



Rules for Resolving Conflicts of Treaty Obligations of States

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Abstract: The growing expansion of international relations and the increasing number of treaties concluded among states, alongside other sources of international law such as customary law, general principles of law, judicial decisions, and peremptory norms, have created conditions in which conflicts between states' international obligations may arise. A conflict of treaty obligations occurs when the simultaneous implementation of two or more obligations becomes impossible, or when the performance of one obligation necessarily results in the breach of another. Such conflicts typically emerge where treaties share the same subject matter, involve common parties, or impose incompatible legal effects. This study, employing a descriptive–library research method and relying primarily on the law of treaties—particularly the 1969 Vienna Convention on the Law of Treaties—examines the legal rules governing the resolution of conflicts between treaty obligations of states. The findings indicate that international law resolves such conflicts through several established principles, including the supremacy of peremptory norms (*jus cogens*), the priority of obligations arising under the Charter of the United Nations—especially Article 103—the principle of *lex posterior derogat legi priori* (later law prevails over earlier law), the principle of *lex specialis derogat legi generali* (special law prevails over general law), and the principle of harmonious interpretation of obligations. Among these, peremptory norms occupy a superior hierarchical status within the international legal order and render any conflicting treaty or rule void or without legal effect. Similarly, obligations deriving from the United Nations Charter prevail over other international agreements in the event of conflict. With respect to the relationship between treaty law and customary international law, both sources are generally considered equal in normative status unless one of them acquires a peremptory character or gains priority on temporal or substantive grounds. The study concludes that the absence of a centralized legislative authority in the international legal system increases the likelihood of conflicts between states' obligations. Nevertheless, conflict-resolution rules play a crucial role in ensuring coherence, legal certainty, and predictability within the international legal order, thereby contributing to the effective implementation of international obligations and the stability of the international community.

Keywords: Conflict of Obligations, International Treaties, Jus Cogens, United Nations Charter, Customary International Law, Law of Treaties.

Received: 18 December 2023

Revised: 29 December 2023

Accepted: 31 December 2023

Introduction

Human history is full of the sorrows of wars between states. Wars that have only resulted in murder, displacement, poverty, and backwardness. In response to the suffering and hardship of war victims, both military and civilian, the conscience of humanity dictates that international humanitarian laws be implemented and enforced, and that everything should not be sacrificed for the nationalization of truth (Mohaqq Damad, 1991: 68). Examining the roots of these conflicts, the ultimate cause of most of them can be found in the lack of independent and

demonstrable legal sources that would establish the legitimate rights of the parties to the dispute. Humanity, tired of war and strife, sought a solution to the disputes of power-hungry governments by proposing unwritten laws called custom, seeking to build a system to control conflicts. Thanks to this invention, human suffering was alleviated to some extent. However, international custom, due to the ambiguity of its rules, the delay in formation, the inability to stabilize, the lack of the necessary consistency in sustainability, and finally the heterogeneity of its rules, could not be the only reliable source for maintaining public order. Despite its advantages such as its ability to change and develop, the formation of another legal source was necessary, regardless of the aforementioned shortcomings. The preservation and protection of the privacy of humanity and its boundaries and boundaries is the duty of each human being (Kasseh, 2017: 25.)

For this reason, treaties, as a written source that is clear and unambiguous, often devoid of ambiguity, and whose existence is based on the circumstances and requirements of the time, and dynamics and repetition are not effective in its occurrence, come into existence as soon as they are concluded, and are more in harmony with time changes, and by relying on them, arbitrators who handle disputes better and more quickly become aware of the intentions of those who concluded them, come into existence in the international legal system. According to history, international treaties have been used as an independent source in the international legal system for at least four thousand years before Christ. For example, the peace treaty of Natom, Patsi, one of the cities of Mesopotamia, with the defeated people of Uma, another city in Mesopotamia, was concluded four thousand years ago (Falsafi, 1379: 33). Despite the use of treaties in the international arena, the hostile behavior of states towards each other continued to prevail, and those in power, seeking to satisfy their own hungry egos, played the leading role in the scenario of wars, and hostile relations continued to prevail over friendly relations. This situation forced intellectual reformers such as Gresius to think of a solution, which eventually led to the creation of valuable works such as the book *War and Peace* in the 17th Century, so that the principle of keeping the promise would find another birth and new thinking would become the cornerstone of the formation of the provisions of the 1969 Vienna Treaty. Legal scholars believed that any international treaty, simply because it is a treaty between states, should be interpreted only according to the provisions of international law, that is, the principles based on the general consensus of the members of the international community, and not according to the provisions of the domestic laws of the countries (Manin, 1979, p9). Nevertheless, the concept of treaty has been valid in the field of international relations since 1815 (the time of the formation of the Congress of Vienna) and has undergone remarkable developments in a period of nearly a century and a half to the extent that the treaty has now acquired a privileged position as the main instrument of international relations. The main reason for the expansion of the scope of the concept of treaty has been the increasing interconnectedness of states with each other. In other words, the treaty is a concept that has grown and developed in proportion to the degree of solidarity of different states, the unity of the general interests of mankind and the efforts of the people of the world in creating a world culture and civilization, and the importance of international public opinion (Falsofi, Hedayat-Allah, *ibid.*: 34).

