COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICABILITÉ DE L'OBLIGATION D'ARBITRAGE EN VERTU DE LA SECTION 21 DE L'ACCORD DU 26 JUIN 1947 RELATIF AU SIÈGE DE L'ORGANISATION DES NATIONS UNIES

AVIS CONSULTATIF DU 26 AVRIL 1988

1988

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICABILITY OF THE OBLIGATION TO ARBITRATE UNDER SECTION 21 OF THE UNITED NATIONS HEADQUARTERS AGREEMENT OF 26 JUNE 1947

ADVISORY OPINION OF 26 APRIL 1988

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APPLICABILITY OF THE OBLIGATION TO ARBITRATE UNDER SECTION 21 OF THE UNITED NATIONS HEADQUARTERS AGREEMENT OF 26 JUNE 1947

Headquarters Agreement between the United Nations and the United States of America — Dispute settlement clause — Existence of a dispute — Alleged breach of treaty — Significance of behaviour or decision of party in absence of any argument by that party to justify its conduct under international law — Implementation of contested decision and existence of a dispute — Whether dispute concerns "the interpretation or application" of the Agreement — Whether dispute one "not settled by negotiation or other agreed mode of settlement" — Principle that international law prevails over national law.

ADVISORY OPINION

Present: *President* RUDA; *Vice-President* MBAYE; *Judges* LACHS, NAGENDRA SINGH, ELIAS, ODA, AGO, SCHWEBEL, Sir Robert JENNINGS, BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN; *Registrar* VALENCIA-OSPINA.

Concerning the applicability of the obligation to arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947,

THE COURT,

composed as above,

after deliberation,

gives the following Advisory Opinion:

1. The question upon which the advisory opinion of the Court has been asked was contained in resolution 42/229 B of the United Nations General Assembly, adopted on 2 March 1988. On the same day, the text of that resolution

in English and French was transmitted to the Court, by facsimile, by the United Nations Legal Counsel. By a letter dated 2 March 1988, addressed by the Secretary-General of the United Nations to the President of the Court (received by facsimile on 4 March 1988, and received by post and filed in the Registry on 7 March 1988) the Secretary-General formally communicated to the Court the decision of the General Assembly to submit to the Court for advisory opinion the question set out in that resolution. The resolution, certified true copies of the English and French texts of which were enclosed with the letter and included in the facsimile transmission, was in the following terms:

> *"The General Assembly,*
>
> *Recalling* its resolution 42/210B of 17 December 1987 and bearing in mind its resolution 42/229A above,
>
> *Having considered* the reports of the Secretary-General of 10 and 25 February 1988 [A/42/915 and Add.1],
>
> *Affirming* the position of the Secretary-General that a dispute exists between the United Nations and the host country concerning the interpretation or application of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, dated 26 June 1947 [see resolution 169 (II)], and noting his conclusions that attempts at amicable settlement were deadlocked and that he had invoked the arbitration procedure provided for in section 21 of the Agreement by nominating an arbitrator and requesting the host country to nominate its own arbitrator,
>
> *Bearing in mind* the constraints of time that require the immediate implementation of the dispute settlement procedure in accordance with section 21 of the Agreement,
>
> *Noting* from the report of the Secretary-General of 10 February 1988 [A/42/915] that the United States of America was not in a position and was not willing to enter formally into the dispute settlement procedure under section 21 of the Headquarters Agreement and that the United States was still evaluating the situation,
>
> *Taking into account* the provisions of the Statute of the International Court of Justice, in particular Articles 41 and 68 thereof,
>
> *Decides,* in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, in pursuance of Article 65 of the Statute of the Court, for an advisory opinion on the following question, taking into account the time constraint:
>
> > 'In the light of facts reflected in the reports of the Secretary-General [A/42/915 and Add.1], is the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [see resolution 169 (II)], under an obligation to enter into arbitration in accordance with section 21 of the Agreement?'"

A copy of resolution 42/229A, referred to in the above resolution, was also enclosed with the Secretary-General's letter.

2. The notice of the request for an advisory opinion prescribed by Article 66, paragraph 1, of the Statute of the Court, was given on 3 March 1988 by telegram from the Registrar to all States entitled to appear before the Court.

3. By an Order dated 9 March 1988 the Court found that an early answer to the request for advisory opinion would be desirable, as contemplated by Article 103 of the Rules of Court. By that Order the Court decided that the United Nations and the United States of America were considered likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute, and fixed 25 March 1988 as the time-limit within which the Court would be prepared to receive written statements from them on the question; and that any other State party to the Statute which desired to do so might submit to the Court a written statement on the question not later than 25 March 1988. Written statements were submitted, within the time-limit so fixed, by the Secretary-General of the United Nations, by the United States of America, and by the German Democratic Republic and by the Syrian Arab Republic.

4. By the same Order the Court decided further to hold hearings, opening on 11 April 1988, at which oral comments on written statements might be submitted to the Court by the United Nations, the United States and such other States as should have presented written statements.

5. The Secretary-General of the United Nations transmitted to the Court, pursuant to Article 65, paragraph 2, of the Statute, a dossier of documents likely to throw light upon the question; these documents were received in the Registry in instalments between 11 and 29 March 1988.

6. At a public sitting held on 11 April 1988, an oral statement was made to the Court by Mr. Carl-August Fleischhauer, the United Nations Legal Counsel, on behalf of the Secretary-General. None of the States having presented written statements expressed a desire to be heard. Certain Members of the Court put questions to Mr. Fleischhauer, which were answered at a further public sitting held on 12 April 1988.

