

ARTICLE 56

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ARTICLE 56

TEXT OF ARTICLE 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

INTRODUCTORY NOTE

1. In the present study, a brief review is made of decisions and related discussions of the General Assembly and the Economic and Social Council in which Article 56 has been referred to or its language paraphrased. Decisions in the economic, social and human rights fields in which reference has been made only in a general way to obligations of Members under the Charter and where no clear connection¹ with Article 56 can be established,² are not dealt with in this study, nor are merely incidental references³ to Article 56 in discussions included.

2. The types of action taken for the "achievement of the purposes set forth in Article 55" are dealt with in the *Repertory* and its *Supplements* under Article 55. Questions concerning the relationship of Article 56 to domestic jurisdiction and to reports on steps taken to give effect to recommendations of the General Assembly and the Economic and Social Council on economic, social and human rights matters are dealt with in the *Repertory* and its *Supplements* under Article 2 (7) and Article 64, respectively.

3. As in the *Repertory* and *Supplements* Nos. 1, 2 and 3, the general survey contains an account of the manner in which Article 56 has been referred to and the analytical summary of practice deals with the question of the scope of the pledge of Member States under Article 56 as reflected in the proceedings of the General Assembly and the Economic and Social Council.

¹It is to be noted that since Article 56 contains a general pledge relating to the achievement of the purposes set forth in Article 55, it cannot be said with certainty that the pledge in Article 56 has not been taken into account in those decisions or discussions in which only a general reference has been made to obligations of Members under the Charter. See *Repertory*, vol. III, under Article 56, footnote 1.

²See, for example, G A resolutions 34/44, 34/46, 34/90 B, 34/179, 35/174, 35/188, 35/192, 36/9, 36/147, 37/184, 37/186, 37/200, 38/17, 38/100, 38/124, 39/117, 39/119, 39/121 and 39/145; E S C resolutions 1981/39, 1982/39 and 1984/10; E S C decision 1983/171, annex.

³See, for example, G A (34), 3rd Comm., 28th mtg., para. 18; G A (36), 3rd Comm., 37th mtg., paras. 32 and 34; 64th mtg., para. 18; G A (37), 3rd Comm., 66th mtg., para. 32; G A (38), 3rd Comm., 39th mtg., para. 4; 60th mtg., para. 21.

I. GENERAL SURVEY

4. As in the past, only a few decisions of the General Assembly and the Economic and Social Council contained references to Article 56. Some of those references were made in the preambles to resolutions, while others occur in the operative part of resolutions, and all those resolutions relate primarily to questions of economic development,⁴ social progress⁵ and human rights.⁶

⁴E S C resolution 1983/57 and E S C decision 1983/171, annex.

⁵G A resolutions 34/58, 34/177 and 36/43; E S C resolutions 1981/61, 1983/11 and 1983/13.

⁶G A resolutions 36/55, 37/200, 38/57, 38/124 and 39/145; E S C resolution 1981/36, annex.

5. As in the past, a reaffirmation was made in resolutions with respect to a previous decision concerning the obligations contained in Article 56,⁷ a reference was made to the obligations assumed by all Member States under Article 56,⁸ or the Article was quoted in part.⁹ Sometimes, the reference was made in connection with the work of specialized agencies¹⁰ or of the Commission on Human Rights.¹¹

6. During the period under review, there was no elaboration of the meaning of the word "pledge" in the decisions of the United Nations. It may be noted that in a decision which paraphrases Article 56, the words "principle of cooperation among all States" and "principle of cooperation among all peoples" were used.¹²

⁷G A resolution 34/177.

⁸G A resolution 36/55; E S C resolution 1981/36, annex.

⁹G A resolution 38/57; E S C resolutions 1983/11, 1983/13, 1983/57 and E S C decision 1983/171, annex.

¹⁰G A resolutions 34/58, 34/177 and 36/43; E S C resolution 1981/61.

¹¹G A resolutions 37/200, 38/124 and 39/145.

¹²E S C decision 1983/171, annex.

II. ANALYTICAL SUMMARY OF PRACTICE

Scope of the pledge to take joint and separate action in cooperation with the Organization

1. QUESTION OF INTERNATIONAL COOPERATION TO PROTECT HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 56

7. During the discussions at the first regular session of the Second (Social) Committee of the Economic and Social Council in 1979, 1980 and 1981,¹³ regarding the draft resolutions and decisions recommended by the Commission on Human Rights for adoption by the Council, no express reference was made to Article 56, but some representatives had given their interpretation of the international cooperation in the United Nations for the universal respect for, and observance of, human rights and fundamental freedoms.

