in the case before the Committee it was difficult to discuss the matter in substance since the allegations against the Ambassador, Mr. Dinh Ba Thi, had not been substantiated. In his view the authorities of the host country should have awaited the corresponding judicial determination before taking action against Mr. Dinh Ba Thi. He pointed out that the consultations required by the Headquarters Agreement had not taken place in the case under discussion. His delegation therefore saw no legal or political justification for the action taken by the host country. This action could jeopardize the normal functioning of missions to the United Nations and of the United Nations itself.

15. The observer from Cuba pointed out that the Committee was discussing the first case in which a hostile act had apparently been committed, in the host country, against a State Member of the United Nations not by an individual or group of individuals, but by the national authorities themselves. The case was more than just another instance of the host country's hostility towards Viet Nam: it was also a violation of the Headquarters Agreement. As pointed out by the observer from Viet Nam, the contact that had taken place on 1 February 1978 between the host country and his Mission had amounted to no more than an oral notification of the decision to expel the Ambassador, Mr. Dinh Ba Thi, thus falling short of the consultations required under the Agreement. That notification had, in fact, been superfluous since the local mass media had given wide publicity to the accusations against the Ambassador on 31 January 1978. The Headquarters

Agreement would therefore have been breached by the host country, even if the contacts that took place with Viet Nam had amounted to consultations within the meaning of that Agreement. Referring to the legislative history of the latter, the observer for Cuba pointed out that, in authorizing the Secretary-General to conclude the Headquarters Agreement on behalf of the United Nations, the General Assembly had endorsed the comments in his report on his negotiations with the Government of the host country (A/371). In that report the Secretary-General had stated that the provision in section 13 (b) whereby no proceedings could be instituted by the host country for the expulsion of a representative of a Member State without the prior approval of the Secretary of State following consultation with the Member concerned was the result of a compromise reached after an exhaustive exchange of views. He had gone on to say that while the procedure thus laid down in section 13 (b) was in line with that followed in diplomatic relations in cases where a diplomat had severely infringed the laws of the country to which he was accredited, that procedure could, in the case of the United Nations, apply only within very narrow limits since the United States was the host country and not the country to which representatives of the United Nations Members were accredited. The Secretary-General had further stated in his report that if, following a consultation under section 13 (b) (1), the parties concerned could not agree on an amicable solution, then and then only could the matter be referred to the competent United States authorities, at which time the Member State concerned or the Secretary-General would be entitled to appear in any proceedings. It was therefore unquestionable that the Headquarters Agreement, as thus interpreted in the light of its legislative history, had been violated by the action of the host country under consideration. The observer from Cuba expressed full support for Viet Nam, which, having been exposed to imperialist hostility and aggression for many years, had just begun its participation in the United Nations only to fall victim to a new kind of aggression. If no steps were taken to ensure that in future the host country fulfilled its commitments under the two international instruments referred to, a precedent would be set opening the door to further violations of the Headquarters Agreement.

16. The representative of the United Kingdom of Great Britain and Northern Ireland observed that many of the statements of solidarity with Viet Nam were not objective, for the Committee did not know the facts behind the incident. The allegations against him had been denied by the Permanent Representative of Viet Nam. However, the representative of the host country had informed the Committee that his Government had conclusive evidence of the involvement of the Ambassador, Mr. Dinh Ba Thi, in the case under investigation. Since the assertion of the United States Government deserved the same respect by the Committee as that of the Vietnamese Government, participants in the work of the Committee were not in a position to choose between them. If the Committee was properly to fulfil its function of giving advice to the General Assembly it should refrain from polemics and act in a serious and objective way. All Members of the United Nations were sovereign States which from time to time had to deal, in bilateral relations and occasionally as hosts of specialized agencies and other international organizations, with problems such as the one that had beset the United States. No Member State could say that the power conferred on the United States by section 13 (b) of the Headquarters Agreement was one that it would not itself want to have as host to an international organization. The Committee should therefore strike a fair balance between the interests of the Organization and those of its host country, recognizing that its function was to study questions objectively and not to denounce the host country on the basis of inadequate information.

17. Referring to the statement by the representative of the United Kingdom, the

representative of the USSR said that the Committee was discussing the question whether certain provisions of the Headquarters Agreement had been violated, which fell squarely within the tasks assigned to it by the General Assembly. He questioned the objectivity of the action taken by the United States against Mr. Dinh Ba Thi, which was not based on a judgement by a court declaring him to be guilty. The host country had taken an a priori decision, which was contrary to the most elementary principles of justice.

18. Responding to those comments, the representative of the United Kingdom asserted that he had not been referring to the question of the facts of the case but rather had said that the Committee had no facts and could not judge without facts.

19. In response, the observer from Viet Nam pointed out that the United States Government had not yet presented any evidence to substantiate its accusations against Mr. Dinh Ba Thi.

20. Full solidarity with the position of Viet Nam was expressed by the observers from Benin, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, Poland and the Ukrainian Soviet Socialist Republic, who underscored the following points: (a) the unprecedented and precipitate action of the host country against the Ambassador, Mr. Dinh Ba Thi, gave reason for serious concern since it might set a precedent detrimental to the functioning of the United Nations and of missions accredited to it; (b) both the Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations had been breached by the host country to the extent that neither the Government of Viet Nam nor the Secretary-General had been properly consulted; (c) The Vienna Convention on Diplomatic Relations 3/ had also been breached by the United States inasmuch as under article 39, paragraph 1, thereof every person entitled to privileges and immunities under the Convention enjoyed them from the moment he entered the territory of the receiving State on proceeding to take up his post; (d) the charges against Mr. Dinh Ba Thi were unfounded and appeared to have been motivated exclusively by the desire to compromise and insult the newest socialist Member State of the United Nations; (e) the slanderous propaganda campaign mounted by the information media prior to the request for the departure of Mr. Dinh Ba Thi was particularly reprehensible; (f) the Secretary-General should lend his assistance to the Committee in order to ensure that there should be no repetition of such action by the host country as that under consideration; and (g) that action was but a sequel to the efforts the host country had made over many years to prevent Viet Nam from becoming a Member of the United Nations, it being particularly regrettable that the State singled out for an illegal request that its permanent representative to the United Nations leave the country should be one which, like Viet Nam, had had to struggle for so many years against foreign intervention to regain its sovereignty.

21. At the 70th meeting of the Committee, on 10 February 1978, the representative of France said that, since the General Assembly resolution by which the Committee had been set up was posterior to the conclusion of the Headquarters Agreement, the Committee was not legally qualified to arraign the host country on alleged violations of that Agreement. In his view, the contacts between the two Governments concerned in New York and Paris appeared to amount to consultations

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

within the meaning of section 13 (b) of the Headquarters Agreement, it being regrettable, however, that the Ambassador, Mr. Dinh Ba Thi, had not been informed of the matter before it was brought to public attention by the mass media. He respected the decision of the Vietnamese Government to recall its permanent representative in the interest of easing the tension and was gratified by the hope expressed by the United States that the incident would have no harmful effect on the relations between the two countries.

22. The representative of Canada said that the matter submitted to the Committee could be divided into two distinct parts: the legality of the action of the United States and certain questions of fact. Under the Headquarters Agreement and the Vienna Convention on Diplomatic Relations, the legality of the United States action could hardly be disputed in principle. Section 13 (b) of the Headquarters Agreement provided that if a representative of a Member State abused his residence privileges while in United States territory in activities outside his official capacity, he would not be exempted from the laws and regulations of the United States regarding the continued residence of aliens. However, under section 13 (b) (3), persons entitled to diplomatic privileges and immunities under section 15 should not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States. That provision recalled article 9 of the Vienna Convention on Diplomatic Relations, which was declaratory of international principles and practices in the matter and provided that the receiving State could, at any time and without having to explain its decision, inform the sending State that a member of its mission was persona non grata. Section 13 (b) (1) of the Headquarters Agreement provided that no action could be taken by the host country in this respect without the approval of the Secretary of State after consultation with the Member State. The Canadian delegation had some doubts regarding the application of that provision to the case before the Committee. Nevertheless, its application thereto would, given the other provisions cited, mean merely that the host country had the right in principle to expel the representative of a Member State of the United Nations after consultation with the Member concerned and without having to state the reasons for its decision. Even had the facts been known, the Committee would not have any jurisdiction with regard to the substance of the matter since the host country was not obliged to give its reasons. The only outstanding question was, therefore, if section 13 (b) (1) of the Headquarters Agreement was applicable, which was open to doubt, whether the United States had complied with that provision. He did not, at any rate, believe that there was any need for the Committee to pronounce on the matter, since it was essentially a bilateral one which he hoped would be resolved to the satisfaction of the parties concerned without undue international repercussions.

