



General Assembly

PROVISIONAL

A/42/PV.113  
16 May 1988

ENGLISH

Forty-second session

GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE ONE HUNDRED AND THIRTEENTH MEETING

Held at Headquarters, New York,  
on Friday, 13 May 1988, at 10.30 a.m.

President: Mr. FLORIN (German Democratic Republic)

- Appointments to fill vacancies in subsidiary organs and other appointments [17]
  - (a) Appointment of a member of the Advisory Committee on Administrative and Budgetary Questions: report of the Fifth Committee (Part III) (A/42/864/Add.2)
- Report of the Committee on Relations with the Host country: [136]
  - (a) Report of the Secretary-General
  - (b) Note by the Secretary-General
  - (c) Draft resolution

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the General Assembly.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

The meeting was called to order at 10.45 a.m.

AGENDA ITEM 17

APPOINTMENTS TO FILL VACANCIES IN SUBSIDIARY ORGANS AND OTHER APPOINTMENTS

- (a) APPOINTMENT OF A MEMBER OF THE ADVISORY COMMITTEE ON ADMINISTRATIVE AND BUDGETARY QUESTIONS: REPORT OF THE FIFTH COMMITTEE (PART III)  
(A/42/864/Add.2)

The PRESIDENT (interpretation from Russian): I call on the Rapporteur of the Fifth Committee.

Mr. ABOLY-BI-KOUASSI (Côte d'Ivoire), Rapporteur of the Fifth Committee (interpretation from French): I have the honour to present to the General Assembly for consideration and adoption the report of the Fifth Committee in document A/42/864/Add.2 on agenda item 17 (a), entitled "Appointment of a member of the Advisory Committee on Administrative and Budgetary Questions".

The Fifth Committee considered this item at its 69th meeting held this morning, 13 May 1988. In paragraph 4 of its report the Fifth Committee recommends to the General Assembly the appointment of Ms. Maria Elisa de Bittencourt Berenger, of Brazil, as a member of the Advisory Committee on Administrative and Budgetary Questions for a term of office beginning on 1 July 1988 and ending on 31 December 1989.

The PRESIDENT (interpretation from Russian): May I then take it that it is the wish of the Assembly to adopt the recommendation of the Fifth Committee contained in paragraph 4 of its report, document A/42/864/Add.2?

It was so decided.

The PRESIDENT (interpretation from Russian): That concludes our consideration of sub-item (a) of agenda item 17.

AGENDA ITEM 136

REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY:

- (a) REPORT OF THE SECRETARY-GENERAL (A/42/915 and Add.1-4);
- (b) NOTE BY THE SECRETARY-GENERAL (A/42/952);
- (c) DRAFT RESOLUTION (A/42/L.50)

The PRESIDENT (interpretation from Russian): The Assembly will now consider agenda item 136, entitled "Report of the Committee on Relations with the Host Country", as decided at its 110th plenary meeting on 11 May 1988.

It is my understanding that the Assembly wishes to proceed with the consideration of this item in plenary meeting. I hear no objection.

It was so decided.

The PRESIDENT (interpretation from Russian): In connection with this item, at the current session the Assembly has adopted resolutions 42/210 A and B of 17 December 1987, 42/229 A and B of 2 March 1988 and 42/230 of 23 March 1988. In addition, the Assembly has before it the reports of the Secretary-General issued in documents A/42/915 and addendums 1 to 4, a Note by the Secretary-General circulated in document A/42/952, and a draft resolution issued in document A/42/L.50.

I shall first call on the representative of Cuba in his capacity as Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

Mr. ORAMAS OLIVA (Cuba), Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian people (interpretation from Spanish): Allow me first to express my gratitude at having been given once again an opportunity, as Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to address the Assembly on an issue of such importance for our Organization.

On behalf of the Committee, I should like to express all my gratitude to the eminent magistrates of the International Court of Justice for the promptness with which they examined the question raised by the Assembly for consideration by them in resolution 42/229 B of 2 March 1988 and for issuing the highly authoritative advisory opinion which we have before us in document A/42/952. The co-operation of the Court has been sincerely welcomed by our Committee and will, without any doubt, greatly facilitate subsequent deliberations on this important subject.

There is no need to repeat here the past events which led to the present situation. These events were thoroughly examined at the forty-second session of the Assembly and during its two resumptions and have been set forth in minute detail by the Court in this document.

