ARTICLE 103

CONTENTS

ARTICLE 103

TEXT OF ARTICLE 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

INTRODUCTORY NOTE

1. During the period under review, Article 103 was subject to discussion and decision by different United Nations organs in relation to a number of agenda items as well as by the United Nations Conference on Law of Treaties.

2. This study, in its analytical summary of practice, follows the division into four main parts established by the previous study, namely: A. Compatibility between regional arrangements and the Charter; B. Compatibility between international treaties and the Charter; C. Consequences of a conflict between an international treaty and a peremptory norm of general international law; and D. Application of successive treaties relating to the same subject-matter. It is to be noted that there were no new developments concerning subsection A and only one case for subsection B.

3. Subsections C and D deal with discussions that took place in the International Law Commission, in the Sixth Committee of the General Assembly and at the United Nations Conference on the Law of Treaties.

4. Subsection C also covers discussions which lead to the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations by the General Assembly in 1970, i.e. outside the scope of the present Supplement. These discussions occurred in a special committee and in the Sixth Committee, to which the former reported.

I. GENERAL SURVEY

5. During the period under review, Article 103 played a certain role in the debates of the Security Council, in one case concerning the question of Czechoslovakia. In this case, the main emphasis of the discussions centred around alleged violations of the Charter, with reference to Article 103 as a further point of contention.[1]

6. The bulk of the material relates to the relevant aspects of the consideration by the Sixth Committee of the reports of the International Law Commission on the law of treaties[2] and of the reports of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,[3] especially in relation to the principle that "States shall fulfil in good faith the obligations assumed by them in accordance with the Charter". Concerning the work on the law of treaties, the study comprises proceedings leading to the adoption by the United Nations Conference on the Law of Treaties,[4] of two articles related to Article 103 of the Charter.

[1] See paras. 7-13 below.
[2] See paras. 15-23 and 43-44 below.
[3] See paras. 35-42 below.
[4] See paras. 24-34 below.

II. ANALYTICAL SUMMARY OF PRACTICE

**A. Compatibility between regional arrangements and the Charter

B. Compatibility between international treaties and the Charter

QUESTION OF CZECHOSLOVAKIA: LETTER DATED 21 AUGUST 1968 FROM THE REPRESENTATIVES OF CANADA, DENMARK, FRANCE, PARAGUAY, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL AND LETTER OF THE SAME DATE FROM THE REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO THE PRESIDENT OF THE SECURITY COUNCIL

7. In their letter of 21 August 1968[5] to the President of the Security Council the representatives of Canada, Denmark, France, Paraguay, the United Kingdom and the United States requested an immediate meeting of the Security Council with regard to the existing serious situation in the Czechoslovak Socialist Republic.

8. In his letter of 21 August 1968[6] to the President of the Security Council the representative of the USSR explained, *inter alia*, that there was no basis for consideration of the matter by the Security Council. The military units of the socialist countries had entered the territory of the Czechoslovak Socialist Republic pursuant to a request by the Government of that State, which had appealed to the allied Governments for assistance, including armed forces assistance, in view of the threat created by foreign and domestic reaction to the socialist social order and the constitutional system of Czechoslovakia. The decision to comply with the request for military assistance had been made by the Soviet Government and the Governments of other allied States in conformity with mutual treaty obligations and on the basis

[5] S C, 23rd yr., Suppl. for July-Sept. 1968, p. 136, S/8758.
[6] *Ibid.*, S/8759.

of the relevant provisions of the United Nations Charter. The events in Czechoslovakia were a matter that concerned the Czechoslovak people and the States of the socialist community, which were bound by appropriate mutual obligations.

9. At the 1441st meeting of the Security Council, on 21 August 1968, the representative of the USSR reaffirmed the text of his letter of the same date. On the other hand, it was maintained by other members of the Security Council[7] that the armed intervention constituted a violation of, *inter alia*, Article 2 (4) of the Charter of the United Nations which could not be justified under the exercise of the right to individual and collective self-defence.