23. The representative of Mali said that the Committee was faced with a delicate situation which was unprecedented in the history of the United Nations and with regard to which it was difficult to reach any factual conclusions. The Committee was not a court of law which could require a complete file on the case in order to choose between the conflicting positions of the United States and Viet Nam. It could, however, express its concern regarding the decision of the host country, and point out that the first decision by it to expel a permanent representative concerned Viet Nam, a State with which the United States had no diplomatic relations. He thought it regrettable that no proper consultation had taken place between the two parties. His delegation expressed its sympathy with the Permanent Mission of Viet Nam.

24. The observer from Viet Nam said that many delegates had insisted on the procedural aspects of the case, asserting in particular that the host country had failed to observe section 13 (b) (1) of the Headquarters Agreement by not consulting the Member State concerned and the Secretary-General. This position was the correct one since the host country had merely notified the Mission of Viet Nam, whereas consultation in its ordinary meaning required an exchange of views and an agreement on the measures to be taken. There was the further question as to whether the host country had valid grounds for requesting the departure of the Ambassador, Mr. Dinh Ba Thi. Since the United Nations was a party to the Headquarters Agreement, the matter was not a bilateral but a trilateral one. As the United Nations itself had conferred international privileges, it had the right to determine whether certain actions constituted an abuse of those privileges. Only where such an abuse had occurred could it allow the host country to declare a diplomatic representative persona non grata. The host country should therefore make available all the facts pertaining to the case in order to enable it to be examined in full. His country did not fear that the calumnies directed at it by the host country would affect its prestige and standing among the many Member States which had supported its admission to the United Nations; its concern was rather for the United Nations as a whole, for failure to analyse fully the substance of the case would be tantamount to admitting that the host country had a discretionary right to expel representatives of Member States, which would negate the independence of the United Nations.

25. The representative of the USSR said there were many steps which the host country should have taken before deciding to expel the Permanent Representative of Viet Nam. It was particularly regrettable that the mass media of the host country had given wide coverage to the charges against the Permanent Representative of Viet Nam long before any consultations. The Headquarters Agreement was not a bilateral but a multilateral agreement, and the Committee had been set up to discuss questions arising out of its implementation and consult with the host country thereon. It was therefore wrong to maintain that the Committee was not entitled to discuss the case at issue. No evidence had been offered of Mr. Dinh Ba Thi's guilt and the procedure normally applicable in such cases had not been followed.

26. The representative of Bulgaria said that the Committee should clarify two points: first, how far the accusations against the Permanent Representative of Viet Nam constituted sufficient grounds for the action taken by the host country, bearing in mind that so far there was no evidence against him and that the case in which he was alleged to be involved was still awaiting judicial determination; secondly, whether consultations within the meaning of the Headquarters Agreement had actually taken place.

27. The observer from Viet Nam said that a distinction must be made between the regular recall of a diplomatic representative and his recall as a result of an abuse of the right to declare an individual persona non grata. The Permanent Representative of Viet Nam would have preferred to remain at the United Nations, in accordance with Article 105, paragraph 2, of the Charter, and refer the host country's decision to the Secretary-General. He had been recalled only because the Government of the host country had used violent means to prevent him from freely exercising his diplomatic functions.

28. The observer from the Lao People's Democratic Republic said that the United States authorities had violated the existing international instruments, in



particular, the Headquarters Agreement, and that the accusations levelled against the Vietnamese Ambassador to request his departure were unfounded. The slander against Viet Nam in the mass media cast a slur on the international standing of that country. All Member States might be affected by the unprecedented incident which had taken place. He appealed to the Committee to persuade the United States authorities to reconsider their decision.

29. At the 71st meeting of the Committee, on 13 February 1978, the Legal Counsel, replying to a question raised by the representative of Senegal concerning the legal definition of "prior consultation", said that according to the only existing dictionary on the terminology of international law, the expression was used to describe either joint consideration of a matter or the action of requesting the opinion of another Government. In the course of a meeting of the Trusteeship Council on 24 January 1950 the representative of Belgium had stated that the expression "after consultation with" was more precise than "request the opinion of", but that neither went as far as "with the agreement of". The representative of the United States had said at that time that consultation implied a continuous action whereas a request for an opinion was a specific action that could prompt a negative or an affirmative reply. Paragraph 4 of article 77 of the Vienna Convention on the Representation of States in their Relations with International Organizations, which dealt with respect for the laws and regulations of the host State and resulted from an amendment submitted by France which had been adopted without change, provided that nothing in that article should be construed as prohibiting the host State from taking such measures as were necessary for its own protection. It provided further that, in such an event, the host State should consult the sending State in an appropriate manner in order to ensure that the measures taken did not interfere with the normal functioning of its mission or delegation. In introducing the amendment in question, the representative of France had stated that all authorities on international law had traditionally conceded to host States the powers which it enunciated. Although the Vienna Convention had not yet entered into force, it could be considered to reflect existing international law, this being particularly true of the provision quoted. Finally, according to a study prepared by the Secretariat some 15 years earlier on the expressions "in consultation with" and "after consultation with", a distinction should be drawn between "consultation" on the one hand and "agreement", "concurrence" or "consent" on the other unless it was clearly understood that the purpose of consultation was to secure agreement. The study observed that the expressions "in consultation with" and "after consultation with" were used with more or less the same meaning as "taking into account the views of" or "bearing in mind the recommendations of"; although United Nations practice indicated no significant difference between these expressions, "in consultation with" seemed to refer to a more continuous process leading to the reaching of a decision by the consulting party. The study concluded that a careful distinction was to be made between the expressions "in consultation with" or "after consultation with" and such expressions as "with the concurrence of".

30. The representative of Senegal said that in his view section 13 (b) of the Headquarters Agreement had not been observed by the host country since it appeared that such contacts as had occurred had taken place following rather than prior to the decision of the Secretary of State to request the departure of the Ambassador, Mr. Dinh Ba Thi. The Committee should therefore invite the General Assembly to consider whether the Headquarters Agreement should not be amended in order to avoid further incidents such as the one under consideration.

31. The representative of the United States said that the decision to request the departure of the Vietnamese Ambassador had been made upon the approval of the Secretary of State after the matter had been brought to the attention of Viet Nam. As the United States representative had stated at the 69th meeting, during the initial contact the representative of the United States Government had not only transmitted a message to Mr. Dinh Ba Thi but also solicited his comments. The Ambassador's response had centred on the total rejection of the charges against him; he had referred to his Government's and his own attitude to such allegations and commented on the probable effects of the United States action on the relations between the two countries. The representative of the United States Government had declined to discuss the incident's effect on those relations but not the case itself or the Ambassador's reaction to the allegations. Following that initial contact, the Secretary of State's decision, and consultations with the Secretary-General, the United States Government had tried to contact the Mission again but had been told that the Ambassador did not wish to discuss the matter further. The United States had informed the Vietnamese Government through its Embassy in Paris of the charges against its Permanent Representative to the United Nations. A more substantive discussion had followed with the Embassy in Paris and questions had been raised regarding the handling of the matter.

32. The observer from Viet Nam said that the question before the Committee was whether or not the United States Government had followed the procedure laid down in the Headquarters Agreement. As already stated by him, on 1 February a senior member of the United States Mission had called on Mr. Dinh Ba Thi and informed him that he was charged with complicity in an espionage conspiracy. Mr. Dinh Ba Thi had rejected that allegation completely, pointing out that it was a fabrication and a calumny. He had then referred to the consultation process, expecting that an exchange of views would follow. The United States official had thereupon said that it had been his duty to notify the Ambassador of the charges and then left. On 3 February, the events of 1 February had been repeated in Paris; the Ambassador of Viet Nam had also rejected the charges against Mr. Dinh Ba Thi. On the same day the United States Mission to the United Nations had telephoned the Permanent Mission of Viet Nam to request an interview. The Mission had inquired about the subject of the interview. The United States Mission had replied that it would concern the subject-matter of the prior visit. An official of the United States Government had then come to the Mission and delivered the official note requesting Mr. Dinh Ba Thi's withdrawal. That sequence of events could certainly not be described as consultations within the definition which the Legal Counsel had just provided. There had only been notification, without any consultation.

