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United States v. Palestine Liberation Organization: Continued Confusion in Congressional Intent and the Hierarchy of Norms

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Note, *United States v. Palestine Liberation Organization*: Continued Confusion in Congressional Intent and the Hierarchy of Norms

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INTRODUCTION

In *United States v. Palestine Liberation Organization*,[1] the District Court for the Southern District of New York held that the Anti-terrorism Act of 1987[2] did not apply to the United States' efforts to close the PLO's observer mission to the United Nations. Under a previous treaty, the Headquarters Agreement of 1947,[3] the United States undertook an obligation to provide headquarters arrangements for United Nations members in New York. The court faced a simple issue. Did the subsequent congressional legislation contradict the treaty and, if so, which of the two should settle this dispute? The court concluded that since Congress had not expressly stated its intention to overrule the treaty, the ATA could not be interpreted to bring about that result.

Terrorist acts aimed at American citizens have increased significantly since 1980.[4] Amidst this climate, a number of Congressmen requested in October, 1986 that the State Department close all offices located in the United States operated by or on behalf of the PLO.[5] When the State Department rejected this request, Representatives Jack Kemp (R-N.Y.) and Dan Mica (D-Fla.), and Senators Charles Grassley (R-Iowa) and Frank Lautenberg (D-N.J.) sponsored a bill

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1. 695 F.Supp. 1456 (S.D.N.Y. 1988).

2. The Anti-terrorism Act, 22 U.S.C.A. §§ 5201-5203 (West Supp. 1988) [hereinafter "ATA"].

3. Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, 22 U.S.C. § 287 (1947) [hereinafter "The Headquarters Agreement"].

4. Examples of increasing terrorism include the bombings of American military bases in Beirut and of a German disco, the taking of American hostages in Lebanon, the hi-jacking of the Achille Lauro cruise liner, and the bombings in Paris in the summer of 1986. The Palestine Liberation Organization publicly admitted responsibility for the Achille Lauro hijacking. PLO involvement in the other terrorist incidents is suspected as well. Americans were killed in each of the terrorist incidents in Beirut, Berlin, and on the Achille Lauro.

5. 695 F.Supp. at 1459-60. This Note examines only those aspects of the ATA's legislative history necessary to address the issue of whether Congress intended to supersede the Headquarters Agreement. For a more detailed examination of the ATA's legislative history, see Note, *Reviving the Doctrine of Non-Forcible Countermeasures: Resolving the Effect of Third Party Injuries*, 29 VA. J. INT'L L. 175 (1988).

proposing to close all PLO offices.[6] The bill resulted in the ATA, which was debated for over a year before it became effective on March 21, 1988. Passing as a rider to the Foreign Relations Authorization Act for Fiscal Years 1988-89, the ATA consists of three sections — Findings, Prohibitions, and Enforcement.[7]

Section 5201 details Congress' findings that the PLO and its constituent groups have taken credit for the murders of dozens of American citizens abroad.[8] In response, the Act prohibits any person or group in the United States from receiving anything of value from the PLO or from employing funds to pursue PLO goals.[9] Most important for the purposes of this Note, the Act states:

> It shall be unlawful. . .
>
> (3) notwithstanding any provision of 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]

These Congressmen, rebuked by the State Department a year earlier, convinced Congress that the PLO's involvement in terrorism warranted, among other prohibitions, the closing of all PLO offices.

Congress placed the power to enforce the ATA in the Attorney General's hands.[11] In reaction to the perceived increase in terrorist activities, the Attorney General implemented this power the day the ATA came into effect and filed suit in the Southern District of New York, seeking an injunction to close the PLO's observer mission to the United Nations in New York City.[12] The PLO responded by claiming that closing the mission would violate the Headquarters Agreement. It specifically cited section 11 of the treaty, which provides in part:

> The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of. . .
>
> (4) representatives of nongovernmental organizations recognized by the United Nations for the purpose of consultation under article 71 of the Charter, or
>
> (5) other persons invited to the headquarters district by the United Na-

6. 133 CONG. REC. S18,190 (daily ed. Dec. 16, 1987) (statement of Rep. Helms).

7. *See* Appendix A; the full text of the ATA has been included to illustrate how specifically the statute focused on the PLO.

8. *See id.* § 5201(a)(1)-(7); Congress states at § 5201(a)(3) that "the PLO and its constituent groups have taken credit for, and have been implicated in, the murders of dozens of American citizens abroad."

9. *Id.* §§ 5202(1), 5202(2).

10. *Id.* § 5202(3).

11. *Id.* § 5203(a).

12. *U.S. v. PLO*, 695 F.Supp. 1456 (S.D.N.Y. 1988).

tions or by such specialized agency on official business.[13]

The PLO also referred to section 12 of the Headquarters Agreement, which guarantees that the provisions of section 11 shall apply "irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States."[14] The PLO, an invitee to the United Nations since 1974, argued that the ATA's proposed closing of its observer mission to the U.N. would violate these provisions. The court in *U.S. v. PLO*[15] agreed that the ATA did not require the closing of the PLO's office. It rejected the PLO's argument, however, and based its holding on Congress' failure to express its intention to abrogate the Headquarters Agreement. Since the Headquarters Agreement remained intact, the ATA did not permit the closing of the PLO office.

This Note concludes that while the court's rationale is disingenuous and misleading, the final decision was an appropriate reaffirmation of the importance which American jurisprudence places on international obligations. In Part One, this Note discusses whether the dispute resolution provisions of the Headquarters Agreement precluded the district court's jurisdiction over the parties and subject matter of this case. Part Two examines the constitutional hierarchy of the ATA and the Headquarters Agreement to determine which should govern this dispute. If the court had concluded that it lacked jurisdiction, the case would have been dismissed from the U.S. court system, leaving the parties to settle the dispute in the International Court of Justice. If the court reached the merits and applied the Headquarters Agreement despite the ATA, the PLO office would have remained open. Had the ATA applied, the PLO office would have been closed and the relevant provisions of the Headquarters Agreement would no longer be valid in United States courts.