10. At the 1442nd meeting, on 22 August 1968, a draft resolution was introduced by the representative of Denmark on behalf of the delegations of Brazil, Denmark, France, Paraguay, the United Kingdom and the United States,[8] which stressed the violation of the principle contained in Article 2 (4), namely, that all Members are to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and which, *inter alia*, condemned the armed intervention of the USSR and the members of the Warsaw Pact in the internal affairs of the Czechoslovak Socialist Republic. The President, speaking as representative of Brazil, remarked that without wanting to enter into the merits of the obligations and commitments under the Warsaw Pact, it was quite clear to his delegation that, under Article 103, the obligations under the Charter of the United Nations should prevail. One of those obligations was the respect for the freedom, territorial integrity and sovereignty of all States. In his opinion the Charter conferred special prerogatives on the major Powers, but by no means was the right to interfere unilaterally included among such prerogatives. The action in question not only went beyond the Charter, it clearly violated it.[9] At the 1443rd meeting, the representative of Senegal[10] stated that despite the existence of the Warsaw Treaty the intervention constituted an interference in the internal affairs of Czechoslovakia, which had not been threatened by any aggression from outside.

11. The representative of the USSR[11] again underlined that the assistance to Czechoslovakia had been provided in conformity with existing treaty obligations. He referred to article 5 of the Warsaw Treaty of 1955, which defines the tasks and purposes of the armed forces and of their Unified Command, and which reads in part:

> "The Parties shall likewise take such other concerted action as may be necessary to reinforce their defensive strength, in order to defend the peaceful labour of their peoples, guarantee the inviolability of their frontiers and territories and afford protection against possible agression."

The actions of the Soviet Union and the other socialist countries were fully in accordance with the right of States to individual and collective self-defence provided for by the treaties of alliance which have been concluded by the fraternal socialist countries. He held that from a legal standpoint it was absurd and intolerable in point of fact to represent the matter in such a way that the aid granted the people of Czechoslovakia by the socialist countries should appear as alleged interference in this country's internal affairs. In his opinion, not a single Article of the Charter of the United Nations provided any basis for characterizing the carrying out of individual or collective self-defence as an act of interference.

12. The Security Council then voted on the draft resolution at its 1443rd meeting on 22 August 1968; it was, however, not adopted owing to the negative vote of a permanent member of the Council.[12]

13. At the 1445th meeting, on 24 August 1968, the representative of Czechoslovakia repeated that the action had not taken place upon the request or demand of the Czechoslovak Government nor of any other constitutional organs of this Republic. He further stressed that the military occupation could not be justified by the concern for the external security of the Czechoslovak Socialist Republic or for the fulfilment of obligations arising from the joint defence of the countries of the Warsaw Treaty. There had been no imminent danger for the Czechoslovak Socialist Republic of military aggression from abroad nor of a counter-revolution.[13]

C. Consequences of a conflict between an international treaty and a peremptory norm of general international law, in relation to Article 103

1. IN CONNEXION WITH THE LAW OF TREATIES

14. During the work of the International Law Commission and of the Sixth Committee of the General Assembly on the draft articles of the law of treaties, Article 103 of the Charter continued to be commented on in connexion with the question of treaties conflicting with a peremptory norm of general international law (*jus cogens*) and also with the question of the application of successive treaties relating to the same subject matter.

a. *Consideration of the question by the Sixth Committee (twenty-first session)*[14]

15. During the consideration of the reports of the International Law Commission on the work of the second part of its seventeenth session and of its eighteenth session,[15] the important of the draft principle that any treaty conflicting with a peremptory norm of international law was void was underlined by a number of delegations. The view was expressed that in adopting articles 50, 61 and 67[16] the International Law Commission had been inspired by Article 103 of the Charter of the United Nations, which stressed the peremptory character of the Charter in relation to any other international treaty. The intention to proclaim the primacy of

[7] For a more detailed study of the entire question, see case 6 of chap. XII of the *Repertoire of the Practice of the Security Council*, Suppl. 1966-1968, p. 235, and also S C, 23rd yr., 1441st-1445th mtgs.

[8] S/8761 and Add.1. See S C, 23rd yr., 1442nd mtg., para. 30. Senegal later joined as a sponsor.

[9] S C, 23rd yr., 1442nd mtg., para 66.