33. The observer from Cuba said that the crux of the matter was whether, between the afternoon of 1 February, when initial contact between the United States authorities and the Permanent Mission of Viet Nam had taken place, and the morning of 3 February, when the United States had delivered its note requesting the withdrawal of the Ambassador, Mr. Dinh Ba Thi, there had been sufficient time for proper consultations between the two Governments. In considering this question it should be borne in mind that during that interval the Secretary of State had been very much taken up with other matters. In the light of the circumstances and the statement of the Legal Counsel, he believed that the question could be answered only in the negative. Moreover no effort seemed to have been made to bring the matter to the attention of the Secretary-General with a view to working out an amicable settlement.

34. The representative of Honduras said he had doubts as to whether the Secretary-

General was required by the Headquarters Agreement to become involved in consultations under section 13 (b) thereof with respect to a member of a permanent mission as distinct from a member of the staff of the Secretariat.

35. The representative of the Ivory Coast observed that the Committee should not go beyond its competence: it was not a tribunal and could not investigate the original causes of the problem. Section 13 (b) of the Headquarters Agreement made it clear that it was for the United States alone to decide what constituted an abuse of a diplomat's right of residence in United States territory. The two sides agreed that diplomatic contact had been made in both New York and Paris, and that the United States had requested the departure of the Ambassador, Mr. Dinh Ba Thi, on 3 February. Whether those contacts constituted consultations was not a matter which the Committee could decide. It must be content to note that meetings had taken place. However, there had already been mention of charges against Mr. Dinh Ba Thi in the local press before the contacts had taken place, which implied that the Secretary of State had already decided to request the departure of the Ambassador. If that was true, the correct procedure had clearly not been followed. The Committee should therefore recommend that in any future case the mission of a country concerned should be informed of a request for the departure of one of its members before the matter was revealed to the press. Moreover, the Secretary-General of the United Nations should play a conciliatory role between the two sides, as provided for in section 13 (b) of the Headquarters Agreement.

36. The representative of Senegal agreed that the main task of the Committee was to make recommendations for dealing with future cases: the Ambassador, Mr. Dinh Ba Thi, had left the country, and it was hardly likely that he would be invited to return.

37. The representative of the USSR said that it was within the Committee's mandate to advise the host country on issues arising in connexion with the implementation of the Headquarters Agreement. It was clearly understood that the host country should observe the principle of consultation in cases such as the present one; he felt, moreover, that there was no need to discuss or define the meaning of "consultation" as used in the Headquarters Agreement, the concept being self-evident. The Committee must make recommendations for dealing with any similar cases occurring in the future.

38. At the 72nd meeting of the Committee, on 15 February 1978, the representative of Costa Rica said that since the matter under consideration, which had delicate legal and political implications, related to the security of the host country, it was particularly important that the Committee should not exceed its mandate, which did not allow it to pronounce on matters which were the internal affair of the host country. The main point was whether consultations as required by section 13 (b) of the Headquarters Agreement had been held. With regard to the divergence of opinion between the United States and Viet Nam as to whether the action by the former was legally justified, it would be wise for the Committee to refrain from making any recommendations pending judicial determination of the case.

39. The representative of Canada said that irrespective of the interpretation given to the Headquarters Agreement, customary international law should, in view of its insufficient development in the area of relations between States and international organizations, be ruled out as a factor in resolving issues such as the one under consideration. In the present case, the legal framework was therefore

limited to the Headquarters Agreement, the Convention on the Privileges and Immunities of the United Nations and the Vienna Convention on Diplomatic Relations, the key element being the latter. The Vienna Convention on the Representation of States in Their Relations with International Organizations of 1975, did not apply, since its provisions went beyond the existing obligations contained in other conventions between international organizations and States and were not declaratory of customary international law. He considered it desirable that the host country should, as far as possible, hold consultations in cases such as the present one. International practice pointed in that direction, but was too recent to have given rise to a legal obligation. There was a clear difference between the advisability of following a certain practice and the obligation to comply with a rule of international law. He agreed with the view expressed by the observer from Viet Nam that the fundamental question was not the matter of consultations but the host country's power to expel members of missions accredited to international organizations. It was true that such cases were of a trilateral nature in that the immunities and privileges involved were conferred by reason of the accreditation of the representative of a Member State to the United Nations. They were, however, granted by the host country, which retained the sovereign and undisputed authority under international law to request a member of a mission to leave its territory. Even if the 1975 Vienna Convention were taken into account, the correct view would still be that international law did not, even in a case where the host country informed an international organization of the measures it contemplated taking against a member of the mission of a sending State, empower the organization to take an active role in a dispute between the host country and the sending State regarding the departure of the person concerned. The reason was that the territory occupied by representatives of international organizations outside their official functions did not belong to the organization, but to the host country. Although, as pointed out by other members of the Committee, the matter under consideration had implications for everyone, he did not think that the Committee was empowered to pronounce on it in so far as it involved matters of international law extending beyond the immediate problem it posed.

40. The representative of Spain said that the case at issue was extremely serious not only because a decision by the host country to expel the Permanent Representative of a Member State was involved, but also because the situation could recur, for which reason the matter had implications not only for the two Member States specifically concerned but also for the entire United Nations membership. It also was of concern to any State which was host to an intergovernmental organization. All the members of the Committee clearly agreed that the Committee was not a court of law but it was clear, however, that its functions were, to a considerable extent, of a legal nature. Thus, one of its principal tasks was to consider issues arising in connexion with the Headquarters Agreement. There was no doubt that the host country could, in the exercise of its sovereignty, expel representatives of Member States of the United Nations just as it could diplomatic representatives whose presence in its territory was governed by the Vienna Convention on Diplomatic Relations. Nevertheless a number of members of the Committee endorsed an interpretation of the Headquarters Agreement whereby the host country was bound to consult the Member State concerned before deciding to expel one of its representatives. He did not subscribe to that interpretation. Section 13 (b) (3) of the Headquarters Agreement provided that persons entitled to diplomatic privileges and immunities under section 15 should not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States. Section 15 laid down that permanent representatives to the United Nations were entitled to the same

privileges and immunities as diplomatic envoys accredited to the United States. If permanent representatives to the United Nations were to enjoy the same privileges as diplomatic envoys accredited to the United States, they should be subject to the same rules with regard to expulsion. The "customary procedure" referred to in section 13 (b) (3) was the one specified in article 9 of the Vienna Convention on Diplomatic Relations, under which "the receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata ...". If mere notification of a declaration of persona non grata was the sole prerequisite for the expulsion of diplomatic agents who, like those to whom the Vienna Convention on Diplomatic Relations applied, were subject to a far stricter control than diplomats accredited to the United Nations, then notification without more should be sufficient for the expulsion of the latter. Such an interpretation was supported by the Convention on the Privileges and Immunities of the Specialized Agencies, <sup>4/</sup> section 25.2 of which was almost identical with section 13 (b) (3) of the Headquarters Agreement. Accordingly, he did not share the view expressed by the Legal Counsel at the 71st meeting to the effect that article 77, paragraph 4, of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character was declaratory of international law. If, as the representative of the United States had stated, the United States Government did have an obligation to consult the Mission of Viet Nam, the Committee's task should be to determine whether consultation had taken place in accordance with that requirement. As was clear from the Legal Counsel's statement, the interpretation given to the term "consultation" in United Nations practice left no room for doubt in this regard. His delegation nevertheless deeply regretted that the Vietnamese Mission had, prior to receiving any official notification, learned of the decision to request the departure of the Ambassador, Mr. Dinh Ba Thi, from the mass media and hoped that no mission would ever again find itself in such a situation.

41. The representative of the USSR said that the Spanish representative's contention that the United States was empowered to compel the departure of members of missions accredited to the United Nations without undertaking prior consultations was not tenable. The United States representative himself had agreed on the need for prior consultation, claiming that the United States had abided by that requirement. Members had differing views as to the extent to which the United States had done so. The Committee's task was to consider, and advise the host country on, issues arising in connexion with the implementation of the Headquarters Agreement. Bearing that in mind, and in the light of the Legal Counsel's interpretation of the term "consultations", the Committee should establish whether the host country had complied with the Headquarters Agreement in the present case.

42. The observer from Benin said that it was particularly distressing that the decision to expel the Permanent Representative of Viet Nam had been reported in the press prior to any effort at consultations. The Committee should decide whether section 13 (b) of the Headquarters Agreement had been complied with; any discussion of other matters merely created confusion.

43. At the 74th meeting of the Committee, on 3 October 1978, the representative of Viet Nam said that there were two sides to the question under consideration.

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<sup>4/</sup> See General Assembly resolution 179 (II).