The mutual relations of treaties may give rise to conflict, but not a conflict whose predominant method is the abrogation or termination of one against the other; rather, the priority of the validity of one over the other is at stake, without the other being invalidated. Technically, a conflict between treaties arises when two or more treaties contain obligations that cannot be implemented simultaneously, or the implementation of one would violate the other. This issue arises when treaties, while separate and distinct, share a common subject matter (common subject matter), although not all multiplicity, diversity, and separation give rise to conflict. Incompatibility or incompatibility of the content of treaties is the essential condition for conflict (Wolfram, Karl, 1984, p 468). In treaty law, there is both horizontal conflict and vertical conflict, that is, conflict between treaties of equal status and conflict between treaties based on hierarchy. Resolving the conflict of treaty obligations requires, on the one hand, the acceptance of the hierarchy between treaties and, on the other hand, the existence of an international legal rule based on the termination and conclusion of conflicting treaties (Ziaei Bigdali, Mohammad Reza, 2002: 83).

In the discussion of observing the hierarchy between treaties, some treaties, regardless of their priority or delay, have priority over other treaties, which, in case of conflict with other treaties, are nullified or abrogated, as the case may be. The logical basis of this rule is based on the fact that a treaty cannot nullify natural rights (Ackhurst, Michael, 1993: 69). Any existing treaty that conflicts with the new preemptory norm is terminated (Mosizadeh, Reza, 2008: 246). Also, legislative or general treaties, which usually contain rules of law, usually have priority over specific contractual treaties, although they cannot be terminated or invalidated. The third category of superior

treaties is the Charter of the United Nations, according to Article 83 of which, in the event of a conflict between the obligations of the members of the United Nations under this Charter and their obligations under another international agreement, their obligations under this Charter shall prevail. The importance of the Charter of the United Nations as the constitutional law of the international community has made it necessary for non-member states and even regional and international organizations to accept the priority of the obligations arising from the Charter (Azizi, Sattar 2013, 97-122).

In the discussion of the conflict between successive treaties with a single position, the meaning is treaties that have priority and delay in terms of the time of conclusion, whether their parties are completely the same or partly the same; the conflict appears when, regardless of the sequence of treaties and the unity of at least some of their parties, the subject matter of those treaties is also the same. The subject matter of Article 30 of the Convention on the Law of Treaties is the rights and obligations of the parties to successive treaties with a single subject matter (Ziaei Bigdali, Mohammad Reza, 2002: 378). Also, regarding the conflict of treaties arising from the succession of States, the International Law Commission ruled in the 1978 Convention on the Succession of States in the Field of Treaties in order to preserve the contractual stability of States by validating the rule of legal continuity of treaties that were required to be performed against one of the predecessor States at the time of the succession (Falsafi, Hedayatullah, *ibid.*: 635). Article 33 of the said treaty states that any treaty which was in force in respect of one of the States at the time of the succession of States shall continue to be in force in respect of the successor State, unless it is inferred from the treaty that the performance of the treaty in respect of the successor State is incompatible with the object and purpose of the treaty. Therefore, it is observed that the law of treaties deals with conflicts of place, time and conflicts arising from the hierarchy of treaties. In short, in order to resolve treaty conflicts, the hierarchy between the conflicting rules can be determined in the first step by using the content and substance of the conflicting rules and with the help of the type of rules such as peremptory rules, general international obligations, fundamental principles and norms and Article 103 of the Charter of the United Nations. In the next step, principles such as "the specific law abrogates the general law", "determining the intention of the parties", "the later law abrogates the previous law" and ... were used to determine the hierarchy between conflicting rules (Poornuri, Mansour; Mukthar, Aida, 2012: 59-90). In conclusion, this research examines the conflict situations and solutions presented in treaty law and analyzes different opinions in this area.

The main hypothesis of the research is that the implementation of treaties by states sometimes contains obligations that are not enforceable at the same time, and the implementation of one leads to the violation of the other.

The basis of any science is its method of cognition, and the validity and value of the laws of any science are based on the cognitive methodology in which science is used. The research method is a set of rules, tools and reliable and systematic ways to examine facts, discover unknowns and achieve solutions to problems. So that the choice of research methodology is one of the most important and technical stages in which the researcher must design a suitable tool for data collection with special sensitivity. In addition, choosing the appropriate research method is a difficult and important matter. Also, understanding research methods and being aware of their accuracy is more sensitive. Also, this research is a descriptive-library research in terms of method. Conducting descriptive research can be simply to better understand existing conditions or to assist in the decision-making process.