[10] *Ibid.*, 1443rd mtg., para. 19.

[11] *Ibid.*, paras. 167 ff.

[12] *Ibid.*, para. 284.

[13] *Ibid.*, 1445th mtg., paras. 161-163.

[14] G A (XXI), Annexes, a.i. 84; *ibid.*, 6th Com., 902nd-914th mtgs

[15] *Ibid.*, Suppl. No. 9. The sessions were held from 3 to 28 January 1966 and from 4 May to 19 July 1966, respectively.

[16] Article 50: Treaties conflicting with a peremptory norm of general international law (*jus cogens*): "A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Article 61. Termination of treaty because of new peremptory norm; Article 67: Consequences of such nullity or termination. See G A (XXI), Suppl. No. 9, pp. 16, 18 and 19.

the Charter also became apparent from the commentaries to the draft articles prepared by the Commission. In this connexion it was observed that the norm of *jus cogens* limited the rule of *pacta sunt servanda*.[17]

16. Some delegations, while basically agreeing with the concept that there were peremptory norms from which States could not at their own will contract out, had, nevertheless, reservations concerning the practicability of this concept. One delegation felt that the acceptance of such norms, as indicated in the commentary of the International Law Commission to article 50, was a statement of the problem, not its solution. There was a strong likelihood of divergent views concerning the question of how new peremptory norms come into existence, become established and secure recognition as such. The role of the Charter remained unclear, as, for example, the question of whether the general principles in Chapter I were *jus cogens* or not. The Commission, in its commentary, had singled out only one of these principles, namely, that stated in Article 2, paragraph 4 (non-use of force), as a conspicuous example of a rule in international law having the character of *jus cogens*.

17. On the other hand, it was reiterated by delegations that the Charter of the United Nations contained several uncontestable norms of international public law which Article 103 made obligatory for Member States. In the light of attempts, however, to limit the application of *jus cogens*, the concept had to be clearly stated, for otherwise it could be used by States which, hiding behind the term "treaty", tried to impose unequal terms on other States. *Jus cogens* should consequently cover the prohibition of the threat or use of force, the inadmissibility of interventions in the domestic affairs of States, the sovereign equality of States, equal rights and self-determination of peoples. Any treaty, for example, which provided for the preparation, initiation and conduct of aggressive wars and the use of any form of coercion in inter-State relations had to be regarded as invalid.

18. Regarding draft article 49, according to which a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter, one delegation stressed that this principle also applied to treaties concluded before the signing of the Charter. The opposite view, held by the representatives of a number of imperialist States would, in its opinion, mean that the unequal treaties imposed on colonial and dependent countries before 1945 could not be deemed invalid. This, however, was not in accord with Article 103 of the Charter, which made no distinction between treaties concluded before or after the signing of the Charter.[18]

19. By resolution 2166 (XXI) of 5 December 1966, the General Assembly, *inter alia*, decided that an international conference of plenipotentiaries should be convened to consider the law of treaties and to embody the results of its work in an international convention and in such instruments as it may deem appropriate.[19]

[17]Article 23 of the draft: *Pacta sunt servanda*: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." See G A (XXI), Suppl. No. 9.

[18]For texts of relevant statements, see G A (XXI), 6th Com., 905th mtg.: Ukrainian SSR, para. 4; 906th mtg.: India, para. 4; 910th mtg.: USSR, paras. 21-26; France: para. 54; 911th mtg.: Austria, para. 14; United Arab Republic, para. 25; Sierra Leone, para. 45; 912th mtg.: Ecuador, paras. 30-34; G A (XXI), Annexes a.i. 84, A/6516, paras. 82-92.