* *

7. The question upon which the opinion of the Court has been requested is whether the United States of America (hereafter referred to as "the United States"), as a party to the United Nations Headquarters Agreement, is under an obligation to enter into arbitration. The Headquarters Agreement of 26 June 1947 came into force in accordance with its terms on 21 November 1947 by exchange of letters between the Secretary-General and the United States Permanent Representative. The Agreement was registered the same day with the United Nations Secretariat, in accordance with Article 102 of the Charter. In section 21, paragraph *(a)*, it provides as follows:

> "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."

There is no question but that the Headquarters Agreement is a treaty in force binding the parties thereto. What the Court has therefore to determine, in order to answer the question put to it, is whether there exists a dispute between the United Nations and the United States of the kind contemplated by section 21 of the Agreement. For this purpose the Court will first set out the sequence of events, preceding the adoption of resolutions 42/229A and 42/229B, which led first the Secretary-General and subsequently the General Assembly of the United Nations to conclude that such a dispute existed.

8. The events in question centred round the Permanent Observer Mission of the Palestine Liberation Organization (referred to hereafter as "the PLO") to the United Nations in New York. The PLO has enjoyed in relation to the United Nations the status of an observer since 1974; by General Assembly resolution 3237 (XXIX) of 22 November 1974, the Organization was invited to "participate in the sessions and the work of the General Assembly in the capacity of observer". Following this invitation, the PLO established an Observer Mission in 1974, and maintains an office, entitled office of the PLO Observer Mission, at 115 East 65th Street, in New York City, outside the United Nations Headquarters District. Recognized observers are listed as such in official United Nations publications: the PLO appears in such publications in a category of "organizations which have received a standing invitation from the General Assembly to participate in the sessions and the work of the General Assembly as observers".

9. In May 1987 a bill (S.1203) was introduced into the Senate of the United States, the purpose of which was stated in its title to be "to make unlawful the establishment or maintenance within the United States of an office of the Palestine Liberation Organization". Section 3 of the bill provided that

> "It shall be unlawful, if the purpose be to further the interests of the Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this Act —
>
> (1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;
>
> (2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or
>
> (3) notwithstanding any provision of the law to the contrary, 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 Palestine Liberation Organization or any of its constituent groups, any successor to any of those, or any agents thereof."

10. The text of this bill was repeated in the form of an amendment, presented in the United States Senate in the autumn of 1987, to the "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989". From the terms of this amendment it appeared that the United States Government would, if the bill were passed into law, seek to close the office of the PLO Observer Mission. The Secretary-General therefore explained his point of view to that Government, by a letter to the United States Permanent Representative dated 13 October 1987. In that letter he emphasized that the legislation contemplated "runs counter to obligations arising from the Headquarters Agreement". On 14 October 1987 the PLO Observer brought the matter to the attention of the United Nations Committee on Relations with the Host Country.

11. On 22 October 1987, the view of the Secretary-General was summed up in the following statement made by the Spokesman for the Secretary-General (subsequently endorsed by the General Assembly in resolution 42/210B):

"The members of the PLO Observer Mission are, by virtue of resolution 3237 (XXIX), invitees to the United Nations. As such, they are covered by sections 11, 12 and 13 of the Headquarters Agreement of 26 June 1947. There is therefore a treaty obligation on the host country to permit PLO personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters."

In this respect, it may be noted that section 11 of the Headquarters Agreement provides that

"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 the families of such representatives . . . ; . . . (5) other persons invited to the headquarters district by the United Nations . . . on official business . . ."

Section 12 provides that

"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 provides *(inter alia)* that

"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."

12. When the report of the Committee on Relations with the Host Country was placed before the Sixth Committee of the General Assembly on 25 November 1987, the representative of the United States noted:

> "that the United States Secretary of State had stated that the closing of that mission would constitute a violation of United States obligation under the Headquarters Agreement, and that the United States Government was strongly opposed to it; moreover the United States representative to the United Nations had given the Secretary-General the same assurances" (A/C.6/42/SR.58).

When the draft resolution which subsequently became General Assembly resolution 42/210B was put to the vote in the Sixth Committee on 11 December 1987, the United States delegation did not participate in the voting because in its opinion: "it was unnecessary and inappropriate since it addressed a matter still under consideration within the United States Government". The position taken by the United States Secretary of State, namely:

> "that the United States was under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at United Nations Headquarters"

was cited by another delegate and confirmed by the representative of the United States, who referred to it as "well known" (A/C.6/42/SR.62).

13. The provisions of the amendment referred to above became incorporated into the United States "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989" as Title X, the "Anti-Terrorism Act of 1987". At the beginning of December 1987 the Act had not yet been adopted by the United States Congress. In anticipation of such adoption the Secretary-General addressed a letter, dated 7 December 1987, to the Permanent Representative of the United States, Ambassador Vernon Walters, in which he 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, it was said, the United States was under a legal obligation to maintain the current arrangements for the PLO Observer Mission, which had by then been in effect for some 13 years. The Secretary-General sought assurances that, in the event that the proposed

legislation became law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected.

14. In a subsequent letter, dated 21 December 1987, after the adoption on 15/16 December of the Act by the United States Congress, the Secretary-General informed the Permanent Representative of the adoption on 17 December 1987 of resolution 42/210B by the General Assembly. By that resolution the Assembly

> *"Having been apprised* of the action being considered in the host country, the United States of America, which might impede the maintenance of the facilities of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York, which enables it to discharge its official functions,
>
> . . . . . .
>
> 1. *Reiterates* that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and should be enabled to establish and maintain premises and adequate functional facilities, and that the personnel of the Mission should be enabled to enter and remain in the United States to carry out their official functions;
>
> 2. *Requests* the host country to abide by its treaty obligations under the Headquarters Agreement and in this connection to refrain from taking any action that would prevent the discharge of the official functions of the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations;".

