

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASHIK AHMED,

Plaintiff, :

- against -

: No. 01 Civ. 7224 (DLC)

AHM SADIQUL HOQUE and
SABHIA HOQUE,

Defendants. :

- - - - -x

STATEMENT OF INTEREST OF THE UNITED STATES

PRELIMINARY STATEMENT

The United States of America (the "United States") respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517¹ to express its views on the privileges and immunities of Abul Hasnat Mohammad Hoque and Sabiha Sadiq under the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, June 26-Nov. 21, 1947, 61 Stat. 3416 (the "UN Headquarters Agreement") and the Convention on Privileges and Immunities of the United Nations, adopted Feb. 13, 1946, United States accession, April 29, 1970, 21 U.S.T. 1418 (the "General Convention"). Pursuant to these treaties, Mr. and Mrs. Hoque are entitled to the same privileges and immunities in the United States as the United States accords

¹ Pursuant to 28 U.S.C. § 517, the United States may appear in any court in the United States "to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

to diplomatic envoys. These immunities are defined by the Vienna Convention on Diplomatic Relations, done Apr. 18, 1961, United States accession, April 29, 1970, 23 U.S.T. 3227 (the "Vienna Convention"), and include immunity from the civil jurisdiction of the courts in this country. Therefore, this action should be dismissed sua sponte. See Section 5 of the Diplomatic Relations Act of 1978, 22 U.S.C. § 254d (action brought against an individual entitled to immunity should be dismissed "as otherwise permitted by law or applicable rules of procedure"); Askir v. Boutros-Ghali, 933 F. Supp. 368, 370 (S.D.N.Y. 1996) (sua sponte dismissing claim on immunity grounds against United Nations official). Permitting this action to proceed would contravene the United States' established international legal obligations and could have adverse consequences for the Government's conduct of foreign relations.²

BACKGROUND

A. Factual Allegations

The United States, taking no position on the merits of this action, understands the factual allegations in this case to be as follows. Defendant Abul Hasnat Mohammad Hoque is a Minister of the Permanent Mission of The People's Republic of Bangladesh to

² For the convenience of the Court, the United States submits with this brief a Compilation of Authorities, which contains documents that may not be readily available to the Court.

the United Nations, and defendant Sabiha Sadiq is his wife. Complaint, dated August 3, 2001 ("Complaint"), ¶¶ 1, 6. Plaintiff, a native of Bangladesh, alleges that between December 1998 and June 2000, he worked as a domestic servant in defendants' Forest Hills home. Id. ¶ 1. Plaintiff contends that he was subjected to abusive working conditions, Complaint ¶¶ 1, 13-16, and was not adequately compensated. Id. ¶ 15. Plaintiff alleges that on June 26, 2000, he fled the defendants' home after an altercation with Mrs. Hoque that resulted in an injury to his hand, id. ¶¶ 17-19, after which he was taken to a hospital emergency room. Id. ¶ 19. He thereafter refused to return to the Hoque residence. Id. ¶ 20.³

B. This Action

On or about August 3, 2001, plaintiff brought this civil action against Mr. and Mrs. Hoque. The complaint seeks damages for defendants' allegedly holding plaintiff in involuntary servitude prohibited by the Thirteenth Amendment, federal statutes, international law treaties, conventions and customary law prohibiting forced labor, failure to pay minimum wage under federal and state laws, assault and battery, false imprisonment, trespass to chattels, unjust enrichment and denial of quantum

³ The Complaint alleges that plaintiff obtained police assistance to get to the hospital. Id. ¶¶ 18-19. The United States is not aware of any request by local authorities to bring a criminal complaint.

meruit. Id. ¶ 2. Upon defendants' failure to answer the complaint, plaintiff now moves by Order to Show Cause seeking a judgment of default against defendants.

C. The Status Of Mr. and Mrs. Hoque

In cases where a claim of diplomatic immunity is appropriate, the United States State Department practice is to provide a certification that establishes the position held by the defendant and the level of immunity to which the defendant is entitled. Accordingly, the State Department has provided each defendant in this action with a formal certification of his or her status and level of immunity. Declaration of William B. Wood, dated February 8, 2002 ("Wood Decl."), Exhs. A and B.

With respect to Mr. Hoque, the State Department has certified that "Mr. Abul Hasnat Mohammad Hoque was notified by the Permanent Mission of the People's Republic of the State of Bangladesh to the United Nations in New York as a Minister on January 12, 1999. He continues to serve in this capacity." Wood Decl., Exh. A, at 1. The State Department has further certified that, pursuant to Article V, sec. 15 of the Headquarters Agreement, and Article IV, sec. 11 of the General Convention, Mr. Hoque is entitled to the same privileges and immunities in the United States as the United States accords to diplomatic envoys who are accredited to it, as defined in the Vienna Convention. Id. at 1. The State Department has further certified that, under

Article 31 of the Vienna Convention, Mr. Hoque's privileges and immunities include immunity from the civil jurisdiction of this country. Id. at 2.

With respect to Mrs. Hoque, the State Department has certified that "Mrs. Sabiha Sadiq is the spouse of Mr. Abul Hasnat Mohammad Hoque, Minister of the Permanent Mission of the People's Republic of Bangladesh to the United Nations in New York." Wood Decl., Exh. B, at 1. The State Department has further certified that, pursuant to Article V, sec. 15 of the Headquarters Agreement, and Article IV, sec. 11 of the General Convention, Mrs. Hoque enjoys the privileges and immunity from the jurisdiction of the United States extended to members of the family forming part of the household of a diplomatic agent, as defined in the Vienna Convention. Id. at 1. The State Department has further certified that, under Article 31 and Article 37 of the Vienna Convention, Mrs. Saleh's privileges and immunities include immunity from the civil jurisdiction of this country. Id. at 2.