1- Conflict of custom with other international obligations

1-1- The concept of international custom

Custom has special importance in both domestic and international legal systems and has been considered as a main source of law. In some countries, domestic legal systems are based on custom, such as the United States and England, and in other domestic legal systems where written law prevails, custom has played an important role, and in fact, the root of written rules is also based on custom. In the domestic legal system of our country, custom has also been considered as one of the sources of law. For example, in Article 3 of the Code of Civil Procedure, it is stipulated that "Courts of Justice are obliged to hear and decide claims in accordance with the laws, and if the established laws of a country are not complete or explicit, or are contradictory, or if there is no law at all in the case at hand, the courts of Justice must decide the case in accordance with the spirit and content of the established laws and established custom and custom".

Article 138 of the Statute of the International Court of Justice defines the formal sources of international law as follows:

1. International agreements, whether general or specific, which create legal rules and are expressly recognized by the States parties to the dispute.

2. International custom which is accepted as a reason for a general or general behavior of a country as a rule of law

3. General principles of law accepted by civilized nations

4. Subject to Article 55, judicial decisions and opinions of the most prominent authors of international law of different countries as secondary factors for determining legal rules "It is stated in the preamble to the 1969 Vienna Convention on the Law of Treaties. In the provisions of customary international law, it also covers issues that the present treaty has not addressed (Ziaei Bigdali, 2016: 104)

In domestic law, custom, in short, is the customs and habits that have been formed uniformly and gradually over time in a society and that all or the majority of the people of that society have felt to be obligatory. In international law, custom is the repetition of similar actions by states and international organizations that gradually become mandatory in their mutual relations with each other and have acquired legal force, and as a result, have the same validity and value as a written legal rule (Charles Rousseau, 1355: 136).

Custom, as one of the sources of international law, is considered a source of rights and obligations in the mutual relations of states.

According to Article 38, custom is evidence of the existence of a general practice that has been accepted as law. Therefore, there are two basic elements in the composition of custom, which are the current behavior of states as the material element and the belief and perception of such behavior as law, which is the spiritual element.

Regarding the material element, which is the first factor in the emergence of international custom, several points should be considered, including the duration, continuity, repetition and generality of a specific act carried out by states. In international law, there is no fixed time factor and it depends on the circumstances of the subject and the nature of the habit in question. In a 1950 asylum case, the International Court of Justice held that the customary rule must be consistent with two established and permanent practices in the country concerned. The case concerned a Peruvian named Haydelatorre, who was being persecuted by his government after a failed uprising. Colombia had granted him asylum at its embassy in Lima but had refused to issue a letter of protection allowing Torre to leave the country. Colombia brought the case before the International Court of Justice and requested that the Court, after hearing the case, declare that the asylum claim could not be considered an established and permanent practice in the unilateral description of the crime in question, given the dubious and contradictory conduct of the States.

Professor Charles Rousseau has summarized the specific features of international custom in the following three parts:

a) Custom, in the first stage, identifies and expresses a "practice" that is common and precedent among the general public, that is, it arises from the repetition of a documented and effective legal act.

b) Custom in the second stage is the recognition of binding action, that is, since it is a legal necessity, it must be accepted as a right, and if it lacks this flexible element, it is no longer a customary rule and is formal without a guarantee of implementation, which can be considered international courtesy.

c) International custom is a way of doing things that is always evolving and, as a result, is not fixed and sustainable. As for custom, when states participate in the process of developing the rule of law, their main goal is not to establish international rules, but rather to protect economic, social or political interests. In addition to the impact of the performance of states in international relations, new international rules are also gradually formed. For this reason, Kelsen considers custom to be an unconscious and unwanted international rule-making, and some Italian international lawyers such as Giuliano, Ago, and Barile refer to custom as a spontaneous process. In general, international custom has advantages and disadvantages. Its advantages include its ability to change and adapt more to the requirements of the international community and existing realities, compensating for the lack of contractual rules, and its disadvantages include its lack of clarity and clarity, its failure to respond to the urgent needs of the international community, its lack of coordination with the rapid changes in the current world, and its variability, which results in instability.

1-2- Conflict between custom and treaty:

Treaties and custom are both formal sources of international law and do not have superiority over each other in the hierarchy of these sources and have the same importance and status. Therefore, their binding power is equal and they are recognized as two independent sources. If they conflict with each other, each can cancel and invalidate the other according to the conditions, meaning that the treaty may amend the custom or cancel and invalidate it, and the custom, in turn, may amend or cancel the treaty without a written document being drawn up

(Kaliyar, 1368: 499). Some scholars of international law believe that since Article 38 is followed by a mandatory treaty, the intention of the drafters of the Statute was to place custom in the second place of importance and validity. Such an understanding is not correct, because in international law there is no hierarchy between formal sources. Therefore, custom and treaty are each an independent symbol for themselves and they cannot be given priority or validity.

Within the framework of the theory of consent in international law, the reason for the obligation to be bound is the factor of consent, which is applied in light of the principle of individual freedom and political relations of sovereign states. In other words, in terms of law, the binding force of the rules in question originates from the will of the state. The main emphasis of this theory is to state the principle that a state regulates its behavior through its voluntary (implicit-explicit) consent. Accordingly, there is no fundamental difference between "general customary law" and "general contractual law", and the basic norms of international law with the origin of custom and contract are assumed to be the same;

The effect of custom and contract on each other in terms of cancellation or change of the other is in conditions where their scope and subject matter are the same.