(Mr. Oramas Oliva, Acting  
Chairman, Committee on the  
Exercise of the Inalienable  
Rights of the Palestinian People)

I should merely like to emphasize yet again the absolute seriousness with which the international community views this problem, as can be seen by the high level of participation in the Assembly debates and the virtual unanimity with which the pertinent resolutions were adopted. Those resolutions have placed on record quite clearly the position of the international community in the sense that the fundamental issue lies in the need for the United States to respect international law as host country of the United Nations. The Headquarters Agreement is a binding international instrument which imposes certain obligations on the host country. In the opinion of the vast majority of Member States and also of the Secretary-General, those obligations are being violated by legislation enacted by the host country. In section 21 of the Headquarters Agreement, the procedure is set forth which is to be followed in the event of a dispute over the interpretation or implementation of the Agreement, and clearly such a dispute exists in this case. As has been said repeatedly, unless the host country is ready to exempt explicitly the Palestine Liberation Organization (PLO) Observer Mission from the implementation of its laws, the procedure provided for in section 21 should be set in motion and the arbitral tribunal provided for therein should be established.

Leaving aside the legal issues relating to compliance with the obligations imposed by the Agreement, for all of us meeting here it is quite clear that the presence of the PLO at the United Nations Headquarters and its unimpeded participation in all conferences, deliberations and efforts of the United Nations designed to bring about a peaceful settlement of the question of Palestine, pursuant to the relevant resolutions of the General Assembly, is an essential

(Mr. Oramas Oliva, Acting  
Chairman, Committee on the  
Exercise of the Inalienable  
Rights of the Palestinian People)

element in order to arrive at a solution to the Arab-Israeli conflict in the Middle East, the very core of which, without any doubt, is the question of Palestine.

Our Committee has noted with interest and gratitude that in its advisory opinion the Court rejects the argument adduced by the host country that the measures adopted by the General Assembly are premature because there is no dispute until the challenged decision is really implemented by the United States.

In paragraph 43 the Court clearly states:

"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." (A/42/952, para. 43)

Paragraph 41 of the same document also clearly states:

"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." (A/42/952, para. 41)

Lastly, having recalled the fundamental principle of the primacy of international law over domestic law, and having observed that the United Nations never elected to resolve the dispute before the United States courts, the International Court concludes unambiguously that the United States must meet the obligation to resort to arbitration pursuant to section 21 of the Headquarters Agreement.

(Mr. Oramas Oliva, Acting  
Chairman, Committee on the  
Exercise of the Inalienable  
Rights of the Palestinian People)

Consequently, the unanimous opinion of the Court is that the United States, as a party to the Headquarters Agreement, is obliged, pursuant to section 21 of that Agreement, to resort to arbitration in order to resolve the dispute which has arisen between that country and the United Nations.

(Mr. Oramas Oliva, Acting  
Chairman, Committee on the  
Exercise of the Inalienable  
Rights of the Palestinian  
People)

The Committee on the Exercise of the Inalienable Rights of the Palestinian People whole-heartedly supports the advisory opinion given by the International Court of Justice and we are in no doubt that the General Assembly will also, by a large majority, endorse that opinion. On behalf of the Committee, I wish to express the sincere hope that the host country, in the light of that opinion, will now reconsider the measures adopted to give effect to that imprudent legislation and will desist from its intent to proceed with the matter in domestic courts.

In his first statement on the subject in the General Assembly last February, the Chairman of the Committee urged the host country to make the necessary arrangements to rescind such a harmful measure. Given the fact that the legislation represents a potential threat to groups and individuals working in this country on behalf of the inalienable rights of the Palestinian people, the concern of our Committee over the legislation goes far beyond the question of the possible closing of the PLO Observer Mission at the United Nations. We wish to reiterate that appeal. However, until that legislation is repealed, we shall support most energetically the appeal to the host country to abide by the procedure for the solution of disputes provided for in section 21 of the Headquarters Agreement and urge it to appoint its arbiter to the arbitration tribunal as requested by the Secretary-General.

The PRESIDENT (interpretation from Russian): In accordance with General Assembly resolution 3237 (XXIX) of 22 November 1974, I now call on the Observer of the Palestine Liberation Organization.



Mr. TERZI (Palestine Liberation Organization (PLO)): In less than three months the General Assembly has resumed its session for the third time to consider once again agenda item 136. I do not wish to note here the administrative, financial and pecuniary ramifications on the budget of the United Nations of such resumptions of the General Assembly session. We appreciate and sympathize with the hardships suffered by members and in particular we wish to thank you, Mr. President, for having undertaken these many trips across the Atlantic to fulfil one of the responsibilities of the presidency of the General Assembly.

