

UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK

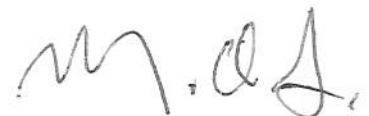
July 13, 2018

The United States Mission to the United Nations presents its compliments to the United Nations Office of Legal Affairs and has the honor to respond to the note No. LA/COD/4 of June 7, 2018. That note refers to a revised “report” of the Permanent Mission of the Russian Federation to the United Nations, purportedly pursuant to General Assembly Resolution 71/145.

The title, history, and text of Resolution 71/145 make clear that the Russian “report” is unfounded, improper, and presents the danger of undermining the critically important purpose of Resolution 71/145, entitled “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.” This resolution, which was issued in December 2016, has been regularly reissued for more than three decades. It arose out of the events in Iran from November 1979, when students took 66 United States citizens hostage. Most of these individuals were members of the United States diplomatic mission to Iran, and most of them were held hostage, with the encouragement of the Iranian Government, for 444 days, until January 1981. The International Court of Justice ruled in 1980 that the Iranian Government had violated, and was violating, the rights of the United States with respect to the inviolability of the mission premises and the personal inviolability of accredited individuals. This infamous act was the genesis of what is now Resolution 71/145.

Given this history, the United States is particularly supportive of Resolution 71/145, in which the General Assembly declared itself “[a]larmed by the new and recurring acts of violence against diplomatic and consular representatives, and well as representatives to international organizations and officials of such organizations, which endanger or take innocent lives and seriously impede the normal work of such representatives and officials” (Paragraph 2). The Resolution “[s]trongly condemns” all such acts of violence, and urges States to take practical steps to protect such individuals and to prevent such acts of violence. (Paragraphs 3 and 4) Paragraph 10(a) urges States to report “serious violations of the protection, security and safety of diplomatic

DIPLOMATIC NOTE

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and consular missions and representatives as well as missions and representatives with diplomatic status to international governmental organizations”

It is unfortunate that the Russian Federation saw fit to transmit to the Secretary-General a report under this Resolution, given that it provides no evidence, or even a specific allegation, of a threat to the security of members of its diplomatic and consular missions, or of its Permanent Mission to the United Nations. Indeed, the focus of Russia’s report is not on its accredited personnel at all, but rather on its property. As will be shown below, the actions that the United States has taken with respect to the Russian Federation and its properties in the United States are in conformity with the Vienna Conventions on Diplomatic and Consular Relations, and do not begin to approach legitimate concerns about the inviolability of mission premises and of accredited personnel.

The first incident about which Russia complains occurred in December 2016, when the United States informed the Russian Federation on December 29 that the Russian recreational properties in Upper Brookville, New York, and Centreville, Maryland (Pioneer Point) were no longer authorized for use for diplomatic or consular purposes. In addition, the United States declared 35 Russian bilateral personnel to be *persona non grata*. The United States announced publicly that these actions were in response to Russia’s interference in the U.S. election and, notably in the context of Resolution 71/145, to well-documented incidents of harassment of United States diplomatic and consular personnel in Russia.

On July 28, 2017, the Russia Federation announced that it wanted “parity” in the United States-Russian bilateral relationship and demanded that as of September 1, the United States reduce the size of its diplomatic and consular presence in Russia to 455 personnel. The Russian Federation also announced that it would close a Moscow recreational property used by the United States Embassy and a U.S. Embassy warehouse in Moscow. This incident, and the other actions taken by Russia and described below, are not mentioned in Russia’s report to the Secretary-General.

On August 31, 2017, the United States informed the Russian Federation that the United States had complied with the Russian requirement that the United States reduce the size of its diplomatic and consular presence in Russia. The United States further informed the Russian

Federation that the Department was withdrawing its consent to the establishment of a consular post in San Francisco and its permission for diplomatic or consular use of properties in New York (consular annex), and Washington (Embassy annex). Also, consistent with the withdrawal of consent for a Russian consulate in San Francisco, the Consulate General residential property was required to close. Russian consular staff in San Francisco were given one month to wind up their personal activities and depart from their residences. Personnel from the consulate were permitted to be reassigned to another bilateral diplomatic or consular mission in the United States. The Russian Trade Office which functioned as part of the Embassy from an annex moved to the main Russian Embassy location. The consular annex in New York City was leased space and reverted to the landlord, but the personnel were able to relocate to an existing Russian consular facility. To ensure safety and to secure the properties, the United States conducted walk-throughs of the various properties only after such inviolability as had existed had ended.

