

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS
SUPPLEMENT No. 11
(2010 – 2015)**

Volume VI

ARTICLE 103

(Advance version, to be issued in volume VI of Supplement No. 11 (forthcoming) of the *Repertory of Practice of United Nations Organs*)¹

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¹ In accordance with Annex I of the [annual report of the Secretary-General on the Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council](#), the preparation of this study falls under the primary responsibility of the Office of Legal Affairs. It has been prepared with the assistance of a consultant.

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. The structure of this study on Article 103 of the Charter of the United Nations differs from those in previous *Supplements*. During the period under review, while reference to the Charter Article was made in various reports and debates of the United Nations, there was no explicit reference thereto in any of the resolutions adopted by the United Nations bodies or in the case-law of the International Court of Justice. At the same time, there were significant developments in the Human Rights Council and in the Sixth Committee of the General Assembly.
2. Accordingly, the structure of the Analytical Summary of Practice of this study does not follow the structure of the previous *Supplement*. It is divided into the following three subsections:
 - A) Discussions about Article 103 in the General Assembly and its subsidiary bodies
 - B) Discussions about Article 103 in the Security Council
 - **C) The case-law of the International Court of Justice
3. Subsection A addresses first the discussions that took place in the General Assembly, and second the discussions that took place in its relevant subsidiary bodies, i.e., the Human Rights Council, the International Law Commission (thereinafter, ILC) and the Sixth Committee.

I. General Survey

4. The period under review saw the following evolutions in the reference to Article 103 of the Charter. It was notably repeatedly mentioned in several reports submitted to the General Assembly² and to the Human Rights Council.³ Most of these reports, *inter alia*, addressed the primacy of human rights obligations as emerging from the Charter over other obligations, notably obligations under trade and investment agreements. The reference to Article 103 in order to declare the primacy of United Nations human rights conventions over other obligations is also a new pattern that has emerged throughout the reporting period.

5. Along these lines, the Independent Expert on the promotion of a democratic and equitable international order called, in one of his reports, on the General Assembly to request from the International Court of Justice an advisory opinion on the primacy of the Charter of the United Nations and United Nations human rights conventions over other treaties.⁴ This request is the first of its kind and highlights a development in the application of Article 103, i.e., its new central role in discussions related to human rights.

6. Additionally, during this period, the above-mentioned reports were taken note of in resolutions adopted by the General Assembly⁵ and the Human Rights Council.⁶

7. Furthermore, whereas *Supplements No. 8* and *9* contained resolutions adopted by the Security Council under Chapter VII of the Charter in which the Council recalled that the obligation of Member States under the Charter to accept and carry out those decisions prevailed over all other treaty commitments, this study, as well as the previous one, is

²See A/66/93, pp. 29-30, para. 151; A/68/284, p. 8, para. 22 and A/70/285, pp. 7, 19 and 23, paras. 14, 15, 51 and 70 (a).

³See A/HRC/17/37, p. 10, para. 43; A/HRC/19/59/Add.5, p. 5, para. 1.3; A/HRC/19/33, p. 8, para. 24 and A/HRC/30/44, pp. 16, 17, 19-20, 27, and 28, paras. 46, 50, 61, 5 and 14.

⁴See report of the Independent Expert on the promotion of a democratic and equitable international order, A/70/285, p. 23, para. 70 (a).

⁵GA resolutions 66/103, p. 1, para. 1; 68/175, p. 6, para. 13 and 70/149, p. 3, para. 3.

⁶HRC resolutions 17/7, p. 2, para. 1; 19/7, p. 7, para. 42; 19/32, p. 3, para. 15 and 30/29, p. 5, para. 15.

characterized by the emergence of a new trend, as, during the period under review, Article 103 was not mentioned in any of the resolutions adopted by the Security Council, neither explicitly nor implicitly. Nevertheless, on one occasion, the Security Council rejected a draft resolution which cites the full text of Article 103.⁷

8. Finally, in instances in which Article 103 was referred to during the debates of the Security Council, while Chapter VII continued to be the primary ground for its invocation, the Charter Article was also referred to when the Council was holding discussions under Chapter VIII of the Charter.⁸As such, the Council seemed to revert to a former trend, considering that, in the original *Repertory* as well as in *Supplements No.3* and *6*,⁹ Chapter VIII used to form a general context for the application and/or interpretation of Article 103 of the Charter.