Item 136 deals with a matter of substance and grave consequences. The issue before the General Assembly is whether or not the United Nations is able "fully and efficiently to discharge its responsibilities and fulfil its purposes" (resolution 169 II, section 27) at its Headquarters in the United States. This comes from the Agreement between the host country and the United Nations. A dispute has arisen as a result of the adoption of the Grassley amendment by the Congress of the United States and the adoption and signing of Title X of the Foreign Relations Authorization Act, Fiscal Years 1988/89. The said amendment has placed this Act in violation of one of the principal purposes of the Charter of the United Nations, as stated in the preamble:

"... to establish conditions under which justice and respect for obligations arising from the treaties and other sources of international law can be maintained...".

The opinion of the International Court of Justice, which was unanimously adopted, is before the General Assembly. We wish to express our great appreciation and gratitude to the honourable Judges of the Court and to the distinguished Registrar for having "found that an early answer to the request"... submitted by the General Assembly on 2 March 1988 "for advisory opinion would be desirable".

(A/42/952, para. 3).

(Mr. Terzi, PLO)

We trust that the host country, the Government of the United States, will act accordingly and not resort to further tactics, but that it will enter into arbitration. It is not premature. The International Court of Justice has unanimously voiced its opinion on the matter:

"... The United States of America ... is under an obligation ... to enter into arbitration for the settlement of the dispute between itself and the United Nations." (A/42/952, p. 27)

In addition to the unanimous opinion, the Honourable Judge Schwebel, the United States Judge in the Court, chose to add:

"It is axiomatic that, on the international legal plane, national law cannot derogate from international law, that a State cannot avoid its international responsibility by the enactment of domestic legislation which conflicts with its international obligations." (Ibid., p.34)

Judge Schwebel further stated:

"... it is an established rule of statutory interpretation that United States Courts will construe congressional statutes as consistent with United States obligations under international law, if such construction is at all plausible". (Ibid., p. 36)

The unanimous opinion of the International Court of Justice was announced on 26 April 1988. However, the United States Department of Justice, on 29 April 1988, advised the United States District Judge that it "intends to submit papers moving for summary judgement". I would say here that that was a fast one by the Attorney-General. It was an immediate response possibly to the request by the General Assembly to the host country that it should abide by its treaty obligations and refrain from taking any action inconsistent with the right of the Palestine Liberation Organization to maintain premises and adequate functional facilities and

(Mr. Terzi, PLO)

that the personnel of the PLO Permanent Observer Mission to the United Nations in New York should be permitted to enter and remain in the United States to carry out their official functions. (See General Assembly resolution 42/210 B)

This latest move by the United States Department of Justice can also be construed as a reply to those who claim that the "dispute" can arise after "implementation of the Act". But how can one qualify this action by the United States Department of Justice other than as "entering into the implementation stage"? Thus arbitration, or going through the entire procedure of dispute settlement, is not premature. It is the United States that has provoked the implementation, and consequently the procedure described in section 21 is to be adopted.

We do feel that the honourable United States District Judge entrusted with this case was right when he asked the United States Department of Justice:

"... to advise the United States District Court immediately if the Government of the United States formally accepts arbitration under section 21 of the Headquarters Agreement and agrees to be bound by the result."

Here, even the judges in the United States are demanding that the United States should abide by its obligation under section 21.

(Mr. Terzi, PLO)

Thus, the host country is called upon by the international community as represented in this Assembly, by the International Court of Justice, and by the United States Federal Court, to heed and to enter into the arbitration procedure to settle the dispute between itself and the United Nations. Here we sincerely hope that the United States will pay heed, because if the host country persists in its position, irrespective of all these calls and irrespective of its legal obligations, the inevitable question will then be: Can the Headquarters of the United Nations in the United States still be able to discharge its responsibilities and fulfil its purposes fully and effectively? What is more, Can the missions accredited to the United Nations, whether they are Member States or observers, be guaranteed independence and freedom in discharging their official functions at the United Nations? Therefore, we are being led into something much more complex and serious.

We wish to express particularly high appreciation to His Excellency the Secretary-General and to His Excellency the Under-Secretary-General, The Legal Counsel, for the presentations made at the International Court of Justice. We are certain that the Secretary-General will feel strongly enough supported by the General Assembly and by the opinion of the International Court of Justice to present to the United States District Court the brief amicus curiae in support of the view that the only forum which can consider this dispute at this stage is the arbitral tribunal provided for in section 21 of the Agreement.

The host country is called upon to refrain from further frustrating the spirit and purpose of the Agreement, and the principles of the Charter. The host country, that is, the Government of the United States, should not commit a breach of good faith, and should honour its legal obligations. At this point we should not lose sight of the political ramifications of this action by the Government of the United States.

