

Executive Memorandum

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RUSH!

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IN THE U.N. VS. CONGRESS, MEESE MUST ENFORCE U.S. LAW

It is United States law that the Palestine Liberation Organization cannot maintain an office in the U.S. This is the result of an amendment to the State Department Authorization Act passed by Congress last December. It specifically mandates the closure of the Palestine Information Office in Washington and the Observer Mission of the Palestine Liberation Organization at the United Nations in New York. The legislation won near unanimous support in both Houses of Congress, and was signed into law by Ronald Reagan on December 22, 1987. This week, refusing to bow to intense pressure from the State Department, Attorney General Edwin Meese apparently decided to enforce the law and was preparing to order the PLO office closed.

State Department officials, who had opposed the amendment from the outset, had been attempting to thwart the law by delaying the closure of the PLO's U.N. Observer Mission. For one thing, argued the officials, the law would damage the U.S. standing at the U.N. The U.N. General Assembly in December passed a resolution condemning efforts to close the Observer Mission. For another thing, the Department feared that closing the Observer Mission could violate U.S. obligations to the U.N. under the 1947 U.N. Headquarters Agreement. This could mean that the matter could be referred to the World Court. Finally, State is feeling heat from Arab states, who threaten to call for a General Assembly Special Session to condemn the U.S. for closing the Observer Mission.

Judged by a World Court. For these reasons, State was pressuring Attorney General Meese not to close the PLO offices by March 21 as the law requires. Instead, State wanted to refer the matter to a special three judge arbitration tribunal, provided for in the 1947 Headquarters Agreement between the U.S. and the U.N. The tribunal would be composed of one judge selected by the U.S., one by the U.N. Secretary-General, and one by mutual agreement between the Secretary-General and the U.S. If the parties failed to agree on an acceptable third judge, he would be appointed by World Court President Nagendra Singh of India.

The decision was in Meese's hands. He apparently decided to do his duty and enforce the law of the land regarding the the PLO office in Manhattan. Earlier, the State Department had closed the Palestine Information Office in Washington. For Meese to have done otherwise would have set a troublesome, even dangerous precedent for future disputes between the U.S. and the U.N., and

perhaps even in conflicts between U.S. law and international obligations. First, whether or not one feels that closing the PLO's Observer Mission is sound policy, the fact is that U.S. law mandates its closure on or before March 21.

Precedence of U.S. Law. Second, closing the Observer Mission violates neither international law nor the Headquarters Agreement. This reportedly is the conclusion of both the Justice Department and the U.N.'s own Legal Counsel. Because the U.S. feared that hosting the U.N. might infringe on U.S. security, the Congress in 1947 passed Public Law 80-357. Section 6 of this law states that "nothing in the [Headquarters] Agreement shall be construed as in any way diminishing, abridging or weakening the right of the United States to safeguard its own security...." The U.S. therefore may take appropriate measures to curtail the PLO presence in New York, especially since Observer Missions, as distinct from normal diplomatic missions, are conferred no right to a permanent presence by the Headquarters Agreement or the U.N. Charter. This position gains further legal authority because the U.S. has imposed travel restrictions on Soviet-bloc diplomats in New York--a practice that has not been legally challenged. Even if the law did not violate international law, moreover, it is well established constitutional doctrine that if an international treaty obligation and U.S. law are in conflict, the U.S. law takes precedence.

Third, the State Department proposal that the matter be referred to a special international tribunal was very unsound. Such a panel would almost inevitably rule against the U.S., since both the judge selected by the Secretary-General of the U.N. and any third judge appointed by the President of the World Court are almost certain to be politically sympathetic toward the PLO. Furthermore, the U.S. should firmly reject any role for the World Court in the matter. The U.S., like most nations, has never accepted the compulsory jurisdiction of the World Court. And for good reason. The Court is primarily a political body that consistently has invoked one sort of legal rationale or another to justify an anti-American decision. Clearly, a court that includes, as the World Court now does, "judges" from Poland, the USSR, India, and Algeria is not competent to rule on whether Congress has the right to pass laws to safeguard U.S. security.

Reducing the FBI's Burden. Fourth, and most important, referring the matter to the Special Tribunal, or allowing the World Court to issue an advisory opinion, would have set a profoundly dangerous precedent. As host country for the U.N., the U.S. is involved in frequent disputes with both individual diplomatic missions and the U.N. over a variety of issues, ranging from rent payments to the limits of diplomatic immunity. Allowing any international legal body to make a judgment in the case would undermine U.S. authority to make final determinations in these matters.

For these reasons, Attorney General Meese acted correctly when he ordered the PLO Observer Mission closed. If the matter is now referred to the World Court, the U.S., as many other states have done, should refuse flatly to recognize the World Court's authority in this matter. And if a Special Session of the U.N. General Assembly is called in Geneva, or efforts are made to hold all U.N. General Assemblies outside the U.S., the U.S. should strongly support these actions. The U.N. is not doing the U.S. a favor by meeting in Manhattan. Moving to Geneva, if nothing else, at least would reduce greatly the FBI's burden of protecting the U.S. from the extensive espionage efforts undertaken by Soviet-bloc spies who use their cover as diplomats and employees at the U.N.

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