II. Analytical summary of practice

A. Discussions about Article 103 in the General Assembly and its subsidiary bodies

1. The General Assembly

9. During the period under review, Article 103 was referred to in the context of the consideration by the General Assembly of three reports, one of which was submitted to it by the Secretary General, while the other two reports were submitted by the Independent Expert on the promotion of a democratic and equitable international order. Whereas the first report deals with the principle of universal jurisdiction, the other two are dedicated to human rights questions, namely the compatibility between United Nations human rights treaties and other obligations under international law. Moreover, the reports highlight the link between Article 103 and the purposes and principles of the Charter.

⁷SC draft resolution S/2013/660, p. 2.

⁸See S/PV.7015, p. 14.

⁹See *Repertory*. Vol. V (1945-1954), p. 319, para. 18; *Repertory, Supplement No. 3*, Vol. IV (1959-1966), pp. 202-207, paras. 11-46 and *Repertory, Supplement No. 6*, Vol. VI (1979-1984), pp. 153-154, paras. 7-8.

10. As reflected in the first report, which was submitted by the Secretary-General to the General Assembly at its sixty-sixth session, in 2011, regarding the agenda item “The scope and application of the principle of universal jurisdiction”,¹⁰ a State commented that, when addressing universal jurisdiction, “[...] due consideration should be given to the role of Article 103 of the Charter of the United Nations”.¹¹ Thus, according to the same State, “[...] any work on the principle [...] should be realized in conformity with the principles and purposes of the Charter”.¹²
11. Following the debate that took place in the Sixth Committee,¹³ the General Assembly adopted resolution 66/103 which, without an explicit reference to Article 103, *inter alia*, took note “[...] with appreciation of the report of the Secretary-General prepared on the basis of comments and observations of Governments and relevant observers”.¹⁴
12. Article 103 was also referred to in the report of the Independent Expert on the promotion of a democratic and equitable international order, transmitted by the Secretary-General to the General Assembly at its sixty-eighth session in 2013. The reference was made when the Independent Expert explored modalities of reforming the United Nations with a view to making it more democratic and equitable.¹⁵ The Expert therefore recognized that “[...] the Security Council cannot be above the Charter [...] and that its decisions and resolutions must become subject to scrutiny”.¹⁶ He also explained that “[à] priori, there can be no conflict between the Charter and United Nations human rights treaties which could bring Article 103 of the Charter into play”¹⁷ and that, “[a]ccordingly, if conflict appears to arise between a Security Council resolution and United Nations human rights treaties, the compatibility of the resolution with the purposes and principles of the United Nations could be tested”.¹⁸

¹⁰Report of the Secretary General, The scope and application of the principle of universal jurisdiction, A/66/93.

¹¹*Ibid.*, p. 29, para. 151.

¹²*Ibid.*, pp. 29-30, para. 151.

¹³See A/C.6/66/SR.12, A/C.6/66/SR.13, A/C.6/66/SR.17 and A/C.6/66/SR.29.

¹⁴GA resolution 66/103, p. 1, para. 1

¹⁵Report of the Independent Expert on the promotion of a democratic and equitable international order, A/68/284, pp. 6-8.

¹⁶*Ibid.*, p. 8, para. 22.

¹⁷*Ibid.*

¹⁸*Ibid.*

13. Further to a debate in the Third Committee,¹⁹ the General Assembly adopted resolution 68/175, entitled “Promotion of a democratic and equitable international order”, which, although it did not make reference to Article 103, took note of the report of the Independent Expert.²⁰
14. Article 103 was referred to in another report of the Independent Expert on the promotion of a democratic and equitable international order, transmitted by the Secretary General to the General Assembly at its seventieth session in 2015. The report then focused on the impact of investor-State dispute settlement on a democratic and equitable international order and discussed the priority of the Charter of the United Nations and United Nations human rights conventions over free trade and investment agreements.²¹
15. After citing the full text of Article 103, the Independent Expert made the following explanation:
- “This means that bilateral and multilateral free trade and investment agreements that contain provisions that conflict with the Charter must be revised or terminated...”.²²
16. He further added that incompatibilities between existing and subsequent treaties can be resolved in good faith by interpreting the subsequent treaty in a manner consistent with the prior treaty²³ and that, pursuant to Article 103, “[...] subsequent treaties must in any case conform to the Charter and are invalid if they impede the fulfilment of its purposes and principles, including its human rights provisions”.²⁴
17. The Independent Expert also argued that “[i]nternational investment agreements must undoubtedly be revisited to ensure that they are compatible with modern international