(Mr. Terzi, PLO)

The Secretary of State, Mr. Shultz, is "shuttling in the Middle East" to achieve peace through contacts between Israel and its neighbours. But the fact is that the stone-throwers, the Davids of 1987-1988, are Palestinians in occupied Palestinian territories, and the troops committing violations of human rights are Israelis. For six months the media have been daily reporting about the "Intifadah" and the victims of repression at the hands of the occupying Power. This fact alone should have brought the message home to the State Department that the two principal parties to the conflict, and consequently the peace endeavours, are the Palestinians and the Israelis, and not just Israel and its neighbours.

The Palestinians have already made it very clear that the Palestine Liberation Organization is their representative, and the Palestine Liberation Organization has expressed its full support for the endeavours to achieve a comprehensive settlement under the auspices of the United Nations, through a just solution to the question of Palestine, guaranteeing the inalienable rights of the Palestinian people to self-determination, independence and sovereignty in their own country, and guaranteeing as well the right of all States, including the independent Palestinian State, within recognized borders. It is specifically in this context that the presence of the Observer Mission of the Palestine Liberation Organization at United Nations Headquarters in New York is essential.

Unfortunately, the United States is still vacillating: Should it honour its international legal obligations under the Treaty or the Agreement or, irrespective of those obligations, proceed to enforce the provisions of the domestic law? If it opts for the second, then the United States would justify loss of credibility and place the entire Headquarters Agreement in jeopardy. Moreover, the United States Government will be on the path of non-attainment and non-achievement of peace, and

will definitely rule out the participation in such peace efforts of one of the principal parties, namely, the Palestinians, as represented by their sole and legitimate representative, the PLO.

The United States could still play the hospitable host to the United Nations by honouring the spirit of the agreement, and its obligations. The Agreement states, among other things:

"This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently, to discharge its responsibilities and fulfil its purposes."

(resolution 169 (II), article IX, section 27)

It is well known that one of the principal purposes of the United Nations is: "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". (Preamble to the Charter)

Can we get a positive reply or do we have to come back to a resumed session as a result of further frustration by the United States?

The PRESIDENT (interpretation from Russian): I call on the representative of Somalia, who in the course of his statement will introduce the draft resolution.

Mr. OSMAN (Somalia): Mr. President, let me at the outset extend to you my delegation's profound appreciation for the effective manner in which you have been guiding our deliberations since last year.

On this occasion I have the honour to introduce, on behalf of the Group of Arab States at the United Nations, and other States which are co-sponsoring the draft resolution before us, a draft resolution (A/42/L.50) which endorses the advisory opinion of the International Court of Justice of 26 April 1988, affirming the applicability of the obligation to arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947.

(Mr. Osman, Somalia)

There has been, of course, extensive discussions and examination of the issues which led this General Assembly to request this decision; I need not therefore dwell on the background of the draft resolution.

(Mr. Osman, Somalia)

Clearly, the decision validates the position of the Secretary-General and the vast majority of Member States on the proper legal procedures for resolving the dispute between the United States and the United Nations on the question of the privileges of the Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations.

Before commenting on the provisions of the draft resolution, I wish to express our deep regret - regret I know is widely shared - that this question has reached its present stage. It has created the unfortunate impression that there is a deliberate policy afoot aimed at belittling the role of the United Nations in international affairs and displaying a surprising disregard for the sanctity of treaties. I believe it is in the context of broad and weighty considerations such as the rule of international law that the dispute before the General Assembly should have been addressed in the past four months and should also be addressed in the months ahead.

I turn now to the provisions of the draft resolution, some of which are explicit and self-explanatory.

The second preambular paragraph goes to the heart of the matter. It takes note of the unambiguous decision of the International Court of Justice with regard to the obligation of the United States to enter into arbitration for the settlement of the dispute between itself and the United Nations, in accordance with section 21 of the United Nations Headquarters Agreement. It is pertinent to recall here that the United States Administration and its representatives have themselves affirmed repeatedly that the closing of the PLO Observer Mission would constitute a violation of the United States obligations under the Headquarters Agreement. This affirmation should now be translated into action.



(Mr. Osman, Somalia)

The third preambular paragraph emphasizes the Court's rejection of the argument that it would be premature to consider arbitration until the United States Courts have determined whether or not relevant legislation of the United States Congress requires the closing of the PLO Observer Mission. As the International Court of Justice has stressed, it would be against the letter and the spirit of the Headquarters Agreement for its arbitration procedure to be subjected to a prior recourse to domestic law.