THE JURISDICTION ISSUE

In *United States v. PLO*, the New York district court first addressed the defendant PLO's claim that it lacked jurisdiction. In support of this claim, the PLO relied on section 21 of the Headquarters Agreement which provides:

> (a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators . . . .
>
> (b) The Secretary-General of the United States may ask the General Assembly to request of the International Court of Justice an advisory

13. The Headquarters Agreement, *supra* note 3, § 11.

14. *Id.* § 12.

15. 695 F.Supp. 1456 (S.D.N.Y. 1988).

> opinion on any legal question arising in the course of such proceedings . . . .[16]

The PLO contended that the dispute over the ATA concerned the "interpretation or application" of the Headquarters Agreement and, citing section 21(a), insisted that the United States should submit the case to an international board of arbitration.

The district court rejected the PLO's claims and based its personal jurisdiction over the defendants upon the "mininimum contacts" requirements set forth in *International Shoe Co. v. State of Washington*.[17] It concluded that the PLO maintained such minimum contacts within the court's jurisdiction through its office, telephone number, and year-round staff of employees in New York.[18] The court perceived that the jurisdiction issue was vital to the case, and addressed the personal jurisdiction issue despite the fact that the "presence" of the defendants within the territory of the Southern District of New York was not disputed. Such caution might be explained by the court's awareness that the United States' alleged duty to arbitrate was a clouded issue, considering the language of section 21(a). Establishing its undisputed personal jurisdiction at the outset lent credence to the eventual decision concerning subject matter jurisdiction.

Pursuant to section 21(b) of the Headquarters Agreement, the International Court of Justice issued an advisory opinion concluding that the United States was bound by the agreement to arbitrate.[19] The New York court, however, declined to follow the advisory opinion. It concluded that "because these proceedings are not in any way directed to settling any dispute, ripe or not, between the United Nations and the United States, section 21 is, by its own terms, inapplicable."[20] Although the court claimed that the United Nations was not involved in the dispute, it permitted the U.N. to file amicus briefs. In addition, the Under Secretary-General and Legal Counsel of the United Nations[21] was permitted to address the court at the outset of the case.[22] The mere existence of the advisory opinion indicates that the United Nations considered itself as having an interest in the dispute. The

16. Headquarters Agreement, *supra* note 3, § 21.

17. 326 U.S. 310, 316 (1945). Here, the Court determined that even though a Delaware corporation did not have offices in the state of Washington, its regular solicitation of orders in the state represented "minimum contacts" sufficient to meet jurisdiction requirements.

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

18. 695 F.Supp. at 1461.

19. United Nations v. United States, 1988 I.C.J. No. 77 (April 26, 1988).

20. 695 F.Supp. at 1462.

21. Carl-August Fleischauer.

22. 695 F.Supp. at 1458 n.** (as cited in the court's opinion).

New York court failed to address that interest adequately, disposing of the issue in this single, conclusory statement.

The court provided two additional reasons why the interpretation of the Headquarters Agreement's relation to the ATA was not automatically submitted to arbitration. First, the court stated that since this case involved matters of international policy, it differed from ordinary arbitration disputes. The court claimed to lack authority to make such decisions in the international arena, given the Executive's decision to bring the case to the federal courts. Judge Palmieri wrote:

> This [matters of international policy] is an area in which the courts are generally unable to participate. These questions do not lend themselves to resolution by adjudication under our jurisprudence. The restrictions imposed upon the courts forbidding them to resolve such questions (often termed 'political questions') derive not only from the limitations which inhere in the judicial process but from those imposed by article III of the Constitution. [23]

Ordering the United States to arbitrate, according to Palmieri, would have created a tension, characteristic of a "political question," as set down by the Supreme Court in *Baker v. Carr*.[24]

> Resolution of the question whether the United States will arbitrate requires "an initial policy determination of a kind clearly for nonjudicial discretion;" deciding whether the United States will or ought to submit to arbitration, in the face of a determination not to do so by the executive, would be impossible without the court "expressing lack of the respect due coordinate branches of the government;" and such a decision would raise not only the "potentiality" if [sic] but the reality of "embarassment from multifarious pronouncements by various departments on one question."[25]

The court thus concluded that, by filing the suit in the federal courts, the Executive had made a "foreign policy" decision against arbitration, which the judiciary was powerless to challenge. Yet, it never illustrated how the international aspect of this situation, where the United States and the United Nations agreed between themselves when arbitration would be required, substantively differed from any other contract situation where two parties agree to submit disputes to an abitrator. Section 21 created a difficult obstacle for the court to

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23. 695 F.Supp. at 1462 (citation omitted).

24. 369 U.S. 186, 217 (1962). Justice Brennan elaborated several formulations of what elements might exist in determining that a function is reserved for the political branches:

> [P]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or the unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarassment from multifarious pronouncements by various departments on one question.

25. 695 F.Supp. at 1463 (citations omitted).

overcome and, rather than addressing the issue directly, the court chose to cloak itself in the political question doctrine.[26]

The court's second argument supporting subject matter jurisdiction further illustrates the ineffectiveness of applying the political question doctrine to matters concerning treaties. The court argued that binding the United States to the Headquarters Agreement settlement process would amount to ignoring its "constitutionally mandated function" to interpret congressional legislation.[27] Despite the requirements of section 21, the court apparently believed it was bound to interpret the ATA. The ATA's potential effect on the Headquarters Agreement and the United Nations Charter required that those two documents must also be considered. However, the true "subject matter" at issue, in the court's view, was the interpretation of the ATA. Citing *Marbury v. Madison*,[28] Palmieri wrote:

> It is, as Chief Justice Marshall said, "emphatically the province and duty of the judicial department to say what the law is." That duty will not be resolved without independent adjudication of the effect of the ATA on the Headquarters Agreement. Awaiting the decision of an arbitral tribunal would be a repudiation of that duty.[29]

The court therefore claimed to carry out its constitutionally mandated responsibility by deciding a question which it considered to be beyond the scope of its constitutional responsibility. It concluded that it had subject matter jurisdiction in this case because submitting the case to arbitration would violate the court's "constitutionally mandated function" to interpret congressional legislation. The court reached this conlcusion despite its concurrent determination that the political question doctrine prevented it from deciding whether arbitration was appropriate as a foreign policy.