[19]The first session was suggested for early 1968, the second for early 1969.

b. *Consideration of the question by the Sixth Committee (twenty-second session)*

20. When the Sixth Committee took up item 86 entitled "Law of Treaties", the Chairman of the International Law Commission pointed out that it seemed desirable to make clear that the normal situation was one in which a treaty concluded in accordance with part II of the draft was valid and subject to the rule *pacta sunt servanda*.[20] The Commission had been fully aware of the danger to the security of treaties inherent in the principles of law concerned with the grounds of invalidity, termination and suspension of the operation of treaties. But since those principles already existed, the Commission felt that it should codify them with as much precision as possible so as to limit the scope for their abuse. Especially the *jus cogens* articles, which were difficult to make entirely precise, had been surrounded by the Commission with procedural checks set forth in article 62, which specifically imposed upon States the express obligation, in the event of a dispute, to seek a peaceful solution in keeping with Article 33 of the Charter.

21. Again, some delegations had reservations as to *jus cogens*. The view was advanced that the fact that there was no general consent as to the content of peremptory norms and the absence of an agreed definition suggested that the concept of *jus cogens* was still so little developed that it was not ripe for inclusion in the codification of the law of treaties. An incorporation would be a danger to the stability of treaties. The relationship between article 50 and Article 103 of the Charter was unclear; Article 103 seemed to eliminate the need for any further assertion of the rule of *jus cogens* in respect of the obligations contained in the Charter.

22. It was also held that, in the absence of any provision for the adjudication of differences relating to the application of articles 50 and 61[21] in particular cases, the Conference would have either to define criteria for applying *jus cogens* or consider carefully the implications of failure to do so. The view was expressed that the articles relating to the invalidity of treaties established sweeping rules that went far beyond the existing practice and law. Moreover, the reasoning by analogy with municipal law became difficult in regard of peremptory norms of international law, since article 50 had no well-developed counterpart in municipal law.

23. The majority of the delegations, however, continued to support the concept of *jus cogens* as a cornerstone of the law of treaties. Peremptory norms of international law originated in the common consent of States, which constituted the legal basis of any rule of international law. Especially smaller and weaker States had an interest in the recognition of the existence of a public order that placed checks on unlimited freedom of contract.[22]

[20]G A (XXII), Annexes, a.i. 86, A/6827 and Add.1-2. The comments included only a few references to articles 50 and 49, namely, by Czechoslovakia, p. 5; Afghanistan, p. 11; Bulgaria, p. 12; United States, p. 27. All of them were favourable to the concept, except the comment by the United States stressing the lack of a test to determine when a norm is peremptory.

[21]See above, foot-note 16.

[22]For texts of relevant statements, see G A (XXII), 6th Com., 964th mtg.: Chairman of ILC, paras. 12-13; 967th mtg.: United Kingdom, para. 4; Austria, para. 11; 969th mtg.: France, paras. 4-5; 971st mtg.: Uruguay, para. 3; USSR: para. 7; 974th mtg.: Cuba, paras. 21-22; 976th mtg.: Canada, para. 4, 977th mtg.: United States, paras. 20, 21, 979th mtg.: Bulgaria, para. 7; 980th mtg.: Cyprus, para. 59; G A (XXII), Annexes, a.i. 86, A/6913, paras. 40-46.

c. *Consideration of the question by the United Nations Conference on the Law of Treaties (first session)*

24. At the first session of the United Nations Conference on the Law of Treaties at Vienna, from 26 March to 24 May 1968, article 50 of the draft was dealt with in the Committee of the Whole.

25. The general positions of delegations could again be divided into those that favoured a wide and dynamic concept of *jus cogens* and those that regretted the absence of definitions and of a system of dispute settlement. Some of the delegations suggested further study by working groups. A number of amendments were submitted.

26. The assessments of article 50 varied from the statement that it was one of the most important articles in the draft to the opinion that it was a Pandora's box that should not be retained in its present form, that it was an attempt to transpose from the civil law to the law of treaties all rules of invalidity and that a vote on it should be deferred.

