

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.

NOTE

1. During the period under review, no decision concerning the application or interpretation of Article 103 was taken by United Nations organs. Reference was, however, made to Article 103 on two occasions.
2. On one occasion, it was stated ^{1/} in a separate opinion appended to the judgement of the International Court of Justice of 28 November 1958, in the "Case concerning the Application of the Convention of 1902 governing the Guardianship of Infants (Netherlands v. Sweden)", that the concept of national ordre public was indissolubly bound up with the general principles of law recognized by civilized nations which, under Article 38, paragraph 1 (c) of the Statute of the International Court of Justice, the Court was required to apply as a main source of law. Consequently, the national ordre public of Sweden prevailed, in accordance with the provisions of Article 103 of the United Nations Charter, over the provisions of the 1902 Convention which governed the guardianship of infants as between Sweden and the Netherlands.
3. In the fourth report on the "Law of Treaties", submitted by the Special Rapporteur to the International Law Commission at its eleventh session, one of the draft articles dealt with the obligatory character of treaties in the case of conflicting treaty obligations. ^{2/} Article 103 of the Charter was cited as one of the exceptions to the general rule laid down in the draft article. The exception covered two cases: (i) As between the Member States of the United Nations, in case of a conflict between their obligations under the Charter and their obligations under any other international agreement, the former obligations would prevail over the latter, and no responsibility would be incurred by one Member State vis-à-vis another in respect of the non-performance of the latter obligations; (ii) As between a Member and a non-member State, the Charter obligation might prevail in the sense that the other agreement or treaty could not be carried out because of the Charter obligation and Article 103, but a Member State might nevertheless be under obligation to make due reparation to the non-member State for the breach involved. It should be noted that the report of the Special Rapporteur had not been discussed by the International Law Commission at the end of the period under review.

^{1/} I C J, Reports 1958, p. 107.

^{2/} Yearbook of the International Law Commission, 1959, vol. II (United Nations publication, Catalogue No. : 59.V.I Vol. II), pp. 43 and 62.