¹⁹See A/C.3/68/SR.29 (pp. 3-5, paras. 7-21); A/C.3/68/SR.44 (p. 5, paras. 26-27) and A/C.3/68/SR.52 (pp. 4-6, paras. 22-33).

²⁰GA resolution 68/175, p. 6, para. 13.

²¹Report of the Independent Expert on the promotion of a democratic and equitable international order, A/70/285, pp. 7, 19 and 23, paras. 14, 15, 51, and 70 (a).

²²*Ibid.*, p. 7, para. 14.

²³*Ibid.*, p. 7, para. 15.

²⁴*Ibid.*

law, in particular that they acknowledge the pre-eminence of the Charter of the United Nations pursuant to Article 103”.²⁵

18. Lastly, the report contained a recommendation to the General Assembly to request the International Court of Justice to render an advisory opinion on “the legal consequences of the [primacy] of the Charter over all other treaties, pursuant to its Article 103, in particular with regard to international investment agreements and investor-State dispute settlement awards”.²⁶
19. Article 103 was also mentioned when the Independent Expert made an introductory statement on his report and engaged in an interactive dialogue with several representatives in the Third Committee. When replying to these representatives, the Independent Expert stated that “[o]ne of the key points of his report was the recognition that human rights should take precedence over other treaties and obligations.”²⁷ He also reminded that “[h]e had made a number of recommendations to the General Assembly, above all in relation to the application of Article 103 of the Charter of the United Nations”.²⁸ According to him, “[i]t was clear that when there was conflict with trade rights, it was the duty of the International Court of Justice to issue a clear advisory opinion... ”.²⁹
20. Following the debate that took place in the Third Committee,³⁰ the General Assembly adopted resolution 70/149 which, without explicit reference to Article 103, *inter alia*, took note of the report of the Independent Expert of the Human Rights Council on the promotion of a democratic and equitable international order and noted “[...] its focus on the adverse human rights impact of international investment agreements, bilateral investment treaties and multilateral free trade agreements on the international order”.³¹

2. Subsidiary bodies of the General Assembly

²⁵*Ibid.*, p. 19, para. 51.

²⁶*Ibid.*, p. 23, para. 70 (a).

²⁷A/C.3/70/SR.27, p. 3, para. 13.

²⁸*Ibid.*

²⁹*Ibid.*

³⁰See *Ibid.*, (pp. 2-4, paras. 1-21); A/C.3/70/SR.48 (p.2, paras. 3-4) and A/C.3/70/SR.53 (pp. 6-7, paras. 39-44).

³¹GA resolution 70/149, p. 3, para. 3.

a. The Human Rights Council

21. Throughout the period under consideration, several references were made to Article 103 of the Charter before the Human Rights Council. The Charter Article was repeatedly mentioned in three reports, the first one of which was submitted by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights,³² while the second report was submitted by the Special Rapporteur on the right to food³³ and the third one was prepared by the Independent Expert on the promotion of a democratic and equitable international order.³⁴ These three reports demonstrated, through references to Article 103, the prevalence of human rights obligations of States over other obligations, in particular those of an economic nature. Additionally, during this period, the Office of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council a thematic study in which it was emphasized that the scope of Article 103 is not limited to treaty obligations and that it encompasses custom and other obligations under general international law.³⁵

22. As just mentioned, Article 103 was first referred to in the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, submitted to the Human Rights Council in 2011.³⁶ The report was an update on three regional multi-stakeholder consultations – which were convened in Latin America and the Caribbean, Africa, and Asia and the Pacific– on the draft general guidelines on foreign debt and human rights. The main purpose of these consultations was to generate ideas, based on regional experiences and perspectives, on the form and content of the draft guidelines in order to improve them. As to the report, it highlighted the main themes of the three regional consultations which have been helpful in clarifying aspects of the guidelines, identifying some missing elements and generating ideas on possible elements for inclusion in the guidelines.