On March 14, 2018, after the use of a Soviet military-grade nerve agent in the United Kingdom against Sergei Skripal and Yulia Skripal, the United Kingdom ordered the expulsion of 23 Russian diplomats from the United Kingdom. On March 26, 2018, the United States announced that effective April 1, 2018, the United States was withdrawing its consent for the operation of the Russian Consulate General in Seattle, and Russian operations there were required to cease. Beginning April 25, 2018, the Consul General residential property was no longer authorized for use for consular purposes. The Consulate General office property was leased space and reverted to the landlord. Additionally, in response to Russian actions, the United States required the departure of 48 Russian accredited personnel from Russia's bilateral mission to the United States. Separately, pursuant to the provisions of the United Nations Headquarters Agreement, the United States required the departure of 12 accredited personnel from the Russian Permanent Mission to the United Nations.

On March 29, 2018, the Russian Federation announced closure of the United States Consulate General in St. Petersburg, effective March 31, 2018. Russia also declared *persona non grata* a total of 60 United States accredited diplomatic and consular personnel from Russia effective April 5.

Throughout all of the actions that it has taken with respect to the Russian diplomatic mission to the United States, the Russian Federation's consular posts, and its Permanent Mission to the United Nations, the United States has ensured the safety and security of all diplomatic or consular staff members, and their family members, who may have resided or worked in the affected property. First and foremost, in keeping with the purpose of Resolution 71/145, the United States has acted with the utmost respect toward the physical safety of these individuals. The Russian Federation has offered no evidence to the contrary.

With respect to the Russian properties, the focus of Russia's report, the United States took custody of Russian property only after the expiration of a stated period during which the property continued to enjoy inviolability and the Russian Federation had an opportunity to remove archives, materials and personnel from the premises. There is no international law obligation to allow members of a diplomatic mission to reside in any particular property, and with regard to the two recreational properties ("dachas" at Pioneer Point, Maryland and Upper Brookville, New York), no diplomatic or consular mission has a right to a recreational property. With respect to the Upper Brookville property, Russia has provided no evidence that it ever notified it to the Permanent Mission of the United States or the United Nations Secretariat that it intended the property to be part of its diplomatic mission, as required under Article 12 of the Vienna Convention on Diplomatic Relations. Accordingly, it never enjoyed inviolability under the VCDR and the UN Headquarters Agreement.

None of the Russian-owned properties were "seized" by the United States. Those properties which were owned by the Russian Federation continue to be owned by the Russian Federation. In shutting down the consular properties and the Embassy and consular annexes, the United States did not, contrary to the Russian report, "raid" the properties, or engage in "forced entry." When requiring Russia to forego the use of these properties, the United States respected the inviolability of the property, if any, for such timeframe as the inviolability existed. The United States did so by providing warning to the Russian Federation that the permitted diplomatic or consular or residential use would terminate, and that only upon termination of such permitted use would inviolability of the property cease. This meant that the Russian Federation was no longer allowed to use the property as a consulate, official residence or mission or consular annex. Once

the period had elapsed after notice of the withdrawal of consent, the property no longer enjoyed inviolability because it was no longer diplomatic or consular premises or a residence entitled to such protection. As discussed above, the Russians took reciprocal actions against the United States.

When a leased property is no longer permitted to be used for diplomatic or consular purposes, the Department allows the property to revert to the control of the landlord, at which point the property is, of course, no longer inviolable. For example, the United States withdrew its consent for Russia to maintain a consulate in Seattle and provided a week for Russia to close its operations and vacate the premises. During that period, the consular premises retained their inviolability. After that period, these leased premises were returned to the landlord and ceased to enjoy any inviolability.

For these reasons, the United States strongly objects to the report of the Russian Federation, which does not raise serious concerns about the personal safety of the members of its diplomatic missions, consular posts, or its Permanent Mission to the United States, which is the focus of Resolution 71/145. Nor does it raise legitimate concerns about the inviolability of the premises of its Embassy, of its consular posts, or of its Permanent Mission to the United Nations. The United States accordingly requests that the Secretary-General reject the report of the Russian Federation in its entirety.

The United States Mission to the United Nations avails itself of this opportunity to renew to the United Nations the assurances of its highest consideration.