From the factual viewpoint, his delegation affirmed its position that the attempt to involve Mr. Dinh Ba Thi in an espionage plot was based on an outright invention. That side of the matter was, however, exclusively within the scope of the bilateral relations between the Socialist Republic of Viet Nam and the United States. The legal aspect of the matter, on the other hand, was of interest to the entire membership of the United Nations inasmuch as it affected the principle laid down in Article 105, paragraph 2, of the Charter, which granted representatives of Member States the privileges and immunities necessary for the independent exercise of their functions. It was, in his opinion, the view of many delegations that the legal problem thus raised should be referred to the General Assembly in view of the ambiguity of the Headquarters Agreement with respect to declarations of persona non grata concerning mission members and the departure from established practice in bilateral relations that was involved.

44. The representative of the United Kingdom said that since the General Assembly was not a legal but a political body, the question raised by the observer from Viet Nam was not a proper one for consideration by the Assembly.

45. The representative of the USSR, who expressed full support for the suggestion made by the observer from Viet Nam, said that both the General Assembly itself and its Sixth Committee were fully entitled to discuss matters such as the one that the observer from Viet Nam had raised.

46. The representative of the United States said that his delegation continued to reject the charges made by the observer from Viet Nam.

IV. SECURITY OF MISSIONS AND SAFETY OF THEIR PERSONNEL:  
COMMUNICATIONS CIRCULATED TO THE COMMITTEE AT THE  
REQUEST OF THE MISSIONS CONCERNED

A. Communications received by the Committee

47. By a note verbale dated 2 March 1978 to the United States Mission (A/AC.154/163), the Mission of Chad complained about a violation of the private residence of Mr. Yoossem-Kontou, First Counsellor of the Mission. On returning, in the evening of 24 February 1978, to the apartment he occupied in Queens, New York, Mr. Yoossem-Kontou found himself locked out because, for reasons unknown to him, the entrance door had been sealed during his absence. The Mission had thereafter learned by telephone that unknown persons had entered the apartment of Mr. Yoossem-Kontou, who, having been unable to unseal the entry thereto, was still homeless and unable to recover his personal effects and documents at the time the note was sent.
48. In a note dated 28 February 1978 to the United States Mission (A/AC.154/164, annex I), the USSR complained about demonstrations held near the Mission on 26 and 27 February. These demonstrations, characterized as hostile, had interfered with the functioning of the Mission by blocking its entrance and obstructing the movement of its vehicles. The Mission also complained about the behaviour of the police, who had allowed certain of the demonstrators to reach the entrance to the Mission despite the latter's clearly expressed refusal to receive them. The police had, even though the circumstances showed that the demonstrations had been prepared in advance, permitted some of the demonstrators to remain at considerably less than 100 feet from the Mission's premises, thereby violating the Federal Act for the Protection of Foreign Officials and Official Guests to the United States. 5/
49. By a note verbale dated 17 March 1978 to the United States Mission (A/AC.154/164, annex II), the USSR Mission complained about a demonstration held on 15 March next to the Mission by a hostile group of some 100 "anti-Soviet hooligans" who blocked entry to and exit from the Mission, threatening and insulting the staff of the Mission and members of their families. About 30 of the demonstrators had set up a picket line in front of the Mission. Even before the mob assembled, representatives of the mass media were present at the site of the demonstration. The Mission urgently demanded that the host country take measures to prevent a repetition of such incidents and guarantee normal working conditions for the Mission.
50. By a note verbale dated 29 March 1978 to the USSR Mission (A/AC.154/165), the United States Mission replied to the two notes verbales mentioned earlier (A/AC.154/164, annexes I and II). Referring to the demonstration on 26 February, the note stated that it had occurred from 11.30 a.m. to noon and involved some 300 participants. The police had confined the demonstrators to 67th Street and Third Avenue, barring access to 67th Street to all but 10 demonstrators, whom the police had escorted to a gate in front of the Mission. These persons had presented a note to the Mission, which had been refused. A demonstration, which had lasted from

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5/ United States Public Law 92-539 (see A/8871/Rev.1).

11.30 a.m. until 12.30 p.m., had been held the next day by 50 Somali students, who had at no time been allowed to cross police lines and enter the East 67th Street block of the Mission. The approximately 300 persons who had participated in the demonstration on 15 March 1978, which had lasted from 6.05 p.m. until 6.45 p.m., had been confined by the police to the designated area at 67th Street and Third Avenue. In the course of the demonstration a group of 4 demonstrators had been escorted by the police to the gate at the entrance of the Mission. These persons, who had remained in the Mission no longer than five minutes, had presented a prayer book and a yarmulka to the Mission, which had refused them. The police had advised that each of the three demonstrations had ended without any untoward incident. The notion in the USSR notes that in view of the presence at the demonstration of members of the information media the responsible authorities had had prior warning of the demonstrations and nevertheless failed to take the necessary measures to safeguard the USSR Mission was rejected. As soon as the United States Mission had become aware, on 14 March 1978, that the demonstration to be held the following day had been scheduled, it had notified the USSR Mission. United States laws allowed citizens to demonstrate peacefully and guaranteed freedom of the press, which included, in particular, freedom to report on any events the press might wish to cover. The United States would continue to take the necessary measures to prevent all irresponsible actions by American citizens against the USSR Mission, which it deplored. As the USSR Mission was aware, the police maintained a fixed post 24 hours a day at its premises, which provided protection as required to control demonstrations. The demonstrations in question had not, in the opinion of the United States Mission, violated the Federal Act to which reference had been made.

51. By a note verbale dated 3 April 1978 to the United States Mission (A/AC.154/166), the Mission of Iraq to the United Nations complained about the theft on 2 April 1978, of the car of the head of the Mission. The unlawful act had been perpetrated by gunmen who had held up the garage in which the car was parked, situated in front of the official residence of its owner. The Mission also referred to previous unreported incidents of minor damage to official cars of the Mission, adding that the over-all situation created abnormal conditions for the Mission, for which reason it was essential that the host country prevent the recurrence of such incidents.

52. By a note verbale dated 7 June 1978 to the United States Mission (A/AC.154/167), the USSR Mission complained of a demonstration, amounting to "a regular provocative propaganda farce", which had been staged by a group of "disorderly elements" just outside the entrance to the Mission on 6 June 1978. Since the police had allowed the entrance to the Mission to be blocked, the employees of the Mission and members of their families to be disturbed and the normal functioning of the Mission to be hampered, the Mission considered that the incident had taken place with the connivance of the police. It strongly protested at the failure of the host country authorities to keep their prior assurances that the necessary measures would be taken to ensure the normal functioning of the Mission.

53. By a note verbale dated 13 June 1978 to the Department of State of the United States, the Philippine Embassy to the United States complained about an incident affecting the security of the Permanent Mission of the Philippines to the United Nations. In its note, which was, at the request of the Acting Permanent Representative of the Philippines to the United Nations, reproduced as a document of the Committee on 16 June 1978 (A/AC.154/168); the Philippine Embassy stated that on or about 12.30 a.m. on 11 June 1978 a group of New York City police officers, with guns drawn and no search/arrest warrant, had forced open the entrance door of



the Philippine Center at 556 Fifth Avenue, New York, which houses the Philippine Mission, the Philippine Consulate General in New York, other offices of the Philippine Government and the Maharlika Restaurant, which is owned by the Philippine Government. Immediately following their forcible entry, the police officers manhandled, beat and handcuffed Mr. Leo Dacalanio, a staff member of the Embassy temporarily acting as security officer at the Center. The police officers then ransacked the offices of the Foreign Trade and Tourism Representatives, located inside the Center. They next broke into the Maharlika Restaurant, the entrance door to which was locked, and pointed their guns at the manager of the Center, certain late customers and personnel of the restaurant. Mr. Modesto Cabuang, a cook of the restaurant, was beaten and handcuffed and, together with Mr. Dacalanio, arrested and taken to a police station. After being subjected to abuse and ill-treatment, including invective against the Government and the President of the Philippines, the two men were released at about 2.45 a.m. without any charges being filed against them. On their return to the Center, the physician of the Consulate General found contusions, wounds and lacerations in various parts of their bodies. The Embassy further pointed out that the coat-of-arms of the Philippines is prominently displayed just inches away from the entrance door to the Center and that Mr. Dacalanio had informed the police officers of the diplomatic and consular character of the building. It demanded formal written satisfaction from the Government of the United States and the dismissal of the officers involved, without prejudice to the right of the Philippine Government to prosecute them criminally and claim civil damages from the Government of the United States.