³² A/HRC/17/37.

³³ A/HRC/19/59/Add.5.

³⁴ A/HRC/30/44.

³⁵ A/HRC/19/33.

³⁶ See report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/HRC/17/37.

23. The Independent Expert made a brief reference to Article 103 during his intervention in the Africa regional consultations. He “[...] emphasized the primacy of human rights obligations as reflected in Article 103 of the Charter of the United Nations...”.³⁷
24. The Human Rights Council subsequently adopted resolution 17/7, which, without reference to Article 103, *inter alia*, took note of the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.³⁸
25. The purpose of the second report mentioned above, i.e., the report submitted by the Special Rapporteur on the right to food to the Human Rights Council in 2011 was to set out guiding principles on human rights impact assessments of trade and investment agreements. The guiding principles were aimed at providing States with guidance on how best to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights instruments.³⁹
26. When commenting on guiding principle 1 which provides that “[a]ll States should prepare human rights impact assessments prior to the conclusion of trade and investment agreements”,⁴⁰ the Special Rapporteur made the following explanation:
- “Where an inconsistency between the human rights obligations of a State and its obligations under a trade or investment agreement becomes apparent only after the entry into force of the said agreement, the pre-existing human rights obligations must prevail”.⁴¹

According to the Special Rapporteur, this follows “[...] from the duty of all States to cooperate towards the full realization of human rights under the Charter of the

³⁷*Ibid.*, p. 10, para. 43.

³⁸See HRC resolution 17/7, p. 2, para. 1.

³⁹Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5.

⁴⁰*Ibid.*, p. 5, para.1.

⁴¹*Ibid.*, para. 1.3.

United Nations...”.⁴² The Special Rapporteur's explanation further includes a reference to Article 103 of the Charter.⁴³

27. The Human Rights Council subsequently adopted resolution 19/7 which, *inter alia*, took note “[...] with appreciation of the report of the Special Rapporteur and the recommendations contained therein”.⁴⁴

28. In 2012, the Office of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council a thematic study on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures. The study underlined that the Charter-based obligation to implement binding resolutions of the Security Council overrides other obligations under international law.⁴⁵ It also pointed out that:

“[a]lthough the wording of Article 103 of the Charter appears to be limited to other treaty obligations, the priority of the Charter obligations is generally regarded to apply also vis-à-vis custom and other obligations under general international law”.⁴⁶

29. This understanding of Article 103, according to which Charter obligations may also prevail over inconsistent customary international law, is consistent with that contained in the conclusions of the ILC's Study Group on the Fragmentation of International Law, which were considered in *Supplement No. 10* of the Study.⁴⁷

30. At the 55th meeting of its nineteenth session, the Human Rights Council adopted resolution 19/32 which, without making a reference to Article 103, took note of the thematic study of the Office of the High Commissioner for Human Rights.⁴⁸

⁴²*Ibid.*

⁴³See *Ibid.*, footnote 7.

⁴⁴HRC resolution 19/7, p. 7, para. 42.

⁴⁵Thematic study of the Office of the United Nations High Commissioner for Human Rights on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures, A/HRC/19/33, p. 8, para. 24.

⁴⁶*Ibid.*

⁴⁷See *Repertory, Supplement No. 10*, Vol. VI (2000-2009), pp. 5-6, para. 18.

⁴⁸See HRC resolution 19/32, p. 3, para. 15.

31. Article 103 was further referred to in the third report mentioned above, i.e., the report submitted by the Independent Expert on the promotion of a democratic and equitable international order to the Human Rights Council in 2015. In order to demonstrate that “[...] the denunciation of international investment agreements is not only legitimate but also legal”⁴⁹ and that “their “survival clauses” must be seen as null and void when they are intended to perpetuate a system that violates human rights”,⁵⁰ the Independent Expert argued that these agreements must be tested for conformity with the Charter of the United Nations.⁵¹ He also submitted a preliminary plan of action in which he reaffirmed the Principles and Purposes of the Charter “which, pursuant to Article 103, prevail over other treaties”.⁵² Furthermore, the Independent Expert announced, in his report, that he is convening a one-day expert consultation on 5 May 2015,⁵³ during which “participants will be able to express their views on the primacy of the UN Charter and in particular its human rights provisions over other treaties”.⁵⁴
32. The Human Rights Council subsequently adopted resolution 30/29 which, without explicit reference to Article 103, *inter alia*, took note of the report of the Independent Expert on the promotion of a democratic and equitable international order.⁵⁵

