

Sultan

International Law

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The United Nations' Headquarters in New York were established as an international enclave by the Agreement Between the United States and the United Nations Regarding the Headquarters of the United Nations (the "Headquarters Agreement"). This agreement followed an invitation extended to the United Nations by the United States, one of its principal founders, to establish its seat within the United States. The provisions of the entire Headquarters Agreement were subsequently promulgated by both houses of Congress and approved by the President in 1947. The legislation also contained the following provision.

ANNEX 2, SECTION 6 OF U.S. PUBLIC LAW 8-357

Nothing in the agreement shall be construed as in any way diminishing, abridging or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity...and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries.

As a meeting place and forum for all nations, the United Nations, according to Article 1 of its Charter, was formed to:

maintain international peace and security...; to develop friendly relations among nations, based on the principle of equal rights and self determination of peoples...; to achieve

international cooperation in solving international problems of an economic, social, cultural or humanitarian character...; and be a centre for harmonizing the actions of nations in the attainment of these common ends.

Today, 159 of the United Nations' members maintain missions to the U.N. in New York. In addition, the United Nations has, from its incipency, welcomed various non-member observers to participate in its proceedings. Of these, several non-member nations, intergovernmental organizations, and other organizations currently maintain "Permanent Observer Missions" in New York.

The PLO falls into the last of these categories and is present at the United Nations as its invitee. The PLO has none of the usual attributes of sovereignty. It is not accredited to the United States and thus does not have the benefits of diplomatic immunity. There is no recognized state it claims to govern. Yet it purports to serve as the sole political representative of the Palestinian people.

In 1974, the United Nations invited the PLO to become an observer at the U.N., to "participate in the sessions and the work of the General Assembly in the capacity of observer." The right of its representatives to admission to the United States as well as access to the U.N. was immediately challenged under American law. N. Y. Federal judge Costantino rejected that challenge in Anti-Defamation League of B'nai B'rith v. Kissinger (E.D.N.Y. November 1, 1974). The court upheld the presence of a PLO representative in New York with access to the United Nations, albeit under certain entrance visa restrictions which limited PLO personnel movements to a radius of 25 miles from Columbus Circle in Manhattan. It stated from the bench:

This problem must be viewed in the context of the special responsibility which the United States has to provide access to the United Nations under the Headquarters Agreement. It is important to note for the purposes of this case that a primary goal of the United Nations is to provide a forum where peaceful discussions may displace violence as a means of resolving disputed issues. At times our responsibility to the United Nations may require us to issue visas to persons who are objectionable to certain segments of our society.

Since 1974, the PLO has continued to function without interruption as a permanent observer and has maintained its Mission to the United Nations without difficulty, largely because of the Headquarters Agreement.

In October 1986, certain members of Congress requested the United States Department of State to close the PLO offices located in the United States. That request proved unsuccessful, and proponents of the request introduced legislation with the explicit purpose of doing so.

The result was the Anti-Terrorism Act (ATA). These provisions are of a unique nature. The PLO is stated to be "a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States." The ATA was added, without committee hearings, as a rider to the Foreign Relations Authorization Act for Fiscal Years 1988-89.

The ATA, which became effective on March 21, 1988, forbids the establishment or maintenance of "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, if the purpose is to further the PLO's interests.

Ten days before the effective date, the Attorney General wrote the Chief of the PLO Observer Mission to the United Nations that "maintaining a PLO Observer Mission to the United Nations will be unlawful," and advised him that upon failure of compliance, the Department of Justice would take action in federal court.

Since the PLO did not respond, the United States commenced a lawsuit in the Eastern District, N.Y. federal court against the PLO the day the ATA took effect. It requests injunctive relief to accomplish the closure of the Mission. The United Nations is not a party to the suit, but has filed a brief *Amicus Curiae*.

Since the passage of the ATA the United States has taken the position that it would enforce the Act, and there followed several months of intensive discussions between the United States representatives and the United Nations, but without avail. The United States has also refused to appoint an arbitrator as called for in Section 21(a) of the Headquarters Agreement.

In the meanwhile, at the request of the Secretary General under Section 21(b) of the Headquarters Agreement, the General Assembly of the United Nations has sought and obtained an advisory opinion of the International Court of Justice on the question whether the United States had an international legal obligation to take this dispute to arbitration before the arbitration panel specified in Section 21 of the Headquarters Agreement. By a vote of 15 to 0, the Court in its Advisory Opinion of 26 April 1988 concluded that the United States did possess such an obligation.

A recent graduate of the University of Dayton Law School, you are a clerk to the Federal judge in New York City who is assigned the case. In your research you come across the following provisions of the Headquarters Agreement (General Assembly Resolution, 169 II 1947) (61 Stat 756, 22 U.S.C. Sec. 287):

Section 11

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2 of the Charter, or the families of such representatives or officials, (2) experts performing missions for the United Nations or for such specialized agencies, (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nation or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness or generally applicable laws and regulations as to the operation or means of

transportation.

Section 12

The provisions of Section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.

Section 13

(a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible..,

Section 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United-States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of-justice.

(b) The Secretary-General or the United States may

ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal questions arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Your judge asks you to first list all viable issues as concisely as possible.

Then he requests you to fully discuss the issues and give your reasons for how they should be resolved.