54. By a note verbale dated 19 June 1978 (A/AC.154/169), the United States Mission, on the basis of preliminary oral reports by the police, provided its understanding of the incident as follows:

- (a) The incident began with a fight involving eight persons in the street in front of the Philippine Center. The combatants turned on two policemen attempting to quell the disturbance.
- (b) The police then attempted to arrest all eight. Two were detained. Two fled down the street. Four, including one observed to be armed, fled into the Maharlika Restaurant, which is not publicly identified as being the property of the Philippine Government, on the ground floor of the building.
- (c) Two other policemen pursued the four into the restaurant. Persons in the restaurant locked the door after the two policemen had entered, denying entry to police reinforcements.
- (d) In their pursuit, these two officers found themselves in the main lobby of the connecting Philippine Center, where they encountered two of the suspects and various other persons in the building who forcibly attempted to prevent them from making arrests.
- (e) The police reinforcements, observing the scene from outside the locked entrance, went to the aid of the two officers by forcing the locked door to the Cultural Center, on the ground floor near the restaurant, and entered with guns drawn, as is their practice when firearms have been observed. The door to the Cultural Center is not marked as Philippine Government property, but has a sign reading "Welcome visitors". A plaque with the seal of the Government of the Philippines to the left of the door was apparently missed in the confused situation.

(f) The police succeeded in arresting two more suspects and brought all four to the local precinct. The police at the precinct were informed that the building in question housed the Philippines Mission and Consulate. Accordingly, after verification that the Mission and the Consulate were located on the upper floors of the building and consultation with the police Legal Counsel, the police released all four.

55. By a note verbale dated 14 July 1978 (A/AC.154/171), the USSR Mission complained about demonstrations that had prevented the normal functioning of the Mission and been accompanied by harassment and threats against its personnel. The failure of the police to prevent these outrages, for which the Jewish Defence League bore the main responsibility, was to be regarded as virtual connivance on their part at the acts in question. These demonstrations had been preceded by a bomb explosion at the office of Intourist on 10 July 1978, responsibility for which act had been claimed by a so-called Jewish Armed Resistance Group. Such acts were an integral part of a campaign waged to stir up hostility against the USSR in the United States. The Mission protested and insisted that the host country authorities take without delay all necessary and effective measures to prevent the repetition of such acts.

56. By a letter dated 13 September 1978 to the Secretary-General (A/AC.154/173), the Permanent Representative of Cuba to the United Nations complained about the explosion, in the morning of 9 September 1978, of a powerful bomb placed in front of the premises of the Mission, which had been seriously damaged. The explosion had, moreover, endangered the lives of the staff of the Mission and the occupants of the premises situated at either side of the Mission. The Permanent Representative observed that this was not the first of the acts of violence committed against the premises of the Mission, against the residences and vehicles of its staff and against individual members thereof, and had interfered with the normal performance of the functions of the Mission. Noting the condemnation of the incident by a spokesman of the Department of State, who had stated that its perpetrators would be brought to justice, the letter expressed the hope that the culprits would be punished as provided for in the applicable laws of the host country and in fulfilment of its international obligations.

57. By a note dated 4 August 1978 to the United States Mission (A/AC.154/172, annex I), the USSR Mission complained about demonstrations held in front of the Mission on 1 and 2 August 1978. Particular attention was drawn to threats on the part of the demonstrators against Soviet diplomats and the leaders of the Soviet States. Such acts were, it was stated, punishable under the Federal Act for the Protection of Foreign Officials and Official Guests of the United States. The note also complained about the inaction of the police, which, it was maintained, had amounted to connivance with the demonstrators. The United States authorities were requested to take measures to prevent the repetition of such acts.

58. By the last-mentioned note, the USSR Mission complained about the throwing, by unknown persons, of three containers containing a water soluble white liquid into the swimming pool that is part of the housing complex of the Mission in Riverdale, New York, and is used by the wives and children of members of the Mission. The incident had occurred on 2 August 1978. The unlawful act thus committed, which had caused inconvenience to these persons and also endangered their health, was characterized as being, together with the demonstrations on 1 and 2 August, part of a growing campaign by United States citizens to kindle hostility against the Soviet Union and its citizens.

59. By a note dated 22 August 1978 to the United States Mission (A/AC.154/172, annex II), the USSR Mission stated that as a result of the damage it had suffered, the swimming pool at the Riverdale housing complex had been out of operation for a week and a half. To restore it to normal conditions the Mission had had to spend the amount of \$5,017. The Mission asked compensation on this account and the prevention of similar acts in the future.

60. By a note dated 20 September 1978 to the USSR Mission (A/AC.154/174), the United States Mission replied to the two notes verbales mentioned in the two preceding paragraphs (A/AC.154/172, annexes I and II). Upon receipt of the note dated 4 August (A/AC.154/172, annex I), the United States Mission, which deplored irresponsible acts against the USSR Mission staff or its property, had requested an investigation of the swimming pool incident by the Federal Bureau of Investigation and the New York Police. Although the investigation was not yet concluded, it was believed that the culprits might have been children. Circumstances seemed to indicate that what had been thrown into the pool was lime; but this could not be corroborated since the USSR Mission had not made the physical evidence in its possession available to the authorities. Families whose property abutted the USSR complex along the area where the incident had taken place had been told to be on the look-out for children playing there. They would warn their children to stay away from the area in question and report to the police any strangers they saw there. A 24-hour coverage of the entrance to the complex was being maintained by the police, who also had cars on "special attention" at a street providing access to the fenced area nearest the pool. Members of the United States Mission had inspected the pool area and discussed preventive measures with the USSR Mission. With regard to the demonstrations mentioned in the USSR Mission note of 4 August (A/AC.154/172, annex I), the United States Mission had obtained a report from the New York City Police revealing that on 1 August 11 members of the Jewish Defense League had conducted an anti-Soviet demonstration for an hour at 67th Street and Third Avenue. The group had been kept behind barricades and the demonstration had not given rise to any incident or arrest. On 2 August a large group of persons from a Jewish summer camp had demonstrated peacefully, without incidents or arrest, during 45 minutes. The demonstrations had been conducted peacefully and without any United States local or federal law appearing to have been violated. The United States Mission, which regretted any inconvenience caused to the USSR Mission staff, noted that it maintained a close liaison with the USSR Mission and the competent law enforcement authorities to provide adequate protection to the USSR Mission. The statement of expenditures attached to the USSR Mission's note of 22 August (A/AC.154/172, annex II), had been forwarded to the Department of State for its consideration.

61. By a note dated 26 October 1978 to the United States Mission (A/AC.154/175), the USSR Mission complained about a demonstration held at the main entrance to the USSR residential complex in Riverdale on 24 October 1978 by a crowd of some 400 persons. The demonstrators had barred passage through the entrance of Mission staff and members of their families. About 30 of the demonstrators, who had uttered threats against Soviet citizens and shouted obscenities and insults, had shaken the gates of the residential complex in an effort to force their way in. Encouraged by the inactivity of the police, the note added, the crowd had compelled a bus carrying staff of the Mission and members of their families to stop and had surrounded it with a dense circle of people, who had beaten on the windows of the vehicle and spat on it, threatening the passengers and attempting to open the door of the bus. When the mob had first assembled, the police who were usually on duty at the complex were nowhere to be seen. Only after repeated telephone calls to the police and the

United States Mission had six policemen arrived at the scene. But they had refused to comply with appeals by members of the USSR Mission to stop the hostile acts of the mob. The failure of the competent United States authorities to take appropriate measures to put a stop to the criminal acts perpetrated by the Zionists staging the demonstration was, the note added, a flagrant violation of the obligations of the United States under international agreements, including the Vienna Convention on Diplomatic Relations, the Convention on Privileges and Immunities of the United Nations and the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, as well as of United States law. The evident connivance of the authorities with hooliganistic elements of well-known organizations, encouraged by certain circles in the United States which specialized in anti-Sovietism, inevitably led to the further escalation of hostile and provocative acts against the USSR Mission, of which the demonstration in question was further evidence. In registering a strong protest to the United States Mission, the USSR Mission once again insisted that the host country, without further delay, fulfil the assurance that it had given in this regard by taking all necessary and effective measures to prevent similar acts of provocation in the future, which might have the most serious consequences.