b. The International Law Commission

33. During the period under review, the ILC referred to Article 103 in the context of two topics, namely “Responsibility of international organizations” and “Effects of armed conflicts on treaties”. The Charter Article was also mentioned in the seventh report of the Special Rapporteur on the topic “Protection of persons in the event of disasters”, as well as in the related debates.
34. At its sixty-third session (2011), the ILC adopted, in the context of the topics “Responsibility of international organizations”,⁵⁶ and “Effects of armed conflicts on

⁴⁹Report of the Independent Expert on the promotion of a democratic and equitable international order A/HRC/30/44, p. 17, para. 50.

⁵⁰*Ibid.*

⁵¹See *Ibid.*, p. 16, para. 46.

⁵²*Ibid.*, pp. 19 -20, para. 61.

⁵³See *Ibid.*, p 27, para. 5.

⁵⁴*Ibid.*, p. 28, para. 14.

⁵⁵See HRC resolution 30/29, p. 5, para. 15.

treaties”,⁵⁷ two sets of draft articles and commentaries thereto, which referred to Article 103 of the Charter.

35. Under the topic “Responsibility of international organizations”, draft article 67, entitled “Charter of the United Nations”, states:

“These draft articles are without prejudice to the Charter of the United Nations”.⁵⁸

36. Before citing the text of Article 103, the commentary to draft article 67 provides that:

“[t]he reference to the Charter includes obligations that are directly stated in the Charter as well as those flowing from binding decisions of the Security Council, which according to the International Court of Justice similarly prevail over other obligations under international law on the basis of article 103 of the Charter of the United Nations”.⁵⁹

37. The commentary further indicates that:

“[...] even if the prevailing effect of obligations under the Charter may have a legal basis for international organizations that differs from the legal basis applicable to States, one may reach the conclusion that the Charter has a prevailing effect also with regard to international organizations”.⁶⁰

38. Additionally, the following explanation was made:

“For instance, when establishing an arms embargo which requires all its addressees not to comply with an obligation to supply arms that they may have accepted under a treaty, the Security Council does not distinguish between States and international organizations”.⁶¹

⁵⁶Draft articles adopted on second reading by the ILC during its sixty-third session, in 2011; A/66/10, pp. 171-172.

⁵⁷Draft articles adopted on second reading by the ILC during its sixty-third session, in 2011; A/66/10, pp. 196-197.

⁵⁸A/66/10, p. 171.

⁵⁹*Ibid.*

⁶⁰*Ibid.*, p. 172.

⁶¹*Ibid.*

39. Under the topic “Effects of armed conflicts on treaties”, draft article 16, entitled “Decisions of the Security Council”, states:

“The present draft articles are without prejudice to relevant decisions taken by the Security Council in accordance with the Charter of the United Nations”.⁶²

40. The commentary to that draft article cites the full text of Article 103. It further provides:

“In addition to the rights and obligations contained in the Charter itself, Article 103 applies to obligations flowing from binding decisions taken by United Nations bodies. In particular, the primacy of Security Council’s decisions under Article 103 has been widely accepted in practice as well as in writings on international law”.⁶³

41. The commentary continues to explain that “[a]rticle 16 leaves open the variety of questions that may arise as a consequence of article 103.”⁶⁴

42. In 2014, Article 103 was also mentioned in the seventh report of the Special Rapporteur on the topic “Protection of persons in the event of disasters”.⁶⁵ The report suggested the addition of draft Article 19 which reads as follows:

“The present draft articles are without prejudice to the Charter of the United Nations”.⁶⁶

43. The Special Rapporteur explained that a draft article 19 on the interaction between the draft articles and the obligations under the Charter may be usefully included and that its text needs to be worded in the light of Article 103.⁶⁷ According to him, “the inclusion [...] of a clause reaffirming the primacy of Charter obligations might contribute to strengthen[ing] the leading role played by the United Nations in disaster management”.⁶⁸

⁶²*Ibid.*, p. 196.