15. On 22 December 1987 the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, was signed into law by the President of the United States. Title X thereof, the Anti-Terrorism Act of 1987, was, according to its terms, to take effect 90 days after that date. On 5 January 1988 the Acting Permanent Representative of the United States to the United Nations, Ambassador Herbert Okun, in a reply to the Secretary-General's letters of 7 and 21 December 1987, informed the Secretary-General of this. 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."

16. 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 went on to say:

"As you will recall, I had, by my letter of 7 December, informed you that, in the view of the United Nations, the United States is under a legal obligation under the Headquarters Agreement of 1947 to maintain the current arrangements for the PLO Observer Mission, which have been in effect for the past 13 years. I had therefore asked you to confirm that if this legislative proposal became law, the present arrangements for the PLO Observer Mission would not be curtailed or otherwise affected, for without such assurance, a dispute between the United Nations and the United States concerning the interpretation and application of the Headquarters Agreement would exist..."

Then, referring to the letter of 5 January 1988 from the Permanent Representative and to declarations by the Legal Adviser to the State Department, he observed that neither that letter nor those declarations

"constitute the assurance I had sought in my letter of 7 December 1987 nor do they ensure that full respect for the Headquarters Agreement can be assumed. Under these circumstances, a dispute exists between the Organization and the United States concerning the interpretation and application of the Headquarters Agreement and I hereby invoke the dispute settlement procedure set out in section 21 of the said Agreement.

According to section 21 *(a)*, an attempt has to be made at first to solve the dispute through negotiations, and I would like to propose that the first round of the negotiating phase be convened on Wednesday, 20 January 1988..."

17. Beginning on 7 January 1988, a series of consultations were held; from the account of these consultations presented to the General Assembly by the Secretary-General in the report referred to in the request for advisory opinion, it appears that the positions of the parties thereto were as follows:

"the [United Nations] 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." (A/42/915, para. 6.)

18. The United Nations Legal Counsel stated that for the Organization 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 the interpretation or application of the Agreement 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 agreed to such discussions but only on an informal basis. Technical discussions were commenced on 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 (*ibid.*, paras. 7-8).

19. On 2 February 1988 the Secretary-General once more wrote to Ambassador Walters. The Secretary-General took note that

> "the United States side is 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 takes the position that it cannot 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."

20. On 11 February 1988 the United Nations Legal Counsel, referring to the formal invocation of the dispute settlement procedure on 14 Janu-

ary 1988 (paragraph 16 above), informed the Legal Adviser of the State Department of the United Nations' choice of its arbitrator, in the event of an arbitration under section 21 of the Headquarters Agreement. In view of the time constraints under which both parties found themselves, the Legal Counsel urged the Legal Adviser of the State Department to inform the United Nations as soon as possible of the choice made by the United States. No communication was received in this regard from the United States.

21. On 2 March 1988 the General Assembly, at its resumed forty-second session, adopted resolutions 42/229 A and 42/229 B. The first of these resolutions, adopted by 143 votes to 1, with no abstentions, contains *(inter alia)* the following operative provisions:

> "*The General Assembly,*
>
> . . . . . .
>
> 1. *Supports* the efforts of the Secretary-General and expresses its great appreciation for his reports;
>
> 2. *Reaffirms* that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York is covered by the provisions of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations [see resolution 169 (II)] and that it should be enabled to establish and maintain premises and adequate functional facilities and that the personnel of the Mission should be enabled to enter and remain in the United States of America to carry out their official functions;
>
> 3. *Considers* that the application of Title X of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, in a manner inconsistent with paragraph 2 above would be contrary to the international legal obligations of the host country under the Headquarters Agreement;
>
> 4. *Considers* that a dispute exists between the United Nations and the United States of America, the host country, concerning the interpretation or application of the Headquarters Agreement, and that the dispute settlement procedure set out in section 21 of the Agreement should be set in operation;".

The second resolution 42/229 B, adopted by 143 votes to none, with no abstentions, has already been set out in full in paragraph 1 above.

22. The United States did not participate in the vote on either resolution; after the vote, its representative made a statement, in which he said:

> "The situation today remains almost identical to that prevailing when resolution 42/210 B was put to the vote in December 1987. The

United States has not yet taken action affecting the functioning of any Mission or invitee. As the Secretary-General relayed to the Assembly in the 25 February addendum to his report of 10 February, the United States Government has made no final decision concerning the application or enforcement of recently passed United States legislation, the Anti-Terrorism Act of 1987, with respect to the Permanent Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations in New York.

For these reasons, we can only view as unnecessary and premature the holding at this time of this resumed forty-second session of the General Assembly . . .

The United States Government will consider carefully the views expressed during this resumed session. It remains the intention of this Government to find an appropriate resolution of this problem in light of the Charter of the United Nations, the Headquarters Agreement, and the laws of the United States."

*

23. The question put to the Court is expressed, by resolution 42/229 B, to concern a possible obligation of the United States, "In the light of [the] facts reflected in the reports of the Secretary-General [A/42/915 and Add.1]", that is to say in the light of the facts which had been reported to the General Assembly at the time at which it took its decision to request an opinion. The Court does not however consider that the General Assembly, in employing this form of words, has requested it to reply to the question put on the basis solely of these facts, and to close its eyes to subsequent events of possible relevance to, or capable of throwing light on, that question. The Court will therefore set out here the developments in the affair subsequent to the adoption of resolution 42/229 B.