The fourth preambular paragraph underlines a fundamental principle governing the issues raised under agenda item 136. It is indeed significant that in explanation of its opinion the Court found it necessary to reaffirm, and in no uncertain terms, the established principle that international law prevails over domestic law. It is interesting to note also that in recalling this principle the Court cited the successful use of it by the United States in a number of cases.

The opinion of the International Court of Justice clearly indicates the course of action the United States must take in order to put right the unfortunate situation that has arisen. We hope that the General Assembly will join in urging the United States to abide by its international obligations. These obligations demand that the United States comply with the advisory opinion of the International Court of Justice and name its arbitrator to the arbitral tribunal provided for under section 21 of the United Nations Headquarters Agreement.

Member States will recall that the United Nations called for the dispute settlement procedure in January of this year and shortly thereafter informed the State Department of the United Nations choice of an arbitrator. In the light of the opinion of the International Court of Justice, the General Assembly must insist on an equally correct and prompt response from the United States.

In the context of paragraph 5, which requests the Secretary-General to continue his efforts to ensure the constitution of the arbitral tribunal, I wish

(Mr. Osman, Somalia)

on behalf of the Arab Group to pay tribute to him for his active defence of the integrity and authority of the United Nations. I am confident that the Secretary-General will continue to exert every effort to resolve the problem with the host country within the appropriate legal framework and in an objective and amicable manner.

I am sure that Member States will join me in hoping that any future developments in this matter that he reports to the General Assembly in accordance with paragraph 5 will be favourable and positive.

The draft resolution I have introduced is simple and straightforward and, I believe, reflects the view of the vast majority of Member States represented here. I ask the General Assembly to give it the fullest support. The sponsors are confident that if the operative paragraphs are promptly implemented the General Assembly will be able to put behind it the distracting questions raised in the report of the Committee on Relations with the Host Country and turn its energies to the more urgent and rewarding tasks in the vital areas of world peace and international co-operation.

Mr. ABDOUN (Sudan) (interpretation from Arabic): I have the honour to address the General Assembly on behalf of the African Group, over which my country has the honour to preside, and on behalf of my delegation.

Once again we return to the resumed forty-second session of the General Assembly to discuss, inter alia, agenda item 136 entitled "Report of the Committee on Relations with the Host Country" and the developments emanating from the Advisory Opinion given by the International Court of Justice on 26 April 1988 in the dispute between the host country and the international Organization in relation to the action that the host country would like to implement concerning the Permanent Observer Mission of the Palestine Liberation Organization (PLO). That action threatens the very presence of the Mission, and its closure would deny it the ability to perform its duties at the international Organization.

The international community represented in this General Assembly has for more than 13 years confirmed the right of the Permanent Observer Mission of the PLO to participate in the General Assembly's sessions and work. The PLO was invited to participate in all efforts, deliberations and conferences on the Middle East which are held under the auspices of the United Nations, on an equal footing with other parties, on the basis of resolution 3237 (XXIX) of 22 November 1974 and 3375 (XXX) of 10 November 1975. The international community reaffirmed the legal status of the PLO through the following resolutions of the General Assembly: 42/210 B of 17 December 1987, 42/229 A and B of 2 March 1988 and 42/230 of 23 March 1988. All these resolutions were adopted by international agreement. Hence the legitimate status of the PLO Mission as an international organization has been established through resolutions representing international unanimity. That legitimacy was not bestowed by the host country as a gift or concession, but rather in implementation

(Mr. Abdoun, Sudan)

of the international will expressed in the aforementioned resolutions. On this occasion and in consideration of the above, the legal status of the relationship of the PLO Mission with the host country is governed by the provisions of the Headquarters Agreement, which is an international commitment accepted by the international Organization and the host country in order to organize their relationship.

The aforementioned Agreement established certain procedures with respect to any disputes concerning implementation or interpretation of the Agreement.

Section 21 of the Agreement reads 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... 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."

The dispute we are discussing here is crystal-clear and there is no confusion about it whatsoever. It is a dispute between the international Organization and the host country. It is governed by an international agreement and not by domestic legislation at all. The United States judicial tribunals cannot take any decision concerning this question. The General Assembly decided, in resolution 42/229 B of 2 March 1988, to request the International Court of Justice for an advisory opinion in accordance with Article 96 of the Charter and Chapter IV of the Statute of the International Court of Justice, which indicates its advisory mandate concerning section 21 of the Headquarters Agreement.