62. By a note dated 14 November 1978 (A/AC.154/177, annex I), the United States Mission informed the USSR Mission that, since the account of the demonstration given in the USSR note of 26 October 1978 (A/AC.154/175) differed from the relevant report of the New York City police, the United States Mission had requested an investigation by the Borough Commander. According to the report on that investigation, the police, having been informed that a group of 50 demonstrators would march from the local synagogue to the Soviet residential complex to protest the treatment of Jews in the USSR, had, in accordance with normal practice, assigned two officers to escort the group. Shortly before the group reached its destination, an entirely unexpected crowd of 200 other demonstrators suddenly arrived at the main gate of the complex. Since the police were unprepared for so large a gathering, reinforcements had been called immediately. A representative of the residents agreed to a request by the police that pending the arrival of reinforcements the residents should use the rear gate. While the police were trying to remove the demonstrators from the area in front of the main gate, the USSR Mission's bus arrived. Its driver, disregarding instructions from the police that it proceed to the rear gate, drove up to the main one. It was thus immediately surrounded by a large group of demonstrators, making it more difficult for the police to remove the demonstrators from the gate. Finally, acting apparently in compliance with instructions received by radio from inside the complex, the driver drove to the rear entrance, whereupon the police resumed their efforts to dislodge the crowd from the gates. By this time, however, the crowd began to disperse, bringing the demonstration to an end by 7.10 p.m. The police saw no deliberate attempt to force open or even shake the gates, as stated in the USSR Mission's note. Moreover, contrary to what had been asserted therein, a police officer had been on duty outside the complex both before and during the demonstration. The United States Mission totally rejected the charge of "connivance" made in the USSR Mission's note, adding that the reason why the police had been unable to prevent the gathering before the main gate had been the sudden and unexpected arrival of the additional group of 200 persons. The Mission, which regretted the inconvenience caused to the staff of the USSR Mission and took seriously its responsibility for the safeguarding of diplomatic premises and personnel, had been assured by the competent commanding officers of the police, who were conscious of the importance of the inviolability of the USSR Mission's premises, of their co-operation in respect of incidents such as those that had occurred. The police officer assigned to the complex had been instructed to stay at all times immediately before the main gate so as to ensure better control of that area. Moreover, the rear gate and the perimeter of the complex would receive special protection from a radio patrol car.

63. By a note dated 6 November 1978 to the United States Mission (A/AC.154/176), the USSR Mission complained about a demonstration held at the entrance of the Riverdale residential complex on 2 November 1978. The demonstrators, numbering about 100, shouted threats and insults against Soviet citizens, obstructing passage through the entrance and shaking the gates in an effort, at which one of the participants had succeeded, to force their way into the grounds. As on the occasion of the incidents that were the subject of the note dated 26 October 1978 (para. 61 above), the policemen who were usually on duty in front of the Mission were absent when the demonstration began. A police detail that arrived at the scene only 45 minutes after having been summoned by the Mission drove back the demonstrators from the gates, shortly after which the mob dispersed. This, the note added, showed that, if they wished to do so, the local authorities could take effective action to curb threats to the safety and dignity of the staff of the USSR Mission. In registering a strong protest against the acts in question, the USSR Mission reiterated its insistence that the host country authorities take the necessary effective measures to prevent similar provocations in the future.

64. By a note dated 14 November 1978 to the USSR Mission (A/AC.154/177, annex II), the United States Mission referred to the demonstration that was the subject of the note dated 6 November 1978 from the USSR Mission (A/AC.154/176). At 3.30 p.m. of that day, the USSR Mission had informed the United States Mission by telephone that a demonstration was taking place at the complex in Riverdale in the absence of the police. The number of demonstrators who, it was alleged, were forcing the entrance gate of the Mission, was placed at 100 but "could be 1,000". The 50th Police Precinct in Riverdale, to which the United States Mission had immediately telephoned, had reported that it had just been informed of the demonstration by a private individual living in the area. The police, which had had no advance notice of the demonstration, had dispatched officers to the scene. The fixed post maintained by the police at the complex was temporarily not covered when the demonstration began because the tour of duty was being changed at the time. The United States Mission immediately conveyed this information to the USSR Mission by telephone. At about 4 p.m., the police informed the United States Mission that the demonstrators were about 50 seventh- and eighth-grade students who, accompanied by two teachers, were standing before the gate and fence of the complex. One of the teachers had said that the purpose of the demonstration was to protest the imprisonment of Soviet Jewish dissidents in the USSR. The police had moved the children away from the gate and fence, following which the demonstration had ended by 4 p.m., that is, some 20 minutes after the arrival of the police. The part of the demonstration observed by the police, who had not been told by any Soviet official of attempts to enter the Mission premises or force the gates open, as asserted in the USSR Mission's note, was peaceful. As the USSR Mission was aware, the New York police have maintained a 24-hour fixed post at the complex in Riverdale, as well as at the USSR Mission in New York City for the past several years. The United States Mission had taken note of the temporary breach of this coverage in Riverdale during the change in tours. At the request of the United States Missions the police had agreed to ensure against a recurrence of this lapse. The United States Mission again suggested to the USSR Mission that should they observe anyone entering their premises, as reported in their note, they should immediately alert the police in order to permit action to be taken with the greatest effectiveness. The United States Mission assured the USSR Mission that the host country would continue to take the necessary measures to safeguard Soviet properties and Mission personnel.

B. Consideration of the general question of the security of missions and the safety of their personnel at the 73rd meeting of the Committee on 21 September 1978

65. The representative of the United States said that, with regard to the security of missions and the safety of their personnel in general, the over-all assessment of the host country for the year was that it had been, as a whole, a good, albeit not an entirely trouble-free one. It was true that there had been incidents involving the security of missions and of their staff. He regretted that there was sometimes a delay in replying to notes from missions, which was due to the need to be in full possession of the facts before making a reply. Every effort would be made to improve the situation in the future, but the co-operation of the complainants was also needed; they were not always as willing as they might be to help investigate the facts. The complaints about incidents at trade centres, airline premises and tourist offices did not fall within the purview of the Committee. Considering the violent incidents that had occurred in other parts of the world, it was fair to say that the overwhelming number of missions had had no problems and had enjoyed excellent working conditions in New York City. However, the Committee did well to concern itself with any incidents that occurred.

66. The representative of the USSR characterized as over-optimistic the assessment made by the United States representative of the problem of the security of missions. The Committee had received during the year a considerable number of notes dealing with very serious incidents, including acts of terrorism, bombings, threats to mission staff, violation of mission premises and other unlawful acts. Many missions had complained of the failure to take proper measures to ensure their safety and some of the replies received to complaints had not been convincing. The number of incidents was not the yardstick by which the gravity of the situation should be measured. An incident affecting only one mission or one member of the diplomatic community was a legitimate cause for serious concern. The need to ensure the security and the normal operation of missions and their staff should remain at the forefront of the Committee's attention.

67. The representative of Canada said that the occurrence of a number of regrettable acts in New York City involving diplomats and diplomatic missions should not blind the Committee to the fact that 1978 had been a generally good year from the viewpoint of the seriousness and frequency of such incidents. Furthermore, the number of notes addressed to the Committee could not be taken as a measure of the way in which the host country fulfilled its responsibilities with regard to the protection of diplomats and diplomatic missions. Moreover, the existence of a complaint about an incident against a mission did not constitute evidence that the host country's legal responsibility was involved. The diplomatic community was very large and in a city the size of New York it was inevitable that a certain number of regrettable acts should occur. His Government was convinced that the Government of the host country was aware of the problems and was doing its best to solve them. Diplomatic missions should also be aware that they had responsibilities and that their privileges should not be abused.

68. The representative of France requested a progress report from the host country on the negotiations taking place between New York State and the federal authorities

to which the representative of the host country had referred at the Committee's 66th meeting on 15 July 1977. 6/

69. The representative of Iraq called the Committee's attention to the deplorable incident which was the subject of the note dated 3 April 1978 from the Iraqi Mission (see para. 51 above). His delegation feared that further, more violent incidents might occur in New York and wished to ask the Committee to endeavour to make the necessary arrangements to protect his mission.

70. In reply to the reference made by the representative of Iraq to the complaint by the Iraqi Mission about the theft of the car of the head of the Mission, the representative of the United States said that the person responsible had been apprehended rapidly and the vehicle had been returned undamaged and without delay. The United States Mission could only regret that such incidents occurred and hoped that the speed with which the situation had been remedied in some way mitigated the inconvenience caused. His delegation shared the concern of the representative of Iraq with regard to security. The United States Mission was relieved that such tragic incidents as had taken place elsewhere in the world had not occurred in New York, and the New York City Commission as well as the Federal authorities would continue to afford as good a protection as possible to the Permanent Mission of Iraq.