Understanding the mechanism of one rule due to compatibility with another rule is possible only when the concept of incompatibility of two rules with each other is clarified. Article 59 of the 1969 Vienna Convention, which refers to the issue of the implied termination of a treaty by the conclusion of a subsequent treaty, has precisely defined the scope of this concept.

According to this article, two successive rules are incompatible when the elements of the two rules are not possible at the same time.

Two consequences follow from the principle of the equality of custom and contract, one is the relative validity of custom and contract and the other is the relative effects of custom and contract.

1- Relative validity of custom and contract: The meaning of the relative validity of custom and contract is that although custom and contract as two sources of international law have equal importance and are independent of each other, this validity is relative and in case of a conflict between the contract and custom, they must be effective against each other and, according to the content of the custom and contract, the necessary adjustment must be made to resolve the conflict. Therefore, the following results are obtained from the principle of relativity of custom and contract:

a) The precedence of the later contractual or customary rule

b) The absolute precedence and preference of the rules of international law (customary or contractual)

2-The relative effects of custom and contract: As previously mentioned, a contract may cause a change, amendment or annulment of custom, such as (the Declaration of February 8, 1815 and the General Convention of Brussels of July 2, 1890, according to which the sale and purchase of blacks was abolished) and on the other hand, custom can also cause a change, amendment or annulment of a contract, for example (the right of consular judgment, which was established according to customs, has sometimes changed contracts)

In 1964, the International Law Commission provisionally adopted the text of an article (Article 68), according to which it was foreseen that any new rule of international law that is related to the subject matter of an international treaty can amend and modify the provisions of that treaty. Or that in this article it was mentioned that any new rule of international law is the title of the article [Revocation and modification of subsequent treaty, subsequent practice or customary law] and its context indicated that the purpose of the rule of international law is a customary international rule. After a thorough examination of this article, the International Law Commission finally concluded in 1966 that since this issue is related to the general issues of the relationship between customary rules and treaty rules, it should not be dealt with in this discussion only one of the minor aspects of this issue; because there is a risk that other aspects will be affected by this aspect and as a result the order of the issues related to the relationship between customary rules and treaty rules will be disrupted. For this reason, the Commission decided to establish a new rule on the revocation and modification of a treaty by subsequent practice of the States parties to the treaty, and to defer the effect of this practice to the consent of the States parties to the treaty.

Regarding the principle of non-retroactivity of treaty rules in relation to international customs, it should be noted that, in view of the unity of the criteria of Articles 64 and Article 71(b) of the 1969 Vienna Convention on the conflict of treaties with peremptory norms, it can be inferred that in the event of a conflict between a previous treaty and a subsequent custom, although the parts of the treaty that are in conflict with the subsequent custom are

abandoned, none of the rights, obligations and legal situations of the parties that were created before the termination of the validity of the treaty as a result of the implementation of the treaty are affected.

Therefore, it is observed that the effect of the subsequent custom on previous treaties causes the previous treaty to remain abandoned and unenforceable and does not in any way cause the termination of the treaty, although it practically has the same effects. Of course, the Vienna Convention is silent in this regard.

3-1- Conflict between custom and peremptory norm

A peremptory norm is defined in Article 53 of the 1969 Vienna Convention as two norms that the international community, the states as a whole, considers to be a norm beyond which no violation is permitted, and which cannot be changed except by a new rule of general international law with the same characteristics.

The origin of peremptory norms is in fact customary norms, but sometimes some fundamental and important norms are found that cannot be changed by another treaty or customary norm because they are fundamental and conduct contrary to them is considered illegal, and evidence and arguments to the contrary that indicate the consent of states in general are rarely obtained. Peremptory norms are a response to the request and need for some norms that, because they have greater moral importance, are considered absolute and inviolable, and are not mandatory. Boulanger considers general legal principles to be a basic idea around which a set of legal articles is presented, and in other words, it is a specific order on the basis of which legal rules are formed (Sadeghi, 2005: 23).

In the domestic system, the hierarchy of legal rules is determined through policy-making, guarantee methods, and legislative authority. For example, the constitution in domestic systems is clearly different from ordinary laws in terms of both the procedure of existence and the status, so it is certain to explicitly examine this law in relation to other laws. However, in the international law system, there is no solution that expresses the hierarchy of legal rules in terms of superiority over other rules, and the question that comes to mind is whether there is a hierarchy between its legal rules in the international law system.

Now, considering that in the hierarchy of international legal rules, contractual and customary rules have the same value and there is no evidence of the superiority of one over the other, and considering the unity of the criteria of Articles 53 and 64 of the Convention, it is concluded that in the event of a conflict between customary rules and mandatory rules, based on the aforementioned articles, the superiority of mandatory rules is certain and subsequent mandatory rules supersede any previous customary rule. In the first place, if a previous mandatory rule exists, a subsequent customary rule that conflicts with the previous mandatory rule cannot exist and become a source of effect.