(Mr. Abdoun, Sudan)

We have before us the report of the Secretary-General containing the Advisory Opinion of the International Court of Justice of 26 April 1988 (A/42/952). This Advisory Opinion is self-explanatory. The Court's unanimous opinion and the unanimous individual opinions of the judges have confirmed that the United States Government is obliged to abide by the terms of the Headquarters Agreement and to enter into arbitration as follows:

"... 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". (A/42/952, p. 27)

"...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 both against the letter and the spirit of the Agreement for the implementation of that procedure to be subjected to such prior recourse. (ibid., para. 41)

The aforementioned Advisory Opinion has not established something new. On the contrary, it revealed something that is a status quo. It enforces legal rules and axioms that have been accepted by the international community since the inception of this Organization.

The host country's allegation that the Advisory Opinion just referred to was premature because United States courts have this dispute under consideration is erroneous and without foundation and constitutes a denial of what had been agreed to in international law and of the principles enunciated in the precedents and judgements handed down by the International Court of Justice.

(Mr. Abdoun, Sudan)

It is stated in paragraph 57 of the advisory opinion that international law prevails over municipal law. That is confirmation of the Court's action in similar cases. Those firm principles make a State's international commitments more important than domestic legislation. Therefore, the host country cannot justify its action by saying it will resort to domestic legislation. International legitimacy is not a slogan or a façade for narrow bidding, but a practice and an expression of the international community. The major Powers' international responsibilities are not a weapon in their hands to be used to achieve advantages over smaller countries.

The Government of the host country must join in the international unanimity and accept the advisory opinion of the International Court of Justice. We call upon that Government from this rostrum to resort to the arbitration procedures in order to find a solution to this dispute.

The Government of the host country must prove its credibility and the seriousness in its endeavours to solve the Middle East question, the core of which is the Palestinian question. That cannot be achieved by denying the rules of international law or silencing the voice of the Palestine Liberation Organization (PLO), which has gained increased recognition at the international level as the sole, legitimate representative of the Palestinian people. Even those States which have not accorded that status to the PLO find in it representation of a large sector of that heroic people and a channel of communication which should not be neglected in any efforts exerted to find a solution to the Middle East question.

The General Assembly faces a difficult test that threatens international legitimacy; hence we call upon the General Assembly to adopt a resolution in which it accepts the advisory opinion of the International Court of Justice and calls

(Mr. Abdoun, Sudan)

upon the Government of the host country to abide by its international commitments and accept the advisory opinion of the International Court of Justice.

In conclusion, I express our deep gratitude for the sincere efforts exerted by the Secretary-General to find a solution of this dispute. We express our gratitude also for the seriousness that accompanied the issuance of the advisory opinion of the International Court of Justice. We hope that efforts will be intensified to achieve the results we seek.

Mr. SALAH (Jordan) (interpretation from Arabic): Allow me at the outset of my statement - which I have the honour to make on behalf of the Organization of the Islamic Conference - to extend thanks and appreciation to you, Mr. President, for including agenda item 136, entitled "Report of the Committee on Relations with the Host Country", in the agenda of the resumed forty-second session of the General Assembly, in the hope that this time also the General Assembly will be able to adopt an appropriate resolution on this item.

I also extend thanks and appreciation to the Secretary-General, Mr. Javier Pérez de Cuéllar, for his vigorous efforts to uphold the prestige of the United Nations, for his report in document A/42/915/Add.4 of 11 May 1988, and for his note in document A/42/952 of 29 April 1988 in which he submitted the recent advisory opinion given by the International Court of Justice in response to the request of the General Assembly contained in its resolution 42/229 B of March 1988.

Moreover, I must express our great appreciation to the esteemed International Court of Justice, the supreme international judicial body, for responding to the General Assembly's request by speeding up the examination of the question and for its early submission of the advisory opinion.

(Mr. Salah, Jordan)

The Anti-Terrorism Act of 1987 adopted by the United States Congress has prompted the General Assembly to examine the item under consideration four times thus far. The General Assembly's position is based on the consideration that that Act contravenes the host country's obligations flowing from the Headquarters Agreement, in view of the fact that the Permanent Observer Mission of the Palestine Liberation Organization to the United Nations in New York - which that Act would close - is covered by the Headquarters Agreement. The General Assembly has affirmed that position in its resolutions adopted in this regard since 17 December 1987.

In view of the series of developments with regard to this question, especially the host country's position thereon, the General Assembly has concluded that a dispute exists between the United States of America and the United Nations concerning the interpretation or application of the Headquarters Agreement and it was hoped that a settlement of this dispute could be achieved through negotiation between the two parties to the Agreement; but that has not proved possible.