"The questions of the diplomatic status enjoyed by a given defendant and the immunity to be accorded him are . . . questions where a determination of the Department of State is binding upon the court." Arcaya v. Paez, 145 F. Supp. 464, 467 (S.D.N.Y. 1956), aff'd, 244 F.2d 958 (2d Cir. 1957). Thus, "[t]he courts are bound by a determination of the Department of State that an alien claiming diplomatic status is entitled to that

status, since this is construed as a nonreviewable political decision." United States v. Enger, 472 F. Supp. 490, 506 n.19 (D.N.J. 1978) (citing In re Baiz, 135 U.S. 403 (1890); Sullivan v. State of San Paulo, 122 F.2d 355, 357-58 (2d Cir. 1941); United States v. Coplon, 84 F. Supp. 472, 475 (S.D.N.Y. 1949)). See also Abdulaziz v. Metropolitan Dade County, 741 F.2d 1328, 1331 (11th Cir. 1984) ("courts have generally accepted as conclusive the views of the State Department as to the fact of diplomatic status"); Carrera v. Carrera, 174 F.2d 496, 497-98 (D.C. Cir. 1959) (same); In the Matter of Terence K., 135 A.D. 857, 858 (2d Dep't 1987) (same for State Department certification of status of representative of mission to United Nations); Traore v. State, 431 A.2d 96, 98 (Ct. App. Md. 1981) ("It is settled that the State Department's determinations concerning an individual's diplomatic status at a particular time should ordinarily be accepted by the courts"). Compare Premier Steamship Corp. v. Embassy of Algeria, 336 F. Supp. 507, 509 (S.D.N.Y. 1971) (letter from State Department to attorney containing general statement that embassy is entitled to immunity is not binding on the court); United States ex rel. Casanova v. Fitzpatrick, 214 F. Supp. 425, 434 (S.D.N.Y. 1963) (where State Department certified that the United States had not agreed to grant diplomatic immunity to petitioner under the Headquarters Agreement, certification was "evidential but not conclusive").

In this action, where the State Department has certified the United States' agreement that Mr. Hoque is entitled to the same immunity "as the United States accords to diplomatic envoys who are accredited to it," and that such immunity includes immunity for Mrs. Hoque as a household family member, these certifications are conclusive as to such status.

ARGUMENT

I. Mr. and Mrs. Hoque Have Immunity From This Action

A. Applicable Treaties

The United States has entered into a number of treaties that establish its obligation to accord diplomatic immunity to Mr. Hoque, as a resident representative of Bangladesh to the United Nations, and to his wife, Mrs. Hoque. These treaties are the United Nations Charter, 59 Stat. 1031 (1945) (the "UN Charter"), the Headquarters Agreement, the Convention on the Privileges and Immunities of the United Nations, and the Vienna Convention. These treaties have the same force of law as statutes, for "[u]nder our constitutional system, statutes and treaties are both the supreme law of the land, and the Constitution sets forth no order of precedence to differentiate between them." United States v. Palestine Liberation Organization, 695 F. Supp. 1456, 1464 (S.D.N.Y. 1988) (citing U.S. Const., art. VI, cl.2).

The UN Charter was ratified by the President of the United States, with the advice and consent of the Senate, on

August 8, 1945, and came into force on October 24, 1945. See UN Charter, Intr.; S.J. Res. 144, P.L. 80-357, 61 Stat. 756 (1947). Article 105(2) of the UN Charter provides that "Representatives of the Members of the United Nations . . . shall enjoy such privileges and immunities, as are necessary for the independent exercise of their functions in connection with the Organizations." Id. The UN Charter thus provides the framework for the privileges and immunities to be provided to, among others, representatives of its member states. As demonstrated below, the specific parameters of those privileges and immunities as to various classes of individuals are set forth in the Headquarters Agreement and the General Convention.

Several months after the UN Charter was ratified, the United States invited the United Nations to establish its permanent seat in the United States, and, on December 14, 1946, the General Assembly of the United Nations resolved to locate its permanent headquarters in New York City. As a consequence, in 1947, the United States and the United Nations negotiated and signed the Headquarters Agreement. S.J. Res. 144, 61 Stat. 756. This agreement establishes the seat of the United Nations in New York City, and regulates the relationship between the United States and the United Nations.

As host country to the United Nations, the United States assumed specific obligations concerning the Members of the United

Nations. These obligations, which are set forth in the Headquarters Agreement, include the following provision:

[Representatives of Member States] shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as [the United States] accords to diplomatic envoys accredited to it.

Art. V, sec. 15.

The General Convention⁴ extends and elaborates the protections accorded to representatives of members of the United Nations by, among other things, enlarging the classes of representatives entitled to diplomatic privileges and immunities and specifying certain of those immunities. Thus, Article IV, section 11 of the General Convention provides:

Representatives of Members to the principal and subsidiary organs of the United Nations . . . shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the

⁴ The General Convention was approved by the United Nations Assembly in February 1946, and was initially submitted to the Congress for approval in 1947 along with the Headquarters Agreement. See Sen. Rep. No. 559, 80th Cong., 1st Sess., at 3 (1947) ("1947 Senate Report"); Letter of Transmittal from Richard Nixon to the United States Senate, dated Dec. 19, 1969 ("1969 Transmittal Letter"), at 1, reprinted in Message from the United States Transmitting a Copy of the Convention on Privileges and Immunities of the United Nations, 91st Cong., 1st Sess. (1969). However, the House of Representatives took no action on the General Convention at that time. After resubmission to the Senate in 1969, see id. the United States accepted the General Convention on April 29, 1970, with two reservations conforming certain aspects of the immunities granted by the General Convention to the Headquarters Agreement. General Convention, U.S. Reserv.

following privileges and immunities:

(a) immunity from personal arrest or detention
and from seizure of their personal baggage
. . . ;

(b) inviolability for all papers and
documents;

* * *

(g) such other privileges, immunities and
facilities not inconsistent with the foregoing
as diplomatic envoys enjoy

Id.

Thus, under both the Headquarters Agreement and the General Convention, representatives to the United Nations are entitled to those privileges and immunities accorded by the United States to diplomats accredited to the United States.

At the time the above treaties were negotiated, the privileges and immunities of diplomats accredited to the United States were governed by customary international law. Customary international law had for centuries recognized that the absolute independence and security of diplomatic envoys was essential to fulfillment of their critical role in international relations, and that full diplomatic immunity was a necessary guarantor of that independence. See generally 767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire, 988 F.2d 295, 299-300 (2d Cir.), cert. denied, 510 U.S. 819 (1993). The customary international law on diplomatic privileges and immunities has since been codified in the Vienna Convention, which was opened for

signature in 1961, and which entered into force for the United States in December 1972.⁵ Id. at 300. Article 31 of the Vienna Convention provides, in relevant part:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction [with three exceptions not relevant here]⁶
2. A diplomatic agent is not obliged to give evidence as a witness.