The contradiction in this line of reasoning is evident. At the outset, the court was faced with two choices: 1) send the case to international arbitration; or, 2) retain it and decide the merits. According to the court's rationale, it was incapable of making this decision, since arbitration was a foreign policy decision which must have fallen to the political branches of the government. However, since the proposed arbitration would involve the interpretation of a domestic statute, the court saw itself as bound by the United States Constitution to see that the statute was interpreted by a United States court. Despite all of its claims that it was unfit to make the decision concerning arbitration, the court effectively decided to retain the case and reach the merits. Such confusion often results when courts are faced with a strong de-

26. *See infra* note 37 and accompanying text.

27. 695 F.Supp. at 1463.

28. 5 U.S. (1 Cranch) 137 (1803).

29. 695 F.Supp. at 1464.

sire to avoid the trappings of the political question doctrine.[30]

The court's handling of the jurisdiction issue illustrates many of the problems involved with the political question doctrine. The evils expressed in *Baker v. Carr*,[31] such as embarassment from "multifarious pronouncements," are not illusory. The foreign policy of the United States is left to the Executive and Legislative branches of the government. Once those branches have concluded what the foreign policies of the country will be, courts must still interpret that law as it applies domestically within the United States.

The judicial responsibility, however, does not include an unrestrained power to ignore a treaty which might have domestic effects or a statute which touches on international agreements. Article VI of the Constitution makes treaties the supreme law of the land, on an equal level with congressional statutes.[32] Accordingly, courts should feel compelled to address the merits of the dispute before them, regardless of whether a treaty or a congressional statute is at issue. Leaving no doubt about his disapproval of the political question doctrine, Professor Henkin discussed the subject in a follow-up article to his analysis of the *Chinese Exclusion Case* and its progeny.[33] Henkin notes that since 1789, states have opened their courts to disputes concerning treaty violations, often granting remedies for private petitioners, but not governments:

> Indeed, when a foreign national claims to have been injured by a state's violation of international law, the state can insist that the claim be pursued in its own courts and that no international claim be brought by the complaining party's state of nationality until domestic remedies are exhausted. If the framers intended to close our courts to suits for a breach of a treaty, there would be no more reason to open the courts to a private beneficiary of a treaty than to a foreign government. Nor would there be any reason to permit suits on a treaty when there had been no act of Congress on the subject, or when an act anteceded the treaty.
>
> Treaties are the law of the land. Cases arising under treaties are justiciable.[34]

Henkin's approach avoids the pitfalls of the political question doctrine — whether the facts at issue include or invoke the characteristic elements of a "political question" and, if not, whether those facts should constitute an addition to the list espoused in *Baker v. Carr*.

Treaties are the supreme law of the land. Cases arising under them should be justiciable regardless of whether Congress has passed subse-

30. *See* Henkin, *Is There A "Political Question" Doctrine?*, 85 YALE L.J. 597 (1976).

31. 369 U.S. 186, 217 (1962).

32. *See infra* note 38 and accompanying text.

33. Henkin, *Lexical Priority or "Political Question": A Response*, 101 HARV. L.R. 524 (1987); For the initial article, *see infra* note 64. The *Chinese Exclusion Case* is the seminal case for the hierarchy issue, *infra*.

34. *Id.* at 531 (footnote omitted).

quent legislation, unless that legislation directly overrules the treaty. Discussions of whether the Executive's decision to submit the case to arbitration represents a "political" or "foreign policy" issue should be eliminated. The Executive and the Senate addressed that issue when the treaty was signed. If the treaty's dispute resolution provisions apply, then the court should give credence to them. If the court sees a reason why those provisions should not apply, then it should succinctly state its reasoning and reach the merits of the case. Such a logical and concise argument should have been adopted by the courts some time ago.

The district court's discussion of the jurisdiction issue was an opportunity lost. The court could have challenged the appellate levels of the federal system by making a critical argument, like Henkin's, about the political question doctrine. It might have recognized that no case involving a treaty claim has been held to be nonjusticiable, and that the addition of a more recent act of Congress effectively adds nothing which should alter that trend.[35] More simply, the court could have argued solely the second tenet of its rationale, recognizing that the Constitution requires federal courts to interpret congressional legislation. If it becomes necessary to consider foreign treaties, then the court should consider them. This is essentially what the *PLO* court did in effect, but the strength and credibility of the argument is lost by the lip service paid to the political question doctrine. Had the court used the challenging analysis outlined above, its analysis would have been far more coherent than the contradictory line of reasoning which it employed, especially where the Administration's indifference to the case indicated that numerous appeals would be unlikely.[36] Despite its shortcomings, such a conclusion was necessary to reach the merits of the case.[37]

THE HIERARCHY ISSUE

Once the court dispensed with the jurisdiction question, it faced the substantive issue of the case: whether the ATA effectively overruled the Headquarters Agreement as it applies to the PLO observer mission to the United Nations. The court had to determine which should govern, the treaty or the subsequent congressional statute. If it had determined that the ATA should govern this dispute, then the provisions in sections 11 and 12 of the Headquarters Agreement

35. *Id.* at note 34.

36. While the case was pending, Secretary of State George Schultz described the ATA as "one of the dumbest things Congress did last year." N.Y. Times, April 27, 1988, at A10, Col. 4.

