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ANNEX III

Opinion of Acting Attorney General of the United States Regarding the Effectiveness of the Proposed Headquarters Agreement if Executed by the President Pursuant to Authorization by a Joint Resolution of the Congress.

20 August 1946

The Honorable,

The Secretary of State.

My dear Mr. Secretary:

By letter dated July 9, 1946, you have asked for my opinion with respect to the following question:

"Would the enclosed agreement when executed by the President pursuant to authorization by a joint resolution of the Congress operate as the supreme law of the land superseding any inconsistent State or local laws with the same effect in that regard as a treaty ratified by and with the advice and consent of the Senate?"

The draft agreement referred to, dated June 20, 1946, would be between the United States and the United Nations. It would create a zone in which the headquarters of the United Nations would be located, and would define, broadly, the rights, privileges and obligations of the parties in connection therewith. At its present stage of negotiation, the agreement does not specify the size of the zone or its precise location within the borders of the United States. Your letter indicates that it has not yet been determined whether the agreement will take the form of a treaty or be executed by the President pursuant to a joint resolution of the Congress.

In this connection, representatives of the United Nations have asked you whether the proposed agreement, in the event that it is authorized by a joint resolution of the Congress, would have the same binding effect as

a treaty, in superseding inconsistent State and local laws. It is your

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view that an agreement executed by the President, pursuant to such a joint resolution, would have the effect indicated, and you desire to have my opinion in the matter. I concur fully in your position.

The question you have asked is confined to the particular agreement now before me, and does not require me to consider whether or not there are circumstances under which a given international compact must take the form of a treaty. It is sufficient to say that the proposed agreement is clearly within the constitutional authority of the Federal Government, and may, with full legal effect, be executed as a legislative-executive agreement.

The Constitution of the United States expressly provides in section 2 of Article VI that

"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."

It is thus axiomatic that where there is a conflict between a State or local law and a treaty, the State or local law must yield. Ware v. Hylton, 3 Dall. 199, 236-237, 242-243, 282 (1796); Asakura v. Seattle, 265 U.S. 332, 341 (1924); 1 Willoughby, The Constitutional Law of the United States (2d ed. 1929), section 76. It is equally well established that such a State or local law must give way to a conflicting Federal statute. Gibbons v. Ogden, 9 Wheat. 1, 210-211 (1824); Hiner v. Davidowitz, 312 U.S. 52, 62, 66 (1941); 1 Willoughby, op. cit. supra. A like rule applies where the conflict is occasioned by Federal executive action authorized by an act of Congress. Case v. Bowles, ___ U.S. ___, 66 Sup. Ct. 438, 443 (1946); the Shreveport Case, 234 U.S. 342 (1914); Wisconsin R.R. Comm. v. C., B. & Q. R.R. Co., 257 U.S. 563 (1922); 35 Op. A.G. 110.

Since a joint resolution, approved by the President, is, plainly, a law of the United States (Wells v. United States, 257 Fed. 605, 610 (C.C.A.9)), it follows that an otherwise valid joint resolution

authorizing execution of the proposed agreement will supersede State or local laws inconsistent with the joint resolution or the agreement. Cases cited supra.

The Supreme Court has pointed out that if international understandings could be vitiated by State laws, the United States would be open to a "charge of national perfidy." United States v. Belmont, 301 U.S. 324, 331 (1937). The need for supremacy of Federal action in the field of foreign affairs is, therefore, if anything, greater than with respect to exclusively domestic concerns. Hines v. Davidowitz, 312 U.S. 52, 68 (1941).

Thus, the Supreme Court held in the Belmont case that the laws of New York, otherwise applicable to the disposition of a bank deposit, must yield to a conflicting Executive agreement with a foreign government executed by the President pursuant to authority vested in him by the Constitution. Mr. Justice Sutherland, speaking for the Court, said in part (331-332):

"Plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning. * * * the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states. Compare United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 316, et seq. In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the State of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. * * *

A similar conclusion with respect to the same Executive agreement was subsequently reached in United States v. Pink, 315 U.S. 203 (1942), in which the Supreme Court, per Mr. Justice Douglas, stated, in part, the following (230-233):

"All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature, . . . 'The Federalist, No. 64. A treaty is a 'Law of the Land' under the supremacy clause (Art. VI, Cl. 2) of the Constitution. Such international compacts and agreements as the Litvinov Assignment have a similar dignity. United States v. Belmont, supra, 301 U.S. at p. 331. See Corwin, The President, Office & Powers (1940), pp. 228-240.

"* * * But state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement. See Nielsen v. Johnson, 279 U.S. 47. Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum (Griffin v. McConch 313 U.S. 498, 506) must give way before the superior Federal policy evidenced by a treaty or international compact or agreement. Santovincenzo v. Egan, supra, 284 U.S. 30; United States v. Belmont, supra.

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"We recently stated in Hines v. Davidowitz, 312 U.S. 52, 68, that the field which affects international relations is 'the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority'; and that any state power which may exist 'is restricted to the narrowest of limits.' There, we were dealing with the question as to whether a state statute regulating aliens survived a similar federal statute. We held that it did not. Here, we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted. These are delicate matters. If state action could defeat or alter our foreign policy, serious consequences might ensue. The nation as a whole would be held to answer if a State created difficulties with a foreign power. Cf. Chy Lung v. Freeman, 92 U.S. 275, 279-280. Certainly, the conditions for 'enduring friendship' between the nations, which the policy of recognition in this instance was designed to effectuate, are not likely to flourish where, contrary to national policy, a lingering atmosphere of hostility is created by state action."

The agreement involved in the Belmont and Pink cases, and given precedence over conflicting State policy, was not predicated on an act of Congress. Hence, there can be no doubt that the proposed agreement, if executed pursuant to congressional authority, will supersede incompatible State and local laws. As the Supreme Court stated in the Belmont case, "It is unconceivable" that State constitutions, State laws, and State policies "can be interposed as an obstacle to the effective operation of a federal constitutional power." (301 U.S. 324, 332.)

Sincerely yours,

(Sgd.) James P. McGranery
JAMES P. McGRANERY
Acting Attorney General