Id. In addition, Article 37 of the Vienna Convention provides, in relevant part:

The members of the family of a diplomatic agent forming

⁵ While the United States had not yet ratified the Vienna Convention in 1970, the time the General Convention was adopted, the United States was well aware of the Vienna Convention provisions regarding diplomatic immunities, which were understood to represent accepted practice under customary international law. Eileen Denza, Diplomatic Law 1-3 (1976).

⁶ The exceptions to Article 31 immunity are:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

Art. 31, sec. 1. None of these exceptions are relevant to this action. Tabion v. Mufti, 73 F.3d 535 (4th Cir. 1996), aff'g, 877 F. Supp. 285 (E.D. Va. 1995).

part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Article 29 to 36.

Id. The Vienna Convention thus provides diplomats and their household family members with "absolute immunity from criminal prosecution and protection from most civil and administrative actions brought in the 'receiving State,' i.e., the state where they are stationed." Tabion, 73 F.3d at 537. In the case of representatives to the United Nations, the "receiving state" for these purposes is the United States. Headquarters Agreement, Art. V, sec. 15.

B. The History and Interpretation of the United Nations Treaties Confirm That Diplomatic Immunities Are Applicable Here

"Treaties are contracts between sovereigns, and as such, should be construed to give effect to the intent of the signatories." Tabion, 73 F.2d at 537 (citations omitted). As the Second Circuit has explained, "[t]he basic aim of treaty interpretation is to ascertain the intent of the parties who have entered into agreement, in order to construe the document in a manner consistent with that intent." Maximov v. United States, 299 F.2d 565, 568 (2d Cir. 1962) (citations omitted), aff'd, 373 U.S. 49 (1963).

Where the parties to a treaty have spoken on its meaning, the court's role in interpreting such treaty is quite circumscribed. "Although not conclusive, the meaning attributed

to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight."

Kolovrat v. Oregon, 366 U.S. 187, 194 (1961). Moreover, "'[w]hen the parties to a treaty both agree to the meaning of a treaty provision, and that interpretation follows from the clear treaty language[, the court] must, absent extraordinarily strong contradictory evidence, defer to that interpretation.'" 767 Third Avenue, 988 F.2d at 301-02 (quoting Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 184-5 (1982)). This is particularly important with respect to treaties governing the operation of the United Nations. Tachiona v. Mugabe, 169 F. Supp. 2d 259, 302 (S.D.N.Y. 2001).

In this action, the treaties at issue are the UN Charter, the Headquarters Agreement, and the General Convention. These international agreements contain the fundamental provisions that have been construed and implemented for more than fifty years to realize the broad objectives set forth in the United Nations Charter. As demonstrated below, the United States and the international community have consistently interpreted and applied these provisions in the same way, and have agreed that these treaties provide the same level of immunity to representatives to the United Nations as the United States provides to diplomats accredited to the United States, as codified in the Vienna Convention.

As an initial matter, as explained in the House of Representatives Report that accompanied the Joint Resolution authorizing the President to bring into effect the Headquarters Agreement, the operation of the United Nations headquarters is inextricably linked with the question of immunity. H.R. Rep. No. 1093, 80th Cong., 1st Sess., at 8 (1947) ("1947 House Report"). Under Article 105 of the UN Charter, inter alia, representatives to the United Nations shall enjoy in all nations "such privileges and immunities as are necessary for the independent exercise of their functions in connections with the Organization." Id. (quoting UN Charter, art. 105). "The host nation, however, is under special responsibility to assure that the arrangements made suffice for the efficient functioning of the United Nations. The host nation also is in a special relationship in that it is more deeply involved domestically in the nature of the arrangements and the manner of their working." Id. The Headquarters Agreement sets forth the agreements on these matters between the United Nations and the United States as host country. Id.⁷

⁷ Before the United States and the United Nations worked out the Headquarters Agreement, the level of privileges and immunities accorded to United Nations representatives and personnel was governed by the International Organizations Immunities Act, 22 U.S.C. §§ 288 et seq. ("IOIA"), which provides only functional immunity for representatives of international organizations. The IOIA was passed in December 1945 for the general purpose of defining the privileges and immunities of international organizations in the United States, several of which were already in operation at that time. 1947 Senate Report, at 3. While it

One of the special arrangements between the United States and the United Nations in the Headquarters Agreement is that certain classes of representatives of member states of the United Nations, namely, resident representatives, will be entitled in the United States "'to the same privileges and immunities' as are accorded to diplomatic envoys accredited to the United States, subject, however, to 'corresponding conditions and obligations.'" 1947 House Report, at 11. Thus, the House Report notes, "a limited group of the more important representatives to the United Nations will receive the same diplomatic status as their colleagues in Washington who are accredited to the United States Government." Id. (emphasis added). See also 1947 Senate Report, at 4 (same). As the House Report makes clear, while the UN Charter did not specify a requirement of diplomatic status for

was hoped that the IOIA would cover the requirements of the United Nations, id., the functional immunity provided thereunder was apparently not sufficient to meet the needs of the United Nations. These needs are addressed by the Headquarters Agreement and the General Convention, both of which must be viewed as amending any inconsistent provisions in the IOIA with respect to the United Nations. Id. See also Letter from Ernest A. Gross, Legal Adviser, United States Department of State to Lawrence H. Smith, Chairman, Subcommittee No. 6 on International Organizations and International Law of the Committee on Foreign Affairs, April 28, 1948, reprinted in Committee on Foreign Affairs, Structure of the United Nations and the Relations of the United States to the United Nations, 80th Cong., 2d Sess., 509 (1948) ("1948 Legal Adviser Letter") (IOIA was enacted by United States on own initiative, and it was to be anticipated that, after gaining experience with United Nations' issues, the final arrangements for United Nations immunities might differ from those in the IOIA).

resident representatives of its members, in the Headquarters Agreement, "[t]he United States and the United Nations have come to an agreement that diplomatic status is the necessary formula here. . . . The premise of the agreement is that the sum total of the privileges necessarily approximates that of diplomatic status, and the committee accept this view." 1947 House Report, at 11-12.

