

Summary

Paradigms in international practice: norm hierarchy versus systemic integration
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A norm conflict in international law can be understood in a narrow or a broad sense. A narrow definition of norm conflict describes those situations where giving effect to one international obligation unavoidably leads to the breach of another obligation or right. A broad definition of norm conflict refers to situations where compliance with an obligation under international law does not necessarily lead to a breach of another norm but rather to its limitation, or even a limitation of all the rights and/or obligations at stake.

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Judicial practice indicates that the paradigm of a human rights based hierarchy competes with the paradigm of systemic integration as a technique for conflict resolution.

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Judicial practice indicates that norm conflicts tend to arise between human rights obligations and certain other categories of international obligations, particularly immunities; extradition and refoulement; collective security; trade and investment; and environmental law.

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In a decentralized international legal order the resolution of norm conflicts and the development of international law is the responsibility of international as well as regional and domestic judicial bodies.

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The methodology of judicial bodies for resolving norm conflicts is decisive for the question whether and to what extent judicial practice favours the paradigm of a human rights hierarchy or, instead, the paradigm of systemic integration.

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Doctrinally the notion of a human rights based hierarchy in international law finds support in the concept of peremptory norms (*jus cogens*).

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It remains controversial whether Article 103 of the United Nations Charter constitutes a manifestation of a (value based) hierarchically superior norm in international law, or of a conflict rule.

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Judicial practice reveals that traditional conflict rules such as *lex specialis* and *lex posterior* play a very limited role in the resolution of norm conflicts (regardless of whether it concerns a broad or narrow norm conflict).

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The most important principle in the VCLT of 1969 for the resolution of norm conflicts in international law, is the principle of systemic integration (i.e. the principle of conflict avoidance) in Art. 31(1) (c) VCLT.

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Judicial bodies have a tendency to avoid norm conflicts through harmonious interpretation and, as a result, prevent any type of norm hierarchy.

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The reason for the virtual practical irrelevance of peremptory norms in relation to norm conflict resolution, is the very narrow scope attributed to such norms by judicial bodies. As a result, norm conflicts are completely avoided.

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In addition to methods of interpretation, judicial bodies rely on formalist arguments to effect conflict avoidance. Examples include the division between substantive and procedural law (as applied to the law of state immunities); or the formalist argument of dualism, as relied on in the *Kadi*-decision of the ECJ.