

## **A N N E X E S**

### **COORDINATION ENTRE LE PROJET SUR LES ALIMENTS ET D'AUTRES INSTRUMENTS INTERNATIONAUX**

*Document établi par Philippe Lortie, Premier secrétaire*

\* \* \*

## **A P P E N D I C E S**

### **CO-ORDINATION BETWEEN THE MAINTENANCE PROJECT AND OTHER INTERNATIONAL INSTRUMENTS**

*Document drawn up by Philippe Lortie, First Secretary*

*Document préliminaire No 18 de juin 2006  
à l'intention de la Commission spéciale de juin 2006  
sur le recouvrement international des aliments  
envers les enfants et d'autres membres de la famille*

*Preliminary Document No 18 of June 2006  
for the attention of the Special Commission of June 2006  
on the International Recovery of Child Support  
and other Forms of Family Maintenance*

**A N N E X E S**

**COORDINATION ENTRE LE PROJET SUR LES ALIMENTS  
ET D'AUTRES INSTRUMENTS INTERNATIONAUX**

*Document établi par Philippe Lortie, Premier secrétaire*

\* \* \*

**A P P E N D I C E S**

**CO-ORDINATION BETWEEN THE MAINTENANCE PROJECT  
AND OTHER INTERNATIONAL INSTRUMENTS**

*Document drawn up by Philippe Lortie, First Secretary*

## TABLE OF CONTENTS

	Page
ANNEX - A .....	3
Global instruments of a specific nature concerning maintenance .....	3
New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance.....	3
Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children .....	3
Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations .....	3
Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.....	3
Global instruments of a specific nature relating to specific rules included in the new Hague regime .....	4
Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters .....	4
Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.....	4
Hague Convention of 25 October 1980 on International Access to Justice .....	4
Regional instruments of a general nature .....	4
Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters .....	4
Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters .....	5
Minsk Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters, as amended on 28 March 1997.....	6
Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters .....	6
Regional instruments of a specific nature concerning maintenance.....	7
Inter-American / Montevideo Convention of 15 July 1989 on Support Obligations .....	7
Proposal for a Council Regulation on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters relating to Maintenance obligations.....	7
Regional instruments of a specific nature relating to specific rules included in the new Hague regime .....	8
Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters .....	8
Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.....	8
Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.....	8
The Inter-American / Panama Convention of 30 January 1975 on the Taking of Evidence Abroad .....	9
Bilateral instruments of a general nature.....	9
The Ottawa Convention of 10 June 1996 between Canada and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Assistance in Maintenance.....	9
ANNEX - B .....	10
Examples of Hague Conventions' Coordination Provisions .....	10
Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters .....	10
Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations....	10
Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.....	10

Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations .....	11
Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.....	12
Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes .....	12
Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.....	12
Hague Convention of 14 March 1978 on the Law Applicable to Agency .....	13
Hague Convention of 25 October 1980 on International Access to Justice .....	13
Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.	13
Hague Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons .....	13
Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children .....	14
 ANNEX – C.....	 16
Extracts from the Vienna Convention on the Law of Treaties .....	16
Article 30 - Application of successive treaties relating to the same subject-matter .....	16
Article 41 – Agreements to modify multilateral treaties between certain of the parties only.	17
Article 59 – Termination or suspension of the operation of a treaty implied by conclusion of a later treaty .....	17
Article 60 – Termination or suspension of the operation of a treaty as a consequence of its breach.....	17

**ANNEX - A****Global instruments of a specific nature concerning maintenance*****New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance***

## Article 1(2)

The remedies provided for in this Convention are in addition to and, not in substitution for, any remedies available under municipal or international law.

***Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children***

## Article 11

Nothing precludes the creditor to make use of another provision with regard to the recognition of decision either under domestic law or under a Convention in force between the Contracting States.

***Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations***

## Article 23

This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.

***Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations***

## Article 19

This Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

**Global instruments of a specific nature relating to specific rules included in the new Hague regime**

***Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters***

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

***Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters***

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

***Hague Convention of 25 October 1980 on International Access to Justice***

Article 21

Without prejudice to the provisions of Article 22, nothing in this Convention shall be construed as limiting any rights in respect of matters governed by this Convention which may be conferred upon a person under the law of any Contracting State or under any other convention to which it is, or becomes, a party.