The provision ultimately codified as Article V, section 15 in the Headquarters Agreement was thus always understood to provide diplomatic immunity to resident representatives of members of the United Nations, as opposed to the more limited functional immunity set forth in the IOIA. In this context, the phrase "subject to corresponding conditions and obligations" found in Article V, section 15 only makes sense if it refers to corresponding conditions and obligations of other diplomats accredited to the United States. This understanding is confirmed in the 1948 letter from the Legal Adviser of the Department of State to a Congressional Subcommittee:

The background in the negotiation of section 15 of the headquarters agreement indicates that the phrase "subject to corresponding conditions and obligations" was inserted by way of compromise to meet a desire on the part of the United States that persons covered by section 15 were not to receive privileges and immunities broader than those accorded to diplomatic envoys accredited to the President of the United States, and that like diplomatic envoys, such persons might be found *personne non gratae* and made subject to recall.

1948 Legal Adviser Letter, at 511. This understanding of the phrase "subject to corresponding conditions and obligations" was

quoted with approval by the International Law Commission, a body of international legal experts commissioned by the United Nations, in a discussion of the practice of the United Nations concerning, among other things, the status, privileges, and immunities of representatives of its members. 1967 International Law Commission Yearbook, Vol. II, at 154, 177-78.

The history and interpretation of the General Convention further supports the understanding that, since entry into force of the Headquarters Agreement, resident member state representatives to the United Nations have been entitled to diplomatic immunities, subject only to corresponding conditions and obligations attendant on other diplomats. As discussed above (at 9), Article IV, section 11 of the General Convention extends diplomatic privileges and immunities to non-resident representatives to the United Nations. The legislative history accompanying this extension of privileges and immunities confirms that such immunities were already in force with respect to resident representatives, such as Mr. Hoque, under Article V, section 15 of the Headquarters Agreement, and that the function of the General Convention was to extend these immunities to additional classes of representatives.

For instance, the Executive Report submitted by the Senate Committee on Foreign Relations in support of ratifying the General Convention describes the following situation when the Headquarters Agreement, but not the General Convention, was in

effect in the United States:

With regard to representatives of members, currently only resident representatives of permanent missions to the United Nations have full diplomatic immunities. Nonresident representatives enjoy only functional immunities; that is, immunities with respect to their official acts. Under the [General Convention], these nonresident representatives will also be entitled to full diplomatic immunities.

Executive Rep. No. 91-17, 91st Cong., 2d Sess., at 3 (1970) ("1970 Executive Report"). The Department of State took the same view. See Letter of Submittal from Secretary of State William P. Rogers to the President, dated Nov. 6, 1969, at 1, reprinted in Message from the United States Transmitting a Copy of the Convention on Privileges and Immunities of the United Nations, 91st Cong., 1st Sess. (1969) (under existing law, resident diplomatic officials attached to permanent missions to the United Nations are entitled to the privileges and immunities enjoyed by members of diplomatic missions in Washington; the General Convention would extend diplomatic privileges to non-resident representatives).⁸

⁸ As the United States has ratified the General Convention, resident representatives such as Mr. Hoque, and his household family members, are also entitled to the diplomatic privileges and immunities provided by Article IV, section 11. These privileges and immunities are largely duplicative of the privileges and immunities accorded to permanent representatives under the Headquarters Agreement. See Tachiona, 169 F. Supp. 2d at 297-302. While the applicable privileges and immunities in the General Convention are set forth with more detail than those in the Headquarters Agreement, id. at 298-300, legislative history confirms that they are in essence the same. Id. at 300-02. However, to the extent any portion of the General Convention could be regarded as conflicting with, or potentially

The conferral of all of the benefits of the Vienna Convention upon permanent representatives to the United Nations was again confirmed with the passage of the Diplomatic Relations Act of 1978, Pub. L. No. 95-393, codified at 22 U.S.C. §§ 254a-254e. The Diplomatic Relations Act incorporated the Vienna Convention and repealed the prior statute on diplomatic immunity dating back to 1790, which had been codified at 22 U.S.C. §§ 252-54, and which had been viewed as granting full diplomatic immunity to a wider class of diplomats than those intended to be covered by the Vienna Convention. See S. Rep. No. 95-958, 95th Cong., 2nd Sess., at 1-2, reprinted at 1978 U.S.C.C.A.N. 1935, 1935-36 (1978) ("1978 Senate Report"). In a report accompanying the Diplomatic Relations Act, the Senate Committee on Foreign Relations noted that "by special statutes, the rights, privileges, and immunities accorded to diplomats attached to embassies in Washington are also enjoyed by the permanent representatives of country missions to the United Nations in New York. . . ." Id. at 3, 1978 U.S.C.C.A.N. at 1937. The Diplomatic Relations Act also expressly defined the term "mission" to include:

missions within the Vienna Convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions

narrowing, any provision of the Headquarters Agreement, the applicable provision of the Headquarters Agreement would control. Headquarters Agreement, Art. IX, sec. 26; 1948 Legal Adviser Letter, at 511.

under the Vienna Convention

22 U.S.C. § 254a(3). This definition was intended to "make[] clear the intent that the United Nations . . . continue[s], as in the past, to be considered part of the diplomatic community for purposes of entitlement to privileges and immunities." 1978 Senate Report, at 4, 1978 U.S.C.C.A.N. at 1938. The Senate Committee specifically contrasted the inclusion of the United Nations in the full scope of the Vienna Convention with the exclusion from the Vienna Convention of organizations covered by other, more limited statutory immunities, such as the functional immunity flowing from the IOIA. Id.

Finally, like the United States and the International Law Commission, the United Nations views the treaties at issue here as conferring diplomatic immunities upon representatives of its members consistent with those set forth in the Vienna Convention. This is explicitly stated with respect to Article V, section 15 of the Headquarters Agreement in the 1983 United Nations Juridical Yearbook:

From the very beginning the United Nations took the position, in light of Article 105 of the Charter, that those representatives should enjoy the same privileges and immunities as are accorded to diplomatic envoys accredited to the Government of the United States.

