ARTICLE 57

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ARTICLE 57

TEXT OF ARTICLE 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

INTRODUCTORY NOTE

1. The present study deals with the establishment of relations between the United Nations and the specialized agencies, as provided under Article 57. As noted in the *Repertory*,[1] an apparent ambiguity exists in the text of Article 57. While Article 57(1) refers to "various *specialized agencies*, established by intergovernmental agreement ... [which] shall be brought into relationship with the United Nations",[2] Article 57(2) suggests that the term "specialized agencies" is applicable *only after* the said relationship with the United Nations has been established. Despite this ambiguity, the practice has been to consider as "specialized agencies" only those organizations brought into relationship with the United Nations through agreements concluded in accordance with Article 63.

2. The study of Article 57 also deals with the question of relations with other intergovernmental organizations not defined as "specialized agencies" of the United Nations. The Charter of the United Nations contains no Article or provision for establishing relations with intergovernmental organizations other than the specialized agencies, as provided for in Articles 57 and 63. However, as stated by the United Nations Conference on International Organization, Article 57 "is not intended to preclude the Economic and Social Council from negotiating at its discretion, subject to the approval of the General Assembly, agreements bringing other types of intergovernmental agencies into relationship with the Organization."[3] The *Repertory* and its *Supplements*[4] have noted this practice. This is in line with the United Nations Conference on International Organization's understanding of the intended purpose of the Article "to provide for agreements sufficiently flexible to enable satisfactory arrangements to be worked out on the basis of need and experience".[5]

3. For the present study, the same major headings as those used in previous *Supplements* have been retained. There were no new developments or significant practice under the following section: II, Analytical summary of practice, subsection B. "The mandatory character of Article 57". Certain questions, though closely related to the provisions of Article 57, are not dealt with here to prevent duplicating material contained in other Articles. With respect to the General Assembly or the Economic and Social Council initiating negotiations for the creation of new specialized agencies, it is advisable to cross-reference to Article 59. Also, attention should be given to Article 63 for discussion on negotiations and entering into agreements with specialized agencies; and to Article 70 for discussion concerning arrangements for representation by specialized agencies in the deliberations of the

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[1]See *Repertory*, under Article 57, footnote 1.

[2]*Emphasis added.*

[3]*The United Nations Conference on International Organization*, vol. 10, p. 272, document 861, II/3/5 (1), para. 12 (b), and vol. 8, p. 82, document 924, II/12, para. 12 (b).

[4]See *Repertory*, under Article 57, para. 5, and *Supplement No. 5*, under Article 57, particularly the sections of the study dealing with Interpol and WTO. See also *Supplement No. 4*, under Article 70, paras. 3-4.

[5]*The United Nations Conference on International Organization*, vol. 10, p. 273, document 861, II/3/5 (1), para. 12 (b), and vol. 8, p. 83, document 924, II/12, para. 12 (b).

Economic and Social Council. While the present study includes a discussion of special arrangements made by the Council with non-United Nations intergovernmental organizations, the study for Article 70 in addition discusses the practice of the United Nations with regard to the general participation of those organizations.

I. GENERAL SURVEY

4. During the period under review, no specialized agency was brought into relationship with the United Nations. However, there were noteworthy developments regarding the United Nations Industrial Development Organization (UNIDO), which had been established pursuant to General Assembly resolutions 2089 (XX) of 20 December 1965 and 2152 (XXI) of 17 November 1966 as an autonomous organization within the United Nations and an organ of the General Assembly. For the first time in United Nations history, an existing organization — UNIDO — would be converted from an organ of the General Assembly into a specialized agency.

5. To facilitate the expansion of the scope and central coordinating role of UNIDO in the field of industrial development, its existing institutional arrangements were in transition during this period. Instead of remaining an autonomous organization within the United Nations and an organ of the General Assembly, UNIDO would become a specialized agency in order to "enhance its autonomy, increase its ability to render assistance to developing countries ... and improve its operational efficiency and effectiveness."[6] As stated in *Supplement No. 5*,[7] the General Assembly by its resolution 3362 (S-VII)[8] of 16 September 1975 had endorsed the recommendation[9] to convert UNIDO into a specialized agency having the same name. Subsequent resolutions, particularly General Assembly resolutions 31/161, 32/167 and 33/161, reaffirmed the urgent need for this conversion.

