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THE APPLICATION OF THE UNITED NATIONS CHARTER TO DOMESTIC LAW

The effect of the United Nations Charter on state and federal statutes, which have previously been tested by the courts and declared constitutional, but which may now appear to be in conflict with various provisions of the Charter, is a problem that has as yet received but relatively slight recognition or attention in our courts. This is due to the fact that until very recently litigants before our tribunals have not invoked the vague terms of that document as rules of law binding upon the deciding court. That increasing importance will attach to the authority to be accorded the Charter is evidenced by the growing and wide-spread interest by the bench and bar in the recent case of *Fujii v. State*,[1] in which the California District Court of Appeal declared the Alien Land Law of that state unenforceable because of the adherence of the United States to the United Nations Charter, although the statute was still considered by the court to be in other respects constitutional.

Sei Fujii was an alien Japanese who had resided in the United States continuously from 1913 to 1948. By reason of the federal naturalization laws[2] he was ineligible to become a citizen of this country, and by reason of such ineligibility, under the provisions of the California Alien Land Law,[3] he was prohibited from owning real property for agricultural purposes in that state. This latter law further provided that any property acquired in violation of the act would escheat to the state as of the date of such acquisition. In 1948 Fujii purchased certain land and suit was commenced pursuant to statute[4] to determine if an escheat occurred. The trial court held that the property had escheated as of the date of the deed. On appeal to the District Court is was urged that the statute was unconstitutional, and further that it was "inconsistent with the declared principles and spirit of the United Nations Charter."[5] The reversal was based squarely upon the United Nations Charter,[6] the court refusing to upset the statute on any other constitutional grounds.[7]

1. 217 P. 2d 481, *rehearing denied*, 218 P. 2d 595 (1950).

2. 57 STAT. 601 (1943), *as amended*, 60 STAT. 416, 8 U. S. C. § 703 (1946).

3. CAL. GEN. LAWS act 261, § 1 (1944), gives aliens eligible for citizenship the right to own real property. Section 2 of this act states that aliens not eligible for citizenship may own real property only as provided for by treaty. In this case the Japanese alien would be permitted to own real property except that used for agricultural purposes. United States-Japanese Treaty, 37 STAT. 1504-9 (1911).

4. CAL. CODE CIV. PROC. ANN. § 738.5 (1945); CAL. GEN. LAWS act 261, § 7 (1944).

5. 217 P. 2d 481, 483 (1950).

6. "Save for the matters to be hereinafter discussed, which are based upon an authority more potent than the Constitution of this State, an authority which for want of opportunity has not previously been made the basis of a judicial determination of the question before us, this opinion might well be terminated under the doctrine of stare decisis with a reaffirmation of the former decisions, since upon constitutional questions we deem ourselves obliged to follow the decisions of the Supreme Courts of the United States and of this State until one of those courts should announce the overruling of its own decisions." 217 P. 2d 481, 484 (1950).

7. The constitutionality of the California Alien Land Law was first tested in the case

The court first stated that the United Nations Charter, being a duly ratified treaty, had become part of the supreme law of the land, together with the federal constitution and all the laws of the United States.[8] Next, the court examined certain provisions and guarantees of the Charter itself in order to "interpret it in the light in which it was adopted by the participating nations."[9] In so doing, attention was directed to the Preamble, and Articles 1, 2, 55, and 56 of the United Nations Charter.[10] The Preamble contains a statement of broad ends and aims and an announcement of the establishment of the United Nations. Articles 1 and 2 are included in Chapter I, entitled Purposes and Principles, and, as the chapter heading indicates, consist of extremely praiseworthy, but very vague and general statements of the purposes of the organization and the principles which shall govern the actions of the organization and its members in pursuing them. Articles 55 and 56 are under Chapter IX, International Economic and Social Cooperation, and since it was principally on the basis of these two Articles that the decision of the court turned, they are set out *in toto:*