⁶³*Ibid.*, p. 197.

⁶⁴*Ibid.*

⁶⁵Seventh report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur, A/CN.4/668, pp. 75-76, paras. 79, 80 and 81.

⁶⁶*Ibid.*, p. 76, para. 82.

⁶⁷*Ibid.*, p. 75, para. 79.

⁶⁸*Ibid.*, p. 76, para. 81.

44. Nevertheless, doubts as to the usefulness and necessity of including such a provision in the draft articles were expressed during the plenary debate.⁶⁹ It was, for example, argued that draft article 19 was superfluous⁷⁰ since “[...] the primacy of the obligations arising from the Charter of the United Nations was achieved through the direct application of Article 103 of the Charter, and did not depend on the establishment of additional rules of international law”.⁷¹ It was also advanced that “[...] under Article 103 of the Charter of the United Nations, a Security Council resolution [...] would always override the draft articles”⁷² and that although draft article 19 “[...] would strengthen the leading role of the United Nations in disaster management[,] [t]he fact that obligations under the Charter of the United Nations took precedence over others was universally recognized”.⁷³ Arguments such as “[...] the primacy of the obligations under the Charter of the United Nations over obligations under other international agreements was self-evident”,⁷⁴ or that “Article 103 [...] was applicable without the need for a reference thereto”⁷⁵ and that it has already “addressed the hierarchy issue”,⁷⁶ were also advanced.

45. Therefore, for the above-mentioned reasons, the Drafting Committee “was unable to reach agreement on the inclusion of the provision, and accordingly decided not to pursue it further”.⁷⁷

46. It is appropriate to highlight that the reluctance to include a provision on the interaction between the draft articles and the obligations under the Charter is in contrast with the trend that has emerged during the period covered by *Supplement No. 10*.⁷⁸ This trend has further continued throughout the reporting period as the ILC included without prejudice clauses in order to underline the relationship of the draft articles on the topics “Responsibility of international organizations” and “Effects of armed conflicts on

⁶⁹See A/CN.4/3199 (paras. 28 and 32); A/CN.4/3200 (paras. 10, 26, 35, 36, 42, 46 and 52) and A/CN.4/3201 (paras. 3 and 6).

⁷⁰A/CN.4/3200, para. 26.

⁷¹*Ibid.*

⁷²*Ibid.*, para. 35.

⁷³*Ibid.*, para. 42.

⁷⁴*Ibid.*, para. 46.

⁷⁵A/CN.4/3201, para. 3.

⁷⁶*Ibid.*, para. 6.

⁷⁷Statement of the Chairman of the Drafting Committee in relation to the topic "Protection of Persons in the Event of Disasters", 30 May 2014, p. 2.

⁷⁸See *Repertory, Supplement No. 10*, Vol. VI (2000-2009), pp. 6-8, paras. 20, 21, 24 and 25.

treaties” with the Charter of the United Nations. Nevertheless, the decision to deviate from this practice may announce the end of this trend and the commencement of a new trend according to which the inclusion of a provision on the relationship with the Charter is deemed unnecessary and superfluous.

c. The Sixth Committee

Throughout the reporting period, Article 103 of the Charter was in some instances referred to when the Sixth Committee examined the reports of the ILC, namely when it considered the topic “Protection of persons in the event of disasters” and addressed the final report of the Study Group on the most-favoured-nation clause. Despite the above-mentioned developments in the ILC, Article 103 was not referred to when the Sixth Committee examined, at its sixty-sixth session, in 2011, the topics “Responsibility of international organizations”⁷⁹ and “Effects of armed conflicts on treaties”.⁸⁰

47. At the sixty-ninth session of the General Assembly, the Sixth Committee on 27, 28, 29, 31 October, and 3, 5 and 14 November 2014, considered the report of the ILC on the work of its sixty-sixth session.