**Regional instruments of a general nature**

***Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters***

Article 57

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in another Contracting State which is not a party to that Convention. The court hearing the action shall, in any event, apply Article 20 of this Convention;

(b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with this Convention.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedure for recognition and enforcement of judgments may be applied.

3. This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

***Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters***

Article 57

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. This Convention shall not prevent a court of a Contracting State which is party to a convention referred to in the first paragraph from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in a Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.

3. Judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention referred to in the first paragraph shall be recognized and enforced in the other Contracting States in accordance with Title III of this Convention.

4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not a contracting party to a convention referred to in the first paragraph and the person against whom recognition or enforcement is sought is domiciled in that State, unless the judgment may otherwise be recognized or enforced under any rule of law in the State addressed.

5. Where a convention referred to in the first paragraph to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

***Minsk Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters, as amended on 28 March 1997***

Article 82

This Convention shall not affect the provisions of other international agreements to which the Contracting States are parties.

***Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters***

Article 71

1. This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Regulation shall not prevent a court of a Member State, which is a party to a convention on a particular matter, from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;

(b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation which concern the procedure for recognition and enforcement of judgments may be applied.



**Regional instruments of a specific nature concerning maintenance**

***Inter-American / Montevideo Convention of 15 July 1989 on Support Obligations***

Article 29

Among Member States of the Organisation of American States that are parties to this Convention and to the Hague Conventions of October 2, 1973 on the recognition and enforcement of decisions relating to maintenance obligations and on the law applicable to maintenance obligations, this Convention shall prevail.

However, States Parties may enter into bilateral agreements to give priority to the application of the Hague Conventions of October 2, 1973.

Article 30

This Convention shall limit neither the provisions of existing or future bilateral or multilateral conventions on this subject entered into by the States Parties, nor the more favourable practices that those States may observe in this area.

***Proposal for a Council Regulation on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters relating to Maintenance obligations***

Article 49

This regulation shall, in relations between Member States, take precedent over the conventions and treaties which concern matters governed by this regulation and to which Member States are parties.

**Regional instruments of a specific nature relating to specific rules included in the new Hague regime**

***Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters***

Article 20

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

2. This Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with this Regulation."

***Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters***

Article 21

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and in particular the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto.

2. This Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements between two or more of them to further facilitate the taking of evidence, provided that they are compatible with this Regulation.

***Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes***

Article 20

This Directive shall, as between the Member States, and in relation to matters to which it applies, take precedence over provisions contained in bilateral and multilateral agreements concluded by Member States including:

(a) the European Agreement on the transmission of applications for legal aid, signed in Strasbourg on 27 January 1977, as amended by the additional Protocol to the European Agreement on the transmission of applications for legal aid, signed in Moscow in 2001;

(b) the Hague Convention of 25 October 1980 on International Access to Justice.

***The Inter-American / Panama Convention of 30 January 1975 on the Taking of Evidence Abroad***

Article 14

This Convention shall not limit any provisions regarding letters rogatory for the taking of evidence abroad in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of more favorable practices in this regard that may be followed by these States Parties.

This Convention shall not limit the application of any provisions on the taking of evidence by consuls that may be in force in other conventions or preclude the continuation of accepted practices in this regard."

**Bilateral instruments of a general nature**

***The Ottawa Convention of 10 June 1996 between Canada and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Mutual Assistance in Maintenance***

Article 17

1. This Convention shall not derogate from international instruments to which both Contracting States become parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

2. However, the Contracting States may make a contrary declaration to the extent allowed under these instruments.

3. The provisions of this Convention do not affect in any manner the application of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

**ANNEX - B****Examples of Hague Conventions' Coordination Provisions*****Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters***

## Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

## Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

***Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations***

## Article 17

This Convention shall not prevent the application in a Contracting State of rules of law more favourable to the recognition of foreign divorces and legal separations.