24. On 11 March 1988 the Acting Permanent Representative of the United States to the United Nations wrote to the Secretary-General, referring to General Assembly resolutions 42/229 A and 42/229 B and stating as follows:

"I wish to inform you that the Attorney General of the United States has determined that he is required by the Anti-Terrorism Act of 1987 to close the office of the Palestine Liberation Organization Observer Mission to the United Nations in New York, irrespective of any obligations the United States may have under the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. If the PLO does not comply with the Act, the Attorney General will initiate legal action to close the PLO Observer Mission on or about March 21, 1988, the effective date of the Act. This course of action will allow the orderly enforcement of the Act. The United States will not take other actions to close the

Observer Mission pending a decision in such litigation. Under the circumstances, the United States believes that submission of this matter to arbitration would not serve a useful purpose."

This letter was delivered by hand to the Secretary-General by the Acting Permanent Representative of the United States on 11 March 1988. On receiving the letter, the Secretary-General protested to the Acting Permanent Representative and stated that the decision taken by the United States Government as outlined in the letter was a clear violation of the Headquarters Agreement between the United Nations and the United States.

25. On the same day, the United States Attorney General wrote to the Permanent Observer of the PLO to the United Nations to the following effect:

"I am writing to notify you that on March 21, 1988, the provisions of the 'Anti-Terrorism Act of 1987' (Title X of the Foreign Relations Authorization Act of 1988-89; Pub. L. No. 100-204, enacted by the Congress of the United States and approved Dec. 22, 1987 (the 'Act')) will become effective. The Act prohibits, among other things, the Palestine Liberation Organization ('PLO') from establishing or maintaining an office within the jurisdiction of the United States. Accordingly, as of March 21, 1988, maintaining the PLO Observer Mission to the United Nations in the United States will be unlawful.

The legislation charges the Attorney General with the responsibility of enforcing the Act. To that end, please be advised that, should you fail to comply with the requirements of the Act, the Department of Justice will forthwith take action in United States federal court to ensure your compliance."

26. Finally, on the same day, in the course of a press briefing held by the United States Department of Justice, the Assistant Attorney General in charge of the Office of Legal Counsel said as follows, in reply to a question:

"We have determined that we would not participate in any forum, either the arbitral tribunal that might be constituted under Article XXI, as I understand it, of the UN Headquarters Agreement, or the International Court of Justice. As I said earlier, the statute [i.e., the Anti-Terrorism Act of 1987] has superseded the requirements of the UN Headquarters Agreement to the extent that those requirements are inconsistent with the statute, and therefore, participation in any of these tribunals that you cite would be to no useful end. The statute's mandate governs, and we have no choice but to enforce it."

27. On 14 March 1988 the Permanent Observer of the PLO replied to the Attorney General's letter drawing attention to the fact that the PLO Permanent Observer Mission had been maintained since 1974, and continuing:

> "The PLO has maintained this arrangement in pursuance of the relevant resolutions of the General Assembly of the United Nations (3237 (XXIX), 42/210 and 42/229 . . .). The PLO Observer Mission is in no sense accredited to the United States. The United States Government has made clear that PLO Observer Mission personnel are present in the United States solely in their capacity as 'invitees' of the United Nations within the meaning of the Headquarters Agreement. The General Assembly was guided by the relevant principles of the United Nations Charter (Chapter XVI . . .). I should like, at this point, to remind you that the Government of the United States has agreed to the Charter of the United Nations and to the establishment of an international organization to be known as the 'United Nations'."

He concluded that it was clear that "the US Government is obligated to respect the provisions of the Headquarters Agreement and the principles of the Charter". On 21 March 1988, the United States Attorney General replied to the PLO Permanent Observer as follows:

> "I am aware of your position that requiring closure of the Palestine Liberation Organization ('PLO') Observer Mission violates our obligations under the United Nations ('UN') Headquarters Agreement and, thus, international law. However, among a number of grounds in support of our action, the United States Supreme Court has held for more than a century that Congress has the authority to override treaties and, thus, international law for the purpose of domestic law. Here Congress has chosen, irrespective of international law, to ban the presence of all PLO offices in this country, including the presence of the PLO Observer Mission to the United Nations. In discharging my obligation to enforce the law, the only responsible course available to me is to respect and follow that decision.
>
> Moreover, you should note that the Anti-Terrorism Act contains provisions in addition to the prohibition on the establishment or maintenance of an office by the PLO within the jurisdiction of the United States. In particular, I direct your attention to subsections 1003 *(a)* and *(b)*, which prohibit anyone from receiving or expending any monies from the PLO or its agents to further the interests of the PLO or its agents. All provisions of the Act become applicable on 21 March 1988."

28. On 15 March 1988 the Secretary-General wrote to the Acting

Permanent Representative of the United States in reply to his letter of 11 March 1988 (paragraph 24 above), and stated as follows:

> "As I told you at our meeting on 11 March 1988 on receiving this letter, I did so under protest because in the view of the United Nations the decision taken by the United States Government as outlined in the letter is a clear violation of the Headquarters Agreement between the United Nations and the United States. In particular, I cannot accept the statement contained in the letter that the United States may act irrespective of its obligations under the Headquarters Agreement, and I would ask you to reconsider the serious implications of this statement given the responsibilities of the United States as the host country.
>
> I must also take issue with the conclusion reached in your letter that the United States believes that submission of this matter to arbitration would not serve a useful purpose. The United Nations continues to believe that the machinery provided for in the Headquarters Agreement is the proper framework for the settlement of this dispute and I cannot agree that arbitration would serve no useful purpose. On the contrary, in the present case, it would serve the very purpose for which the provisions of section 21 were included in the Agreement, namely the settlement of a dispute arising from the interpretation or application of the Agreement."