6. During the period under review, the General Assembly continued to press for the conversion of UNIDO, "strongly recommend[ing]"[10] States to ratify the Constitution of UNIDO, and:

> "11. *Request[ing]* the Economic and Social Council to arrange for the negotiation with the new agency of an agreement to constitute it as a specialized agency in accordance with Articles 57 and 63 of the Charter of the United Nations, to enter into such agreement subject to the approval of the General Assembly and to arrange for the provisional application of that agreement as appropriate".[11]

7. General Assembly resolution 34/96 of 13 December 1979, which contained the above request, is further discussed in the analytical summary of practice, along with other resolutions and decisions pertaining to UNIDO.

8. During the period under review, another type of special agreement establishing a non-United Nations intergovernmental organization — the University for Peace — was approved by the General Assembly in its resolution 35/55 of 5 December 1980. The University's agreements and Charter are similar to those discussed in *Supplement No. 5*,[12] concluded by the Economic and Social Council with the International Criminal Police Organization — Interpol and by the General Assembly with the World Tourism Organization (WTO). The University for Peace is discussed below in subsection C. "Other intergovernmental organizations."

9. The Economic and Social Council continued to allow for the participation of intergovernmental organizations in its deliberations, and this matter is discussed under Article 70 of the present *Supplement*.

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[6]G A resolution 33/161, para. 1.

[7]See *Supplement No. 5*, under Articles 57 and 59.

[8]G A resolution 3362 (S-VII), sect. IV, para. 9.

[9]See Lima Declaration and Plan of Action on Industrial Development and Cooperation, Second General Conference of UNIDO, A/10112, ID/CONF.3/31, chap. IV, paras. 68-71, pp. 60-62.

[10]G A resolution 34/96, para. 1.

[11]Ibid., para. 11.

[12]See *Supplement No. 5*, under Article 57, sect. II.C.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Relationship with the United Nations

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

10. In line with previous General Assembly resolutions[13] concerning the conversion of UNIDO[14] into a specialized agency, the General Assembly in its resolution 34/96 took "note with approval of the Constitution of the United Nations Industrial Development Organization, adopted on 8 April 1979"[15] and "[s]trongly recommend[ed] that States should sign and ratify, accept or approve"[16] the Constitution of UNIDO. Article 18 of the Constitution of UNIDO specifically provided for relations with the United Nations:

> "The organization shall be brought into relationship with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. Any agreement concluded in accordance with Article 63 of the Charter shall require the approval of the Conference, by a two-thirds majority of the members present and voting, upon recommendation of the Board."[17]

Such a constitution however, referred to in Article 57(1) as a specialized agency's "basic instrument", must first be ratified by a requisite number of States and enter into force[18] before the United Nations could conclude a relationship agreement[19] with UNIDO, thereby making it one of the "specialized agencies" within the United Nations system as envisaged in Article 57(2).

11. The General Assembly, in its resolutions 35/66 A[20] and 36/182,[21] therefore continued to urge all States that had not yet done so to ratify the Constitution of UNIDO. By 1982, as noted by the General Assembly in its resolution 37/213,[22] the Constitution of UNIDO did gather the requisite number of 80 ratifications necessary for entry into force.[23] Yet pursuant to article 25(1) of the UNIDO Constitution, it was still necessary "to execute individual notifications to the Secretary-General of agreement for the entry into force of the Constitution of [UNIDO]."[24] Because of the extra notification requirement of article 25(1), the Economic and Social Council, in its resolution 1982/66 A, had provided for the Secretary-General to begin a process of consultations with not only those States who had signed and ratified the UNIDO Constitution, but also with other interested States. The General Assembly, in its resolution 37/213, further outlined this time frame[25] of consultations to determine the entry into force date of the UNIDO Constitution.

