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

#### Report of the Secretary-General

1. By its resolution 42/210 B of 17 December 1987 the General Assembly, having been apprised of action being considered in the host country, the United States of America, which might impede the maintenance of facilities of the Permanent Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations in New York that enables it to discharge its official functions, requested the Secretary-General to take effective measures to ensure full respect for the Headquarters Agreement of 26 June 1947 1/ between the United Nations and the United States and to report, without delay, to the General Assembly on any further development in this matter.
2. The action of the host country considered by the General Assembly in its resolution 42/210 B was implemented with the signing into law by the President of the United States, on 22 December 1987, of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Title X of which, the Anti-Terrorism Act of 1987, established certain prohibitions regarding PLO, inter alia, a prohibition "to establish or maintain an office, headquarters premises or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the PLO or any of its constituent groups, any successor, to any of those, or any agents thereof".
3. In anticipation of the adoption of this Act by the United States Congress the Secretary-General addressed two letters to the Permanent Representative of the United States, Ambassador Walters. In the first of these letters, dated 7 December 1987, the Secretary-General reiterated to the Permanent Representative the view previously expressed by the United Nations that the members of the PLO Observer Mission are, by virtue of General Assembly resolution 3237 (XXIX), invitees to the United Nations and that the United States is under an obligation to permit PLO personnel to enter and remain in the United States to carry out their official functions at the United Nations under the Headquarters Agreement.

Consequently, the United States was under a legal obligation to maintain the current arrangements for the PLO Observer Mission, which have been in effect for some 13 years. The Secretary-General expressed the hope that it would be possible for the United States Administration, in line with its own legal position, to act to prevent the adoption of the legislation; the United States Department of State had repeatedly taken the position that the United States is "under an obligation to permit PLO Observer Mission personnel to enter and remain in the US to carry out their official functions". In the event that the proposed legislation became law, however, the Secretary-General sought assurances that the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected. In the second letter, dated 21 December 1987, the Secretary-General informed the Permanent Representative of the adoption of resolution 42/210 B by the General Assembly and requested that he be informed of any further developments regarding the pending legislation, in particular its signing into law.

4. On 5 January 1988 the Acting Permanent Representative of the United States to the United Nations, Ambassador Herbert Okun, responded to the Secretary-General's letters of 7 and 21 December 1987 confirming that the Act had been signed by President Reagan on 22 December 1987 and that the Section relating to PLO would take effect 90 days after that date. The letter went on to say that "Because the provisions concerning the PLO Observer Mission may infringe on the President's constitutional authority and, if implemented, would be contrary to our international legal obligations under the United Nations Headquarters Agreement, the Administration intends, during the ninety-day period before this provision is to take effect, to engage in consultations with the Congress in an effort to resolve this matter."

5. On 14 January 1988 the Secretary-General again wrote to Ambassador Walters. After welcoming the intention expressed in Ambassador Okun's letter to use the ninety-day period to engage in consultations with the Congress, the Secretary-General nevertheless pointed out that the assurance sought in his letter of 7 December 1987 had not been forthcoming and that under these circumstances it had to be concluded that a dispute existed between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement. The Secretary-General accordingly invoked the dispute settlement procedure set out in section 21 of the Agreement and proposed that the negotiations phase of the procedure commence on 20 January 1988. The Secretary-General named Mr. Carl-August Fleischhauer, the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, his representative in these negotiations.

6. Beginning on 7 January 1988, a series of consultations were held which involved, on the United Nations side, the Legal Counsel, and on the United States side, the Legal Adviser of the State Department, Judge Abraham D. Sofaer, and the Legal Adviser of the United States Mission. In one instance on 27 January 1988, a meeting included on the United States side also a representative of the United States Attorney General. In these consultations, the Legal Counsel was informed that the United States was not in a position and not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement; the United States was still evaluating the situation and had not yet concluded that a dispute existed between the United Nations and the United States at the present

time because the legislation in question had not yet been implemented. The Executive Branch was still examining the possibility of interpreting the law in conformity with the United States obligations under the Headquarters Agreement regarding the PLO Observer Mission, as reflected in the arrangements currently made for that Mission, or alternatively of providing assurances that would set aside the ninety-day period for the coming into force of the legislation.

7. The Legal Counsel stated that for the United Nations the question was one of compliance with international law. The Headquarters Agreement was a binding international instrument the obligations of the United States under which were, in the view of the Secretary-General and the General Assembly, being violated by the legislation in question. Section 21 of the Agreement set out the procedure to be followed in the event of a dispute as to its interpretation or application and the United Nations had every intention of defending its rights under that Agreement. He insisted, therefore, that if the PLO Observer Mission was not to be exempted from the application of the law the procedure provided for in section 21 be implemented and also that technical discussions regarding the establishment of an arbitral tribunal take place immediately. The United States side agreed to such discussions but only on an informal basis.

8. Technical discussions were commenced 28 January 1988. Among the matters discussed were the costs of the arbitration, its location, its secretariat, languages, rules of procedure and the form of the compromis between the two sides.

9. When, however, it became clear that no progress was being made regarding the substance of the matter, on 2 February 1988 the Secretary-General once more wrote to Ambassador Walters. The Secretary-General noted that while he had not received an official response to his letter of 14 January 1988 consultations between the United Nations and the United States were being conducted on various levels. The United States side was still in the process of evaluating the situation which would arise out of the application of the legislation and, pending the conclusion of such evaluation, took the position that that it could not enter into the dispute settlement procedure outlined in section 21 of the Headquarters Agreement. The Secretary-General then went on to say that "The section 21 procedure is the only legal remedy available to the United Nations in this matter and since the United States so far has not been in a position to give appropriate assurances regarding the deferral of the application of the law to the PLO Observer Mission, the time is rapidly approaching when I will have no alternative but to proceed either together with the United States within the framework of section 21 of the Headquarters Agreement or by informing the General Assembly of the impasse that has been reached." On 4 February 1988, the Secretary-General, in a meeting with Ambassador Walters, spoke in the same sense. Later on the same day, the United Nations was informed that a decision would be communicated to the Secretary-General no later than 10 February 1988.

10. The Secretary-General learned on 10 February 1988 that the United States Administration has not made its decision with respect to the PLO Observer Mission and that it will not make its decision until next week. The Secretary-General will continue to exert every effort to settle the dispute or to bring about dispute settlement procedures within the framework of section 21 of the Headquarters

Agreement. However, having regard to the time constraints referred to in paragraph 4 above, a stage in the negotiations between the United Nations and the United States has been reached where he must inform the General Assembly in accordance with the terms of resolution 42/210 B of 17 December 1987.

Notes

1/ Resolution 169 (II).

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