* * * *

It follows from Article V, section 15, of the Headquarters Agreement that the relevant provisions of general international law on the question of privileges and immunities also apply to the resident

representatives to the United Nations and their staffs. International law concerning this question is codified in the 1961 Vienna Convention on Diplomatic Relations.

Id. at 222. See also 1986 United Nations Juridical Yearbook, at 327 (reprint of letter from the United Nations to the deputy permanent representative of a member state confirming that the Vienna Convention is applicable to permanent missions to the United Nations by virtue of Art. V, sec. 15 of the Headquarters Agreement)

In addition, the United Nations attributes the same interpretation to Article IV, section 11 of the General Convention attributed by the United States, namely, that this also provides diplomatic immunity, extended to a larger class of people than those covered by the Headquarters Agreement. See 1976 United Nations Juridical Yearbook, at 224-29. Indeed, the United Nations has explicitly rejected the notion that the immunity language of Article IV, section 11 is limited to the official functions of representatives to the United Nations, notwithstanding the use of the phrase "while exercising their functions and during their journey to and from the place of meeting . . .":

In the view of the Secretary-General, to interpret those words so as to limit them to times when the person concerned is actually doing something as part of his functions as a representative, for example speaking in a United Nations meeting, leads to absurd and meaningless results, making such an interpretation wholly untenable. The only reasonable interpretation is the "broad" one, namely to regard the words concerned as describing the whole period during which the person involved discharges his responsibilities.

Id. at 228. The Yearbook further explains: "In other words, 'while exercising' means during the entire period of presence in the State" Id.

In sum, because the United States and the United Nations agree to an accepted interpretation of the applicable conventions, and because there is no evidence of a contrary interpretation advanced by any of the United Nations members, or the international community, this Court should defer to the interpretation of the treaty parties. Thus, as Mr. Hoque has been certified by the United States to be entitled to the privileges and immunities specified by Article V, section 15 of the Headquarters Agreement, and Article IV, section 11 of the General Convention, he is entitled to the same privileges and immunities accorded to diplomatic envoys accredited to the United States, which are now found in the Vienna Convention, subject only to the same corresponding conditions and obligations to which those diplomats are subject. This includes immunity for Mr. Hoque and his household family members from the civil jurisdiction of this Court under Articles 31 and 37 of the Vienna Convention.

In accordance with the above, courts in this district have uniformly declined to proceed with actions against representatives to the United Nations entitled to diplomatic immunity, particularly when the Department of State has certified that immunity should be accorded. See Fireman's Ins. Co. v.

Onwualia, No. 94 Civ. 0095 (PKL), 1994 WL 706994, *3 (S.D.N.Y. Dec. 19, 1994); York River House v. Pakistan Mission to the United Nations, No. 90 Civ. 2071 (PNL), 1991 WL 206286, *1 (S.D.N.Y. Sept. 27, 1991); Arcaya, 145 F. Supp. at 468, 472-473. See also Terence K., 135 A.D. at 858 (same result in New York State court); 767 Third Avenue, 988 F.2d at 297-98; 302-03 (same provisions of United Nations' immunity in the UN Charter, Headquarters Agreement and General Convention that address immunity of representatives require the United States to accord United Nations mission with inviolability under the Vienna Convention). This Court should likewise decline to adjudicate plaintiff's claims.

II. Respecting Defendants' Diplomatic Immunities
Does Not Present A Constitutional Issue

According the appropriate level of immunity to Mr. and Mrs. Hoque is consistent with customary norms of international law and does not present a constitutional issue. As an initial matter, the treaties at issue here do not conflict with the Constitution, international treaties, conventions, or customary international law. Nothing in the UN Charter, the Headquarters Agreement, the General Convention, or the Vienna Convention authorizes involuntary servitude, or any other practice forbidden by the Constitution. Moreover, even if any constitutional right were implicated, a guaranteed entitlement to a judicial remedy does not necessarily follow, particularly where there are other, equally important, principles at stake.

The diplomatic immunities provided by the Vienna Convention -- made applicable to Mr. and Mrs. Hoque through Article V, sec. 15 of the Headquarters Agreement and Article IV, sec. 11 of the General Convention -- have long been an integral component of customary international law, and played an important role in the nation's conduct during and after the time the Constitution was created. See, e.g., The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 143 (1812) ("it is impossible to conceive . . . that a Prince who sends an ambassador or any other minister can have any intention of subjecting him to the authority of a foreign power . . . " (quoting Emmerich de Vattel⁹); 5 Blackstone's Commentaries with Notes of Reference to the Constitution and Laws of the Federal government of the United States and of the Commonwealth of Virginia, 70 (1969) (reprint of 1803 ed.) (rights of ambassadors were a matter of universal concern recognized in English common law and were adopted by United States). See also Boos v. Barry, 485 U.S. 312, 323 (1988) (national concern for the protection of ambassadors and foreign ministers predates the Constitution); Abdulaziz, 741 F.2d at 1330 (precursor to Diplomatic Relations Act of 1978 was enacted in 1790 and "had been in effect unaltered for almost two hundred years");

⁹ Mr. de Vattel was an international jurist who greatly influenced the Framers of the Constitution. See U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 462 n.12 (1978).