27. In direct connexion with Article 103 of the Charter, it was observed that by virtue of this Article the rules of *jus cogens* undoubtedly included the purposes and principles set forth in Articles 1 and 2 of the Charter and in its Preamble. It was also pointed out that it laid down the principles of a hierarchy of rules in the international legal order. One delegation expressed the view that in comparison with Article 103 of the Charter, article 50 referred in the abstract to the fundamental principle that treaty obligations conflicting with a peremptory norm were void. It could not agree with the assertion that Article 103 of the Charter would prevail regardless of the contents of articles 49 and 50 of the draft convention, and believed that Article 103 would operate to the same effect as the convention and would in fact constitute a source of *jus cogens*. Another delegation thought that article 50 represented a substantial advance on Article 103 of the Charter. The approach used in the Charter Article was also called cautious and modest, while now a more confident and positive one was possible due to the developments of the last two decades.[23]

28. Among several amendments[24] to article 50, there was one that proposed the insertion of the words "which is recognized in common by the national and regional legal systems of the world" in order to further determine the criteria by which a rule could be recognized as a peremptory norm. It was favoured as a clarification by those who wanted a narrow interpretation of *jus cogens*, while it was opposed by others *inter alia* as seemingly based on the notion of the supremacy of the national over the international legal order and of the regional international over the general international order making it more difficult to determine the contents of many peremptory norms.

29. The motion made in connexion with the amendment that the Committee should defer voting on article 50 and all amendments thereto was defeated. While other parts of that amendment were either accepted or referred to the Drafting Committee, the part referred to in paragraph 28 above was rejected by the Committee of the Whole.[25]

30. The Committee of the Whole recommended the following text to the Conference for adoption:

> "*Treaties conflicting with a peremptory norm of general international law* (jus cogens)
>
> "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."[26]

d. *Consideration of the question by the United Nations Conference on the Law of Treaties (second session)*

31. At the second session of the United Nations Conference on the Law of Treaties at Vienna, from 9 April to 22 May 1969, article 50 of the draft was debated at two plenary meetings.[27]

32. No new positions to draft article 50 dealing with *jus cogens* were advanced by delegations. The main attitudes towards peremptory norms as they had been explained in the meetings of the Committee of the Whole and of the Sixth Committee were briefly reiterated. Only a small number of delegations indicated their intention to abstain or to vote against article 50. Thus, for example, it was remarked that the provision was imprecise regarding the present scope of *jus cogens*, as to how the norms it implied were formed and as to its effects. Another delegation observed that the question of the burden of proof was raised if one State invoked a rule of *jus cogens* to invalidate a treaty and the other was able to establish that it had not accepted and recognized the rule as a peremptory norm. The article was, however, supported by the majority, including delegations which observed that their original concern had been alleviated by improvements in the text and by the safeguards provided in other articles.

33. In connexion with Article 103 of the Charter, it was observed that it constituted a striking example of a case where States had expressly given one group of rules a hierarchical value superior to that enjoyed by any other rule. Another view was that Article 103 demonstrated the existence of principles of *jus cogens*.[28]

34. Article 50, recommended by the Committee of the Whole, was adopted by 87 votes to 8, with 12 abstentions,[29] and became article 53 in the final text of the Convention.

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[23]For statements made in connexion with Article 103, see: United Nations Conference on the Law of Treaties, first session, Vienna, 26 March-24 May 1968, 52nd mtg.: Cuba, para. 34; 53rd mtg.: Sierra Leone, para. 9; Poland, para. 35; 54th mtg.: India, para. 16; 55th mtg.: Pakistan, para. 8; 56th mtg.: Trinidad and Tobago, para. 59. A/CONF.39/11 (United Nations publication, Sales No. E.68.V.7).

[24]For amendments, see United Nations Conference on the Law of Treaties, first and second sessions, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969, Reports of the Whole, A/CONF.39/11/Add.2, p. 173, para. 461 (United Nations publication, Sales No. E.70.V.5).

[25]*Ibid.*, paras. 465-466, amendment by the United States of America. For general statements on article 50, see United Nations Conference on the Law of Treaties, first session: 52nd-57th mtgs. and 80th mtg., paras. 293-328, 330-334 and 471-473; for all amendments and proceedings of the Committee of the Whole, see: United Nations Conference on the Law of Treaties, first and second sessions, A/CONF.39/11/Add.2, paras. 173-175 and 460-470 (United Nations publication, Sales No. E.70.V.5).

[26]This text became article 53 of the Convention on the Law of Treaties.

[27]United Nations Conference on the Law of Treaties, second session, Plen., 19th and 20th mtgs., pp. 6 and 107, A/CONF.39/11/Add.1 (United Nations publication, Sales No. E.70.V.6).