37. As illustrated in the text, the court's reasoning concerning the applicability of § 21 of the Headquarters Agreement is neither definitive nor completely honest. If the court were to conclude that § 21 must be enforced, as the International Court of Justice believed it must, then the court would never have reached the hierarchy issue and could have disposed of the case.

would no longer apply in domestic United States law. The Supremacy Clause states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[38]

The Supremacy Clause thus provides that treaties and congressional legislation are superior to state law. It provides no basis, however, to choose one over the other when the two conflict. The Supreme Court addressed this issue in *The Head Money Cases*,[39] sparking a series of cases concerning Congress' power to regulate immigration and the hierarchy of law concerning treaties and congressional legislation. In 1882,[40] Congress passed an act calling for the payment of a duty at every port for each passenger lacking U.S. citizenship.[41] The act conflicted with several treaties, particularly one with Russia, which obligated the United States to restrict such customs duties.[42] Following a lengthy discussion in which the Court concluded that the tariff fell within the scope of Congress' power to regulate commerce, it turned to the Supremacy Clause. After quoting the relevant text, Justice Miller stated that,

> [A] treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined . . . [b]ut even in this aspect of the case there is nothing in this law which makes it irrepealable or unchangeable. The Constitution gives it no superiority over an act of Congress in this respect, which may be repealed or modified by an act of a later date.[43]

The *Head Money* Court concluded that when faced with a treaty and an incompatible subsequent statute, the statute should be considered Congress' most recent modification of the subject matter in the treaty. The Court further argued that the procedural requirements in making a treaty are different than those for passing a bill. First, the Constitution gives the President and the Senate sole responsibility for negotiating and ratifying a treaty.[44] The House of Representatives, however, is included in the decision-making process which spawns domestic

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38. U.S. CONST. art. VI.

39. 112 U.S. 580 (1884).

40. The Supreme Court addressed the hierarchy issue repeatedly in a series of decisions in the late nineteenth century. These cases are usually cited in any discussion of the issue, and the *PLO* court relies on them extensively. Despite the passing of a century, these cases are still valid constitutional law.

41. Act of August 3, 1882, ch. 376, 22 Stat. 214.

42. Treaty on Liberty of Commerce and Navigation, Dec. 18, 1832, United States - Russia, 8 Stat. 444.

43. 112 U.S. at 598-99.

44. U.S. CONST. art. II, § 2, cl. 2.

law. Decisions made by both houses, according to the Court, are favored in the face of conflicting international agreements. "In short, we are of the opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may [subsequently] pass for its enforcement, modification, or repeal."[45]

This line of reasoning was continued three years later in *Whitney v. Robertson*.[46] There, New York merchants were forced to pay a duty on sugar imported from the Dominican Republic under an act of Congress.[47] Prior to that legislation's enactment, the United States had signed a treaty with the Dominican Republic which included a "most favored nation" clause.[48] The United States had also entered a similar treaty with the King of Hawaii, and imported similar sugars from those islands duty-free.[49] The Court, emphasizing that the domestic legislation was passed after the treaty, followed the *Head Money* precedent holding that the domestic legislation governed. "When the stipulations [treaties] are not self-executing they can only be enforced pursuant to legislation to carry them into effect, and such legislation is as much subject to modification and repeal by Congress as legislation upon any other subject."[50] The Court went on to state that its responsibility lay only in interpreting those acts of Congress establishing or changing law. Issues of "[w]hether the complaining nation has just cause of complaint, or our country was justified in its legislation, are not matters for judicial cognizance."[51]

In 1888, the Supreme Court concluded for the third time in four years that an act of Congress, passed subsequent to and in contradiction with a treaty must still be enforced.[52] Twenty years earlier, the United States and the Chinese Empire had recognized "the inherent and inalienable right" of citizens from either country to travel to the other "for purposes of curiosity, of trade, or as permanent residents."[53] The discovery of gold on the Pacific coast brought vast numbers of people to California, including many Chinese. The substantial increase in population created a competitive atmosphere for employ-

45. 112 U.S. at 599 (emphasis added).

46. 124 U.S. 190 (1887).

47. Convention of Amity, Commerce, and Navigation, October 24, 1867, United States - Dominican Republic, 15 Stat. 473.

48. A "most favored nation" clause grants any advantage, privilege, immunity, or favor given by one party to the treaty to any third country to the other parties to the treaty. *See generally* J. JACKSON AND W. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 428-482 (2d ed. 1986).

49. Convention on Commercial Reciprocity, June 3, 1875, United States - Hawaiian Islands, 19 Stat. 625.

50. 124 U.S. at 194 (emphasis added).

51. 124 U.S. at 194.

52. The Chinese Exclusion Case, 130 U.S. 581 (1888).

53. Treaty, July 28, 1868, United States - China, art. V, 16 Stat. 739, 740.

ment and wealth, leading to strong racial tensions and prejudice. As a result, Congress began to restrict immigration into the United States. In 1881, the United States signed a treaty effectively giving it an escape clause from its previous obligations. That treaty stated:

> Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of United States may regulate, limit, or suspend such coming or residence, but may not prohibit it.[54]

In the following seven years, the U.S. Government stretched this escape clause to its limits and, eventually, it went beyond even that point.

In 1882, Congress passed legislation,[55] further suspending immigration of Chinese laborers into the United States for a period of ten years. The Government would issue a certificate to anyone leaving the United States which ensured that person a legal right to return. Relatives and friends, however, would often persuade authorities to allow their Chinese compatriots to re-enter the U.S. without these certificates. Congress responded by passing new legislation in 1884.[56] Under this new law, only the certificate was sufficient to establish the Chinese immigrant's right to re-enter. In *Chew Heong v. United States*,[57] the Supreme Court held that this act did not apply to laborers who had departed the United States prior to May, 1882 and had not yet returned when the 1884 Act was passed. The same loose re-entry requirements, however, permitted people to return to the United States without the necessary certificates. In 1888, Congress passed yet another act, this time closing the United States to all Chinese laborers not in the country on the day of the act's passage, regardless of their residence or possession of a certificate.[58] The plaintiffs in *Chinese Exclusion* challenged this act.[59]

The *Chinese Exclusion* Court first concluded that the Constitution empowered Congress to regulate immigration under the constitutional provisions concerning sovereignty over subject matter — those which affect "the interests of the whole people equally and alike," such as the Commerce Clause.[60] Following *Whitney*,[61] the Court again recognized that the Supremacy Clause places treaties and congressional leg-

54. Art. I, 22 Stat. 826, *quoted in Chinese Exclusion*, 130 U.S. at 596.

55. Ch. 126, 22 Stat. 58-61 (1882).

56. Act of July 5, 1884, ch. 220, 23 Stat. 115.

57. 112 U.S. 536 (1884).