Republic of Phillipines v. Marcos, 665 F. Supp. 793, 798 (N.D. Ca. 1987) (noting "rich jurisprudential and statutory history surrounding the international practice of diplomatic immunity"); 1978 Senate Report, at 2, 1978 U.S.C.C.A.N. 1936 (1790 precursor to Diplomatic Relations Act of 1978 was "adapted from English statutes [sic] dating back to the reign of Queen Anne").¹⁰

The extension of legal immunity to diplomatic persons is so embedded in our history and legal structure, it has been held to apply even if it precludes adjudication of constitutional claims. For example, "[c]ourts have protected the immunities of diplomatic officers against the constitutional clause guaranteeing

¹⁰ In recognition of these important principles of international law, Article III of the Constitution implies a special legal status for ambassadors, stating that while "judicial Power shall extend in all Cases affecting Ambassadors, other Public Ministers and Consuls; . . . In all Cases affecting Ambassadors, other Public Ministers and Consuls . . . the supreme Court shall have original Jurisdiction." U.S. Const., art. III, sec. 2. In view of the long-held understanding even at the time the Constitution was framed that ambassadors are immune from most forms of judicial process, this provision cannot be viewed as a limit on immunity; rather, it recognizes that ambassadors have a special status, and in the limited event that they bring suit, or are attempted to be made subject to suit, they may invoke the original jurisdiction of the Supreme Court. (Congress has since determined that such original jurisdiction need not be exclusive, 28 U.S.C. § 1251.) Similarly, through Section 8(a) of the Diplomatic Relations Act of 1978, 28 U.S.C. § 1351, Congress extended the jurisdiction of the District Courts to suits against diplomatic personnel only "under circumstances where such suits will lie under the Vienna Convention." S. Rep. No. 95-1108, 95th Cong., 2nd Sess., at 5, reprinted at 1978 U.S.C.C.A.N. 1941, 1945 (1978).

the accused a right 'to have compulsory process for obtaining witnesses in his favor.'" Q. Wright, The Control of American Foreign Relations, 162 (1922) (citing cases and authorities). Likewise, where foreign states and their representatives properly invoke the level of immunity to which they are entitled (such types and levels of immunity can vary), a court may not proceed, even where constitutional jurisdiction is claimed. See Dexter & Carpenter, Inc. v. Kunglig Jarnvagsstyrelsen, 43 F.2d 705, 710 (2d Cir. 1930) (constitutional grant of jurisdiction to the federal courts is necessarily limited by the right of a sovereign state to plead immunity); Gerritsen v. Escobar & Cordova, 721 F. Supp. 283 (C.D. Ca. 1988) (dismissing, on ground of consular immunity, claims that included allegations of civil rights violations by consular employees); I Blackstone's Commentaries on the Laws of England, 376-80 (1916) (reprint of 1788 ed.) (explaining rationale and practice for the general understanding that "the rights, the powers, the duties, and the privileges of ambassadors are determined by the law of nature and nations, and not by any municipal constitutions"). Cf. Tuck v. Pan American Health Org., 668 F.2d 547, 549-50 (D.C. Cir. 1981) (dismissing, on ground of immunity under the IOIA, alleged constitutional and common law claims, including race discrimination claim, made against international organization). Indeed, in another context, the Second Circuit has made clear that a cause of action that would

have been altogether barred by the immunities required by customary international law at the time of the Constitution's creation cannot be viewed as a Constitutional right. See Ruggiero v. Compania Peruna de Vapores "Inca Capac Yupanqui", 639 F.2d 872, 878-81 (2d Cir. 1981) (Seventh Amendment jury trial right does not apply to cases brought against a foreign sovereign, as no suit at all could have been brought against such sovereign in 1791 due to sovereign immunity).

Similarly, neither the Alien Tort Claims Act, 28 U.S.C. § 1350 ("ATCA"), nor international human rights law, abrogates properly asserted diplomatic immunities. See Tachiona, 159 F. Supp. 2d at 297 (dismissing on grounds of head-of-state immunity claims under the ACTA, Torture Victim Protection Act, 28 U.S.C. § 1350 note, § 2(a) ("TVPA"), and norms of international human rights law); LaFontant v. Aristide, 844 F. Supp. 128 (E.D.N.Y. 1994) (dismissing on grounds of head-of-state immunity claims under the Constitution, ATCA, TVPA, and customary international law). See also Aidi v. Yaron, 672 F. Supp. 516, 518 (D.D.C. 1987) (expressing doubt that defendant's alleged status as international law criminal could abrogate his diplomatic immunity for purposes of claims of personal injury and wrongful death of relatives killed at refugee camps in Beirut, Lebanon). Indeed, the seminal Second Circuit case that is widely viewed as revitalizing the ATCA in recent times, Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir.

1980), expressly noted that the defendant in that action did not claim diplomatic immunity. Id. at 879. See also Kadac v. Karadzic, 70 F.3d 232, 247-48 (2d Cir. 1996) (permitting ATCA action to proceed based, in part, on communications from State Department and United Nations confirming that defendant did not have immunity from suit or legal process).

In view of the above, the claims against Mr. and Mrs. Hoque must be dismissed, regardless of whether plaintiff purports to invoke the Constitution, the ATCA, and/or customary norms of international law. This result is no different from that which stems from many other long-standing immunity doctrines that operate to bar adjudication of constitutional claims against government actors within their spheres of immunity. See, e.g., Federal Deposit Insurance Corp v. Meyer, 510 U.S. 471, 484-86 (1994) (United States cannot be sued absent waiver of sovereign immunity, and there is no such waiver for constitutional torts); Imbler v. Pachtman, 424 U.S. 409, 410 (1976) (prosecutors have absolute immunity from suit claiming constitutional violations); Pierson v. Ray, 386 U.S. 547, 553-554 (1967) (judges have absolute immunity from suit claiming constitutional violations).

It should be noted that the Vienna Convention provides in no uncertain terms that despite their immunity, diplomats are under an obligation to follow the laws of the receiving State. Tabion, 877 F. Supp. at 293 (citing Vienna Convention, Art. 41).

