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REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY

Statement by the Legal Counsel concerning the determination by the Secretary of State of the United States of America on the visa application of Mr. Yasser Arafat, made at the 136th meeting of the Committee on Relations with the Host Country, on 28 November 1988\*

1. In the meeting which took place this morning, a number of representatives referred to the statements issued by the Secretary-General and by the President of the General Assembly regarding the denial of the visa application of Mr. Yasser Arafat. It had not been my intention, therefore, to make a statement in the meeting, but in the light of the statements made by a number of representatives, and in particular that of the host country, I wish to make the following remarks.

2. First of all, I should like to confirm that as the Permanent Observer of the Palestine Liberation Organization (PLO) stated this morning, a visa request for Mr. Yasser Arafat, Chairman of the Executive Committee of the PLO, was presented to the Secretary-General on the afternoon of 8 November 1988. The visa request stated explicitly that the purpose of Mr. Arafat's visit was to participate in the work of the forty-third session of the General Assembly. The note was transmitted by me to the United States Mission on 9 November; in view of the fact that the visa was requested for the Chairman of the Executive Committee of the PLO, I handed the note personally to Ambassador Herbert S. Okun of the United States Mission. In transmitting the request on 9 November, I drew the attention of Ambassador Okun to the fact that the note was worded in exactly the same way as the normal PLO visa

\* Circulated pursuant to a decision of the Sixth Committee at its 51st meeting, on 29 November 1988.

requests, that Mr. Arafat was designated therein as the Chairman of the Executive Committee of the PLO and that the purpose of his visit was to participate in the work of the forty-third session of the General Assembly; therefore, in my view, the request fell under sections 11, 12 and 13 of the Headquarters Agreement. <sup>1/</sup> As you know, sections 11, 12 and 13 of the Headquarters Agreement provide, *inter alia*, that invitees of the United Nations shall not be impeded in their access to the Headquarters district, that this applies irrespective of the state of bilateral relations of the host country and that the necessary visas "shall be granted ... as promptly as possible".

3. I note from the statement of the Department of State dated 27 November 1988 on the determination by the Secretary of State on the visa application of Mr. Arafat that the United States recognizes that it is obligated to provide certain rights of entry, transit and residence to persons invited to the United Nations Headquarters district in New York. The statement of the Department of State goes on to say that "The Congress of the United States conditioned the entry of the United States into the Headquarters Agreement on the retention by the United States Government of the authority to bar the entry of aliens associated with or invited by the United Nations 'in order to safeguard its own security'." On page 3 of the statement of the Department of State, it is said that "the Headquarters Agreement contained in Public Law 80-357 reserves to us [i.e. the United States] the right to bar the entry of those who represent a threat to our security". This is the so-called security reservation which was referred to by the representative of the host country this morning.

4. In this respect, I note that the Headquarters Agreement states in section 13 (d) that "Except as provided above in this section and the General Convention, the United States retains full control and authority over the entry of persons ... into the territory of the United States". Thus, the Headquarters Agreement makes it clear that there is an unrestricted right of the persons mentioned in section 11 to enter the United States for the purpose of proceeding to the Headquarters district.

5. The Agreement does not contain a reservation of the right to bar the entry of those who represent, in the view of the host country, a threat to its security. What is referred to in the statement of the Department of State is, apparently, section 6 of Public Law 80-357 which reads as follows:

"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."

6. There is a difference of opinion between the United Nations and the United States on the legal character and validity in international law of that proviso. That difference has surfaced occasionally, but I do not think that it is necessary to go into that difference of opinion on which the position of the United Nations was firmly established in a memorandum of the United Nations Legal Department

reproduced in Economic and Social Council document E/2397 of 10 April 1953, in particular paragraphs 9 to 11. In the present circumstances, it suffices to refer to the wording of section 6, whatever the international legal character of that proviso might be, which speaks of the need to "safeguard its own security and completely to control the entry of aliens into any territory of the United States other than the Headquarters district and its immediate vicinity [emphasis added] ... and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries".

7. Mr. Arafat's visa application is precisely to visit the Headquarters district and nothing else. The application thus situates itself precisely within the scope of section 11, precisely within the scope of the exception provided for in section 13 (d) of the Headquarters Agreement and precisely within the area left open by section 6 of Public Law 80-357.

8. I would like to recall, moreover, that in 1953 when a problem arose concerning the denial of a visa to an invitee of the Economic and Social Council on the grounds of national security, the then Secretary-General, Dag Hammarskjöld, engaged in negotiations with the host country in an effort to find a way in which such difficulties could be handled and dealt with. On these negotiations, the Secretary-General published a progress report in document E/2492 of 27 July 1953 and a chapter in his annual report for 1953/54 (A/2663) dealt with this matter. In these reports, he stated that the right to transit to and from the Headquarters district had not been made the subject of any reservation. He added also that from the United Nations point of view, it should be recognized that a person should be excluded from the host country if there was clear and convincing evidence that a person intended in bad faith to use his or her trip as a cover for activities against that country's security. He informed Member States that the United States representatives had assured him that if in the future there should arise any serious problems with respect to the application in special cases of provisions concerning access to the Headquarters district or to sojourn in its vicinity, the latter would consult him and keep him as fully informed as possible in order to ensure that the decision made was in accordance with the rights of the parties concerned. I note that no consultation took place nor was the Secretary-General kept fully informed in this manner.

9. In her statement this morning, the representative of the United States referred to, and I quote, "rare occasions" on which the United States had declined to issue visas to persons entering the United States for United Nations purposes in order to protect national security. The United States representative went on to assert that United Nations practice confirms that the United States had the right to decline the issuance of visas and the United Nations had, on a number of occasions since 1954, acquiesced in such a practice.

10. For the record, I wish to state that the United Nations has not acquiesced in such a practice. It is true that, on certain occasions, the United States has declined to issue visas to representatives of States or to persons invited to the United Nations, and the United Nations has not insisted where the requesting State itself, for reasons of its own, did not pursue the matter. The United Nations legal position regarding the obligation of the host country to grant visas has at

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all times been perfectly clear to the host country, as was the United Nations position with respect to the so-called security reservation.

11. As to the reasons given by the host country in the present case, I would like to indicate, finally, that the statement of the Department of State does not make the point that the presence of Mr. Arafat, Chairman of the Executive Committee of the PLO, at the United Nations would per se in any way threaten the security of the United States. In other words, the host country did not allege that there was apprehension that Mr. Arafat, once in the United States, might engage in activities outside the scope of his official functions directed against the security of the host country. The reasoning given in the statement of the State Department of 27 November 1988 does not meet the standard laid down in the talks between Secretary-General Hammarskjöld and the United States authorities and reported back by Mr. Hammarskjöld in the report cited above.

12. To sum up, I am of the opinion that the host country was and is under an obligation to grant the visa request of the Chairman of the Executive Committee of the PLO, an organization which has been granted observer status by the General Assembly.

#### Notes

1/ Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, dated 26 June 1947 (General Assembly resolution 169 (II)).

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