summary of the law under the rules of contract interpretation, which puts the lawyer right back into arguing over what law to use.

A speaker from the floor, who said that he was an attorney in Brazil, asked for the specific definition of money laundering, in view of the following situation. In most of the countries in South America, though not all, the currency was not freely convertible. If a Brazilian attorney, for example, had to engage a U.S. law firm for one of his clients, to pay the fees of this law firm, he would have to go through the normal red tape of getting approval from the Central Bank for the remittance of those fees. This was an extraordinarily long process that eventually became bogged down in one of the various departments of the Central Bank. The attorney therefore might arrange for the U.S. law firm to be paid with funds purchased in the “parallel market.”

In Brazil there was an official market for the conversion of currency, on which there were certain limitations, including the requirement that the Central Bank approve the transaction. There was also a free market or parallel market. Through this parallel market one could buy dollars by shipping cruzados, the currency of Brazil, to Uruguay, where the conversion actually would take place. Now strictly speaking, from a legal standpoint, the purchase of dollars by converting the cruzados outside the jurisdiction of the Brazilian central bank was illegal. But this illegality was only on paper, because the Uruguay exchange rates were quoted openly in the newspapers and on television. The conversions were made openly and the practice was tolerated. Would this constitute an illegal act under the reporting requirements, such that the U.S. firm receiving these fees, knowing that the conversion of cruzados to dollars had been illegal, would become subject to U.S. sanctions?

Mr. Zagaris: Under the 1986 act, that should not constitute an offense, unless there is some underlying U.S. federal or state law that has been violated. Simply not following a requirement of a foreign country would not constitute a violation of the 1986 act. Assuming the payment of cruzados through the parallel market was made to a U.S. financial institution, a Form 4789 would have to be filed by the financial institution. If the U.S. law firm had a role in circumventing that reporting requirement, the U.S. firm would be subject under recent case law to a violation, but otherwise there would be no violation.

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The Palestine Liberation Organization Mission Controversy

The panel was convened at 8:30 a.m., April 23, 1988, by its Chair, John F. Murphy**

Remarks by Professor Murphy

Among the many issues that will come out in this discussion is one I regard as having the most transcendent importance. That is the relationship between U.S. law and international law, more particularly, the U.N. Charter and the Headquarters Agreement. Assuming that the Anti-Terrorism Act of 1987 mandates the closing of
the mission of the Palestine Liberation Organization (PLO) and thus conflicts with the
Charter and the Headquarters Agreement, does the last-in-time rule set out in U.S.
Supreme Court cases apply, or should the rule be reconsidered and the Charter be
regarded as having a superior status so as to override any conflicting domestic
legislation?

I would like to bring out two points, the first of which was raised by Louis Sohn at
the 1969 Annual Meeting. First, in terms of the alleged equal status between the U.N.
Charter and federal legislation, article 103 of the Charter explicitly provides that in
case of conflict, the U.N. Charter is to prevail over any other conflicting international
obligations. The second point deals with the supranational aspects of the U.N. Char­
ter and the relationship to decisions with respect to the Rome Treaty establishing the
European Economic Community. Both the European Court of Justice and national
courts of the member states have held that the Rome Treaty prevails over any conflict­
ing national law. There are analogies there that might be explored usefully, although
that might have to wait for another day.

REMARKS BY CHARLES J. COOPER*

I am pleased to be with you this morning to discuss this very important and timely
issue. I will use the few moments that I have to set out the salient features of our legal
position. I am not going to attempt to defend the Anti-Terrorism Act; in fact, the
administration opposed it quite vigorously. Since the act was passed, however, we
take the view that it is to be enforced.

Briefly stated, our legal position is as follows. First, the Anti-Terrorism Act clearly
applies to the PLO United Nations Observer Mission; indeed, closing the mission was the Act’s
exclusive purpose. It is impossible to escape that fact from the language of the statute
and its legislative history. Second, this Act of Congress takes precedence or super­
sedes any prior existing treaty obligation. It has been alleged that the United Nations
Headquarters Agreement requires the United States to permit the continued residence of the
observer mission. Whether or not that is true really does not matter, because this
statute overrides the obligations under the Headquarters Agreement. Finally, the act
does not violate the President’s prerogatives in the area of foreign affairs unconstitu­
tionally, including the Executive’s exclusive prerogative to receive ambassadors.

The act prohibits anyone, if the purpose is to further the interests of the PLO, from
establishing or maintaining an office, headquarters, premises or any other facility
within the jurisdiction of the United States at the behest or direction of, or with funds
provided by, the PLO. It also outlaws virtually all economic transactions in which the
PLO or agents of the PLO might want to engage—both the expenditure of funds and
the receipt of PLO money by others. Significantly, the act directs the Attorney Gen­
eral to “take the necessary steps and institute the necessary legal action to effectuate
the policy and provisions of this title.” It is in obedience to that directive that the
Justice Department filed the lawsuit requiring the PLO to show reason why its mis­

*Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice. Mr. Cooper spoke in
his personal capacity; the views expressed are his own and are not necessarily those of the Department of
Justice.