While a diplomat's obligations to respect the laws of a host country cannot be judicially enforced where immunity has not been waived, the United States takes very seriously allegations of abuses of diplomatic privilege, and has both formal and informal means of obtaining compliance through the diplomatic process. Wood Decl., ¶ 7. As a formal matter, in certain circumstances, not present here, the State Department may request that the sending state waive the immunity of the diplomat.¹¹ The General Convention makes clear that "[p]rivileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice" General Convention, Art. IV, sec. 14. If a waiver is not granted by the sending state, the United States also has the option -- in consultation with the United Nations, as the United Nations is technically the "receiving"

¹¹ For example, where law enforcement authorities have investigated allegations and a prosecutor has notified the Department of State that a criminal case would be prosecuted but for the immunity, Department of State regulations call for the Department to request that the sending state waive the immunity of the diplomat. Wood Decl., ¶ 14. As noted above (at 3, n.3), the United States is not aware of any request by a criminal prosecutor with respect to this case. Wood Decl., ¶ 14 n.1.

entity, see 1986 United Nations Juridical Yearbook, at 320-21 -- to ask that such diplomat be removed from the country. See Headquarters Agreement, Article IV, sec. 13 (in case of abuse of privileges and immunities in activities outside a representative's official capacity, the United States retains the ability to exercise customary removal procedure applicable to diplomatic envoys accredited to United States); General Convention, United States Reservation No. 2 (same); Vienna Convention, art. 9(1) (procedure for declaring diplomat persona non grata). See also 1970 Executive Report, at 10 (testimony of Ambassador Charles W. Yost, U.S. Permanent Representative to the United Nations regarding the United States' right to expel United Nations representatives); Wood Decl., ¶ 15. These are examples of the "corresponding conditions and obligations" attendant upon the privileges and immunities of representatives to the United Nations and diplomats accredited to the United States.

Moreover, short of formal measures, which are not always appropriate, the State Department can examine a complaint and, if warranted, mediate that dispute through the mission to the United Nations. Wood Decl., ¶ 11. While use of the State Department's "good offices" for these purposes is voluntary for all concerned and cannot guarantee any particular result, in many instances, bringing the matter to the mission's attention, and focusing on it as a diplomatic matter, may ultimately induce voluntary

compliance. Wood Decl., ¶ 12. See also 767 Third Avenue, 988 F.2d at 303 (noting that diplomatic efforts and pressure were extraordinarily successful at getting Zaire to pay back rent owed by its mission). The State Department has also taken diplomatic measures aimed at preventing abusive working conditions for domestic servants that come into this country to work for diplomats or employees of international organizations. See Wood Decl., ¶¶ 8-10.

III. Failure of the United States to Respect Diplomatic Immunities Could Have Serious Consequences in the International Community

As this lawsuit illustrates, diplomatic immunities can prevent persons allegedly wronged by those entitled to such immunities from obtaining court review of their allegations. The United States takes seriously allegations of abuse of diplomatic privileges, and does not intend to downplay the potential negative consequences to individuals that can result from the requirement that the United States uphold its international obligations in this regard. Indeed, as discussed above (at 26-28), the State Department's diplomatic powers provide a means to attempt to mitigate such effects where appropriate. However, even in the face of potential adverse effects, the diplomatic immunities of United Nations representatives must be respected because they are vital to the conduct of peaceful international relations. Respecting diplomatic obligations is a fundamental component of

harmony and comity in the international community. Wood Decl., ¶ 16. The importance of standing behind these universal norms of international law "is even more true today given the global nature of the economy and the extent to which actions in other parts of the world affect our own national security." Boos v. Barry, 485 U.S. at 323. The conduct of the United States with respect to the United Nations and representatives of its members in this country is a particularly visible portion of the international relations of the United States. Wood Decl., ¶ 17. The United Nations observes the degree and manner of the United States' compliance with its diplomatic obligations, and a failure by the United States to abide by its international responsibilities can damage the relationship between the United States and the United Nations. Wood Decl., ¶ 18.

It should also be noted that, as a leading scholar on diplomatic law has explained, "the real sanction of diplomatic law is reciprocity. Every State is both a sending and a receiving State. Its own representatives abroad are hostages and even in minor matters their treatment will depend on what the sending State itself accords." Eileen Denza, Diplomatic Law 2 (1976). This is equally true for representatives of other countries accredited to this country, and for representatives of other countries that are present here because they are accredited to the United Nations. See 767 Third Avenue, 988 F.2d at 296 (applying

diplomatic protections under the Vienna Convention to Permanent United Nations Mission of the Republic of Zaire). In this context, the reason to respect diplomatic immunity is not "a blind adherence to a rule of law in an international treaty, uncaring of justice at home, but that by upsetting existing treaty relationships American diplomats abroad may well be denied lawful protection of their lives and property to which they would otherwise be entitled." Id.

These concerns are central to this case. If the United States is prevented from carrying out its international obligations to protect the privileges and immunities of representatives to the United Nations, adverse consequences may well occur. Wood Decl., ¶ 19. At a minimum, the United States may hear objections for failing to honor its obligations not only from the Bangladesh Mission, but also from other United Nations member countries whose representatives derive diplomatic immunity from the same sources relied upon by Mr. and Mrs. Hoque in this action, and from the United Nations itself. Id. Indeed, a ruling by this Court limiting the diplomatic immunities of representatives to the United Nations in this country could, if applied generally, lead to erosion of the necessary and respected protections accorded by diplomatic immunities. Wood Decl., ¶ 20. As noted by the Second Circuit in 767 Third Avenue, "Recent history is unfortunately replete with examples demonstrating how

fragile is the security for American diplomats and personnel in foreign countries; their safety is a matter of real and continuing concern." 988 F.2d at 301.

In sum, the text of the treaties, the treaty parties' long-standing interpretation and practice under them, and basic precepts of international law all provide for the provision of diplomatic immunity to representatives to the United Nations and their resident family members. Accordingly, Mr. and Mrs. Hoque are immune from this Court's civil jurisdiction, and this case should be dismissed.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that Mr. and Mrs. Hoque are entitled to immunity from the civil jurisdiction of this Court and this action should therefore be dismissed.

Dated: New York, New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

ASHIK AHMED,

Plaintiff,

- against -

AHM SADIQUL HOQUE and
SABHIA HOQUE,

Defendants.