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6/ See paras. 7 (c), 15 and 17 of the Committee's report to the General Assembly at its thirty-second session (Official Records of the General Assembly, Thirty-second Session, Supplement No. 26 (A/32/26)) and para. 23 of the summary record of the Committee's 66th meeting (A/AC.154/SR.66). The subject of the negotiations was a complaint by the French Mission, in connexion with the forcible entry into premises by demonstrators in 1977, about the requirement that, as a condition precedent to the expulsion of the demonstrators from the Mission's premises, a complaint be signed. The complaint was based on the principle of the inviolability of mission premises under international law.

## V. THE PARKING SITUATION AFFECTING THE DIPLOMATIC COMMUNITY

### A. Note verbale dated 26 June 1978 from the Mission of the Union of Soviet Socialist Republics

71. By a note verbale dated 26 June 1978 (A/AC.154/170), the USSR Mission stated that on 15 June 1978, the day before a demonstration was to be held near the Mission, the latter was informed by the police that it would not be able to prevent possible attempts to damage automobiles belonging to the Mission. Responding to a request by the police, a Mission attaché, Mr. G. N. Zhuravlev, removed his Volkswagen car from the diplomatic parking area and placed it at a specially designated parking site on Second Avenue near Sixty-fourth Street. However, at about 6 p.m. on the same day, the police arbitrarily towed away Mr. Zhuravlev's automobile, which had clearly visible diplomatic licence plates. The USSR Mission pointed out that the Committee on Relations with the Host Country and the General Assembly had made appeals to the United States authorities not to permit automobiles with diplomatic licence plates to be arbitrarily towed away from their parking places, expressing serious concern at this violation of the universally recognized rules of international law and of the repeated assurances of the host country's authorities themselves that they would take all necessary steps to prevent such cases from arising. It also insisted that compensation be paid for the damage suffered by the automobile when it was towed away, which had been estimated by the police itself as amounting to \$989.49.

### B. Consideration at the 73rd meeting of the Committee, on 21 September 1978

72. Speaking on the question of parking in general, the representative of the United States observed that there continued to be an excessive number of parking violations involving diplomatic vehicles where danger and inconvenience was caused to the public because fire hydrants and bus stops were obstructed and access to emergency vehicles blocked because of double parking.

73. The representative of the USSR said that despite the appeals made by the Committee and the General Assembly in this regard, diplomatic vehicles continued to be arbitrarily towed away.

74. The representative of the Ivory Coast observed that several permanent missions had been obliged to pay private firms for the cost of towing away vehicles with diplomatic licence plates. He was not clear who authorized those firms to tow away such vehicles. He wished to suggest that the city should be requested to have the police tow away those vehicles so as to do away with such fees and avoid direct contact between diplomats and private companies. A second point with regard to parking concerned reserved diplomatic parking spaces. Since the reserved space in front of his residence was regularly occupied by vehicles with non-diplomatic licence plates he was obliged to park illegally. Although he received traffic tickets as a result, the unauthorized vehicles occupying his reserved place never did. That situation also arose in the case of his Permanent Mission. The matter should therefore be examined by the Mission of the United States.



75. The representative of the United States replied that, with regard to the question of towing away, most or all of the private towing occurred in his view where vehicles were improperly parked on private property. In such cases, the building management might employ private companies to tow away cars. If, by inadvertence, a vehicle with a diplomatic licence plate was towed away and expense was incurred for removing it, then that amount had to be paid. In cases where a diplomatic parking space was occupied improperly by a vehicle without a diplomatic licence plate, the City of New York tried to maintain the greatest possible vigilance in removing unauthorized vehicles from such spaces promptly. If there was a diplomatic parking space with unusual difficulty in that regard, his Mission would ensure that vigilance would be redoubled in order to keep that space clear at all times.

## VI. OTHER MATTERS

76. A number of matters not dealt with in the preceding sections of this report were discussed for the first time in 1978 at the 73rd meeting of the Committee, on 21 September 1978. One of those matters was also discussed at the 74th meeting of the Committee, on 3 October 1978.

### A. Diplomatic Relations Act 7/

77. At the 73rd meeting of the Committee, the Chairman drew the attention of the Committee to a letter dated 31 August 1978 addressed to him by the Acting Permanent Representative of the USSR to the United Nations. This communication, which dealt with a proposed new law governing the privileges and immunities of diplomatic missions that was before the United States Congress, 7/ had, as requested in a note dated 31 August 1978 from the USSR Mission to the Secretary-General (A/33/231), been circulated as an official document of the General Assembly (A/33/231, annex). In the letter the Acting Permanent Representative expressed concern over this pending legislation, which, in his view, contained provisions that contradicted the principles and norms of contemporary international law applicable to persons enjoying diplomatic privileges and immunities and were liable to cause friction in relations between diplomats and the authorities of the host country. It was unprecedented in international practice that the law should require mission staff to apply to United States courts to establish that they enjoyed diplomatic privileges and immunities. The law would give local courts the right to decide whether or not individual staff members of a diplomatic mission enjoy the privileges and immunities in question. Furthermore, the proposed legislation imposed on insurance firms responsibility in court for traffic accident claims against diplomats. Since he believed that the legislation would seriously restrict the immunity and status of members of missions accredited to the United Nations, it would be advisable that the Committee should request an explanation from the host country authorities regarding the matter and request the Secretary-General to provide the Committee with the opinion thereon of the Office of Legal Affairs of the Secretariat.

78. The representative of the United States said that circulation without prior discussion of the document to which the Committee's attention had been drawn was regrettable, since that document was not based on up-to-date information. Although he doubted whether the matter was a proper one for consideration by the Committee, he was willing to comment thereon. Current United States law on diplomatic privileges and immunities, which had been inherited from pre-independence days, in certain respects went beyond the requirements of the Vienna Convention on Diplomatic Relations. The aim of the Act, which most likely would soon be signed into law by the President, was to bring the law into line with that Convention. There was nothing in the Act requiring a diplomat to appear in court in order to establish his immunity. There would in fact be no change in practice in this

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7/ Approved on 30 September 1978 (United States Public Law 95-393).

respect. In cases where diplomats wished to assert their immunity, the State Department would, as before, enter suggestions of immunity without the diplomats concerned having to take any action other than informing the State Department of their intention to invoke their immunity from legal process. The part of the Act in question which established the liability of insurance firms with regard to traffic accident claims brought against staff of diplomatic missions innovated only in that it placed an obligation on insurance companies to meet such claims. The diplomatic community should heartily welcome such a provision, which meant that they would have greater protection. Under the law of New York State, third-party liability insurance in respect of vehicles had long been obligatory and as far as he knew there had never been any question of diplomats being exempted from that requirement.

79. The representative of the USSR thanked the representative of the United States for his attempt to explain the new legislation and dispel any doubts. However, his delegation was still concerned that the Act in question could seriously affect diplomatic privileges and immunities. It would have facilitated the Committee's work if the full text of the Act had been made available in writing. If, as had been said, the Act was intended merely to bring existing legislation into line with the Vienna Convention, that was all to the good. Moreover, the adoption of such legislation was, of course, an internal matter. However, some points remained unclear. He was aware of cases where individuals had been summoned to court and if the Act allowed that practice to continue then the new legislation would in fact be contrary to the obligations assumed by the United States when it became a party to the Vienna Convention. In no circumstances could a diplomat be required, directly or indirectly, to establish his right to immunity in court. With regard to the payment of insurance claims, he feared that the new legislation would lead to insurance companies refusing to insure diplomatic staff, or charging them higher premiums, which could place a particularly heavy burden on the missions of small countries and affect their normal operations. The purpose of the Soviet letter contained in the annex to document A/33/231 was to obtain assurances that there would be no change in existing practice.

80. The representative of the United States reassured the representative of the Soviet Union that for members of the United Nations community diplomatic immunities and privileges would be in no way affected by the Act. Under the legal system of the United States, which considered a person to be innocent unless evidence could be brought to prove the contrary, it was sometimes necessary for a diplomat to appear in court in order to secure a conviction. That occurred, for instance, in cases where the only witness to an alleged crime was a diplomat. However, it was for that diplomat and his Government to decide whether or not he should give evidence in court; no pressure could be put on him by the United States authorities to induce him to appear. When a diplomat did appear in court, the United States authorities would continue to do everything possible to ensure that the minimum inconvenience was caused. With regard to the Act, of which his delegation had at that moment informally provided copies to the members of the Committee, he stated that his delegation hoped to circulate copies to all missions very soon. The slight changes made by the Act would not affect the status and activities of diplomatic missions in New York; those changes, in fact, related only to diplomats accredited to the United States. The Act did not, he reiterated, require a diplomat to appear before a court to plead his immunity. Moreover, the entering of an appearance to plead immunity did not, as shown by the practice of the International Court of Justice, imply acceptance of the jurisdiction of the

Court concerned, and, were there such a requirement, it would not be inconsistent with the Vienna Convention on Diplomatic Relations. Under the Act, the existing system whereby the State Department presented suggestions of immunity would be maintained.