## Article 18

This Convention shall not affect the operation of other conventions to which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the subject-matter of this Convention.

Contracting States, however, should refrain from concluding other conventions on the same matter incompatible with the terms of this Convention, unless for special reasons based on regional or other ties; and, notwithstanding the terms of such conventions, they undertake to recognize in accordance with this Convention divorces and legal separations granted in Contracting States which are not Parties to such other conventions.

***Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters***

## Article 27

The provisions of the present Convention shall not prevent a Contracting State from –

- a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;
- b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;
- c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

#### Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at The Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 8-16 of the earlier Conventions.

#### Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

### ***Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations***

#### Article 26

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce –

- (1) a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;
- (2) a decision or settlement in respect of maintenance obligations
  - a) between persons related collaterally;
  - b) between persons related by affinity;
- (3) a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation.

#### Article 29

This Convention shall replace, as regards the States who are Parties to it, the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children, concluded at The Hague on the 15th of April 1958.

***Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations***

Article 18

This Convention shall replace, in the relations between the States who are Parties to it, the Convention on the Law Applicable to Maintenance Obligations in Respect of Children, concluded at The Hague, the 24th of October 1956.

However, the preceding paragraph shall not apply to a State which, by virtue of the reservation provided for in Article 13, has excluded the application of this Convention to maintenance obligations in respect of a person who has not attained the age of twenty-one years and has not been married.

Article 19

This Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

***Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes***

Article 20

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

***Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages***

Article 21

The Convention shall not affect the application of any convention containing provisions on the celebration or recognition of the validity of marriages to which a Contracting State is a Party at the time this Convention enters into force for that State.

This Convention shall not affect the right of a Contracting State to become a Party to a convention, based on special ties of a regional or other nature, containing provisions on the celebration or recognition of validity of marriages.

Article 22

This Convention shall replace, in the relations between the States who are Parties to it, the Convention Governing Conflicts of Laws Concerning Marriage, concluded at The Hague, the 12th of June 1902.

***Hague Convention of 14 March 1978 on the Law Applicable to Agency***

## Article 22

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

***Hague Convention of 25 October 1980 on International Access to Justice***

## Article 21

Without prejudice to the provisions of Article 22, nothing in this Convention shall be construed as limiting any rights in respect of matters governed by this Convention which may be conferred upon a person under the law of any Contracting State or under any other convention to which it is, or becomes, a party.

## Article 22

Between Parties to this Convention who are also Parties to one or both of the *Conventions on civil procedure* signed at The Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 17 to 24 of the Convention of 1905 or Articles 17 to 26 of the Convention of 1954 even if the reservation provided for under paragraph 2 c) of Article 28 of this Convention has been made.

***Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition***

## Article 25

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a party.

***Hague Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons***

## Article 23

1. The Convention does not affect any other international instrument to which Contracting States are or become Parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States Parties to such instrument.

2. Paragraph 1 of this Article also applies to uniform laws based on special ties of a regional or other nature between the States concerned.

***Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children***

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

1. This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
2. This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.
3. Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.
4. The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

***Hague Convention of 13 January 2000 on the International Protection of Adults***

Article 48

In relations between the Contracting States this Convention replaces the *Convention concernant l'interdiction et les mesures de protection analogues*, signed at The Hague 17 July 1905.

Article 49

1. The Convention does not affect any other international instrument to which Contracting States are Parties and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States Parties to such instrument.
2. This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of adults habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.



3. Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4. The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

## ANNEX – C

**Extracts from the Vienna Convention on the Law of Treaties*****Article 30 - Application of successive treaties relating to the same subject-matter***

1. Subject to Article 103<sup>1</sup> of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
  - (a) as between States parties to both treaties the same rule applies as in paragraph 3;
  - (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

---

<sup>1</sup> Charter of the United Nations, 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."

***Article 41 – Agreements to modify multilateral treaties between certain of the parties only***

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty;  
or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

***Article 59 – Termination or suspension of the operation of a treaty implied by conclusion of a later treaty***

A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

***Article 60 – Termination or suspension of the operation of a treaty as a consequence of its breach***

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.