

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 present study, in its analytical summary of practice, follows the division into four main parts established by the previous study of this Article in *Supplement No. 6*, namely:

- (a) Compatibility between regional agreements 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;
- (d) Application of successive treaties, relating to the same subject matter, in relation to Article 103.

I. GENERAL SURVEY

2. During the period under review, the General Assembly, by its resolution 42/22 of 18 November 1987, approved the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, as contained in the annex to the resolution. The Declaration included a paragraph confirming the priority of obligations under the Charter of the United Nations over obligations of Member States under any other international agreement, in accordance with Article 103 of the Charter.¹

¹ G A resolution 42/22, annex, para. 4.

3. The adoption of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations² on 21 March 1986 clarified some of the questions that have been under discussion in the studies of Article 103 in previous *Supplements of the Repertory of Practice*.³

4. No decisions explicitly related to Article 103 of the Charter were taken by any other organ during the period under review.

² A/CONF.129/15; see also *United Nations Juridical Yearbook 1986*, p. 218. The Convention did not enter into force during the period under review.

³ See *Repertory, Supplement No. 6* and *Supplement No. 5*, under Article 103.

II. ANALYTICAL SUMMARY OF PRACTICE

****A. Compatibility between regional arrangements and the Charter**

B. Compatibility between international treaties and the Charter

1. SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

5. There continued to be consideration of Article 103 in the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations in the context of its consideration of the relation between Article 2 (4) of the Charter and obligations pursuant to a possible world treaty on the principle of the non-use of force. The General Assembly, by its resolution 41/76 of 3 December 1986, changed the mandate of the Special

Committee from one that envisaged the preparation of a draft world treaty,⁴ deciding that:

“the Special Committee shall complete a draft declaration on the enhancement of the effectiveness of the principle of non-use of force in international relations, including, as appropriate, recommendations on the peaceful settlement of disputes”.⁵

6. The Special Committee finished its work in 1987⁶ and submitted to the General Assembly for adoption a draft Declaration on the Enhancement of the Effectiveness of the

⁴ G A resolution 40/70, para. 2.

⁵ G A resolution 41/76, para. 2.

⁶ For the reports of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, with a detailed summary of the discussions on the preparation of a draft declaration, see G A (41), Suppl. No. 41, and G A (42), Suppl. No. 41.

Principle of Refraining from the Threat or Use of Force in International Relations. The General Assembly, by its resolution 42/22 of 18 November 1987, approved the Declaration, as contained in the annex to the resolution.

7. Paragraphs 2, 3 and 4 of the Declaration read as follows:

“The General Assembly,

“... ”

“2. Declares that nothing in the present Declaration shall be construed as:

(a) Enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful;

(b) Prejudicing in any manner the relevant provisions of the Charter or the rights and duties of Member States or the scope of the functions and powers of the United Nations organs under the Charter, in particular those relating to the threat or use of force;

“3. Declares that nothing in the present Declaration could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration;

“4. Confirms that, in the event of a conflict between the obligations of Member States of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter will prevail in accordance with Article 103 of the Charter.”

2. INTERNATIONAL AGREEMENTS

8. During the period under review, 16 international legal instruments were adopted by organs of the United Nations or under the auspices of the Organization.⁷ Only one of them referred explicitly to Article 103 of the Charter of the United Nations: namely, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986. Article 30, paragraph 6, of that Convention provides:

⁷ For a list of the agreements see the present *Supplement*, under Article 95.

“The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.”

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

9. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations contains two provisions on the consequences of a conflict between an international treaty and a peremptory norm of general international law. The provisions – article 53 and article 64 – parallel the corresponding provisions of the 1969 Vienna Convention on the Law of Treaties and read as follows:

Article 53

“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.”

Article 64

“If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.”

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

10. The Vienna Convention on the Law of Treaties between States and International Organizations or International Organizations contains in its article 30 provisions dealing with successive treaties relating to the same subject matter.

11. Article 30, paragraph 6, envisages that when the obligations of a Member State under the Charter conflict with its obligations under a treaty with an international organization or to which an international organization is a party, its obligations under the Charter prevail.