[28]*Ibid.*, Plen., 19th mtg.: France, paras. 9-12; Germany, Federal Republic of, paras. 27-30; Poland, para. 70; United Kingdom, para. 55.

[29]*Ibid.*, Plen., 20th mtg., para. 65.

2. IN CONNEXION WITH THE PRINCIPLE THAT "STATES SHALL FULFIL IN GOOD FAITH THE OBLIGATIONS ASSUMED BY THEM IN ACCORDANCE WITH THE CHARTER"

a. *Consideration by the Sixth Committee (twenty-first session) of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States*

35. The Sixth Committee examined at the twenty-first session of the General Assembly the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States on its work during the session it held in New York from 8 March to 25 April 1966. By resolution 2103(XX), the General Assembly had *inter alia* requested the Special Committee to consider the three principles set forth in paragraph 5 of General Assembly resolution 1966 (XVIII), one of which was the principle "that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter".

36. The report of the Special Committee contained three written proposals thereto. They had in common *inter alia* the concept that States shall in good faith and in accordance with the Charter fulfil their obligations arising from international treaties concluded on the basis of equality, as well as those arising from other sources of international law. Two contained language related to that of Article 103 of the Charter, one stating that a treaty in conflict with the Charter was invalid, the other focusing on the supremacy of Charter obligations over conflicting obligations arising out of international agreements.[30]

37. Regarding the role of Article 103 of the Charter, the view was expressed that opposition to its inclusion in the principle was not understandable, especially since it figured in two of the three written proposals before the Special Committee. As to the relationship of the component parts of the principle to be established, it was held that the first one, the rule of *pacta sunt servanda*, was qualified by the two other rules: that of good faith and that of Article 103. Good faith required that treaties be freely entered into, which made sovereign equality between the parties a necessary element. A number of delegations requested that the concept that unequal treaties were invalid should be included. The view was expressed that together with Article 103 the rule *pacta sunt servanda* signified that any treaty in conflict with the Charter would be either null and void or abrogated by the Charter, if it had been signed before the latter's entry into force. A treaty that provided for intervention by one State into the internal affairs of another would be void *ab initio* since it would conflict with obligations under the Charter, namely, the principles of non-intervention, of prohibition of the threat or use of force and of equal rights and self-determination.[31]

38. The General Assembly, in resolution 2181 (XXI) of 12 December 1966, requested the Special Committee *inter alia* to complete the formulation of the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

b. *Consideration by the Sixth Committee (twenty-second session) of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and subsequent developments*

39. The Sixth Committee examined at the twenty-second session of the General Assembly the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States on its work during the session it held in Geneva from 17 July to 19 August 1967.

40. The report of the Special Committee contained a formulation of the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter as agreed upon by the Drafting Committee:

> "1. Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.
>
> "2. Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.
>
> "3. Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.
>
> "4. Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail."[32]

41. During the debate many delegations stated their acceptance of the text above and satisfaction that consensus had been possible on the formulation of this useful principle in the Special Committee, even if it was less than perfect. It was commented that the reference to Charter obligations and their supremacy was not an idle repetition of Article 103, but rather a reaffirmation of the vital importance of the fulfilment of such Charter obligations as the duty of States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. The statement of the principle also properly reflected the need for compliance with the international obligations binding on every State, arising from customary or conventional international law. The opinion was expressed that paragraph 4 of the principle brought out the interdependence of two basic provisions of the Charter, Article 2 (2) and Article 103, thereby strengthening their continued effect. One delegation felt that to avoid misinterpretation paragraph 4 should be made to cover the obligations referred to in paragraph 2, in order to emphasize the primacy of the Charter obligations also over generally recognized principles and rules of international law.

42. In connexion with the principle concerning the abstention from the threat or use of force, it was observed by one delegation that the Inter-American

[30] Joint proposal by Burma, Ghana, India, Lebanon, Madagascar, Nigeria, Syria, United Arab Republic and Yugoslavia; joint proposal by the United Kingdom and the United States; G A (XXI), Annexes, a.i. 87, A/6230, paras. 522 ff.

