

ARTICLE 103

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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. Article 103 has been referred to in decisions of United Nations organs on two occasions. In the first instance, obligations arising under Article 103 were related to obligations under Article 94. In the second instance, a provision was inserted in an agreement between the United Nations and a specialized agency concerning the effect of the terms of the Convention establishing that agency on the obligations of Members of the United Nations.
2. In addition, there has been discussion of the bearing of Article 103 in various other connexions. One such instance was concerned with the possible relation of Article 103 to the application of collective measures. In another case, a question was raised concerning the bearing of Article 103 on the San Francisco Statement by the Four Sponsoring Governments on the Voting Procedure in the Security Council. Other matters in respect of which questions concerning Article 103 have been raised concerned the compatibility with the Charter of obligations under regional arrangements and under various treaties.

ANALYTICAL SUMMARY OF PRACTICE

A. The assumption of obligations under Article 103 in relation to Article 94

3. In November 1946, the Committee of Experts of the Security Council considered the conditions on which Switzerland might become a party to the Statute of the International Court of Justice. In its report to the Council, the Committee, having recommended that one such condition should be the "Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter", stated: 1/

"In the opinion of the Committee, the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter insofar as the provisions of those Articles may relate to the provisions of Article 94, and non-members of the United Nations which become parties to the Statute (and non-parties which have access to the Court) become bound by these complementary obligations under Articles 25 and 103 in relation to the provisions of Article 94 (but not otherwise), when they accept 'all the obligations of a Member of the United Nations under Article 94.'"

1/ G A resolution 91 (I), annex, para. 4. See also in this Repertory under Article 94.

The report and recommendation of the Committee was adopted ^{2/} as a whole by the Security Council. The General Assembly, by resolution 91 (I), adopted the report and recommendation of the Security Council.

B. Agreement containing provisions relating to Article 103
concluded by the United Nations with
a specialized agency

4. The second paragraph of article VI of the agreement between the United Nations and the Universal Postal Union ^{3/} reads as follows:

"As regards the Members of the United Nations, the Union agrees that in accordance with Article 103 of the Charter no provision in the Universal Postal Convention or related agreements shall be construed as preventing or limiting any State in complying with its obligations to the United Nations."

This agreement was approved by the General Assembly on 15 November 1947, ^{4/} and came into force on 1 July 1948.

C. Compatibility of the application of collective measures
with the legal obligations of Member States

5. The Collective Measures Committee, established by the General Assembly under resolution 377 (V), set up two sub-committees, one to consider political measures and the other to consider economic and financial measures. The reports of the two sub-committees to the full Committee contained passages concerning the effect of the application of United Nations collective measures on the legal obligations of States. It was stated in the report of the Sub-Committee for the Study of Political Measures that the question of the possible effects, under Article 103, of recommendations or decisions of organs of the United Nations could be dealt with only in respect of individual cases and in the light of the circumstances relating to those cases. In the report of the Sub-Committee for the Study of Economic and Financial Measures, the principle was laid down that States should not be subject to legal liabilities under other international agreements as a consequence of carrying out the United Nations collective measures.

6. During the consideration by the Collective Measures Committee of those passages of the reports, two somewhat divergent views were expressed. ^{5/} Some representatives considered that States should not incur any liability for violations of legal obligations under other international instruments as a result of the application of collective measures adopted by the General Assembly or the Security Council. Other representatives believed that there might be legal liability, and that the United Nations organs should endeavour not to put States in the position of having to violate their legal obligations under international agreements.

^{2/} S C, 1st yr., 2nd series, No. 22, 18th mtg., p. 502.

^{3/} United Nations Publications, Sales No. 1951.X.1, p. 99. For the discussion of this article in the Committee on Negotiations with Specialized Agencies, see E/C.1/23, pp. 2 and 3 and E/C.1/26, pp. 1 and 2. See also in this Repertory under Article 63.

^{4/} G A resolution 124 (II).

^{5/} A/AC.43/SR.6, pp. 6-9.

7. In explanation of the recommendation of the Sub-Committee for the Study of Economic and Financial Measures it was pointed out that the Sub-Committee had not used the wording of Article 103 because there was some question whether Article 103 of the Charter could legally apply to recommendations of the General Assembly and the Security Council as well as to decisions of those organs. However, since the Sub-Committee had considered it desirable that a State should not be subjected to successful prosecution for violations of legal obligations resulting from the application of measures recommended by the General Assembly or the Security Council, it included that principle in its report, basing it on the analogy of Article 103. The opinion was expressed that it was inevitable that the General Assembly and the Security Council should, at times, adopt resolutions the implementation of which would be incompatible with the legal obligations of States under other international agreements.