1-4- Conflict of a subsequent customary rule with a previous customary rule (change of customary law by custom)

Conflict regarding two customary rules occurs when a later customary rule is in conflict with a previous customary rule in such a way that it is not possible to apply these two rules simultaneously. This situation only occurs when the subject matter of both rules is the same. That is, incompatibility arises regarding a subject matter of obligations. The issue of a single subject matter, although it may seem difficult in theory, is not the case in practice. If the simultaneous application of two rules regarding a series of actions and events leads to incompatibility and conflict between them, then it can be said that the said rules have been directed at a similar subject matter. Of course, it should not be thought that the existence of two customary rules regarding a single subject necessarily creates a state of conflict, but only when the said rules are incompatible with each other, a conflict occurs and we must assume the superiority of one of the two customary rules.

The later rule abandons the previous customary rule. This principle has also been accepted in relation to treaties and has been applied many times by the Permanent Court of International Justice.

2-The position of general legal principles and other subsidiary sources in terms of the hierarchy of rules of international law

1-2 The concept of general legal principles

In paragraph 3 of Article 38 of the Statute of the International Court of Justice, it is stated in the statement of the formal sources of international law

"3- General principles of law accepted by civilized nations"

In order to provide more resources for resolving disputes to international judges, the drafters of Article 38 of the Statute of the Permanent Court of International Justice; have included general principles of law, such as contract and custom, among the independent and direct sources of international law, that is, principles that have been recognized by civilized nations. Some jurists believe that general principles of law, i.e. "fundamental rules of

customary international law", such a theory is not free from criticism because the conditions of existence of custom are the combination of two material and spiritual elements, and general principles of law lack a material element (Ziaei Giloli, 2016: 111).

Therefore, these principles cannot be mixed with customary rules. Today, according to the doctrine of the general practice of countries, general legal principles are divided into two groups: general legal principles common to all and general legal principles specific to international law. General principles of common law are principles that are common to all legal systems and can be implemented in domestic and international contexts. The most important of these principles are: the principle of keeping promises, the principle of compensation for unjustified damages, the principle of respect for the rights of the school.

General legal principles specific to international law are principles that are specifically implemented in the relations of countries and other issues of international law. The most important of these principles are the principle of the permanence of the state, the principle of respect for the independence of countries, the principle of the priority of international treaties over domestic law« ...

O'Connell also looked at general principles from the perspective of their unity, and said that law. is the spontaneous product of human needs and inspiration in society. Although its specific details differ according to time and place, its basic principles are the same because human nature is fundamentally constant and similar. Hermann Becker says that general legal principles are unwritten rules that are accepted as law by the public conscience in a given society.

2-2- The position of general legal principles in the hierarchy of international law rules

Although general legal principles are considered to be one of the independent and direct sources of international law, their scope of influence and enforceability are far less than those of contracts and customs. Therefore, these principles play a constructive role if they do not conflict with a fundamental contractual or customary rule of international law and do not contradict them. Otherwise, the superiority of that contractual or customary rule over the general principle of law is clear and obvious.

The role of general legal principles and their application in the international legal system is in cases where other sources of international law, such as customs and contracts, are silent on an issue. In this case, an appropriate ruling is given to resolve disputes by relying on general legal principles. This is also documented in domestic systems. In the event of a legal vacuum regarding the subject of the lawsuit, court judges can determine the matter by referring to legal principles and certainties. Therefore, the absence of any contract or customary rule provides the reason for using general legal principles. Most authors, relying on Article 38 and considering the intention of the framers of the Statute of the Court, consider the general principles of law to be an independent source and at the same time a substitute source for contract and custom. The purpose of the substitute source is that recourse to these principles becomes necessary when there is no contract or custom in a particular matter, only in this case that the general principles of law, as a main source, becomes a substitute or substitute for the two previous sources. The purpose of mentioning this source was to fill the gaps that exist in international law, and to eliminate the difficulties of issuing a judgment due to the lack of clarity or the absence of a contractual or customary rule, and not to consider the issue of the proceedings as insoluble (Dhu al-Ain, 2004: 710).

2-3- The position of judicial practice and doctrine in terms of the hierarchy of international law rules

In order for international courts to be able to consider a dispute and issue the necessary ruling in the absence of an explicit legal rule (contract, custom, and general principles of law), they must take into account international judicial practice and the theory of international legal scholars. Article 38 of the Statute of the International Court of Justice, after mentioning contract, custom, and general principles of law as the balances that the said Court must use in resolving disputes, refers to judicial decisions and opinions of legal scholars and justifies these as secondary means for determining legal rules.

The difference between primary and secondary sources is that each of the primary sources can be the basis for issuing a ruling, for example, they can cite a contract or custom in a ruling, while secondary sources alone cannot be the basis for issuing a ruling, but are used to strengthen the primary sources. Therefore, a ruling cannot be issued solely on the basis of the theory of a legal scholar or the ruling of a court in a similar case can be considered the criterion for issuing a ruling in the current case.

Judicial practice is the repetition of similar judicial decisions and the adoption of a certain method and procedure in resolving similar cases by the judges of one or more courts; and in a sense, it can be called judicial custom.