12. Consequently, since the UNIDO Constitution had obtained the requisite number of ratifications for entry into force, the process of negotiating a relationship agreement with UNIDO could formally begin. Thus, the Economic and Social Council in its decision 1983/105 "[a]uthorized the President of the Council to appoint ... the members of the Committee on Negotiations with Intergovernmental Agencies". This was pursuant to paragraph 11[26] of General Assembly resolution 34/96, in which the Assembly had earlier requested arrangements to negotiate a special relationship agreement with UNIDO in accordance with Articles 57 and 63 of the Charter of the United Nations.

13. Pursuant to paragraph 1(b) of General Assembly resolution 37/213, a formal meeting on the conversion of UNIDO into a specialized agency was held from 16 to 20 May 1983. The General Assembly, in its resolution 38/193, took note of the report[27] of the meeting. With regard to the conclusions of the meeting, adopted by consensus, the transitional arrangements dealing with legal matters are worth noting.[28] Particularly, as the meeting examined the legal provisions relating to the transition of UNIDO into a specialized agency, it was "recommended that the Economic and Social Council set out, at its second regular session of 1983, the terms of reference of its Committee on Negotiations with Intergovernmental Agencies for the

[13] G A resolutions 33/161, 32/167, 31/161 and 3362 (S-VII).

[14] Established by G A resolution 2152 (XXI).

[15] G A resolution 34/96, second preambular para.

[16] Ibid., para. 1.

[17] A/CONF.90/19, chap. V, article 18, p. 17.

[18] Ibid., chap. VI, Article 25(1), p. 21. UNIDO's Constitution in Article 25(1) provides: "1. This Constitution shall enter into force when at least eighty States that had deposited instruments of ratification, acceptance or approval notify the Depositary that they have agreed, after consultations among themselves, that this Constitution shall enter into force."

[19] The conclusion of such relationship agreement would be in accordance with Article 63(1).

[20] Para. 11.

[21] Sect. I, para. 5.

[22] Second preambular para.

[23] See also G A resolutions 38/193 and 39/231.

[24] G A resolution 37/213, para. 1(c).

[25] Ibid., para. 1(a), (b) and (c).

[26] See the present study, under paragraph 6, for the text of G A resolution 34/96, para. 11.

[27] A/38/141; appendix IV of the report contains "General Statements delivered on behalf of groups of States and individual States at the opening of the formal meeting on the conversion of UNIDO into a specialized agency".

[28] A/38/141, sect. IV.E, paras. 26-28. They also included: (a) provisionally applying existing arrangements where UNIDO acted as executing agency for the United Nations Development Programme (UNDP), while the current UNIDO secretariat prepared a draft for a future arrangement; (b) preparing documentation in order for the "new UNIDO" organs to decide whether it would participate in the International Civil Service Commission, the United Nations Joint Staff Pension Fund, the Joint Inspection Unit; (c) preparing documentation in order for the "new UNIDO" competent organs to decide whether it should submit to the Administrative Tribunal of the United Nations or that of the International Labour Organization and, in consultation with the Secretary-General of the United Nations, preparing corresponding draft agreements; (d) preparing a draft annex to the Convention on the Privileges and Immunities of the Specialized Agencies; (e) preparing draft rules of procedure for the Programme and Budget Committee, the Industrial Development Board and the General Conference of the "new UNIDO"; and (f) that the competent organs of the "new UNIDO" should immediately consider establishing a working capital fund.

drafting of a text of a relationship agreement between the United Nations and UNIDO as a specialized agency".[29]

14. The General Assembly, in its resolution 38/193, further requested the Secretary-General to undertake consultations with States "with a view to determining, inter alia, if financial viability [of UNIDO] is adequately ensured, and, subsequently, to convene the one-day meeting foreseen in paragraph 1(c) of General Assembly resolution 37/213 to execute individual notifications to the Secretary-General for the entry into force of"[30] the UNIDO Constitution.

15. These requested consultations occurred in April and May 1984, with the Legal Counsel representing the Secretary-General of the United Nations. Under existing understandings, the earlier adopted conclusions[31] of May 1983 "were not to be reopened;" and once the new UNIDO was established, policy and structural issues "will have to be determined by its competent organs".[32] Consensus concerning membership on a "universal basis" and "equitable geographic representation" was reached.[33] The General Assembly, in its resolution 39/231, endorsed the Secretary-General's subsequent report[34] on those consultations and requested that efforts be continued for the immediate conversion of UNIDO into a specialized agency.