81. The representative of the USSR said that his delegation was still not convinced that the new United States law was fully in keeping with the obligations of the host country under the various relevant international agreements and conventions and it would maintain its request that a legal opinion be obtained from the Secretary-General with regard to that legislation. The important point was that diplomats should not be required either in person or through their attorneys to plead their immunity before the courts inasmuch as the host country had the duty, under international law, to accord such immunity. Section 5 of the Act, in particular, gave rise to doubts on that point.

82. The representative of Bulgaria said that the Soviet letter raised a question of great importance for the diplomatic community of New York. In his opinion, the Committee was fully entitled to discuss the matter in conformity with paragraph 7 of General Assembly resolution 2819 (XXVI).

83. The representative of Iraq said that he understood from the statement made by the United States that the new law was intended only to bring United States legislation into conformity with the standards and provisions of the Vienna Convention on Diplomatic Relations. According to the Vienna Convention, diplomats were not required to be brought before the courts by the executive authorities of the host country. He understood from the Soviet letter that the new law required diplomats to appear in court to establish their immunity, a requirement which was incompatible with the provisions of the Vienna Convention.

84. The representatives of Canada and France, while observing that it would be premature to pronounce on the matters raised by the USSR in connexion with the Act, on which they reserved their final judgment, expressed the belief that none of its provisions were inconsistent with the international obligations of the host country.

85. At the 74th meeting of the Committee, the representative of the USSR said that his delegation continued to be concerned over the possible consequences of the Act, particularly about the requirement that mission staff apply to United States courts to establish that they enjoyed diplomatic privileges and immunities and about the legal responsibility of insurance firms in car accidents involving claims against diplomats. The comments made during the Senate hearings on the bill confirmed his fears. He noted that according to an article in that day's issue of the Washington Post the new Act was expected to reduce substantially the level of immunity from civil suits and criminal prosecution that foreign diplomats and their staff had enjoyed since 1790. The Congressional records indicated that the new requirement that diplomats must establish their right to diplomatic privileges and immunities in United States courts meant that the State Department would cease to be responsible for ensuring the immunity of diplomats from legal process.

86. The representative of the United States said that his delegation's response to the preceding comments were the same as those previously made to the USSR representative's remarks on the matter under consideration at the 73rd meeting (see paras. 78 and 80 above).

B. Question of the indebtedness of missions and their members

87. At the Committee's 73rd meeting, the representative of the United States said that the problem of the indebtedness of missions and their members, which had already occupied the attention of the Committee, persisted even though the majority did abide by their legal and contractual obligations in a praiseworthy manner and were an asset to the New York community. There were, for example, four cases involving missions and mission staff where sums of \$15,000, \$37,000, \$40,000 and \$80,000 were owed for items such as rent, mortgage payments, telephone and hotel bills, and payments to importers and credit card companies. These were all cases of long-standing indebtedness which, potentially, could cause serious problems.

C. Housing conditions for members of missions

88. At the Committee's 73rd meeting, the representative of the Ivory Coast said that his delegation was experiencing difficulties with regard to housing for its diplomats. When his Mission wished to enter into a lease agreement it was required to indicate the name of the diplomat who was to occupy the premises, even though it was quite clear that it was the Mission that was entering into the lease agreement and paying the rent. Since the premises were regarded as rented for occupation by the diplomat concerned, upon his departure the Mission had no priority in renewing the lease and thus had no claim to further use of the premises. He was acquainted with the views of other missions, particularly those of African missions, on that matter and since such situations constituted a common problem it should, he believed, be brought to the attention of the United States authorities.

89. In reply the representative of the United States said that his delegation was not unaware of the unfortunate circumstances regarding the lease in question. Both his Mission and the New York City Commission for the United Nations and the Consular Corps had attempted to convince the landlord to behave in a more courteous and forthcoming manner. However, in a city the size of New York and with such a large diplomatic community, it was inevitable that there would be unfortunate occurrences with landlords who were unco-operative or might have had unpleasant experiences with another diplomatic mission. Where there were problems, his Mission did its best to solve them; if it was unable to solve them, it could do nothing more than apologize for the inconvenience caused. However, he believed that housing conditions for diplomats in New York compared favourably with those in most other cities in the world.

D. Question of the formalities applicable on the arrival of diplomats at New York airports and related matters

90. At the 73rd meeting of the Committee, the representative of the Ivory Coast stated that the question of the formalities applicable whenever diplomats arrived at New York airports from abroad raised two difficulties. Firstly, diplomats met with hostile attitudes when collecting their luggage. The airport services and the customs authorities in particular should be informed of the rights of diplomats and the treatment to which they were entitled. Furthermore, the forms that had to be filled out upon entering the country, which were usually available only in the English language, created a problem because many diplomats were unfamiliar with that language. Diplomatic staff members of missions were not permitted to join

passengers upon their arrival and it sometimes took those passengers up to an hour to fill out the entry forms. He therefore wished to ask the representative of the host country to examine the question of facilitating the entry of visiting diplomats and of diplomatic mission staff.

91. In response, the representative of the United States said that his Mission provided passes for diplomatic mission staff who wished to meet passengers upon arrival. If there had been any instances of discourtesy, the United States Mission most profoundly regretted it. Special treatment was not always easily accorded in an egalitarian society such as that of the United States. However, violations of legal privileges and rights were intolerable and his Mission was prepared to take steps to ensure that there was no recurrence of acts involving such violations. He was not personally aware of the forms in question and, in his experience, forms were usually supplied in both French and English. However, he believed that there usually were personnel at airports who spoke a large number of languages and assistance should therefore be available.

92. The representative of Senegal noted that officials at United States airports verified the documents submitted by entering and departing diplomats and he wondered whether the fact that a diplomat had on one occasion or another claimed diplomatic immunity in the United States might not jeopardize his possibilities of returning to that country.

93. In reply, the representative of the United States said that the check of diplomatic documents at airports was for the protection of all since terrorists sometimes made use of false diplomatic passports and documents. The United States kept no record of whether a diplomat had ever asserted immunity and he assured the representative of Senegal that such assertion could in no way ever be held against a diplomat in the United States. He added, however, that it was generally understood in international law that under certain circumstances the waiver of immunity was appropriate.

#### E. Difficulties encountered in the use of tax exemption cards

94. At the 73rd meeting of the Committee, the representative of the Ivory Coast said that it was increasingly the case that shops refused to honour tax exemption cards. To impose no obligation to do so constituted a refusal to apply provisions applied in all countries that were parties to the Vienna Convention. If the tax exemption was not being applied missions would have to inform their respective Governments accordingly.

95. In reply, the representative of the United States said that shops were required to honour tax exemption cards. The major shops and stores were fully aware of this obligation. If there was any instance in which tax exemption cards had not been honoured, his delegation would appreciate it if those cases were reported to his Mission or to the New York City Commission.

#### F. Question of periodic meetings of the Committee

96. At the 73rd meeting of the Committee, the representative of the USSR, who was supported by the representatives of the Ivory Coast and of Bulgaria, said that his delegation remained of the view, expressed by it on several past occasions, that the Committee should meet regularly for a detailed discussion of the broad range of

issues falling within its mandate. Such meetings would, he believed, benefit the entire diplomatic community as well as the host country.

97. The representative of Canada said that his delegation had reservations with regard to the holding of periodic meetings of the Committee, which should, in his view, be convened to consider specific problems. This could be done at any time at the request of members faced by specific problems, which should be considered as they arose since the Committee could function efficiently only if it did not allow problems to accumulate.

98. The representative of Costa Rica said that the convening of meetings was governed by paragraph 8 of General Assembly resolution 2819 (XXVI), so that any change would require action by the Sixth Committee and the General Assembly. She shared the view that if meetings were held whenever issues arose the Committee would not be faced with a backlog at the end of the year.

## VII. RECOMMENDATIONS

99. At its 75th meeting, on 21 November 1978, 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 with satisfaction the assurances given by the competent authorities of the host country and recognizes the usefulness of the various measures taken to this end.

(2) The Committee urges the host country to take all necessary measures without delay in order 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 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.



(9) 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.

(10) The Committee wishes to express its appreciation to the New York City Commission for the United Nations and the Consular Corps and those bodies 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.

(11) 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.

(12) 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) and 3498 (XXX).

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