58. Act of May 6, 1882, ch. 1064, 25 Stat. 504.

59. 130 U.S. 581.

60. 130 U.S. at 605.

61. 124 U.S. 190 (1887).

islation on an equal basis, thus rejecting the inference in favor of domestic legislation espoused in *Head Money*.[62] It further stated that "[w]hen once it is established that Congress possesses the power to pass an act, our province ends with its construction, and its application to cases as they are presented for determination."[63] The Court concluded that the treaties with China placed no restrictions on Congress' power to restrict immigration, apparently ignoring the language of the 1881 treaty. Under this reasoning, all treaties are repealable or reversible by subsequent acts of Congress.

The *Chinese Exclusion Case* has remained sound precedent for a full century. Commentators who have scrutinized its reasoning, however, have been critical. Most recently, Professor Henkin addressed the case and it progeny.[64] He concluded that the two doctrines addressed by the case (the regulation of immigration and the obligations of the United States to adhere to international agreements) have come back to haunt us one hundred years later. He specifically pointed to a 1986 case in which the Court of Appeals for the Eleventh Circuit held that indefinite detention of undocumented aliens is not unconstitutional. The court stated that although such detention violated international law, that violation was not determinative since it had been effected by the Attorney General's office.[65]

In his discussion of the relationship between treaties and statutes, Henkin criticizes the Supreme Court's decisions in *Head Money*, *Whitney*, and *Chinese Exclusion*, noting that several countries consider international obligations to be superior to domestic legislation.

> Although the Court [in *Head Money*] asserted that nothing "in its essential character" gives a treaty "superior sanctity," treaties may indeed have superior sanctity because of their essential character as international obligations, a principal [sic] that other systems of law have accepted. Unlike an act of Congress, under the law of nations a treaty is binding on the United States and therefore on all branches of the government. Neither the text nor the history of the Constitution suggests that the framers intended that Congress have authority to disregard the international obligations of the United States.[66]

Henkin admits that the application of the *Chinese Exclusion* doctrine has not seriously harmed the United States in its relations with other countries. This is the result of an early precedent set down in *Murray*

62. 112 U.S. at 600.

63. 112 U.S. at 603.

64. Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 HARV. L. REV. 853 (1987); c.f., Westin, *The Place of Foreign Treaties in the Courts of the United States: A Reply To Henkin*, 101 HARV. L. REV. 511 (1987).

65. *Id.*, at 864, n. 54. *See, Garcia-Mir v. Meese*, 788 F.2d 1446 (11th Cir.), *cert. denied*, 479 U.S. 889 (1986). This case serves as a striking example for Henkin's conclusion that the lesson of *Chinese Exclusion* is that "courts are prepared to abdicate their responsibility to ensure that the executive act in conformity with international law." Henkin, *supra* note 64 at 854.

66. Henkin, *supra* note 64, at 871 (footnote omitted).

v. The Schooner Charming Betsy.[67] There, Chief Justice Marshall said "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."[68] Moreover, Henkin included the spirit of this holding in the third edition of the Restatement of Foreign Relations Law of the United States:

> § 115. Inconsistency Between International Law or Agreement and Domestic Law: Law of the United States
>
> (1) (a) An act of Congress supersedes an earlier rule of international law or a provision of an international agreement as law of the United States if the purpose of the act to supersede the earlier rule or provision is clear or if the act and the earlier rule or provision cannot be fairly reconciled.
>
> (b) That a rule of international law or a provision of an international agreement is superseded as domestic law does not relieve the United States of its international obligation or of the consequences of a violation of that obligation.[69]

The notion that courts should not presume that Congress would surreptitiously violate international obligations is part of the original foundations of American jurisprudence.

This is the legal environment in which the ATA case was decided. The *PLO* court began its discussion of the hierarchy issue by admitting that the ATA, as applied by the Attorney General's office, would be inconsistent with the Headquarters Agreement. It then stated that the Constitution places both legislation and treaties on equal footing, but offers no methods by which to choose between the two. Next, the court, in a relatively off-handed way, made a statement which determined the outcome of the case: "Only where a treaty is irreconciliable with a later enacted statute *and Congress has clearly evinced an intent to supersede a treaty by enacting a statute* does the later enacted statute take precedence."[70] The court then outlined the history of the ATA,

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67. 6 U.S. (2 Cranch) 64 (1804).

68. *Id.* at 118.

69. Henkin served as the Chief Reporter for the ALI's most recent revision of the Restatement (Third) of Foreign Relations Law of the United States. 1 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW (1986).

70. 695 F.Supp. at 1464 (emphasis added). It should be noted that the first case cited by the court to support this proposition is *Chinese Exclusion*, which clearly did not set down this principle as it is stated here. The other cases cited include: *The Head Money Cases*, 112 U.S. 580 (1884); *Chew Heong*, 112 U.S. 536 (1884); South African Airways v. Dole, 817 F.2d 119, 126 (D.C. Cir. 1987); Diggs v. Schultz, 470 F.2d 461, 466 (D.C. Cir. 1972); Menominee Tribe of Indians v. United States, 391 U.S. 404, 412-13 (1968); McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 21-22 (1963); and Cook v. United States, 288 U.S. 102 (1933).

In *Menominee Tribe*, the Court said, "While the power to abrogate those rights [conferred by treaty] exists, 'the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress,'" In *McCulloch*, the Court stated, ". . . for us to sanction the exercise of local sovereignty under such conditions in this 'delicate field of international relations there must be present the affirmative intention of the Congress.'" In *Diggs*, the Circuit Court, facing a conflict between the Byrd Amendment and the U.N. Charter, stated the *Charming Betsy* doctrine and refused to address the issue, deeming it a political question. The court did make the statement

concluding that Congress never had a clear intent to supersede the Headquarters Agreement.

