
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. In the period covered by the previous *Supplement*, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations finished its work by submitting the draft Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations to the General Assembly in 1987. The General Assembly subsequently approved the Declaration in its resolution 42/22 on 18 November 1987. In addition, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, which contained two provisions on the consequences of a conflict between an international treaty and a peremptory norm of general international law¹ and one provision which dealt with successive treaties relating to the same subject matter,² was adopted on 21 March 1986.³ Accordingly, the subheadings in the study of this Article in the previous *Supplement* are no longer relevant and have therefore been dropped.

2. This study will focus instead on decisions and measures adopted by the Security Council under Chapter VII of the Charter of the United Nations. In accordance with Article 103, the obligation of Member States under the Charter to accept and carry out those decisions prevails over their obligations under any other international agreement in the event of a conflict between them. The Security Council included in a number of its resolutions provisions designed to remind Member States that this was so.

¹ G A resolution 53/64.

² Article 30 (6).

³ The Convention did not enter into force during the period under review. Belgium entered a reservation on 21 June 1993, after ratifying the Convention on 1 September 1992, to articles 53 and 64. None of the Contracting Parties to the Convention notified the Secretary-General of an objection either to the deposit itself or to the procedure envisaged within a period of 90 days from the date of its circulation. As such the reservation was deemed to have been accepted.

I. General survey

3. During the period under review, the Security Council adopted a number of decisions under Chapter VII of the Charter in which it recalled that the obligation of Member States under the Charter to accept and carry out those decisions prevailed over all other treaty commitments.

4. The International Court of Justice confirmed the Security Council's power to adopt such decisions in its order of 14 April 1992 in *Questions of Interpretation and Application of the 1971 Montreal Convention*

*arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures.*⁴

⁴ *I.C.J. Reports 1992*, p. 3. See also its order of 14 April 1992 in *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures*. The two orders are identical, *mutatis mutandis*.

II. Analytical summary of practice

A. Decisions and enforcement measures of the Security Council under Chapter VII

5. Article 103 states specifically that 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 prevail. This clearly includes all obligations which result immediately and directly from the Charter, such as the obligation to settle disputes only by peaceful means and not to use force. In as much as the Charter imposes an obligation on Member States to accept and carry out decisions of the Security Council under the Charter, it also includes obligations which arise as a result of those decisions. As such, the obligation of Member States to accept and carry out decisions of the Security Council under Chapter VII prevails over their obligations under other international agreements in the event that they conflict.

6. During the period under review, the Security Council invoked Chapter VII of the Charter to impose measures in respect of Angola, Haiti, Iraq, Liberia, Libya, Rwanda, Somalia and the former Yugoslavia. The majority of those resolutions emphasized, either expressly or by reference to former resolutions, that the obligations under the Charter to which they gave rise prevailed over any other commitments in the event of conflict between them.

7. The Security Council adopted a number of resolutions imposing measures under Chapter VII of the Charter in respect of Iraq⁵ during the period under review. In resolution 661 (1990) of 6 August 1990, the Council

*“[c]all[ed] upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution”.*⁶

In the penultimate paragraph of the preamble of its resolution 670 (1990) of 25 September 1990, the

Security Council expressly *“[r]ecall[ed] the provisions of Article 103 of the Charter”*. In paragraph 3 of the same resolution, the Council

“[d]ecide[d] that all States, notwithstanding the existence of any rights or obligations conferred or imposed by any international obligation or any contract entered into or any licence or permit granted before the date of the present resolution, shall deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances, subject to authorization by the Security Council or the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait and in accordance with resolution 666 (1990), or supplies intended strictly for medical purposes or solely for the United Nations Iran-Iraq Military Observer Group”.

8. The Security Council resolutions during the period under review imposing measures in respect of Somalia and Liberia did not contain a provision similar to paragraph 3 of resolution 670 (1991) of 25 September 1990.⁷

9. By its resolution 864 (1993) of 15 September 1993, the Security Council imposed certain measures under Chapter VII of the Charter in respect of the National Union for the Total Independence of Angola. In paragraph 20 of that resolution, the Council

“[c]alle[d] upon all States, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of adoption of the present resolution”.

10. In paragraph 15 of its resolution 918 (1994) of 17 May 1994, imposing an arms embargo in respect of Rwanda, the Security Council

⁵ S C resolutions 661 (1990) of 6 August 1990, 670 (1990) of 25 September 1990, 687 (1991) of 3 April 1991 and 712 (1991) of 19 September 1991.

⁶ S C resolution 661 (1990), para. 5.

⁷ See para. 5 of S C resolution 733 (1992) of 23 January 1992, in respect of measures against Somalia and para. 8 of resolution 788 (1992) of 19 November 1992, in respect of measures against Liberia.

“[c]alle[d] upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of the adoption of this resolution”.

11. The Security Council employed a similar formulation in its resolutions 748 (1992) of 31 March 1992 and 883 (1993) of 11 November 1993 imposing measures in respect of Libya. Specifically, the Council

“[c]all[ed] upon all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992”.⁸

12. The Security Council resolutions during the period under review imposing measures in respect of Haiti did not employ a uniform formulation in addressing the relationship between the obligations of Member States to comply with those measures and their other treaty obligations. Security Council resolution 841 (1993) of 16 June 1993 followed the formulation in the case of Angola.⁹ However, by its resolution 917 (1994) of 6 May 1994, the Council

“[c]all[ed] upon all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution and the earlier relevant resolutions, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the effective date of the measures in this resolution or earlier relevant resolutions”.¹⁰

⁸ Para. 3 of S C resolution 748 (1992) and para. 2 of resolution 833 (1993), except the time stipulated was the effective time of that resolution.