In Article 38, Part D of the first paragraph, it is stipulated: “With due regard to the meaning of Article 59, judicial decisions as auxiliary means for determining legal rules” Article 59 referred to is as follows: “In the judgments of the Court, they shall be binding only on the parties to the dispute and on the case that was the subject of the judgment.” In view of the explanation given in the two articles above, judicial decisions are meant only as decisions of the International Court of Justice. Although, according to Article 59 of the Statute of the International Court of Justice, the judgments of the Court shall be binding only on the parties to the dispute and on the case that was the subject of the judgment, and therefore the Court cannot rely on a decision it has issued in the past in a pending dispute, the fact is that the Court has basically followed its past practice. The practice of referring to past decisions is one of the prominent features of the Court’s opinions and opinions.

2-4- The place of fairness in the hierarchy of sources of international law

Article 38 of the Statute of the International Court of Justice states: “The present provisions shall not prejudice the power of the Court to hear and determine cases on the basis of justice and equity, provided that the parties to the dispute so agree.” The judges of the Court are free to use this principle. Therefore, it is natural that this power prevents the principle of justice and equity from being considered an independent and primary legal source in international relations. Rather, it can only be considered a subsidiary and complementary source and an effective factor in resolving international disputes, because it is by resorting to such a principle that the judge gains broad freedom of action to hear and issue a judgment. In short, the principle of justice and equity in international law has three basic roles.

a) The principle of justice and equity is a factor that modifies legal rules and gives them flexibility.

b) The principle of justice and equity is a factor that complements legal rules.

C) The principle of justice and fairness is a factor that invalidates a legal rule, of course, if the litigants ask the judges not to make binding legal rules for resolving the dispute and to document the principle of justice and fairness; in this case, this principle invalidates the existing legal rules in this specific case. The importance of fairness is that the judge always involves fairness in interpreting contracts and customs or cases of ambiguity in existing laws.

Conclusion:

In principle, when concluding international treaties or accepting other international obligations and committing themselves to comply with them, states consider their national interests and benefits and accept such obligations on that basis. There is no institution in the international community that is beyond states and can oblige a state to accept an obligation, and it is the will of the state that can create an obligation for itself and commit itself to comply with obligations in the international arena towards other members of the international community. The number of states in the international community that rely on the principle of their sovereignty to conclude treaties and create obligations, and on the other hand, the institutional vacuum beyond the states that can and has the power to prohibit them, has caused conflicts between the obligations stipulated by the states towards each other, in such a way that the majority of the international obligations of the states are sometimes in conflict, and inevitably, in order to give consistency and stability to such obligations, it is necessary to lean towards rules to resolve conflicts, because if we do not apply the rules to resolve conflicts, international obligations in many cases will not be able to be implemented and enforced, and the order of the international community will be jeopardized. Therefore, because states accept different obligations based on the principle of their sovereignty and taking into account their own interests and interests, and there is no authority to coordinate the legal obligations created, conflicts between international obligations are possible. Conflict of obligations occurs when the simultaneous application of two obligations is not possible due to their incompatibility with each other. This occurs when the obligations in question concern the same subject matter, that is, in the case of a subject matter of obligations, the incompatibility burdens the parties with the conflicting obligations. Conflict of obligations is either real or apparent. The apparent conflict means that the conflict can be resolved by applying the principles of interpretation. However, the real conflict, which is also meant by the objects of the obligations, is the same conflict because it forces the parties to the conflicting obligations to comply with the legal systems to resolve the conflict. It is such a situation that the simultaneous application of the obligations is not possible unless one of the obligations that are in conflict with each other is abandoned by resorting to conflict resolution systems. The conditions that give rise to a real conflict are divided into two parts: 1- The role of time in the occurrence of a conflict, which examines the importance of the time of the conclusion of obligations in terms of determining their priority and delay

2-The composition of the treaty, which deals with the factor that creates a link between the conflicting obligations, namely common membership. In discussing the role of time, two points should be noted: first, that the time of the conflicting obligations must be different from each other, that is, the incompatible obligations must have occurred in two time intervals. Because the creation of two conflicting obligations simultaneously has no rational basis because it is not enforceable and is a kind of violation of the purpose. Secondly, that the role of time in the case of conflicting obligations can be examined, provided that they have the same value in such a way that one of the two treaties cannot be considered preferable, because otherwise the rule of law is superior. Another element that we mentioned in the situation of conflict of obligations is the composition of the surrounding obligation or common membership, that is, two conflicting obligations must have at least one common member, otherwise the conflict relationship between the two obligations will not arise. Therefore, we will witness a conflict between two obligations when at least one of the parties to the obligation undertakes an obligation contrary to the original obligation regarding the same subject. Otherwise, it is natural that a conflict between obligations that do not have any common member is not possible.