8. One delegation stated that it was natural that the international community should ensure that States respected the standards laid down in matters of human rights, but that did not mean that the international community should assume a judicial function and pronounce certain States guilty, for example, with regard to the consideration of communications concerning human rights. For that representative, the aim was essentially to gain the cooperation of States in question, in order first to ascertain whether the allegations in communications were accurate and then, if they were, to try to bring about the adoption of the appropriate measures. In determining whether there had been violations of the standards laid down in international instruments, objectivity must be a constant concern. It was deemed that it would be regrettable if human rights became a weapon used by States against one another. In the view of that delegation, if the cooperation of States in verifying allegations was essential, it was even more so when it came

to suggesting measures to be taken. The United Nations had neither de facto nor de jure power to adopt coercive measures. What it could do was to use persuasion. In doing so, care had to be taken to show the State in question that it was not its political options that were being condemned, but certain acts or practices obviously contrary to internationally recognized standards.¹⁴

9. Another delegation observed that it was generally acknowledged that the endeavours of Member States in the field of human rights should be based on international cooperation, with due respect for the sovereignty and independence of States. The representative added that the role of the Commission on Human Rights had therefore been, and continued to be, to encourage cooperation and not to interfere in the internal affairs of sovereign countries. International cooperation could be effective only if it were based on respect for the sovereignty of States and on the principle of non-interference in their internal affairs.¹⁵ It was also pointed out that that interpretation followed from the generally recognized principle of international law that each people freely established its own political status and freely determined its own economic, social and cultural development. It was further stated that any other approach to the question of human rights would be in flagrant contradiction to the Charter and incompatible with the maintenance of peaceful and friendly relations between peoples.¹⁶

10. The attention of the Committee was also drawn to the complex problems to be resolved in the field of human rights, which, it was felt, should be tackled in a spirit of frank cooperation and mutual respect among States, taking into account the principles of the Charter of the United Nations. It was said that a posture of confrontation of

¹³In its decision 1982/105 of 4 February 1982, the Council, inter alia, decided to discontinue, for an experimental period of two years, the provision of summary records for its sessional committees (First (Economic) Committee, Second (Social) Committee and Third (Programme and Coordination) Committee).

¹⁴E S C (1979), 2nd Comm., 20th mtg., para. 26.

¹⁵E S C (1980), 2nd Comm., 20th mtg., para. 59. Also E S C (1981), 2nd Comm., 13th mtg., para. 29; 16th mtg., paras. 24 and 25.

¹⁶E S C (1980), 2nd Comm., 21st mtg., paras. 16, 17, 20 and 21.

Governments was not conducive to the promotion of and respect for human rights, and that international cooperation was hampered by divergences between the standards and practices of the various States and that the harmonization of those standards and practices was still a long-term objective, even in the most homogeneous regions.¹⁷

11. The discussions resulted, on the recommendation of the Economic and Social Council, in the various resolutions adopted by the General Assembly on the situation of human rights and fundamental freedoms in Chile,¹⁸ in Bolivia,¹⁹ in El Salvador²⁰ and in Guatemala,²¹ in which the General Assembly, inter alia, invited the Governments and other parties concerned in the countries concerned to cooperate with the Special Rapporteurs of the Commission on Human Rights on the situation of human rights in those countries. The discussions also resulted in the adoption of resolutions on "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms",²² in which the General Assembly, inter alia, urged all States to cooperate with the Commission on Human Rights in the promotion and protection of human rights and fundamental freedoms in any part of the world.

2. QUESTION OF THE CREATION OF A POST OF A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

12. As in the preceding period,²³ two approaches conflicted during the discussions on the creation of a post of a United Nations High Commissioner for Human Rights, with many references to Articles 55 and 56 of the Charter of the United Nations and their relations to Article 2, paragraph 7, of the Charter.

13. The delegations which opposed the creation of the post of a High Commissioner for Human Rights said²⁴ that the establishment of such a post would certainly not contribute to a real improvement in the effective enjoyment of human rights and fundamental freedoms having regard to the basic objective underlying all United Nations activities in that field, namely the achievement of international cooperation. In the first place, it would lead to overlap of activities, since some of the proposed functions were carried out by the Secretary-General or persons authorized by him, or by existing United Nations and other bodies. There was also the problem of the complicated and delicate questions

which would inevitably arise in relations between a High Commissioner and sovereign States. It would obviously be impossible for one person to cope with the enormous task of promoting human rights; there was no magic wand which in the hand of one person could resolve mankind's problems. No single person, however exceptional, could cope with the multitude of problems facing the United Nations, it was said: how could such a person achieve true international cooperation when there was no consensus on the establishment of such a post?