⁹ Para. 9 of S C resolution 841 (1993) of 16 June 1993.

¹⁰ Para. 12 of S C resolution 917 (1994) of 6 May 1994.

13. The Security Council adopted a number of resolutions imposing measures in respect of the crisis on the territory of the former Yugoslavia during the period under review. Of these, resolutions 713 (1991) of 25 September 1991¹¹ and 757 (1992) of 30 May 1992¹² expressly referred to the priority of the obligations that they imposed in relation to any other commitments, including under other international agreements. Resolution 713 (1991) of 25 September 1991 followed a similar formulation for this purpose to those appearing in the resolutions relating to the situations in Somalia and Liberia.¹³ The Council

“[d]ecide[d], under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Council decides otherwise following consultations between the Secretary-General and the Government of Yugoslavia”.¹⁴

Resolution 757 (1992) of 30 May 1992 followed the formulation in the case of Libya.¹⁵ Subsequent resolutions imposing measures in respect of the former Yugoslavia made reference to one or both of these resolutions.¹⁶

14. Apart from resolution 670 (1990) of 25 September 1990 in the case of Iraq, the resolutions referred to above did not expressly refer to Article 103. They nevertheless contained provisions which were formulated on the basis of the language of that article. At the same time, they were broader in scope. The majority were addressed not only to States but also to non-Member States and international organizations. They also referred to rights and obligations derived from contracts, licences and permits as well as to obligations under international agreements.

¹¹ At para. 6.

¹² At para. 11.

¹³ See op. cit., 7.

¹⁴ Para. 6.

¹⁵ See paras. 11-13 above.

¹⁶ See S C resolutions 724 (1991) of 15 December 1991, 727 (1992) of 8 January 1992, 743 (1992) of 21 February 1992, 787 (1992) of 16 November 1992, 820 (1993) of 17 April 1993.

B. The International Court of Justice

15. Until 1992, the International Court of Justice (hereinafter “the Court”) had only discussed Article 103 in one decision.¹⁷ On 3 March 1992, Libya filed in the Registry of the Court two separate Applications instituting proceedings against the Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971. The dispute arose from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988. As a result of subsequent police investigations, the Lord Advocate of Scotland and a Grand Jury of the United States of America charged two Libyan nationals with having caused the explosion which led to the crash and with it the death of several hundred persons. Accordingly the Governments of the United Kingdom and the United States of America requested Libya to hand over the two Libyan nationals for trial. Libya contended that, by pressuring it to surrender the two Libyan nationals for trial in the United Kingdom or the United States of America, while at the same time rejecting the Libyan efforts to resolve the matter within the framework, States were violating the Montreal Convention, in particular, those provisions dealing with jurisdiction and prosecution of aerial sabotage.¹⁸ Libya also asked for the indication of provisional measures.¹⁹

16. In its order of 14 April 1992,²⁰ the Court found, by eleven votes to five, that the circumstances of the case were not such as to require the exercise of its power under Article 41 of the Statute to indicate

provisional measures. The Court referred, in particular, to Security Council resolution 748 (1992) of 31 March 1992 in which the Security Council had decided, in accordance with Chapter VII of the Charter, that Libya must comply with the requests of the United Kingdom and the United States of America²¹ to surrender for trial all those charged with the Lockerbie crime; to accept responsibility for the actions of Libyan officials; to disclose all it knew of the crime, and allow full access to all witnesses, documents and other material evidence; and to pay appropriate compensation.²² In the same resolution, the Security Council also decided “that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism”.²³ The Security Council further decided in that resolution that, as of 15 April 1992, States were to apply a range of measures in respect of Libya.²⁴ In paragraph 7 of the resolution, the Council

“[c]all[ed] upon all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992”.

17. The Court, in its order of 14 April 1992, referred to the fact that the States concerned, as Members of the United Nations, were obliged to accept and carry out the decisions of the Security Council and that *prima facie* this obligation extended to the decision contained in resolution 748 (1992) of 31 March 1992. The Court also stressed that, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect

¹⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392 at p. 440.

¹⁸ *I.C.J. Reports 1992*, p. 6 at para. 6. See note 4 above.

¹⁹ *Ibid.*, p. 8 at para. 11 and p. 9 at para. 19.

²⁰ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 3 and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 114.

²¹ Para. 1 of S C resolution 748 (1992).

²² See *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 12, para. 28 and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, pp. 122-123, para. 30.

²³ Para. 2 of resolution 748 (1992).

²⁴ Para. 3 of resolution 748 (1992).

prevailed over their obligations under any other international agreement, including the Montreal Convention. Thus, the Court held:

“39. Whereas both Libya and the United Kingdom, as Members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that *prima facie* this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;

“40. Whereas the Court, while thus not at this stage called upon to determine definitively the legal effect of Security Council resolution 748 (1992), considers that, whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Convention cannot now be regarded as appropriate for protection by the indication of provisional measures;

“41. Whereas, furthermore, an indication of the measures requested by Libya would be likely to impair the rights which appear *prima facie* to be enjoyed by the United Kingdom by virtue of Security Council resolution 748 (1992) ...”.²⁵

²⁵ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 15 and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, p. 126-7, paras. 42-44.