First, the court followed the *Whitney* precedent, recognizing that Congress has the power to pass legislation abrogating prior treaties or international obligations. Rather than ending its discussion at that point, however, the court made an interpretive addition to *The Charming Betsy*'s doctrine, stating that "*unless this power is clearly and unequivocably exercised*, this court is under a duty to interpret statutes in a manner consonant with existing treaty obligations."[71] The court cited a dubious line of cases to support this requirement of an express statement by Congress of its intent to abrogate a prior treaty.[72] Although it pointed to both *Chinese Exclusion* and *The Charming Betsy*, the Court could not rely on specific quotations from either opinion because no such quotation existed. In fact, the only passage which the court did cite came from a dissenting opinion in *Chew Heong v. United States*.[73] As noted earlier, the statute in that case was later amended, and became the subject of the *Chinese Exclusion* case. There, Congress' intent to violate the previous treaties supposedly became clear some four years after the *Chew Heong* decision. Yet, the court claims that these cases "require the clearest of expressions on the part of Congress. . . . Congress' failure to speak with one clear voice on this subject requires us to interpret the ATA as inapplicable to the Headquarters Agreement."[74]

The true origin of this clear congressional intent requirement is worth examining. The district court's opinion is misleading because it suggests that this doctrine is supported by a series of citations dating from 1884 to 1984.[75] Close examination of these cases reveals that the Supreme Court has been historically disingenuous in its application of

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that "under our constitutional scheme, Congress can denounce treaties if it sees fit to do so, and there is nothing that the other branches of government can do about it." In *South African Airways*, the same court gave a lengthy discussion of the *Charming Betsy* and *Chew Heong* decisions, but closed its argument with a quote from *Whitney*; "[I]t is wholly immaterial to inquire whether by the act. . .[Congress] has departed from the [Agreement] or not, or *whether such departure was by accident or design. . . .*" (emphasis by the court). For the Court's treatment of the doctrine in *Cook*, see *infra*, at 949.

71. 695 F.Supp. at 1465 (emphasis added).

72. *See supra* n. 70.

73. 112 U.S. 536 (1884). In *Cheow Heong*, Justice Field said,

> I am unable to agree with my associates in their construction of the act . . . restricting the immigration into this country of Chinese laborers. That construction appears to me to be in conflict with the language of that act, and to require the elimination of entire clauses and the interpolation of new ones. It renders nugatory whole provisions which were inserted with sedulous care. The change thus produced in the operation of the act is justified on the theory that to give it any other construction would bring it into conflict with the treaty; and that we are not at liberty to suppose that Congress intended by its legislation to disregard any treaty stipulations.

74. 695 F.Supp. at 1468.

75. *Id.* at 1464-5.

the rule. First, in *Chew Heong*, the Court never specifically set down a rule of law on the subject of Congress' clear intent:

> When the act of 1882 was passed, Congress was aware of the obligation this government had recently assumed, by solemn treaty, to accord a certain class of Chinese laborers the privilege of going from and coming to this country at their pleasure. Did it intend, within less than a year after the ratification of the treaty, and without so declaring in unmistakable terms, to withdraw that privilege. . . ? Did it intend to do what would be inconsistent with the inviolable fidelity with which, according to the established rules of international law, the stipulation of treaties should be observed? These questions must receive a negative answer.[76]

While the overall tenor of the *Chew Heong* opinion might illustrate an attempt to determine what Congress' intent might have been, the passage above was clearly dictum, and it certainly should not stand as a firm expression of law requiring express congressional intent to abrogate prior treaties.

In *Cook v. United States*,[77] however, the Supreme Court applied *Chew Heong*. In *Cook*, a 1924 treaty between the United States and Great Britain allowed American officials to board British ships outside the three mile territorial boundary if the ships were suspected of smuggling alcohol into the United States. The Tariff Act of 1922 had previously authorized Coast Guard officials to board British vessels "within four leagues of the coast." Congress reiterated the "four league" language in the Tariff Act of 1930, without reference to the treaty. In holding that the 1930 act did not supersede the treaty, the Court made a single, simple statement of law; "A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed."[78] As precedent for this doctrine, the Court cited *Chew Heong*, which has been shown to be an inappropriate source, and *United States v. Paine*.[79] In the latter, the Court stated only that the legislation in that case "should be harmonized with the letter and spirit of the treaty so far as that reasonably can be done, since an intention to alter, and, *pro tanto*, abrogate, the treaty, is not to be lightly attributed to Congress."[80] The Supreme Court in *Cook*, therefore, created the "clear, express intent" doctrine, based solely on a fifty year old paragraph of dictum and an amorphous belief that Congress would prefer, if possible, not to violate the United States' international obligations.

Having established the legal standard, the district court then tried to show that Congress did not intend to supersede the Headquarters Agreement with the ATA. First, the court examined the text of the

76. 112 U.S. at 550.

77. 288 U.S. 102 (1933).

78. 288 U.S. at 120.

79. 264 U.S. 446 (1923).

80. 264 U.S. at 448.

ATA itself, searching for evidence of Congress' intent on the face of the document; neither the PLO office nor the Headquarters Agreement is mentioned explicitly. The court then noted that while the act did prohibit maintaining an office "notwithstanding any provision of law to the contrary," such language should not be taken to mean that the act applied notwithstanding any treaty, especially when such exact language was used elsewhere in the text.[81] The question arose, then, as to what else lay outside the scope of "any provision of law to the contrary." The court never addressed the issue, leaving open the possibility that any Executive Agreements and Executive Proclamations which conflict with the ATA might also be unaffected by its passage.