Since it was also not possible to establish an arbitration tribunal owing to the host country's refusal to enter into arbitration, the General Assembly, by its resolution 42/229 B of 2 March 1988, referred the question to the International Court of Justice for its decision and an advisory opinion on whether the United States of America is under an obligation to enter into arbitration in accordance with section 21 of the Headquarters Agreement.

The International Court of Justice in its advisory opinion has validated the General Assembly's position by affirming the existence of a dispute between the United Nations and the United States of America regarding the applicability of the Headquarters Agreement. The Court also affirmed that the United States is obligated to accept arbitration to settle this dispute.



(Mr. Salah, Jordan)

Moreover, the Court found that a dispute exists, regardless of whether the Act in question had entered into effect or whether it was not to be considered to have come into effect except after the actual closing of the mission concerned, because section 21 of the Headquarters Agreement refers to any dispute concerning the interpretation or application of the Agreement, and not concerning the application of the measures taken under the domestic law of the United States. The Court also found that this dispute had not been settled by negotiation within the meaning of section 21 (a) and that the United States and the United Nations had not contemplated any other mode to settle their dispute, which means that the only means left for settling the dispute is that of arbitration.

The Court has concluded that the United States, as a party to the Headquarters Agreement, is under an obligation, in accordance with section 21 of the Headquarters Agreement, to enter into arbitration for the settlement of the dispute between itself and the United Nations.

In view of all of the above, we appeal to the host country to abide by the advisory opinion of the International Court of Justice regarding recourse to arbitration concerning the dispute between the United States and the United Nations. Arbitration is now the only proper means for settling this dispute. The legal actions taken by the United States Department of Justice before a municipal United States court cannot be considered to be a substitute for arbitration. They are aimed at the application of the Act in question and not at finding a settlement for the dispute resulting therefrom, in addition to the fact that domestic courts have no competence to decide on this dispute.

We hope that the General Assembly will adopt an appropriate resolution regarding the advisory opinion calling upon the United States to enter into arbitration so that this dispute will be settled in the proper way, so that the United Nations will maintain its status as an international organization and so

(Mr. Salah, Jordan)

that the inviolability of international law will be preserved and will prevail over the domestic law of States. That is the basic principle of international law invoked by the Court in paragraph 57 of its advisory opinion on the matter. We request the Secretary-General to continue his efforts to ensure the constitution of the arbitral tribunal under section 21 of the Headquarters Agreement, and to report to the General Assembly on developments in this matter.

Mr. ZAPOTOCKY (Czechoslovakia): In my capacity as Chairman of the Group of Eastern European countries I am pleased to note that the International Court of Justice on 26 April this year unanimously gave an advisory opinion on the request contained in resolution 42/229 B adopted at the resumed forty-second session of the United Nations General Assembly, according to which "... 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." (A/42/952, para. 58)

The advisory opinion, contained in extenso in document A/42/952, represents an explicit endorsement of the legal position of the United Nations contained in General Assembly resolutions 42/210 B; 42/229 and 42/230. The International Court of Justice, like the General Assembly earlier, has come to the conclusion that the United Nations and the United States are in dispute over the issue of obligations of the United States as host country towards the United Nations regarding the Observer Mission of the Palestine Liberation Organization (PLO) to the United Nations. The Court has also recognized that the efforts of the United Nations aimed at a solution of this dispute by negotiation with the United States have produced no results and, accordingly, that the United States is obliged, in the circumstances, to enter into arbitration.

(Mr. Zapotocky, Czechoslovakia)

We take this opportunity to call once again on the Government of the United States to live up to its international legal obligations under the Headquarters Agreement and, pursuant to the advisory opinion of the International Court of Justice and, by the appointment of its representative in the arbitration tribunal, to enable the arbitration provided for in section 21 of the Headquarters Agreement.

We wish to believe that the United States will not fail to respond positively to the advisory opinion of the International Court of Justice and that, by complying with its international obligations, it will show willingness to contribute constructively to United Nations endeavours.

The PRESIDENT (interpretation from Russian): The Assembly has heard the last speaker in the debate and will now vote on draft resolution A/42/L.50.

A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Rwanda, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Somalia, Spain, Sri Lanka, Sudan, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe

Against: Israel, United States of America

The draft resolution was adopted by 136 votes to 2 (resolution 42/232).\*

---

\* Subsequently the delegations of India, Niger, Suriname and Vanuatu advised the Secretariat that they had intended to vote in favour.

The PRESIDENT (interpretation from Russian): I call on the representative of the United States of America for an explanation of vote.