8. In support of the second view, it was proposed that the principle contained in the report of the Sub-Committee on Economic and Financial Measures be reworded as follows: 6/

"With reference to such [collective] measures, it is important that a Member State should not find itself forced to violate its legal obligations in order to apply a collective measure adopted by the General Assembly or the Security Council for the purpose of restoring international peace and security."

It was urged that the General Assembly and the Security Council should not adopt resolutions which the Member States could not implement without violating their contractual obligations, unless Article 103 was invoked. Attention was also drawn by one representative to the dangers of too general a wording which would not take into consideration the fact that Article 103 could not apply to legal obligations assumed in respect of non-member States.

9. In view of these divergent opinions, the Collective Measures Committee decided to set up a drafting group charged with the preparation of an agreed text.

10. The agreed text submitted by the Drafting Group to the full Committee stated that the question had been raised as to the legal liabilities of a State on account of its carrying out collective measures decided upon or recommended, within the limits of their competence, by the Security Council or the General Assembly for the purpose of maintaining or restoring international peace and security. The Committee had reached the conclusion that a State had the right to carry out such measures, and that that right could, in conformity with the Charter, be relied upon as against its obligations under other international agreements.

11. The text submitted by the Drafting Group was discussed 7/ by the Committee. One representative stated that if the majority of the Committee preferred the wording of the Drafting Group, he would not oppose that text, provided that the words "in conformity with the Charter" were understood to mean "in conformity with Article 103 in relation to Articles 10 and 25 of the Charter". Another representative maintained that the question of legal liability for the failure to carry out other international agreements did not appear to be conclusively settled in Article 103 but, apart from that point, there would be no difficulty as far as decisions of the Security Council were concerned. Difficulties would, however, arise in connexion with the text proposed by the Drafting Group under which recommendations of the Security Council and the General Assembly which, strictly speaking, were not binding, would prevail over obligations under other

6/ A/AC.43/SR.6, p. 6.

7/ A/AC.43/SR.8, pp. 2 and 3.

international agreements; States would, in fact, be called upon to repudiate the latter obligations in order to carry out the collective measures recommended. Therefore, it would be better to avoid any reference to the question in the report of the Committee, since Article 103 would serve as a guide in any concrete case which might arise. Moreover, it would be rash and unnecessary to try to draw analogies which would not, in any event, be binding upon any tribunal which might subsequently be called upon to apply Article 103.

12. As a result of the discussion, the Committee adopted for inclusion in the final report of the Committee 8/ the wording of the report of the Sub-Committee on Economic and Financial Measures on that subject (see paragraph 5 above).

13. Chapter V of the report of the Collective Measures Committee set forth the conclusions of the Committee, and, under the heading of "Guiding principles", contained the following statement: 9/

"(14) In the event of a decision or recommendation of the United Nations to undertake collective measures, the following guiding principles should be given full consideration by the Security Council or the General Assembly and by States:

(i) Guiding principles of general application:

.....

(d) It is of importance that States should not be subjected to legal liabilities under treaties or other international agreements as a consequence of carrying out United Nations collective measures."

By resolution 503 A (VI) the General Assembly took note of the report of the Collective Measures Committee and of its conclusions.

D. The bearing of Article 103 on the San Francisco Statement on Voting Procedure in the Security Council

14. During the discussion of the Czechoslovak question in the Security Council in 1948, a difference of opinion arose 10/ as to whether a draft resolution under which a sub-committee would be appointed to receive or hear evidence, statements and testimonies was a procedural matter within the meaning of Article 27 (2).

15. The representative of a permanent member of the Council took the view that the matter was of a substantive nature, and requested that the question be decided in accordance with the procedure laid down in the San Francisco Statement by the delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council. It was, however, objected that the matter should be treated as a procedural one, and that the San Francisco Statement was not applicable to the case.

16. In support of the latter view, it was stated 11/ that if the permanent members regarded the San Francisco Statement as an international agreement, their obligations under the Charter nevertheless prevailed, in accordance with Article 103, over any such agreement. The representative of the permanent member referred to above replied that this argument was erroneous; the San Francisco Statement dealt with the interpretation

8/ Ibid., p. 4.