Second, the court examined the legislative history of the ATA, noting that its supporters were forewarned early in the debates that the Headquarters Agreement might constitute an obstacle. This, in the court's opinion, should have indicated to the congressmen the importance of expressing their clear intentions. Instead, "no member of Congress, at any point, explicitly stated that the ATA was intended to override any international obligation of the United States."[82] Most of the statements concerning the Headquarters Agreement consisted of congressmen denying that a conflict would arise.[83] Senator Grassley stated that "the United States has no international legal obligation that would preclude it from closing the PLO observer mission."[84] Senator Helms (R-N.C.) claimed that closing the mission would be "entirely within our Nation's obligations under international law."[85] Furthermore, Representative Burton (R-Ind.) spoke extensively on the subject, concluding:

> The U.N. headquarters agreement does not even contain the words "observer mission." All observer missions exist under a clause pertaining to "invitees" that was never intended to cover permanent offices or missions. All U.N. observer missions remain in New York under the courtesy of the United States and have no — zero — rights in the headquarters agreement.[86]

The court evaluated these commentaries and concluded that the ATA

81. 695 F.Supp. at 1468. Court's "elsewhere" refers to "U.S. law (including any treaty)," at 101 Stat. at 1343. The weakness of this argument is evident when one recalls that the ATA was passed as a rider to an act approving the State Department's budget authorizations. The two documents are unrelated, so specific language used in the primary legislation should not necessarily be taken to mean that Congress' failure to use such language in the ATA was a conscious decision.

82. 695 F.Supp. at 1470.

83. The commentary in the congressional debates was limited to only about a dozen members, including Senators Grassley and Helms. The absence of commentary by other members might indicate that, had Congress been presented with the question whether to pass the ATA with an understanding that the Act would violate the Headquarters Agreement, the statute would never have passed.

84. 133 CONG. REC. S16,605 (daily ed. Nov. 20, 1987).

85. 133 CONG. REC. S18,190 (daily ed. Dec. 16, 1987).

86. 133 CONG. REC. H11,425 (daily ed. Dec. 15, 1987).

supporters were not espousing an intent to overrule the agreement with the United Nations; they were simply incorrect about what obligations that agreement imposed upon the United States.[87] In deference to the precedent set down by *The Charming Betsy*,[88] therefore, the court held that the ATA was inapplicable to the PLO observer mission to the United Nations in New York City.

> The statute remains a valid enactment of general application. It is a wide gauged restriction of PLO activity within the United States and, depending on the nature of its enforcement, could effectively curtail any PLO activities in the United States, aside from the Mission to the United Nations.[89]

The court thus concluded that the ATA, passed to restrict PLO activity in the United States, did not apply to the PLO's most important office in this country.

The court, for the most part, applied the "clear, express intent" doctrine set down by the Supreme Court in 1933. It is not necessarily the business of a federal district court to provide long paragraphs of eloquent prose to explain the reasoning behind a doctrine of law, especially when numerous opinions of the higher courts are available to be cited as precedent. Presumably, the jurists who first enunciated these doctrines have written such eloquent explanations in one or more of those previous cases. With the "clear, express intent" doctrine, however, no rationale or explanation has ever been given, even though the doctrine has most recently been described as "a firm and obviously sound construction against finding implicit repeal of a treaty in ambiguous congressional action."[90] This gives rise to two questions. Why should an express statement of congressional intent be so important to the courts? More importantly, do the members of Congress realize the possible consequences of failing to make a clear indication of their intentions when passing legislation which might conflict with a prior treaty?

To answer the first question, one must accept the *Whitney* and *Chinese Exclusion* holdings that Congress has the power to abrogate or suspend the international obligations of the United States, to the extent that those obligations apply as domestic law in this country. Once that power is determined, Congress is the only branch of the U.S. Government which has the resources to determine when such action is necessary. Courts are generally not equipped with the resources or the political experience necessary to conclude whether a given policy, espoused in a treaty with a foreign government, remains in the best interests of the United States:

87. 695 F.Supp. at 1470-71.

88. 6 U.S. (2 Cranch) 64 (1804).

89. 695 F.Supp. at 1471.

90. Trans World Airlines v. Franklin Mint., Inc., 466 U.S. 243, 252 (1984).

> [W]hilst it would always be a matter of the utmost gravity and delicacy to refuse to execute a treaty, the power to do so [is] prerogative, of which no nation could be deprived without deeply affecting its independence; but whether a treaty with a foreign sovereign had been violated by him, whether the consideration of a particular stipulation of a treaty had been voluntarily withdrawn by one party so as to no longer to be obligatory upon the other, and whether the views and acts of a foreign sovereign . . . had given just occasion to the political departments of our government to withhold the execution of a promise contained in a treaty or to act in direct contravention of such promise, [are] not judicial questions.[91]

If the courts are inherently unable to make this type of legislative policy decision, then it must be made by Congress and the Executive. By interpreting congressional legislation as inconsistent with treaty obligations, courts risk unlawfully intruding into the responsibilities of another branch of the government.[92] For this reason, the courts must insist upon an express statement of Congress' intention to violate prior treaties before they read the legislation in a way which would bring about that result. Without such an expression, the decision is not for the courts to make.

The second question is more difficult to answer. In the debates preceding the passage of the ATA, several members of Congress clearly indicated their awareness that the ATA might violate the Headquarters Agreement. Senator Pell (D-R.I.) stated that his reading of the bill's language did not,

> necessarily require the closure of the PLO Observer Mission to the United Nations since it is an established rule of statutory interpretation that U.S. courts will construe congressional statutes as consistent with U.S. obligations under international law, if such construction is at all plausible.[93]

A month earlier, Senator Grassley made reference to the *Whitney* case to support his contention that Congress had the power to pass such legislation.[94] Still, there is no clear indication that the supporters of the ATA realized that an express statement was necessary on their part to overrule the 1947 agreement. As the court pointed out, many of these advocates mistakenly believed that the new statute would not conflict with the prior agreement. Yet, such a situation is a firm example of the need for the federal courts, preferably the Supreme Court, to explain the advantages and disadvantages of the "clear, express intent" doctrine. The Court should expressly state the separation of powers problem which is created when Congress does not make its intentions clear. Secondly, the Court should expressly state that, in the context of competing international and domestic concerns, it will

91. Taylor v. Morton, 2 Curtis 254 (1855), *quoted in Chinese Exclusion*, 130 U.S. at 602.

92. U.S. CONST. art. I, § 1.

93. 133 CONG. REC. S18,185-86 (daily ed. Dec. 17, 1987).