"Article 55.—With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

"a. higher standards of living, full employment, and conditions of economic and social progress and development;

"b. solutions of international economic, social, health and related problems; and international cultural and educational cooperation; and

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

"Article 56.—All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."[11]

The court also referred to and quoted from the "Universal Declaration of Human Rights," one of the provisions of which reads:

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of Postenfield v. Webb, 263 U. S. 225 (1923), and upheld on the basis of the holding in another case decided the same day, Terrace v. Thompson, 263 U. S. 197 (1923). This latter case involved the Washington Alien Land Law. In 1948, the Supreme Court invalidated one section of the California law relating to a presumption of intent to avoid the escheat but refused to reconsider the constitutionality of the act as a whole. Oyama v. California, 332 U. S. 633 (1948). *But see* Namba v. McCourt, 185 Ore. 579, 204 P. 2d 569 (1949), in which the Oregon Supreme Court held the Oregon Alien Land Law unconstitutional as a denial of equal protection of the laws.

8. *Id.* at 486. "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." U. S. CONST. ART. VI, § 2.

9. *Id.* at 487.

10. *Ibid.*

11. The Charter is contained in 59 STAT. 1035 *et. seq.* (1945).

"Everyone has the right to own property alone as well as in association with others."[12]

However, the court did not rely upon the Declaration as authority for its holding, but referred to it only to emphasize the purposes of the Charter.[13]

Holding that the class of persons ineligible to own land under the Alien Land Law was based upon racial distinctions the court stated:

"Clearly such a discrimination against a people of one race is contrary both to the letter and to the spirit of the Charter which, as a treaty, is paramount to every law of every state in conflict with it. The Alien Land Law must therefore yield to the treaty as the superior authority. The restrictions of the statute based on eligibility to citizenship, but which ultimately and actually are referable to race or color, must be and are therefore declared untenable and unenforceable."[14]

The United Nations Charter is concededly a treaty entered into by the United States and duly ratified by the United States Senate in 1945.[15] As a treaty made under the authority of the United States, it is, therefore, a part of the supreme law of this country, superior to any state laws and to any state constitutional provisions in conflict with it, if, and only if, it has of and by itself the power to act directly on the courts as binding and compelling law.[16]

At one time in the development of this country it was believed that, since the powers of the federal government are limited to those set forth in the Constitution, with all other powers being reserved to the states and to the people, there could be no valid treaty that dealt with those reserved rights and powers.[17] That premise was refuted however in 1920 by the now famous case of *Missouri v. Holland*[18] involving the Migratory Bird Treaty. The validity of certain legislation passed by Congress under the authority of that treaty was under attack by the State of Missouri as a violation of a purely internal state power, one of the chief arguments being that Congress could not by indirection do that which it was constitutionally prohibited from doing directly. Justice Holmes speaking for the Court held that the law was valid and that it was within the power of Congress to invade the field of reserved powers in this manner. Disposing of the principal opposing argument he said:

12. UNIVERSAL DECLARATION OF HUMAN RIGHTS Art. 17 (1945), reprinted at 43 AMER. J. INT'L L. SUPP. 127 (1949).

13. 217 P. 2d 481, 488 (1950). The Declaration is in no way binding on the member nations of the United Nations. It was propounded by the General Assembly, which body does not bind the members.

14. 217 P. 2d 481, 488 (1950). The state then brought petition for rehearing which was denied, the court stating that the fact that Japan was not a member nation of the United Nations did not preclude its nationals from the guarantees of the Charter. 218 P. 2d 595, 596 (1950).

15. July 28, 1945. 59 STAT. 1035 (1945).

16. See note 21 *infra* and accompanying text.

17. See THE FEDERALIST, Nos. 33, 45 (Hamilton, Madison).

18. 252 U. S. 416 (1920).

