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C A L I F O R N I A L E G I S L A T U R E

SENATE OFFICE OF RESEARCH

Elisabeth K. Kersten, Director

January 6, 1987

Senator Don Rogers
State Capitol, Rm. 5052
Sacramento, CA 95814

Dear Senator Rogers:

Elisabeth Kersten asked me to respond to your letter of December 31, 1986 regarding the "supremacy" of the United Nations Charter.

Before discussing the details of the case cited by your constituent, let me briefly review the constitutional status of treaties as the "supreme law of the land."

Article VI Section 2 of the United States Constitution states:

> "(2) 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."

The language of Article VI has engendered various misunderstandings about the "supremacy" of treaties. Indeed, in the early 1950s concerns over the application of the United Nations Charter lead to the introduction of the Bricker Amendment. This proposal would have amended the U.S. Constitution to include, among other things, a provision stating that "A provision of a treaty which conflicts with this Constitution shall not be of any force or effect." The amendment was defeated in the United States Senate and the effort abandoned when the debate revealed that the proposed language was superfluous; Article VI already established the supremacy of the Constitution over any treaty.

Some people have contended that the phrase in Article VI referring to treaties "made under the authority of the United States" as meaning that treaties, unlike laws, do not have to be made "in pursuance" to the Constitution and thus are some sort of higher law taking precedence over everything else. In fact, it is clear from the intent of the Framers and two hundred years of case law that just the opposite is true. The reference to treaties "made under the authority of the United States" simply validates treaties made by the United States prior to the adoption of the Constitution. Moreover, treaties are subject to the same constitutional restrictions as are laws enacted by Congress or the states. This was quite clearly and forcefully restated by the United States Supreme Court in Reid v. Covert (1957):

> "There is nothing in this language which intimates that treaties ... do not have to comply with the provisions of the Constitution. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights - let alone alien to our entire constitutional history and tradition - to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions."

In short, neither the United Nations Charter nor any other international agreement signed by the United States in any way limits or supersedes the Constitution. Under Article VI, a treaty does have supremacy over state law but only if the treaty is self-executing (i.e. contains specific implementation provisions) or is accompanied by specific federal laws. For example, if the United States signs a treaty with Canada which prohibits import duties on Canadian widgets, the State of California cannot enact legislation placing import duties on those widgets because the treaty would be part of the "supreme law of the land" and thus have supremacy over state law.

The question of the supremacy of the United Nations Charter was an issue, though not the primary issue, in the case cited by your constituent, Sei Fuji v. The State of California. The plaintiff in Sei Fuji sought to invalidate California's Alien Land Law on the basis of both the Fourteenth Amendment of the U.S. Constitution and on Articles 1, 55 and 56 of the United Nations Charter regarding human rights. Although the Court overturned the Alien Land Act as being in violation of the Fourteenth Amendment, Chief Justice Gibson totally dismissed the the relevance of the Charter to California law:

"It is first contended that the law has been invalidated and superseded by the provisions of the United Nations Charter.... It is not disputed that the charter is a treaty and our federal constitution provides that treaties ... are part of the supreme law of the land and that judges in every state are bound thereby. A treaty, however, does not automatically supersede local laws...."

"The provisions of the Charter which are claimed to be in conflict with the law ... state general purposes and objectives of the United Nations Organization and do not purport to impose legal obligations on individual member nations or to create rights in private persons....there is nothing to indicate that these provisions were intended to become rules of law for the courts of this country upon ratification of the Charter."

"The Charter represents a moral commitment of foremost importance ....We are satisfied, however, that the Charter provisions relied on by the plaintiff were not intended to supersede existing domestic legislation..."

In conclusion, the U.N. Charter does not have supremacy over the federal Constitution, federal law, or state laws.

If we can be of any further assistance, please do not hesitate to contact our office.

Sincerely,

T A Hodson

Timothy A. Hodson
Principal Consultant