9/ G A (VI), Suppl. No. 13 (A/1891), p. 33.

10/ S C, 3rd yr., No. 63, 288th mtg., pp. 21 and 22.

11/ S C, 3rd yr., No. 71, 300th mtg., pp. 40 and 41.

of the Charter and was not an international agreement under which the five permanent members of the Security Council had assumed obligations in addition to those assumed under the Charter. As the Statement was an interpretation of the Charter, there could be no opposition between the obligations under the Statement and the obligations assumed under the Charter. 12/

17. The President of the Council put to the vote the question whether the vote to be taken on the draft resolution should be considered as a procedural vote. There were 8 votes in favour, 2 against (1 vote against being that of a permanent member) and 1 abstention. The President, invoking the San Francisco Statement, interpreted the vote as a decision to consider the vote on the draft resolution as one of substance. 13/ A challenge to the ruling of the President was rejected, when fewer than seven members of the Council voted in favour of it.

E. Obligations assumed under regional agreements in relation to Article 103

18. During the consideration of the question of Guatemala by the Security Council, the representative of Guatemala stated that his Government had no dispute with any American State and was therefore not obliged to bring the question before the Organization of American States. Consequently, his Government had merely notified the Peace Committee of the Organization of American States of the invasion, but had asked it to take no position until the Security Council had taken action. In urging action by the Security Council, 14/ he invoked Article 103, asserting that if there was a conflict between the obligations undertaken by Member States under the Charter of the United Nations and those assumed under the Charter of the Organization of American States, "despite the fact that ... [Guatemala had] not applied to, but merely notified, the Organization of American States, Articles 34, 35 and 39 of the United Nations Charter must apply".

F. The question of compatibility between the Charter and various treaties

19. In the cases set forth below, various agreements and treaties were alleged to be incompatible with the Charter and Article 103 was invoked, but no decision on the point was taken. 15/

1. The question of compatibility between the Charter and an Anglo-French agreement of 1945; 16/

2. The question of the compatibility between the Charter and the Anglo-Egyptian Treaty of 1936; 17/

12/ Ibid., p. 42.

13/ S C, 3rd yr., No. 73, 303rd mtg., pp. 19-21.

14/ S C, 9th yr., 675th mtg., paras. 189-191.

15/ Reference was also made to Article 103 in connexion with the question of the admission of new Members (G A (III/1), Ad Hoc Pol. Com., 6th mtg., p. 55).

16/ S C, 1st yr., 1st Series, No. 1, 22nd mtg., pp. 318 and 319.

17/ See S C, 2nd yr., No. 70, 175th mtg., pp. 1752-1757; 176th mtg., pp. 1773, 1779 and 1783; No. 75, 182nd mtg., p. 1964; No. 80, 189th mtg., pp. 2110 and 2111; No. 84, 195th mtg., pp. 2239 and 2240.

3. The question of the compatibility between the Charter and the Franco-Moroccan and Franco-Tunisian protectorate treaties. 18/

18/ For texts of relevant statements, see:

- G A (VII), 1st Com., 538th mtg.: Iran, para. 64;
539th mtg.: Brazil, para. 11; Uruguay, para. 47;
543rd mtg.: Afghanistan, para. 69;
544th mtg.: Dominican Republic, para. 32;
545th mtg.: Australia, para. 32; Byelorussian SSR, para. 50;
Lebanon, para. 20;
546th mtg.: Syria, para. 14;
548th mtg.: Belgium, para. 55; United Kingdom, para. 25;
552nd mtg.: Pakistan, paras. 23 and 24;
G A (VIII), 1st Com., 630th mtg.: Syria, paras. 61 and 62;
633rd mtg.: India, para. 4.

During the discussion, the question was raised of the competence of the General Assembly to act in case of a conflict between a treaty and the Charter. One representative stated that under Article 103 the United Nations was entitled to call the attention of a Member State to any divergence between its interpretation and application of a treaty and the Charter (G A (VIII), 1st Com., 633rd mtg., para. 4). Another representative expressed the view that even if there were an inconsistency, that fact would not confer competence upon the General Assembly, as Article 103 did not authorize any United Nations organ to take action (G A (VII), 1st Com., 545th mtg., para. 32).