29. According to the written statement of 25 March 1988 presented to the Court by the United States,

> "The PLO Mission did not comply with the March 11 order. On March 22, the United States Department of Justice therefore filed a lawsuit in the United States District Court for the Southern District of New York to compel compliance. That litigation will afford an opportunity for the PLO and other interested parties to raise legal challenges to enforcement of the Act against the PLO Mission. The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely."

The Court has been supplied, as part of the dossier of documents furnished by the Secretary-General, with a copy of the summons addressed to the PLO, the PLO Observer Mission, its members and staff; it is dated 22 March 1988 and requires an answer within 20 days after service.

30. On 23 March 1988, the General Assembly, at its reconvened forty-second session, adopted resolution 42/230 by 148 votes to 2, by which it reaffirmed *(inter alia)* that

> "a dispute exists between the United Nations and the United States of America, the host country, concerning the interpretation or application of the Headquarters Agreement, and that the dispute settlement procedure provided for under section 21 of the Agreement, which constitutes the only legal remedy to solve the dispute, should be set in operation"

and requested "the host country to name its arbitrator to the arbitral tribunal".

31. The representative of the United States, who voted against the resolution, said *(inter alia)* the following in explanation of vote. Referring to the proceedings instituted in the United States courts, he said:

> "The United States will take no further steps to close the PLO office until the [United States] Court has reached a decision on the Attorney General's position that the Act requires closure ... Until the United States courts have determined whether that law requires closure of the PLO Observer Mission the United States Government believes that it would be premature to consider the appropriateness of arbitration." (A/42/PV.109, pp. 13-15.)

He also urged:

> "Let us not be diverted from the important and historic goal of peace in the Middle East by the current dispute over the status of the PLO Observer Mission." (*Ibid.*, p. 16.)

32. At the hearing, the United Nations Legal Counsel, representing the Secretary-General, stated to the Court that he had informed the United States District Court Judge seised of the proceedings referred to in paragraph 29 above that it was the wish of the United Nations to submit an *amicus curiae* brief in those proceedings.

* * *

33. In the present case, the Court is not called upon to decide whether the measures adopted by the United States in regard to the Observer Mission of the PLO to the United Nations do or do not run counter to the Headquarters Agreement. The question put to the Court is not about either the alleged violations of the provisions of the Headquarters Agreement applicable to that Mission or the interpretation of those provisions. The request for an opinion is here directed solely to the determination whether under section 21 of the Headquarters Agreement the United Nations was entitled to call for arbitration, and the United States was obliged to enter into this procedure. Hence the request for an opinion concerns solely the applicability to the alleged dispute of the arbitration procedure provided for by the Headquarters Agreement. It is a legal question within

the meaning of Article 65, paragraph 1, of the Statute. There is in this case no reason why the Court should not answer that question.

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34. In order to answer the question put to it, the Court has to determine whether there exists a dispute between the United Nations and the United States, and if so whether or not that dispute is one "concerning the interpretation or application of" the Headquarters Agreement within the meaning of section 21 thereof. If it finds that there is such a dispute it must also, pursuant to that section, satisfy itself that it is one "not settled by negotiation or other agreed mode of settlement".

35. As the Court observed in the case concerning *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania,* "whether there exists an international dispute is a matter for objective determination" (*I.C.J. Reports 1950,* p. 74). In this respect the Permanent Court of International Justice, in the case concerning *Mavrommatis Palestine Concessions,* had defined a dispute as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*P.C.I.J., Series A, No. 2,* p. 11). This definition has since been applied and clarified on a number of occasions. In the Advisory Opinion of 30 March 1950 the Court, after examining the diplomatic exchanges between the States concerned, noted that "the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations" and concluded that "international disputes have arisen" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, I.C.J. Reports 1950,* p. 74). Furthermore, in its Judgment of 21 December 1962 in the *South West Africa* cases, the Court made it clear that in order to prove the existence of a dispute

> "it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other." (*I.C.J. Reports 1962,* p. 328.)

The Court found that the opposing attitudes of the parties clearly established the existence of a dispute (*ibid.*; see also *Northern Cameroons, I.C.J. Reports 1963,* p. 27).

36. In the present case, the Secretary-General informed the Court that, in his opinion, a dispute within the meaning of section 21 of the Head-

quarters Agreement existed between the United Nations and the United States from the moment the Anti-Terrorism Act was signed into law by the President of the United States and in the absence of adequate assurances to the Organization that the Act would not be applied to the PLO Observer Mission to the United Nations. By his letter of 14 January 1988 to the Permanent Representative of the United States, the Secretary-General formally contested the consistency of the Act with the Headquarters Agreement (paragraph 16 above). The Secretary-General confirmed and clarified that point of view in a letter of 15 March 1988 (paragraph 28 above) to the Acting Permanent Representative of the United States in which he told him that the determination made by the Attorney General of the United States on 11 March 1988 was a "clear violation of the Headquarters Agreement". In that same letter he once more asked that the matter be submitted to arbitration.

37. The United States has never expressly contradicted the view expounded by the Secretary-General and endorsed by the General Assembly regarding the sense of the Headquarters Agreement. Certain United States authorities have even expressed the same view, but the United States has nevertheless taken measures against the PLO Mission to the United Nations. It has indicated that those measures were being taken "irrespective of any obligations the United States may have under the [Headquarters] Agreement" (paragraph 24 above).