"It is obvious that there may be matters of the sharpest exigency for national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found. *Andrews v. Andrews,* 188 U. S. 14, 33."[19]

Therefore on the basis of *Missouri v. Holland* it would appear that Congress can enact legislation in the field of the reserved powers under the authority of the United Nations Charter and that such laws will be binding upon the states. However, there is the further problem of the effect of a treaty in cases where Congress has not provided such additional legislation. The rule in such cases was laid down in 1829 by Chief Justice Marshall in the case of *Foster v. Neilson.*[20] The result of that case was later changed by the discovery of additional facts, but the rule of law laid down in it has never been changed or modified. This rule, apparently ignored by the California court in the *Fujii* case, is contained in the following excerpt from the Chief Justice's opinion:

"A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished; especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, *whenever it operates of itself without the aid of any legislative provision.* But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule for the court."[21]

It appears, therefore, to follow of necessity that before a state law can be held unenforceable because it is in conflict with and repugnant to a treaty, it must first be established that the treaty or provision thereof is self-executing, or if not self-executing, that a valid Congressional enactment has executed it. If this is not established, the law in conflict with the purposes of the treaty cannot be rendered unenforceable by it, since under the rule of the *Foster* case the treaty is not addressed to the judiciary, and they are powerless to act upon it.

Applying this rule of law to the United Nations Charter, it is submitted that neither the Charter in its entirety, nor Articles 55 and 56 separately, are of such a character that they can be considered to be self-executing. This conclusion is based upon the application of three different tests, no one of which is in itself dispositive of the question, but which when taken together provide a firm basis for denying the validity of the Charter as a set of rules of law binding and compelling on our courts.

The first of these tests is one of language, and is directed to the actual

19. *Id.* at 433.
20. 2 Pet. 253 (U. S. 1829).
21. *Id.* at 314 (italics supplied).

words used in the Charter itself. A careful reading of that document will show that nowhere therein is there any statement of present guarantees of any rights or freedoms, but rather that there is merely a continuous expression of some future action to achieve some equally future end. Since the Preamble and Articles 1 and 2 are expressly concerned only with ends, aims, purposes and principles we must direct our attention to Articles 55 and 56 for concrete illustration of this language of futurity. Article 55 itself is written in the form of an expression of a future end, the creation of conditions of stability and well-being, followed by a recital of means by which the United Nations "shall promote"[22] that end. This clearly is not to be interpreted as a present guarantee of either the end or of the means which "shall" be used to attain it. By the use of such language of futurity some further act is required to carry this article into operation. Standing alone and by itself, Article 55, like the Preamble and Articles 1 and 2, is nothing but a solemn hope for a condition yet to be reached. We cannot maintain a system of orderly government and a sound system of laws if we apply mere hopes and aspirations, no matter how praiseworthy, as rules of law in our courts.

There is also the futurity of the language of Article 56 which strengthens the view that the Charter and these articles under consideration are not binding rules for the courts. The language of this latter section states that the various nations comprising the United Nations pledge themselves "to take"[23] joint and separate action in regard to the "achievement of the purposes set forth in Article 55."[24] This also denotes some future action and not a present guarantee. Furthermore, there is an additional important feature of Article 56. It expressly recognizes the words of Article 55 to state "purposes,"[25] and it is this use of the word "purposes" that negatives the very idea that Article 55 sets down rules of law. Article 56 clearly calls for the execution of the previous Article by the member nations, a step which if unnecessary, would render the Article itself meaningless. Therefore, on the basis of testing the meaning of the language employed in these two Articles it appears quite definite that no self-executing characteristic can be attributed to them.