**B. The mandatory character of Article 57

C. Other intergovernmental organizations

UNIVERSITY FOR PEACE

16. During the period under review, the General Assembly considered a proposal by the President of the Republic of Costa Rica for the establishment of a University for Peace.[35] What was envisioned was "a specialized international institution for postgraduate studies, research and dissemination of knowledge specifically aimed at training for peace, within the system of the United Nations University".[36] Pursuant to General Assembly resolution 33/109, the Secretary-General circulated the proposal for comment to Member States, UNESCO, UNU and other United Nations agencies.

17. Since the basic idea underlying the proposal received general support,[37] the General Assembly, in its resolution 34/111, "[a]pprove[d] the idea of establishing a University for Peace"[38] and "[d]ecide[d] to establish an international commission, which, in collaboration with the Government of Costa Rica",[39] was to prepare the organization and structure of the university.

18. During sessions in 1980, the Commission on the University for Peace contemplated the framework for the relationship of the University for Peace with the United Nations,[40] including the legal consequences of each option.[41] Although the General Assembly in resolution 34/111 specifically referred to ties with UNU, the Commission considered this "an implicit relationship with the United Nations".[42] As the United Nations Office of Legal Affairs had noted:

> "Any relationship between the United Nations University and the University for Peace would indirectly link the University for Peace to the United Nations and would reflect the fact that the constitution, operations and programmes of the University for Peace are officially sanctioned by the competent organs of the United Nations."[43]

19. Two options[44] were considered for the "organization, structure and setting in motion"[45] of the University for Peace. In the first option, the General Assembly would "greet ... the creation of the University and look ... forward to the early conclusion of an agreement with the United Nations University".[46] In the second option, the University would be created "as a subsidiary organ"[47] of the General Assembly.

20. The United Nations Office of Legal Affairs examined the legal implications flowing from these two possible options under consideration by the Commission, in the light of the conditions mentioned in paragraph 2 of General Assembly resolution 34/111.[48] Under the first option, the University for Peace would not have the status of a United Nations organ, but "the effect of the General Assembly's action would be a clear indication that the preparations made ..., including its constitution and method of operation, meet with the Assembly's approval".[49] However, "this action would not ... have the effect of establishing the University for Peace and this would be for some other authority to do so".[50] Accordingly, this option "would not involve any financial implications for the United Nations budget".[51] Under the second option, if the General Assembly established the University for Peace, "either explicitly or implicitly, by adopting the Charter of the University prepared by the Commission, it would have the status of a subsidiary organ of the General Assembly".[52] Thus, "the General Assembly would have a residual budgetary responsibility for the University in the event that the voluntary contributions needed for the operation and management of the University did not provide the necessary

[29] A/38/141, sect. IV.E, para. 27 (a).
[30] G A resolution 38/193, para. 3(a).
[31] A/38/141, sect. IV.A-H, paras. 12-32.
[32] A/39/376, para. 1.
[33] Ibid., paras. 2-3.
[34] A/39/376.
[35] See G A (33), Plen., 11th mtg., paras. 106-122. See also G A resolution 33/109 and A/C.2/33/SR.50, 51, 53 and 55.
[36] G A resolution 34/111.
[37] A/34/496, para. 14.
[38] G A resolution 34/111, para. 1.
[39] Ibid., para. 2.
[40] A/35/468 and Corr.1, annex I, paras. 59-78.
[41] Ibid., paras. 61-63 and 71-76. See also A/AC.203/CRP.6.
[42] Ibid., para. 59.
[43] A/AC.203/CRP.6, para. 3.
[44] A/35/468 and Corr.1, para. 14. See also A/AC.203/CRP.6.
[45] G A resolution 34/111, para. 2. See also A/AC.203/CRP.6, para. 2.
[46] A/35/468 and Corr.1, annex I, para. 61.
[47] Ibid.
[48] See A/AC.203/CRP.6.
[49] A/AC.203/CRP.6, para. 3
[50] Ibid.
[51] Ibid.
[52] Ibid., para. 7.