48. In the course of the deliberations on the topic “Protection of persons in the event of disasters”, and despite, as provided above, the decision of the Commission not to retain draft article 19, one delegation supported the proposal of the Special Rapporteur to include a provision specifying the relationship of the draft articles to the Charter of the United Nations.⁸¹ The delegation indicated that “[s]uch a provision, worded in the light of Article 103 of the Charter, would have merit in that it could highlight the cardinal role of the principles of [...] sovereignty and territorial integrity of the affected State enshrined in the Charter”.⁸²

49. Moreover, at its seventieth session, in 2015, the Sixth Committee examined the report of the ILC on the work of its sixty-seventh session. When addressing the final report of

⁷⁹See A/C.6/66/SR.18; A/C.6/66/SR.19; A/C.6/66/SR.20; A/C.6/66/SR.21; A/C.6/66/SR.23; A/C.6/66/SR.24; A/C.6/66/SR.25; A/C.6/66/SR.27 and A/C.6/66/SR.28.

⁸⁰See A/C.6/66/SR.21; A/C.6/66/SR.22; A/C.6/66/SR.23; A/C.6/66/SR.24; A/C.6/66/SR.25 and A/C.6/66/SR.27.

⁸¹See A/C.6/69/SR.21, p. 6, para. 27.

⁸²*Ibid.*

the Study Group on the most-favoured-nation clause,⁸³ one member stated the following:

“In accordance with Article 103 of the Charter of the United Nations, any bilateral or multilateral free trade or investment agreement containing provisions that conflicted with the Charter must be revised or terminated, or incompatible provisions must be severed”.⁸⁴

50. The member further added that “[s]ubsequent treaties must, [...], conform to the Charter and were invalid if they impeded the fulfilment of its purposes and principles, including its human rights provisions”.⁸⁵ He also explained that “[u]nder the *pacta sunt servanda* principle, if States entering into an international investment agreement were already parties to United Nations human rights treaties, they were obligated to interpret the investment agreement in a manner that did not contravene those treaties”.⁸⁶

B. Discussions about Article 103 in the Security Council

51. During the period under consideration, Article 103 was referred to when the Security Council examined the agenda items: “The promotion and strengthening of the rule of law in the maintenance of international peace and security” and “Threats to international peace and security caused by terrorist acts”. Further, a former trend has re-emerged upon consideration by the Council of the item “Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security”; this trend consists of making reference to Article 103 when the Council is holding discussions under Chapter VIII of the Charter. In addition, this study, like the previous one, saw an evolution in the reference to the Charter Article in the resolutions of the Security Council: Article 103 was only mentioned in one draft resolution, which did not obtain the required number of votes, and was therefore not mentioned in any of the resolutions adopted by the Council.

⁸³See final report of the Study Group on the Most-Favoured-Nation clause, *Yearbook* of the International Law Commission, A/CN.4/SER.A/2015/Add.1 (Part 2), pp. 91-117.

⁸⁴A/C.6/70/SR.19, p. 9, para. 44.

⁸⁵*Ibid.*

⁸⁶*Ibid.*

52. At the 6347th meeting of the Security Council, held on 29 June 2010, devoted to the agenda item “The promotion and strengthening of the rule of law in the maintenance of international peace and security”, one member of the Council, while speaking on measures to further support and strengthen the role of the International Criminal Court (thereinafter, ICC) in the international judicial system, reminded States of their obligations under Article 103 of the Charter in the following terms:

“[...] the Council should consider measures to further support and strengthen the ICC’s important role in the international judicial system. We urge all those States which have not yet done so to consider becoming party to the Rome Statute, but we also take this opportunity to remind them of their obligations under Article 103 of the Charter”.⁸⁷

53. Following the debate that took place during that same meeting,⁸⁸ the President of the Security Council made a statement, which, although it did not make reference to Article 103, *inter alia*, reaffirmed the Council’s “commitment to the Charter of the United Nations and international law”.⁸⁹

54. Additionally, at the 6492nd meeting of the Security Council, held on 28 February 2011, in connection with the Council’s consideration of the item entitled “Threats to international peace and security caused by terrorist acts”, the President of the Security Council made a statement on behalf of the Council. In his statement, the President, *inter alia*, recalled the Council’s “[...] primary responsibility for the maintenance of international peace and security under the Charter of the United Nations and further recall[ed] Article 103 of the Charter”.⁹⁰

55. Subsequently, the Council adopted resolution 1989 (2011), which without an explicit reference to Article 103, *inter alia*, [...]recall[ed][...] the Presidential Statement of the Security Council (S/PRST/2011/5) of 28 February 2011”.⁹¹

⁸⁷S/PV.6347, p. 10.