The second test to help determine this question of execution or lack thereof, is a test of the subject matter of Articles 55 and 56. As has been mentioned the ends stated in Article 55 are the creation of "conditions of stability and well-being," and the means to be employed in achieving these ends are stated as the promotion of higher living standards, full employment, and conditions of economic and social progress and development; solution of economic, social and health and related problems of an international character, and international cooperation along educational and cultural lines; and lastly, universal respect for human rights and freedoms and observance of these rights and freedoms. Admittedly, these ends and means are not to be lightly dismissed, but for vagueness of subject matter they are probably unsurpassed by any law in opera-

22. 59 STAT. 1045 (1945).
23. 59 STAT. 1046 (1945).
24. *Ibid.*
25. *Ibid.*

tion today. The broad, almost all inclusive, scope of Article 55 is in itself enough to require some further clarification if it is to be given any effect. The Supreme Court has repeatedly struck down acts of Congress and of the states on the ground that they were too vague and broad in scope and character.[20] To hold a treaty provision, which itself is the epitome of vagueness, enforceable is a denial of the validity of the Court's holdings in those many cases. Clearly, legislative action is required to execute and render more definite and certain the provisions of Article 55 of the Charter. Without this execution the courts cannot be bound by this Article.

The foregoing is true also of Article 56. The "pledge" to take "action" is equally vague and indefinite. Congress must lead the way in providing this "action," and a court properly should not assume the burden of providing what it believes to be the object of the Article. Thus, on the basis of testing the subject matter of the Articles in question, it is still more readily apparent that these two Articles of the Charter cannot be considered to be self-executing.

The third test to be applied is that of the so-called legislative or pre-ratification history of the Charter. It appears that little if any attention was focused on the question of the self-execution of these Articles by Congress. This is perhaps due to the fact that Article 56 so clearly indicates that Article 55 is not self-executing. Moreover, the Charter itself contains in Chapter 1, Article 2, a statement that nothing in the Charter shall authorize United Nations intervention in matters "essentially within the domestic jurisdiction" of any member nation. This Article implies as a necessary corollary the non-applicability of the Charter as a binding law on the member nations when dealing with domestic problems.

Thus, on the basis of these three tests it is submitted that there is but one compelled conclusion that Articles 55 and 56 of the United Nations Charter are not self-executing. By the application of these same tests it can be further seen that very little, if any, of the Charter is binding on the courts. It is the type of treaty that the *Foster* case declared was addressed to the political division of the government and not the judicial branch. It is not the role of the judiciary to execute the Charter or any part of it by judicial fiat. However, this was a question not even mentioned by the California court in the *Fujii* case, the court in that case gratuitously assuming the self-executing character of the provisions of the Charter which it invoked.

On the basis of the foregoing, it is submitted that although the United Nations Charter is a treaty and as such constitutes part of the supreme law of the land, it is part of that segment of our body of law that is, as yet, judicially non-enforceable. Before it can achieve the stature of enforceable law and be binding upon the judicial department of our government, it must be executed by the political department.

Conclusion

The dangers inherent in the United Nations Charter being applied in a manner similar to that employed by the California court in the *Fujii* case

26. See Stromberg v. California, 283 U. S. 359 (1931), and cases cited therein.

are numerous. The holding in that case, if followed, might lead to the suspension of many of our state laws dealing with citizenship and property-holding qualifications. It is almost impossible to draw the line where an extension of the holding might end. The Charter, being of necessity a vague document, might furnish a treaty foundation for a complete upheaval or disintegration of the present system of relationships existing between the state governments and the federal government. However, in view of the attention that has been focused on the question of the authority to be accorded the Charter as a result of the decision in the *Fujii* case, we may at least expect a discussion by the courts in the future of the problem ignored by the California District Court of Appeal.

Our own framework of enforceable law provides relief to citizen and alien alike, and to plunge headlong into the vague generalities of the United Nations Charter in order to remedy the evils of discriminatory legislation is not only unnecessary, it is an invitation to chaos on a national scale.[27]

27. Since the decision in the *Fujii* case, Congress passed and sent to the President an act which would abolish the last racial barriers in regard to naturalization. However, this bill was vetoed by the President for other reasons, and as yet Congress has neither passed over the veto, nor conformed the bill in accordance with the veto message of the President.