[31] For texts of relevant statements, see G A (XXI), 6th Com., 924th mtg.: Czechoslovakia, para. 26; 926th mtg.: United States, para. 10; 928th mtg.: Ukrainian SSR, para. 19; 930th mtg.: United Kingdom, para. 24; 931st mtg.: USSR, para. 19; 933rd mtg.: Argentina, para. 14; 938th mtg.: Cyprus, paras. 24-25; G A (XXI), Annexes, a.i. 87, A/6547, paras. 72-76.

[32] G A (XXII), Annexes, a.i. 87, A/6799, para. 285. See also *ibid.*, paras. 161 and 474. This formulation was later adopted without change by the General Assembly in resolution 2625(XXV) of 24 October 1970 entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations".

Treaty of Reciprocal Assistance of 1947 conflicted with the Charter of the United Nations, since it introduced new factors, such as any fact or situation that might endanger the peace of America. Here the Charter was to prevail, in accordance with Article 103.[33]

D. Application of successive treaties relating to the same subject-matter, in connexion with Article 103

1. Consideration of the question by the Sixth Committee (twenty-first session)[34]

43. The Sixth Committee, at the twenty-first session of the General Assembly, considered the report of the International Law Commission on the work of its eighteenth session (4 May-19 July 1966). This report contained draft articles on the law of treaties. Draft article 26 was accompanied by a commentary, as follows (paragraph 1):

> "*Application of successive treaties relating to the same subject-matter*
>
> "1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs."[35]

44. This role of Article 103 of the Charter within draft article 26 was further underlined in statements made in the Sixth Committee.[36]

2. Consideration of the question by the United Nations Conference on the Law of Treaties (first and second sessions)

45. At the first session of the United Nations Conference on the Law of Treaties, draft article 26 was briefly debated in the Committee of the Whole.

46. One remark with regard to Article 103 was made by the delegation of Switzerland in view of the nature of its country's international status. Since Switzerland was not bound by the Charter, its signature of the Convention would have to be made subject to a reservation concerning Article 103.[37]

47. At the second session, in a plenary meeting, Switzerland, repeated its position with regard to Article 103.[38] Paragraph 1 of draft article 26 was adopted by the Conference without change and became paragraph 1 of article 30 of the Convention on the Law of Treaties.

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[33]For texts of relevant statements, see G A (XXII), 6th Com., 993rd mtg.: United States, para. 31; 994th mtg.: India, para. 2; 995th mtg.: Cuba, para. 14; France, para. 19; 996th mtg.: USSR, para. 18; 997th mtg.: Kenya, para. 4; Uruguay, para. 21; 999th mtg.: Hungary, para. 4; Syria, para. 20; Canada, para. 26; 1000th mtg.: United Kingdom, para. 30, China, para. 56; 1003rd mtg.: Cyprus, para. 57; 1005th mtg.: Israel, paras. 3-4; G A (XXII), Annexes, a.i. 87, A/6955, paras. 73-79. After this session, the principle in question was no longer discussed either in the Special Committee or in the Sixth Committee. As mentioned in foot-note 32, the final Declaration, as adopted by the General Assembly, contained the principles as set out in para. 40.

[34]G A (XXI), Annexes, a.i. 84.

[35]*Ibid.* The discussions in ILC as contained in its report were treated in the previous volume of the *Repertory*, *Supplement No. 3*, vol. IV, paras. 95-97.

[36]For texts of relevant statements, see G A (XXI), 6th Com., 906th mtg.: India, para. 4; 911th mtg.: United Arab Republic, para. 25; 912th mtg.: Australia, para. 24; G A (XXII), 6th Com., 980th mtg.: Cyprus, para. 55.

[37]United Nations Conference on the Law of Treaties, first session, Committee of the Whole, 31st mtg.: Switzerland, para. 9; see also *ibid.*, 80th mtg. A/CONF.39/11 (United Nations publication Sales No. E.68.V.7).

[38]*Ibid.*, second session, Plen., 13th mtg.: Switzerland, para. 57. A/CONF.39/11/Add.1 (United Nations publication, Sales No. E.70.V.6).

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