financial viability".[53] The prospect of financial consequences for the United Nations budget would then necessitate the General Assembly being "presented with a statement of the full administrative and budgetary implications"[54] of the second option. Also, as a United Nations subsidiary organ, the University's finances "would be governed by the Financial Rules of the United Nations, and its operation and management would be subject to the authority of the General Assembly".[55] Moreover, the second option's approach "would prejudge the issue"[56] of the relationship between the University for Peace and UNU. Therefore, the first option appeared to meet all the conditions of General Assembly resolution 34/111, paragraph 2.[57] In contrast, if the Commission followed the second option, "its recommendations might require revision of two of the conditions laid down by the General Assembly in resolution 34/111, namely"[58] paragraph 2(b) and (c).

21. The Commission agreed to recommend the establishment of the University for Peace "in accordance with the terms of an international agreement to be open to signature by all States",[59] while the University's functioning would be governed by a charter which the General Assembly could also endorse. The report of the Commission included suggested elements for inclusion in the international agreement and charter, along with a request to "the Secretary-General to prepare on that basis, for consideration by the Assembly, the texts of a draft agreement and a draft charter which could be fully consistent with the United Nations and other relevant international principles, procedures and practices".[60] Additionally, after the *entry into force* of the international agreement establishing the University for Peace, a relationship agreement would be negotiated with UNU.[61] Close links and associations would also be made with UNESCO and the United Nations Institute for Training and Research (UNITAR).[62]

22. The Secretary-General, commenting on the report of the Commission, concluded that the requirements contained in General Assembly resolution 34/111 had been met, and thus it would be appropriate for the General Assembly to consider adopting the draft international agreement together with the draft charter of the University.[63]

23. In its resolution 35/55, the General Assembly "[a]pprove[d] the establishment of the University for Peace in conformity with the International Agreement for the Establishment of the University for Peace and with the Charter of the University for Peace",[64] as set forth in the annex to the resolution. The Secretary-General also opened for signature the International Agreement for the Establishment of the University for Peace within 10 days of its approval by the General Assembly.[65] According to the terms of the agreement, unlike specialized agencies, the University for Peace has no financial ties to the United Nations since it is funded from voluntary contributions and revenue derived from tuition.[66] However, similar to specialized agencies, the University does "enjoy such privileges and immunities as are necessary for the exercise of its functions and the fulfilment of its purposes".[67] Also among the Council or "supreme authority" of the University are four representatives designated by the Secretary-General of the United Nations, by the Director-General of UNESCO, by the Rector of UNU and by the Executive-Director of UNITAR, and 10 representatives of the academic community appointed by the Secretary-General of the United Nations, in consultation with the Director-General of UNESCO.[68]

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[53]Ibid.
[54]Ibid.
[55]Ibid., para. 8.
[56]Ibid., para. 11.
[57]Ibid., para. 5.
[58]Ibid., para. 12.
[59]A/35/468 and Corr.1, annex I, para. 62.
[60]Ibid., para. 63.
[61]A/35/468 and Corr.1, para. 21. See also Charter of the University for Peace, article 4(2) in G A resolution 35/55, annex. See also United Nations, *Treaty Series*, vol. 1223, p. 87.
[62]See Charter of the University for Peace, articles 4(3) & 4(1) in G A resolution 35/55 of 5 December 1980, annex. See also United Nations, *Treaty Series*, vol. 1223, p. 87.
[63]A/35/468 and Corr.1, para. 23.
[64]G A resolution 35/55, para. 1.
[65]Ibid., para. 2.
[66]International Agreement for the Establishment of the University for Peace, article 4, in G A resolution 35/55, annex. See also United Nations, *Treaty Series*, vol. 1223, p. 87.
[67]Ibid., article 3.
[68]See Charter of the University for Peace, article 6, in G A resolution 35/55, annex. See also United Nations, *Treaty Series*, vol. 1223, p. 87.