After examining the concept of conflict and the conditions under which it occurs, the point we addressed is the attention of international treaty law to the issue of conflict. The Vienna Conventions of 1969 and 1989 have paid attention to the issue of conflict. The conflicts referred to in the aforementioned treaties are:

1- Conflict of treaties or peremptory norms (Articles 53 and 64)

2- Conflict of treaties with obligations arising from Article 103 of the Charter (Article 30, paragraph 1)

3- Conflict of treaty obligations on a single subject matter (other paragraphs of Article 30) In addition, the aforementioned treaties have also taken into account principles for resolving the aforementioned conflicts. These principles, which are general legal principles, are:

1-"The superior rule overrides the subordinate rule." This preference refers to a rule over other rules that is more important and its degree of importance and priority is generally accepted, such as the preference of the peremptory rule over other ordinary rules of international law.

2-"The latter rule overrides the former rule," and the aforementioned rule applies to situations where the latter law is not subordinate to the former law. This rule has been accepted by considering the principle that the latter will be considered legally valid and its application leads to a violation of the previous rule or obligation and the influence and validity of the subsequent rule or obligation.

3-"The special rule is abrogating the general benefit: whenever there is a conflict between two general and specific rules, it must be considered that the specific one appropriates the general one, and in this way, it must be combined between them and apply both. Of course, this solution is not applicable in all cases of conflict between the general and specific. Because in some cases, the conditions for specialization do not exist, in that case it is inevitable to consider abrogation. Of course, in the case of the possibility of abrogation and specialization, the latter is preferable because specialization is an explanation of the expression that is expressed for a will that is expressed in general, while abrogation destroys the expressed will in whole or in part.

After stating the general methods of conflict resolution, different forms of conflict between treaties and the rules for resolving them have been discussed, the different forms of which were:

1- Conflict of treaties with Article 103 of the Charter: The said article stipulates that in the event of conflict between treaties and the obligations of the members under the Charter of the United Nations, the obligations of the members under the Charter take precedence over other obligations. Therefore, the Charter abrogates all obligations that the states had before and that are contrary to the Charter, and also the treaties that they conclude after the Charter should not be in conflict with their obligations under the Charter. Therefore, the provisions of the Charter have priority and are superior to other obligations of the states, which is mentioned in paragraph 1 of Article 30 of the treaties on the law of treaties.

2- Paragraphs 3 and 4 of Article 30, in relation to the conflict of treaty obligations regarding the same subject matter, outline the legal fate of conflicting treaties as follows:

a) Compatibility and conflict of treaties in the event of the same parties: Paragraph 3 of Article 30 indicates the principle according to which "a subsequent treaty abrogates the earlier treaty."

In other words, the said paragraph, taking into account the principle (*Lex posterior*), has ruled on the nullity of the earlier treaty and the validity of the later treaty. Of course, the said principle is effective when the parties to the treaty are the same.

b) Compatibility and conflict of treaties in the event of the parties being different The legal status of conflicting treaties that do not have the same parties is stipulated in paragraph 4 of Article 3 as follows.

1- In relations between the States of two treaties, the rule contained in paragraph 3 is applicable.

2- In relations between a State party to two treaties and a State party to one of the treaties, only the treaty to which both States are parties determines their mutual rights and obligations.

In the process of the evolution of the international legal order, the invention of peremptory norms is a great achievement in ensuring international peace and security. The discussion of peremptory norms and their conflict with other international obligations is mentioned later in the discussion of treaties. A peremptory norm is a norm that is accepted and recognized by the international community as a whole as a fundamental norm that cannot be violated and that can only be changed by a new norm of general international law that has the same characteristics. To identify a peremptory rule, the following criteria have been considered:

1-General rule of international law 2- Acceptance and recognition by the international community of states as a whole The generality of a rule of international law indicates the coordination of the will of states in the existence of this rule, which in principle is also required to be observed by them. Therefore, the existence of a common will of the countries creating the rule indicates their commitment to the consequences of the said rule. However, the purpose of the acceptance and recognition by the international community of states as a whole does not mean that if a single state refuses to accept the peremptory nature of a rule, there will be a gap in the recognition of that peremptory rule. Rather, the purpose of the recognition by the international community of states as a whole is that if a large number of states consider such a rule to be peremptory and act on it, it will be sufficient for that rule to have a peremptory nature.

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Since peremptory norms, like other norms, are the product of the needs and interests of human society, given that the interests and needs of the international community are constantly changing and evolving, peremptory norms based on these needs are inevitably subject to amendment and change. Of course, in order to ensure that the stability and strength of these obligations are not shaken, their amendment and change are based on their specific conditions. Regarding the method of changing a peremptory norm, we stated that it is possible to change a prior peremptory norm through a subsequent peremptory norm, which has two elements of time and unity of subject matter, meaning that two prior peremptory norms can be changed by a subsequent peremptory norm that has unity of subject matter with the prior peremptory norm.

In the following discussion, the conflict between treaties and peremptory norms and its various forms were discussed as follows.

A) Conflict of a subsequent treaty with the rules of mandatory precedence: This assumption is based on the hierarchy of rules of the legal system, which considers a superior rule to be the abrogator of a subordinate rule. Since mandatory rules are superior to contractual treaties in terms of this hierarchy, a subsequent contractual treaty that conflicts with a mandatory precedence rule is null and void.