38. In the view of the Court, where one party to a treaty protests against the behaviour or a decision of another party, and claims that such behaviour or decision constitutes a breach of the treaty, the mere fact that the party accused does not advance any argument to justify its conduct under international law does not prevent the opposing attitudes of the parties from giving rise to a dispute concerning the interpretation or application of the treaty. In the case concerning *United States Diplomatic and Consular Staff in Tehran*, the jurisdiction of the Court was asserted principally on the basis of the Optional Protocols concerning the Compulsory Settlement of Disputes accompanying the Vienna Conventions of 1961 on Diplomatic Relations and of 1963 on Consular Relations, which defined the disputes to which they applied as "Disputes arising out of the interpretation or application of" the relevant Convention. Iran, which did not appear in the proceedings before the Court, had acted in such a way as, in the view of the United States, to commit breaches of the Conventions, but, so far as the Court was informed, Iran had at no time claimed to justify its actions by advancing an alternative interpretation of the Conventions, on the basis of which such actions would not constitute such a breach. The Court saw no need to enquire into the attitude of Iran in order to establish the existence of a "dispute"; in order to determine whether it had jurisdiction, it stated:

> "The United States' claims here in question concern alleged violations by Iran of its obligations under several articles of the Vienna

> Conventions of 1961 and 1963 with respect to the privileges and immunities of the personnel, the inviolability of the premises and archives, and the provision of facilities for the performance of the functions of the United States Embassy and Consulates in Iran ... By their very nature all these claims concern the interpretation or application of one or other of the two Vienna Conventions." (*I.C.J. Reports 1980,* pp. 24-25, para. 46.)

39. In the present case, the United States in its public statements has not referred to the matter as a "dispute" (save for a passing reference on 23 March 1988 to "the current dispute over the status of the PLO Observer Mission" (paragraph 31 above)), and it has expressed the view that arbitration would be "premature". According to the report of the Secretary-General to the General Assembly (A/42/915, para. 6), the position taken by the United States during the consultations in January 1988 was that it "had not yet concluded that a dispute existed between the United Nations and the United States" at that time "because the legislation in question had not yet been implemented". Finally, the Government of the United States, in its written statement of 25 March 1988, told the Court that:

> "The United States will take no action to close the Mission pending a decision in that litigation. Since the matter is still pending in our courts, we do not believe arbitration would be appropriate or timely."

40. The Court could not allow considerations as to what might be "appropriate" to prevail over the obligations which derive from section 21 of the Headquarters Agreement, as "the Court, being a Court of justice, cannot disregard rights recognized by it, and base its decision on considerations of pure expediency" (*Free Zones of Upper Savoy and the District of Gex, Order of 6 December 1930, P.C.I.J., Series A, No. 24,* p. 15).

41. The Court must further point out that the alleged dispute relates solely to what the United Nations considers to be its rights under the Headquarters Agreement. The purpose of the arbitration procedure envisaged by that Agreement is precisely the settlement of such disputes as may arise between the Organization and the host country without any prior recourse to municipal courts, and it would be against both the letter and the spirit of the Agreement for the implementation of that procedure to be subjected to such prior recourse. It is evident that a provision of the nature of section 21 of the Headquarters Agreement cannot require the exhaustion of local remedies as a condition of its implementation.

42. The United States in its written statement might be implying that neither the signing into law of the Anti-Terrorism Act, nor its entry into force, nor the Attorney General's decision to apply it, nor his resort to court proceedings to close the PLO Mission to the United Nations, would have been sufficient to bring about a dispute between the United Nations

and the United States, since the case was still pending before an American court and, until the decision of that court, the United States, according to the Acting Permanent Representative's letter of 11 March 1988, "will not take other actions to close" the Mission. The Court cannot accept such an argument. While the existence of a dispute does presuppose a claim arising out of the behaviour of or a decision by one of the parties, it in no way requires that any contested decision must already have been carried into effect. What is more, a dispute may arise even if the party in question gives an assurance that no measure of execution will be taken until ordered by decision of the domestic courts.

43. The Anti-Terrorism Act was signed into law on 22 December 1987. It was automatically to take effect 90 days later. Although the Act extends to every PLO office situated within the jurisdiction of the United States and contains no express reference to the office of the PLO Mission to the United Nations in New York, its chief, if not its sole, objective was the closure of that office. On 11 March 1988, the United States Attorney General considered that he was under an obligation to effect such a closure; he notified the Mission of this, and applied to the United States courts for an injunction prohibiting those concerned "from continuing violations of" the Act. As noted above, the Secretary-General, acting both on his own behalf and on instructions from the General Assembly, has consistently challenged the decisions contemplated and then taken by the United States Congress and the Administration. Under those circumstances, the Court is obliged to find that the opposing attitudes of the United Nations and the United States show the existence of a dispute between the two parties to the Headquarters Agreement.

44. For the purposes of the present advisory opinion there is no need to seek to determine the date at which the dispute came into existence, once the Court has reached the conclusion that there is such a dispute at the date on which its opinion is given.

* *

45. The Court has next to consider whether the dispute is one which concerns the interpretation or application of the Headquarters Agreement. It is not however the task of the Court to say whether the enactment, or the enforcement, of the United States Anti-Terrorism Act would or would not constitute a breach of the provisions of the Headquarters Agreement; that question is reserved for the arbitral tribunal which the Secretary-General seeks to have established under section 21 of the Agreement.