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No. 01 Civ. 7224 (DLC)

STATEMENT OF INTEREST OF THE UNITED STATES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

BACKGROUND 2

 A. Factual Allegations 2

 B. This Action 3

 C. The Status Of Mr. and Mrs. Hoque 3

ARGUMENT 6

I. Mr. and Mrs. Hoque Have Immunity From This Action 6

 A. Applicable Treaties 6

 B. The History and Interpretation of the
 United Nations Treaties Confirm That
 Diplomatic Immunities Are Applicable Here 11

II. Respecting Defendants' Diplomatic Immunities
 Does Not Present A Constitutional Issue 21

III. Failure of the United States to Respect
 Diplomatic Immunities Could Have Serious
 Consequences in the International Community 29

CONCLUSION 32

TABLE OF AUTHORITIES

CASES

Abdulaziz v. Metropolitan Dade County, 741 F.2d 1328
(11th Cir. 1984) 5, 23

Aidi v. Yaron, 672 F. Supp. 516 (D.D.C. 1987) 25

Arcaya v. Paez, 145 F. Supp. 464
(S.D.N.Y. 1956), aff'd, 244 F.2d 958
2d Cir. 1957) 5, 21

Askir v. Boutros-Ghali, 933 F. Supp. 368
(S.D.N.Y. 1996) 2

Boos v. Barry, 485 U.S. 312 (1988) 23, 29

Carrera v. Carrera, 174 F.2d 496 (D.C. Cir. 1959) 5

Dexter & Carpenter, Inc. v. Kunglig Jarnvagsstyrelsen,
43 F.2d 705 (2d Cir. 1930) 24

Filartiga v. Pena-Irala, 630 F.2d 876
(2d Cir. 1980) 25

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No. 94 Civ. 0095 (PKL), 1994 WL 706994
(S.D.N.Y. Dec. 13 1994) 21

Gerritsen v. Escobar & Cordova, 721 F. Supp. 283
(C.D. Ca. 1988) 24

Imbler v. Pachtman, 424 U.S. 409 (1976) 26

In the Matter of Terence K., 135 A.D. 857
(2d Dep't 1987) 5

Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1996) 26

Federal Deposit Insurance Corp v. Meyer,
510 U.S. 471, 484-86 (1994) 26

Kolovrat v. Oregon, 366 U.S. 187 (1961) 12

LaFontant v. Aristide, 844 F. Supp. 128
(E.D.N.Y. 1994) 25

<u>Maximov v. United States</u> , 299 F.2d 565 (2d Cir. 1962), <u>aff'd</u> , 373 U.S. 49 (1963)	11
<u>Pierson v. Ray</u> , 386 U.S. 547 (1967)	26
<u>Premier Steamship Corp. v. Embassy of Algeria</u> , 336 F. Supp. 507 (S.D.N.Y. 1971)	6
<u>Republic of Phillipines v. Marcos</u> , 665 F. Supp. 793 (N.D. Ca. 1987)	23
<u>Ruggiero v. Compania Peruna de Vapores</u> <u>"Inca Capac Yupanqui"</u> , 639 F.2d 872 (2d Cir. 1981)	25
<u>767 Third Avenue Associates v. Permanent</u> <u>Mission of the Republic of Zaire</u> , 988 F.2d 295 (2d Cir. 1993), <u>cert. denied</u> , 510 U.S. 819 (1993)	10, 12, 21, 28, 30, 31
<u>Sullivan v. States of San Paulo</u> , 122 F.2d 355 (2d Cir. 1890)	5
<u>Sumitomo Shoji Am., Inc. v. Avagliano</u> , 457 U.S. 176 (1982)	12
<u>Tabion v. Mufti</u> , 73 F.3d 535 (4th Cir. 1996), <u>aff'g</u> , 877 F. Supp. 285 (E.D. Va. 1995)	11, 26
<u>Tachiona v. Mugabe</u> , 169 F. Supp. 2d 259 (S.D.N.Y. 2001)	12, 17, 25
<u>The Schooner Exchange v. McFaddon</u> , 11 U.S. (7 Cranch) 116 (1812)	22
<u>Traore v. State</u> , 431 A.2d 96, 98 (Ct. App. Md. 1981)	6
<u>Tuck v. Pan American Health Org.</u> , 668 F.2d 547 (D.C. Cir. 1981)	24
<u>United States ex rel. Casanova v. Fitzpatrick</u> , 214 F. Supp. 425 (S.D.N.Y. 1963)	6
<u>United States v. Coplon</u> , 84 F. Supp. 472 (S.D.N.Y. 1949)	5

<u>United States v. Enger</u> , 472 F. Supp. 490 (D.N.J. 1978)	5
<u>United States v. Palestine Liberation Organization</u> , 695 F. Supp. 1456 (S.D.N.Y. 1988)	7
<u>U.S. Steel Corp. v. Multistate Tax Commission</u> , 434 U.S. 452 (1978)	22
<u>York River House v. Pakistan Mission to the United Nations</u> , No. 90 Civ. 2071 (PNL), 1991 WL 206286 (S.D.N.Y. Sept. 27, 1991)	21
<u>CONSTITUTION, STATUTES AND TREATIES</u>	
U.S. Const., art. III, sec. 2	23
U.S. Const., art. VI, cl.2	7
22 U.S.C. §§ 252-54, <u>repealed by</u> Pub. L. No. 95-393, <u>codified at</u> 22 U.S.C. §§ 254a-254e (1978)	18
22 U.S.C. §§ 254a-254e	17
22 U.S.C. § 254a	18
22 U.S.C. § 254d	2
22 U.S.C. §§ 288 <u>et seq.</u>	13
28 U.S.C. § 517	1
28 U.S.C. § 1251	23
28 U.S.C. § 1350	24
28 U.S.C. § 1350 note, § 2(a)	25
28 U.S.C. § 1351	23
United Nations Charter, 59 Stat. 1031 (1945)	passim
Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, June 26-Nov. 21, 1947,	

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S. Rep. No. 95-958, 95th Cong., 2nd Sess., <u>reprinted at</u> 1978 U.S.C.C.A.N. 1935 (1978)	18, 23
S. Rep. No. 95-1108, 95th Cong., 2nd Sess., <u>reprinted at</u> 1978 U.S.C.C.A.N. 1941 (1978)	23

MISCELLANEOUS

I <u>Blackstone's Commentaries on the Laws of England</u> (1916) (reprint of 1788 ed.)	24
---	----

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1967	<u>International Law Commission Yearbook</u> , Vol. II	16
1976	<u>United Nations Juridical Yearbook</u>	20
1983	<u>United Nations Juridical Yearbook</u>	19
1986	<u>United Nations Juridical Yearbook</u>	19, 27
Q. Wright,	<u>The Control of American Foreign Relations</u> (1922)	24
Eileen Denza,	<u>Diplomatic Law</u> 2 (1976)	10, 30