

# Repertory of Practice of United Nations Organs

## SUPPLEMENT No. 9

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### 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. The present study follows, in its analytical summary of practice, the division into two main parts established in the previous *Supplement*, namely:
  - A. Decisions and Enforcement Measures of the Security Council under Chapter VII;
  - B. The case-law of the International Court of Justice.
2. No decision related to Article 103 of the Charter was adopted by any other organ of the United Nations during the period under review.

## I. GENERAL SURVEY

3. On several occasions during the period under review, the Security Council, in requesting compliance with a number of its decisions contained in resolutions adopted under Chapter VII of the Charter, reaffirmed the prevalence of the obligations of the Member States of the United Nations under the Charter on their obligations under any other agreement to which they were parties.

4. The International Court of Justice referred to the effects of Security Council decisions in its judgments on preliminary objections in the two parallel cases concerning certain *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*, opposing, respectively, the Libyan Arab Jamahiriya to United Kingdom of Great Britain and Northern Ireland, and the Libyan Arab Jamahiriya to the United States of America).<sup>1</sup>

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Decisions and Enforcement Measures of the Security Council under Chapter VII

5. During the period under review, the Security Council adopted, under Chapter VII of the Charter, five resolutions in which it recalled the prevalence of the obligations of United Nations Member States under the Charter – in the cases at stake, the obligations arising from the decisions adopted by the Council in those resolutions – on their obligations under any other international agreement.

6. Thus, in its resolution 1127 (1997) concerning the situation in Angola, the Security Council, after having decided, *inter alia*, that all States shall – subject to certain exceptions – take the necessary measures to prevent the entry into or transit through their territories of all senior officials of the *Uniao Nacional para a Independencia Total de Angola* (UNITA) and of adult members of their immediate families, and to suspend or cancel all travel documents, visas or residence permits issued to senior UNITA officials and adult members of their immediate families,<sup>2</sup> called upon all States and all international and regional organizations to act strictly in accordance with the provisions of its resolution, “*notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any*

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<sup>1</sup> See below, notes 8 and 12.

<sup>2</sup> See S/RES/1127 (1997), 28 August 1997, in particular para 4.

*contract entered into or any licence or permit granted prior to the date of adoption of [the] resolution”.*<sup>3</sup>

7. Also, in its resolution 1132 (1997) on the situation in Sierra Leone, the Security Council used the same formula in order to request all States and international organizations to comply with the terms of its decision.<sup>4</sup>

8. Similarly, in its resolution 1160 (1998) concerning a comprehensive arms embargo on the Federal Republic of Yugoslavia, including Kosovo, the Security Council, after having decided, *inter alia*, that that all States shall, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, of arms and related *matériel* of all types<sup>5</sup>, called upon all States and all international and regional organizations “*to act strictly in conformity with this resolution, notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any license or permit granted prior to the entry into force of the prohibitions imposed by this resolution*”.<sup>6</sup>

9. Lastly, in its resolution 1267 (1999) on the situation in Afghanistan, the Security Council called upon “*all States to act strictly in accordance with the provisions of [its] 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 coming into force of the measures imposed by paragraph 4*”.<sup>7</sup>

## **2. Case-law of the International Court of Justice**

10. During the period under review, the International Court of Justice continued its consideration of the *Lockerbie* cases, in which it adopted two parallel judgments on preliminary objections. In the case opposing the Libyan Arab Jamahiriya to the United Kingdom of Great Britain and Northern Ireland,<sup>8</sup> the latter, in challenging the jurisdiction of

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<sup>3</sup> *Ibid.*, para 10 (emphasis added). See also S/RES/1173 (1998), 12 June 1998, para 17.

<sup>4</sup> See S/RES/1132 (1997), 8 October 1997, para 11.

<sup>5</sup> See S/RES/1160 (1998), 31 March 1998, para 8.

<sup>6</sup> *Ibid.*, para 10.

<sup>7</sup> See S/RES/1267 (1999), 15 October 1999, para 7.

<sup>8</sup> See *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections*, Judgment of 27 February 1998, *ICJ Reports 1998*, p. 9.

the Court, contended *inter alia* that “even if the Montreal Convention did confer on Libya the rights it claims, those rights could not be exercised in the present situation because they were superseded by Security Council resolutions 748 (1992) and 883 (1993) which, by virtue of Articles 25 and 103 of the United Nations Charter, have priority over all rights and obligations arising out of the Montreal Convention.”<sup>9</sup> Furthermore, “[the] Respondent has also argued that, because of the adoption of those resolutions, the only dispute which existed from that point on was between Libya and the Security Council; this, clearly, would not be a dispute falling within the terms of Article 14, paragraph 1, of the Montreal Convention and thus not one which the Court could entertain.”<sup>10</sup>

11. Without addressing the legal effects of Articles 25 and 103 of the Charter, the Court refused to uphold the line of argument suggested by the United Kingdom, on the ground that the resolutions in question had been adopted by the Security Council after the date at which the Libyan Arab Jamahiriya had brought the case before the Court. The Court stated:

*“The Court cannot uphold this line of argument. Security Council resolutions 748 (1992) and 883 (1993) were in fact adopted after the filing of the Application on 3 March 1992. In accordance with its established jurisprudence, if the Court had jurisdiction on that date, it continues to do so; the subsequent coming into existence of the above-mentioned resolutions cannot affect its jurisdiction once established [...].”*<sup>11</sup>

12. The same argument was made by the United States of America, and the Court held the same position.<sup>12</sup>

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<sup>9</sup> *Ibid.*, p. 23, para 37. A similar argument was made by the United Kingdom in challenging the admissibility of the Application; see *ibid.*, p. 24, para 41, and p. 29, para 50.

<sup>10</sup> *Ibid.*, p. 23, para 37.

<sup>11</sup> *Ibid.*, pp. 23-24, para 38.

<sup>12</sup> See *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)*, Preliminary Objections, Judgment, ICJ Reports 1998, pp. 128-129, paras 36-37. See also *ibid.*, p. 134, para 49.