B) Conflict of a prior treaty with a subsequent mandatory rule: In this section, the rule is mandatory precedence because the formation of a subsequent contractual treaty that conflicts with a mandatory precedence rule is null and void from the beginning because the formation of a mandatory is illegal.

Of course, regarding the two cases mentioned, a distinction must be made because if the treaty is prior and the peremptory rule is subsequent, since the prior treaty was valid before the peremptory rule existed, only the conflicting provisions should be eliminated, if possible, but the other provisions of the treaty remain in force. In this case, we have considered relative nullity, but if the peremptory rule is prior and the treaty is subsequent, then the treaty is null and void and its nullity is absolute.

After mentioning the effects of the conflict of treaties with the peremptory rule within the framework of the Vienna Convention, other effects of the conflict of treaties with the peremptory rules within the framework of the Vienna Convention were mentioned, which explained that it was examined under two headings: the international responsibility of states and the consequences arising from the international responsibility of states.

-1International responsibility of states: In the international system, states must comply with a series of obligations towards other states in order to benefit from the rights of this system. International responsibility is a legal institution by which a state that is responsible for an act contrary to international law must compensate the country affected by that act in accordance with the rules of international law for the damages caused by that act. Therefore,

if a state commits an act contrary to a peremptory norm, it becomes liable and is obliged to pay for possible damages.

Consequences of international responsibility of states: Regarding the conclusion of treaties contrary to peremptory norms, if treaties are concluded in the international arena that involve the violation of those general and peremptory norms whose violation leads to the occurrence of an international crime, the following consequences will arise.

A) The international community's reaction in the form of:

(1) Collective measures (2) Failure to recognize the legal effects of the created situation

B) The UN's reaction in two parts:

(1) Issuing a declaration of invalidity (2) Security Council actions

In the final chapter, the conflict of obligations arising from Article 38 of the Statute of the International Court of Justice with other obligations is mentioned, which is stated in the topic of the conflict of international custom with other obligations: Custom in international law systems is also of special importance as domestic law systems and has been considered as a main legal source and consists of the repetition of similar actions by countries and international organizations, which gradually have become mandatory in their mutual relations with each other and have acquired legal force. Various forms of conflict of custom with other obligations are also mentioned as follows.

A) Conflict between custom and treaty: In terms of hierarchy, they do not have superiority over each other and their binding power is equal. If they are in conflict with each other, each can cancel each other out depending on the circumstances. Of course, their effectiveness is in the event that they have a single subject matter.

B) Conflict between custom and peremptory norm: Peremptory norms have vital value and importance for the international community and on this basis, they have gained the legal belief of the international community, so they are superior to custom. And since according to Articles 53 and 64 of the Vienna Convention, any contract that existed before or after the establishment of a peremptory norm and is in conflict with the peremptory norm is null and void. Therefore, since custom and treaty are also the same in terms of value and hierarchy, as a result, if there are customary norms before or after the peremptory norm that are in conflict with the peremptory norm, they are abandoned.

C) Conflict of a subsequent customary rule with a previous customary rule: If two customary rules are in conflict with each other, if it is not possible to apply these two rules simultaneously and they have the same subject matter, based on the rule "the later rule abrogates the previous rule": the subsequent customary rule abandons the previous customary rule. This principle has also been accepted in the case of treaties and has been repeatedly applied by the Permanent Court of Justice.

In the final section, the position of general principles of law and other customary sources is mentioned that general principles of law are mentioned in paragraph 3 of Article 38 of the Statute of the International Court of Justice as one of the sources of international law and are among the principles that are implemented in the relations of countries, the most important of which are the principle of the permanence of the state, the principle of respect for the independence of countries - although these principles are considered as a source of international law, their value of validity in the legal hierarchy is less than that of custom and treaties. Therefore, these principles play a constructive role if they do not encounter a contractual or customary rule and do not contradict them. Otherwise, the rule of custom and contract is evident over these principles. And their role and application is when other sources of international law are silent on a subject. Other sources of international law such as judicial practice and doctrine are used in the absence of an explicit legal rule such as custom, contract or general principles of law and are used as a secondary tool for determining legal rules. The difference between primary and secondary sources is that each of the primary sources can independently serve as the basis for issuing a ruling, but secondary interests cannot serve as the source and basis for issuing a ruling and are merely considered a means to strengthen the primary sources.

Suggestions

Finally, it is necessary to provide suggestions to other researchers who want to research in this field in terms of the importance and sensitivity of the subject. Researchers can examine the same issue in other areas of state obligations, including international custom, general legal principles, and international judicial decisions, and compare the results obtained in a comparative manner. Other researchers can simultaneously examine the same issue in comparison with the obligations of international organizations. They can also examine the conflicting

obligations of international organizations with each other. Another very important variable in relation to the research topic is the examination of the obligations of states under the United Nations Charter. In such a way that the limits and limitations of the primacy of the Charter in conflict with the treaty obligations of states include the decisions of the organs of the United Nations, including the Security Council, or not

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