94. 133 CONG. REC. S15,622 (daily ed. Nov. 3, 1987).

presume that Congress had no intention of violating the United States' international obligations.[95]

In cases such as *PLO*, where members of Congress were "mistaken" about the applicability of the Headquarters Agreement, the Court should re-assert the age-old adage that ignorance of the law is not a defense. Had such an affirmative statement been made before the ATA was debated, Congress might never have passed the Act.[96] Senators Helms and Grassley avoided putting the issue of whether the Headquarters Agreement should be violated by the ATA to a vote, arguing instead that no conflict between the two existed. An explanation by the court would not only fill a void in constitutional jurisprudence which has existed for over fifty years, but might make the debates in the committee rooms of Congress more fruitful in bringing about well considered legislation.

Despite all of its shortcomings, the district court did not allow the United States simply to turn its back on its international obligations. Although the court was disingenuous in its line of reasoning, it did not "abdicate [its] responsibility to ensure that the executive act in conformity with international law,"[97] and with good reason. The state of international law is what the participants make of it. Consider Bolt's Sir Thomas More:

> The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal. . . . I'm *not* God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate. I'm no voyager. But in the thickets of the law, oh, there I'm a forester. . . . What would you do? Cut a great road through the law to get after the Devil?. . . . And when the last law was down, and the Devil turned round on you — where would you hide, Roper, the laws being all flat?. . . . This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down. . . d'you really think that you could stand upright in the winds that blow them?. . . . Yes, I'd give the devil the benefit of the law, for my own safety's sake.[98]

The United States must live in the international world it helps to create. United States' courts cannot shy away from their responsibility to remind the other branches of our government that our jurisprudence considers international obligations to be as weighty as domestic legislation. Such obligations cannot be swept aside emotionally or frivolously, and if Congress sees fit to undertake such a sober task, then its express intention to do so is as important as the soundness of the reasoning used to reach that conclusion.

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95. This concept is an inverse of *The Charming Betsy*'s doctrine that, whenever possible, courts should not presume that Congress intends to violate a treaty.

96. *See supra* note 83.

97. Henkin, *supra* note 64, at 854.

98. R.Bolt, "A Man For All Seasons", Act I, p.147 (Three Plays, Heinemann ed. 1967).

CONCLUSION

This Note has examined *United States v. Palestine Liberation Organization* in two ways. First, it analyzed the New York court's opinion concerning the two primary issues in the case: whether the federal courts had jurisdiction to consider foreign treaties and agreements which contain dispute resolution procedures but which also interpret domestic legislation, and whether the subsequent domestic legislation effectively overruled the prior treaty simply because it was created more recently. The court's rationale was contradictory and misleading, and the opinion, as written, is left to stand for little more than a series of lost opportunities. The court could have made a strong statement about the deficiencies of the political question doctrine, but instead furthered the confusion surrounding that doctrine with inconsistent and circular reasoning. The court could have filled a jurisprudential void by providing a thoughtful dissertation in support of the "clear, express intent" doctrine. It chose instead to apply the doctrine blindly, stating unequivocally that domestic legislation will never outweigh international treaties unless Congress makes its intent to do so clear, supplying string citations of cases for support rather than reasoned logic or policy.

Second, this Note concentrated on the overall decision of the New York court, holding that the United States will not violate its international obligations by a presumption of the judiciary. In an era when leading commentators were expressing their fears that American courts had ignored their responsibilities to ensure the binding force of international agreements, this decision was a welcome reprieve. Despite the flaws in the court's reasoning, it did not allow the ATA, an emotional reaction to a brief but frightening period in American history, to undermine an agreement which has created numerous advantages for the United States for over half a century. As a statement of legal norms, *United States v. PLO* probably has no precedential value at all, other than to serve as yet another case in the next string citation. As an example of a district court's willingness to force the Legislative and Executive branches to respect international obligations, however, it will hopefully serve as a valuable precedent. Failing that, it might yet instill in those decision-makers the notion that clarity is the springboard of action in this context. Without such clarity, the courts will not give preference to subsequent legislation. International law is what actors make of it. If the United States expects other countries to uphold their international obligations, then American courts cannot disregard their reciprocal responsibilities.

APPENDIX A
TITLE 22. UNITED STATES CODE (FOREIGN RELATIONS) CHAPTER 61—ANTI—TERRORISM—PLO[NEW]

§ 5201. Findings; determinations

(a) Findings

The Congress finds that

(1) Middle East terrorism accounted for 60 percent of total international terrorism in 1985;

(2) the Palestine Liberation Organization (hereafter in this title referred to as the "PLO") was directly responsible for the murder of an American citizen on the Achille Lauro cruise liner in 1985, and a member of the PLO's Executive Committee is under indictment in the United States for the murder of that American citizen;

(3) the head of the PLO has been implicated in the murder of a United States Ambassador overseas;

(4) the PLO and its constituent groups have taken credit for, and been implicated in, the murders of dozens of American citizens abroad;

(5) the PLO Covenant specifically states that "armed struggle is the only way to liberate Palestine, thus it is an overall strategy, not merely a tactical phase;

(6) the PLO rededicated itself to the "continuing struggle in all its armed forms" at the Palestine National Council meeting in April 1987; and

(7) the Attorney General has stated that "various elements of the Palestine Liberation Organization and its allies and affiliates are in the thick of international terror".

(b) Determinations

Therefore, the Congress determines that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.

§ 5202. Prohibitions regarding the PLO

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 agents thereof, on or after the effective date of this chapter—

(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 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 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.

§ 5203. Enforcement

(a) Attorney General

The Attorney General shall take the necessary steps to institute the necessary legal action to effectuate the policies and provisions of this chapter.

(b) Relief

Any district court of the United States for a district in which a violation of this chapter occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of this chapter.