46. In the present case, the Secretary-General and the General Assembly of the United Nations have constantly pointed out that the PLO was invited "to participate in the sessions and the work of the General Assem-

bly in the capacity of Observer" (resolution 3237 (XXIX)). In their view, therefore, the PLO Observer Mission to the United Nations was, as such, covered by the provisions of sections 11, 12 and 13 of the Headquarters Agreement; it should therefore "be enabled to establish and maintain premises and adequate functional facilities" (General Assembly resolution 42/229 A, para. 2). The Secretary-General and the General Assembly have accordingly concluded that the various measures envisaged and then taken by the United States Congress and Administration would be incompatible with the Agreement if they were to be applied to that Mission, and that the adoption of those measures gave rise to a dispute between the United Nations Organization and the United States with regard to the interpretation and application of the Headquarters Agreement.

47. As to the position of the United States, the Court notes that, as early as 29 January 1987, the United States Secretary of State wrote to Senator Dole that:

> "The PLO Observer Mission in New York was established as a consequence of General Assembly resolution 3237 (XXIX) of November 22, 1974, which invited the PLO to participate as an observer in the sessions and work at the General Assembly."

He added that:

> ". . . PLO Observer Mission personnel are present in the United States solely in their capacity as 'invitees' of the United Nations within the meaning of the Headquarters Agreement. . . . we therefore are under an obligation to permit PLO Observer Mission personnel to enter and remain in the United States to carry out their official functions at UN headquarters . . ." (*Congressional Record,* Vol. 133, No. 78, p. S6449).

After the adoption of the Anti-Terrorism Act, the Acting Permanent Representative of the United States to the United Nations indicated to the Secretary-General that the provisions of that Act "concerning the PLO Observer Mission . . ., if implemented, would be contrary to . . . [the] international legal obligations" of the host country under the Headquarters Agreement (paragraph 15 above). The United States then envisaged interpreting that Act in a manner compatible with its obligations (paragraph 17 above). Subsequently, however, the Acting Permanent Representative of the United States, in a letter dated 11 March 1988 (paragraph 24 above), informed the United Nations Secretary-General that the Attorney General of the United States had determined that the Anti-Terrorism Act required him to close the PLO Observer Mission, "irrespective of any obligations the United States may have under" the Headquarters Agreement. On the same day, an Assistant Attorney General declared that the Act had "superseded the requirements of the United Nations Headquarters Agreement to the extent that those requirements are inconsistent with the statute . . ." (paragraph 26 above). The Secretary-General, in his reply of

15 March 1988 to the letter from the United States Acting Permanent Representative, disputed the view there expressed, on the basis of the principle that international law prevails over domestic law.

48. Accordingly, in a first stage, the discussions related to the interpretation of the Headquarters Agreement and, in that context, the United States did not dispute that certain provisions of that Agreement applied to the PLO Mission to the United Nations in New York. However, in a second stage, it gave precedence to the Anti-Terrorism Act over the Headquarters Agreement, and this was challenged by the Secretary-General.

49. To conclude, the United States has taken a number of measures against the PLO Observer Mission to the United Nations in New York. The Secretary-General regarded these as contrary to the Headquarters Agreement. Without expressly disputing that point, the United States stated that the measures in question were taken "irrespective of any obligations the United States may have under the Agreement". Such conduct cannot be reconciled with the position of the Secretary-General. There thus exists a dispute between the United Nations and the United States concerning the application of the Headquarters Agreement, falling within the terms of section 21 thereof.

50. The question might of course be raised whether in United States domestic law the decisions taken on 11 and 21 March 1988 by the Attorney General brought about the application of the Anti-Terrorism Act, or whether the Act can only be regarded as having received effective application when or if, on completion of the current judicial proceedings, the PLO Mission is in fact closed. This is however not decisive as regards section 21 of the Headquarters Agreement, which refers to any dispute "concerning the interpretation or application" of the Agreement, and not concerning the application of the measures taken in the municipal law of the United States. The Court therefore sees no reason not to find that a dispute exists between the United Nations and the United States concerning the "interpretation or application" of the Headquarters Agreement.

* *

51. The Court now turns to the question of whether the dispute between the United Nations and the United States is one "not settled by negotiation or other agreed mode of settlement", in the terms of section 21, paragraph *(a)*, of the Headquarters Agreement.

52. In his written statement, the Secretary-General interprets this provision as requiring a two-stage process.

> "In the first stage the parties attempt to settle their difference through negotiation or some other agreed mode of settlement . . . If they are unable to reach a settlement through these means, the second stage of the process, compulsory arbitration, becomes applicable." (Para. 17.)

The Secretary-General accordingly concludes that

> "In order to find that the United States is under an obligation to enter into arbitration, it is necessary to show that the United Nations has made a good faith attempt to resolve the dispute through negotiation or some other agreed mode of settlement and that such negotiations have not resolved the dispute." (Para. 42.)

53. In his letter to the United States Permanent Representative dated 14 January 1988, the Secretary-General not only formally invoked the dispute settlement procedure set out in section 21 of the Headquarters Agreement, but also noted that "According to section 21 *(a)*, an attempt has to be made at first to solve the dispute through negotiations" and proposed that the negotiations phase of the procedure commence on 20 January 1988. According to the Secretary-General's report to the General Assembly, a series of consultations had already begun on 7 January 1988 (A/42/915, para. 6) and continued until 10 February 1988 (*ibid.*, para. 10). Technical discussions, on an informal basis, on procedural matters relating to the arbitration contemplated by the Secretary-General, were held between 28 January 1988 and 2 February 1988 (*ibid.*, paras. 8-9). On 2 March 1988, the Acting Permanent Representative of the United States stated in the General Assembly that

> "we have been in regular and frequent contact with the United Nations Secretariat over the past several months concerning an appropriate resolution of this matter" (A/42/PV.104, p. 59).