⁸⁸See *Ibid.*, and S/PV.6347 (Resumption 1).

⁸⁹Statement by the President of the Security Council, S/PRST/2010/11, p. 1.

⁹⁰Statement by the President of the Security Council, S/PRST/2011/5, p. 1.

⁹¹SC resolution 1989 (2011), p. 2.

56. At the 7015th meeting of the Security Council held on 6 August 2013 regarding the agenda item “Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security”, one delegate noted that the content and scope of the partnerships of the Security Council with other organizations will vary, depending on changing circumstances, and that differences of decisions made by regional organizations and the United Nations, if not reconciled through dialogue, should be resolved in accordance with Article 103 of the Charter.⁹² The delegate explained:

“When there is no mechanism to reconcile those differences through dialogue and understanding, they can become serious obstacles to the proper functioning of joint activity. That suggests that there is a need to reconcile decisions taken by regional organizations with those adopted by the United Nations, including those of the Security Council, in light of the provisions of Article 103 of the Charter of the United Nations”.⁹³

57. In light of the above, it is noteworthy that, while Chapter VII continues to be the primary ground to invoke Article 103, the Charter Article was referred to, during this meeting, when the Council was holding discussions under Chapter VIII of the Charter. As such, the Council seemed to revert to a former trend considering that, in the original *Repertory* as well as in *Supplements No.3* and *6*,⁹⁴ Chapter VIII used to form a general context for the application and/or interpretation of Article 103 of the Charter. Nevertheless, after a lasting gap in the practice, the Council seems to revert to this trend. It is also notable that, in the context of the discussions held during this meeting (i.e. the 7015th meeting), reference was made to Article 103 as a mechanism “to reconcile decisions taken by regional organizations with those adopted by the United Nations”.⁹⁵ However, in the original *Repertory* and in *Supplements No. 3* and *6*, reference was made to Article 103 in relation to the question whether a Member State which is also a member of a regional agency can bring its dispute with an another State, a member of

⁹²See S/PV.7015, p. 14.

⁹³*Ibid.*

⁹⁴See *Repertory*, Vol. V (1945-1954), p. 319, para. 18, *Repertory, Supplement No. 3*, Vol. IV (1959-1966), pp. 202-207, paras. 11-46 and *Repertory, Supplement No. 6*, Vol. VI (1979-1984), pp. 153-154, paras. 7-8.

⁹⁵S/PV.7015, p. 14.

the two organizations, concurrently before the Security Council and the regional agency; or before the Council in preference to referral to the regional agency.⁹⁶

58. In addition, during the 7015th meeting, the President of the Security Council made a statement on behalf of the Council, which without reference to Article 103, *inter alia*, expressed the Council's intention "[...] to consider further steps to promote closer and more operational cooperation, as appropriate, between the United Nations and regional and subregional organizations...";⁹⁷ "[...] stresse[d] the utility of continuing to develop effective partnerships..."⁹⁸ and "[...] encourage[d] enhanced cooperation between the United Nations and the regional and subregional organizations and arrangements..."⁹⁹

59. Lastly, Article 103 was referred to in a draft resolution of 15 November 2013. Before requesting the International Criminal Court to defer the investigation and prosecution against the President and Deputy President of Kenya for a period of 12 months, the authors of the draft resolution were mindful of the primacy of the Charter obligations and provided that:

“[...] in accordance with article 103 of the Charter of the United Nations in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail”.¹⁰⁰

60. However, the draft resolution has not been adopted, having failed to obtain the required number of votes.¹⁰¹

****C. The case-law of the International Court of Justice**

⁹⁶See *Repertory*. Vol. V (1945-1954), p. 319, para. 18; *Repertory, Supplement No. 3*, Vol. IV (1959-1966), pp. 202-207, paras. 11-46 and *Repertory, Supplement No. 6*, Vol. VI (1979-1984), pp. 153-154, paras. 7-8.

⁹⁷Statement by the President of the Security Council, S/PRST/2013/12, p. 1.

⁹⁸*Ibid.*, p. 2

⁹⁹*Ibid.*, p. 6

¹⁰⁰SC draft resolution S/2013/660, p. 2.

¹⁰¹See S/PV.7060, p. 2.