Miss BYRNE (United States of America): As we have said before in the context of the issue being considered here, the United States takes its obligations under the Headquarters Agreement seriously and we seek to abide by them. The United States Administration opposed passage of the Anti-Terrorism Act of 1987, but it was passed none the less by the Congress. The Attorney-General determined that the Act required him to seek to close the Observer Mission office of the Palestine Liberation Organization (PLO). The Attorney-General, accordingly, has sought an injunction by the Federal District Court in New York to implement the Act. That litigation provides an opportunity to address all of the issues relating to the enforcement of the Act. Pending a final decision in the courts, the United States will take no further steps to close the Mission's office.

Because this matter is still pending in our courts, the United States believes it is inappropriate and untimely to consider the appropriateness of entering into arbitration under section 21 of the Headquarters Agreement to resolve the dispute between the United Nations and the United States. Accordingly, we voted against the draft resolution.

I should like to add that Secretary Shultz is planning to return to the Middle East in the next few weeks to continue his efforts to initiate negotiations among the concerned parties. The Administration remains committed to this effort. Giving the Palestinian people the ability to exercise their legitimate rights is a central goal of this process. Attention should not be diverted from the key issue, that is, the attainment of peace in the Middle East.

The PRESIDENT (interpretation from Russian): The next speaker is the Observer of the Palestine Liberation Organization. I call on him in accordance with resolution 3237 (XXIX) of 22 November 1974.

Mr. TERZI (Palestine Liberation Organization (PLO)): Once again the international community, with all the members present here, has taken a very clear stand on a very serious issue, namely the future of the Headquarters Agreement between the host country and the United Nations.

We have heard the representative of the United States refer to the attention that should be directed towards the attainment of peace. I wonder what sort of peace the United States has in mind. Is it peace translated into more lethal weapons, more poisonous gas, or is it peace translated into the renewed strategic alliance between Israel and the United States, plus a few hundred million dollars to support and encourage Israel to commit further violations of human rights, breaking more arms and killing more youth? I would have thought that in the last six months the United States would have learned that those Palestinian heroes, with their stones, can still confront the most lethal and sophisticated of American arms in the hands of Israelis. At the very start of his recent trip, Mr. Shultz began on the wrong foot. He totally ignores the principal party to the conflict, and thus he cannot really hope to achieve any peace. We welcome any move by the United States towards peace if it is on the right track, but derailing the peace efforts undertaken by the Secretary-General, the Security Council and the General Assembly is not a move towards peace, but against peace.

We are addressing a very serious problem, namely how seriously or how consistently the host country abides by its obligations. The fact that the United States has lit a red voting light, together with its strategic ally Israel, shows

(Mr. Terzi, PLO)

beyond any doubt that it is determined not to respect and not to abide by its legal obligations and not to abide by the opinion of the International Court of Justice.

Now we have a very serious issue. Since the United States is in breach of its commitment according to the Agreement, what happens to the Agreement? I think that in casting its negative vote the United States has created many more complex issues for the General Assembly and the Headquarters Agreement; it has done more than light a red bulb on the voting display, as if it were a sign to obstruct the smooth functioning of the United Nations.

The International Court of Justice has told us in very clear terms that no other agreed mode of settlement has been attempted by both parties and that there is no other agreed mode of settlement except that provided in section 21 of the Agreement. Mr. Schwebel, the United States judge on the Court, made it very clear. I shall paraphrase his remarks: he said it is axiomatic that international law prevails over domestic law.

We are really very sorry that the United States Government has opted at this stage to reject the endorsement of the opinion of the International Court of Justice and also to ignore completely the unanimous support of the General Assembly. I am not going by the figures - 136 votes to 2 against; the other day it was 148 votes to 2 against. I am referring to the fact that only two members chose to push the red button. I have made a count. There are only 138 members here; 136 voted "yes" and the constant two remain the constant two.

We hope that the Secretary-General - I am glad to see the Legal Counsel is present - and the Legal Counsel will consider the further complications in this "irrespective approach" by the United States to its legal obligations.

(Mr. Terzi, PLO)

Where do we go from here? What is the status of the Agreement? Of course, as mentioned, there are some loopholes there. What happens to the arbitration? That it is premature has been rejected because the United States has taken action. Further, resort to the domestic courts of the United States has been rejected outright by the International Court of Justice and by the General Assembly as an "agreed mode of settlement". Thus, we need a little more time to ponder what the next move of the General Assembly should be, and we hope to receive from the Secretary-General some learned advice on the status of the Agreement.

The PRESIDENT (interpretation from Russian): I declare the forty-second session of the General Assembly suspended.

The meeting rose at 12.15 p.m.