54. The Secretary-General recognizes that "The United States did not consider these contacts and consultations to be formally within the framework of section 21 *(a)* of the Headquarters Agreement" (written statement, para. 44), and in a letter to the United States Permanent Representative dated 2 February 1988, the Secretary-General noted that the United States was taking the position that, pending its evaluation of the situation which would arise from application of the Anti-Terrorism Act, "it cannot enter into the dispute settlement procedure outlined in section 21 of the Headquarters Agreement".

55. The Court considers that, taking into account the United States attitude, the Secretary-General has in the circumstances exhausted such possibilities of negotiation as were open to him. The Court would recall in this connection the dictum of the Permanent Court of International Justice in the *Mavrommatis Palestine Concessions* case that

> "the question of the importance and chances of success of diplomatic negotiations is essentially a relative one. Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a deadlock is reached, or if finally a point is reached

> at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that *the dispute cannot be settled by diplomatic negotiation"* (*P.C.I.J., Series A, No. 2,* p. 13).

When in the case concerning *United States Diplomatic and Consular Staff in Tehran* the attempts of the United States to negotiate with Iran "had reached a deadlock, owing to the refusal of the Iranian Government to enter into any discussion of the matter", the Court concluded that "In consequence, there existed at that date not only a dispute but, beyond any doubt, a 'dispute . . . not satisfactorily adjusted by diplomacy' within the meaning of" the relevant jurisdictional text (*I.C.J. Reports 1980,* p. 27, para. 51). In the present case, the Court regards it as similarly beyond any doubt that the dispute between the United Nations and the United States is one "not settled by negotiation" within the meaning of section 21, paragraph *(a),* of the Headquarters Agreement.

56. Nor was any "other agreed mode of settlement" of their dispute contemplated by the United Nations and the United States. In this connection the Court should observe that current proceedings brought by the United States Attorney General before the United States courts cannot be an "agreed mode of settlement" within the meaning of section 21 of the Headquarters Agreement. The purpose of these proceedings is to enforce the Anti-Terrorism Act of 1987; it is not directed to settling the dispute, concerning the application of the Headquarters Agreement, which has come into existence between the United Nations and the United States. Furthermore, the United Nations has never agreed to settlement of the dispute in the American courts; it has taken care to make it clear that it wishes to be admitted only as *amicus curiae* before the District Court for the Southern District of New York.

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57. The Court must therefore conclude that the United States is bound to respect the obligation to have recourse to arbitration under section 21 of the Headquarters Agreement. The fact remains however that, as the Court has already observed, the United States has declared (letter from the Permanent Representative, 11 March 1988) that its measures against the PLO Observer Mission were taken "irrespective of any obligations the United States may have under the [Headquarters] Agreement". If it were necessary to interpret that statement as intended to refer not only to the substantive obligations laid down in, for example, sections 11, 12 and 13, but also to the obligation to arbitrate provided for in section 21, this conclusion would remain intact. It would be sufficient to recall the fundamental principle of international law that international law prevails over domestic law. This principle was endorsed by judicial decision as long ago as the arbitral award of 14 September 1872 in the *Alabama* case between Great Britain and the United States, and has frequently been recalled since, for example in the case concerning the *Greco-Bulgarian*

"Communities" in which the Permanent Court of International Justice laid it down that

> "it is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty" (*P.C.I.J., Series B, No. 17,* p. 32).

* * *

58. For these reasons,

THE COURT,

Unanimously,

Is of the opinion that the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 26 June 1947, is under an obligation, in accordance with section 21 of that Agreement, to enter into arbitration for the settlement of the dispute between itself and the United Nations.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-sixth day of April, one thousand nine hundred and eighty-eight, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) José Maria RUDA,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge ELIAS appends a declaration to the Advisory Opinion of the Court.

Judges ODA, SCHWEBEL and SHAHABUDDEEN append separate opinions to the Advisory Opinion of the Court.

(Initialled) J.M.R.
(Initialled) E.V.O.

DÉCLARATION DE M. ELIAS

[Traduction]

Je souscris à l'avis consultatif, mais étant bien entendu que je considère qu'aux fins de la question juridique soumise à la Cour, au sens de l'article 65 du Statut de la Cour et de l'article 96 de la Charte, un différend est né entre l'Organisation des Nations Unies et les Etats-Unis lorsque le Congrès des Etats-Unis a adopté la loi contre le terrorisme, signée le 22 décembre 1987. Je ne pense pas que ce différend ne se cristallisera qu'au moment où la loi du Congrès pourrait être confirmée par le tribunal de district de New York — comme l'ont soutenu les Etats-Unis. Je ne pense pas non plus que l'efficacité à cet égard de la loi du Congrès signée par le Président dépend de la question de savoir si les assurances que le Secrétaire général de l'Organisation des Nations Unies a demandées au gouvernement lui ont été données ou non. Le but recherché par le Secrétaire général ne peut être atteint que si le Congrès adopte un nouveau texte législatif modifiant la loi contre le terrorisme. La loi du 22 décembre 1987 est en elle-même suffisante pour faire naître un différend puisque «la demande de l'Assemblée générale a été présentée en raison de la situation créée par la promulgation de la loi de 1987 contre le terrorisme adoptée par le Congrès des Etats-Unis» (C.I.J., communiqué de presse n° 88/10, 14 avril 1988).

(Signé) T. O. ELIAS.