14. The view was also expressed that the proposal to create the post was fundamentally flawed as it ran counter to the Charter of the United Nations because it did not meet the basic requirement of international cooperation set forth in Articles 55 and 56 of the Charter. The proposal was designed to undermine the activities of the Organization in the field of human rights. By personalizing functions that should be taken care of collectively, it might reduce their effectiveness and might also result in a violation of Article 2, paragraph 7, of the Charter by interfering in the internal affairs of sovereign States.

15. It was further stated that before a decision was taken to create the post an appeal must be made to States to demonstrate the necessary commitment to promote total respect of human rights, and if there were greater collaboration between the United Nations and Member States, the Organization would be in a better position to carry out its task in the field of human rights. It was therefore considered useless to establish a new organ to consider human rights questions; it would be better to strengthen existing procedures and monitor the implementation of existing international instruments to ensure their effectiveness.

16. The delegations supporting the creation of the post expressed the view²⁵ that the office of the High Commissioner would be in a better position than other United Nations mechanisms to collect serious, objective and reliable information on the problems encountered in the application of the provisions on human rights and to recommend solutions. It would thereby strengthen substantially the role, the capacity and the credibility of the United Nations to deal with and find solutions particularly to mass and flagrant violations of human rights, and would give greater moral authority to the Organization for the defence of those rights.

17. It was also pointed out that the allegations that the creation of such a post would lead to interference in the internal affairs of countries were unwarranted: the High Commissioner would have to play a conciliatory, advisory and coordinating role and to work on the basis of mutual cooperation, in a similar manner to the United Nations High Commissioner for Refugees. Moreover, the appointment of that High Commissioner for Human Rights would help to resolve some of the difficulties that lay in the way of the exercise of the Secretary-General's good offices because it

¹⁷Ibid., para. 60.

¹⁸G A resolutions 34/179, 35/188, 36/157, 37/183, 38/102 and 39/121.

¹⁹G A resolution 35/185.

²⁰G A resolutions 35/192, 36/155, 37/185, 38/101 and 39/119.

²¹G A resolutions 37/184, 38/100 and 39/120.

²²G A resolutions 34/46, 34/48, 35/175, 35/176, 36/133, 36/135, 37/199, 37/200, 38/124 and 39/145.

²³See *Supplement* No. 5, vol. III, under Article 56, para. 29.

²⁴See, for example, G A (34), 3rd Comm., 27th mtg., para. 34; 28th mtg., paras. 17, 41 and 63; G A (35), 3rd Comm., 58th mtg., para. 2; 60th mtg., paras. 2, 14 and 33; 66th mtg., para. 16; G A (36), 3rd Comm., 37th mtg., para. 32; 38th mtg., para. 34; 40th mtg., para. 57; G A (37), 3rd Comm., 40th mtg., paras. 22, 29, 43, 56 and 67; G A (38), 3rd Comm., 42nd mtg., para. 13; G A (39), 3rd Comm., 36th mtg., paras. 40, 69, 77 and 93.

²⁵See, for example, G A (34), 3rd Comm., 29th mtg., paras. 12 and 38; 36th mtg., para. 27; G A (35), 3rd Comm., 56th mtg., para. 63; 58th mtg., para. 23; 59th mtg., para. 15; 69th mtg., para. 35; G A (38), 3rd Comm., 40th mtg., para. 52.

would help to remove humanitarian issues from the political arena.

18. It was further stated that it remained to be hoped that the United Nations would establish the post in order to implement the obligation to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms, as set forth in Article 1 of the Charter, and to promote universal respect for and observance of human rights and fundamental freedoms, as specified in Article 55. A proposal of such value should not be held up indefinitely.

19. During the period under review, other representatives defended a third approach, stating²⁶ that the proposal to establish a post of a United Nations High Commissioner for Human Rights was premature, the time to change structural foundations had not yet arrived, and Member States had shown considerable reluctance to take a decision on the matter, in part because different ideas existed as to what the mandate of the High Commissioner should be. It was

²⁶See, for example, G A (34), 3rd Comm., 28th mtg., para. 47; 29th mtg., para. 5; 35th mtg., para. 26; G A (35), 3rd Comm., 56th mtg., para. 63.

preferable to adopt a measure that won the sincere and unreserved approval of all Member States rather than an ambitious reform that would be rejected by a substantial minority of States or accepted with mental reservations by others. The necessity of consensus was of primordial importance, and the question of creating the post should be considered from time to time until conditions were favourable for taking the proposal further.

20. Thus, in its resolutions 38/124 of 16 December 1983 and 39/145 of 14 December 1984, for example,²⁷ the General Assembly reiterated its request that the Commission on Human Rights should continue its work on the overall analysis with a view to further promoting and improving human rights and fundamental freedoms, and on the overall analysis of the alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms, including the question of the creation of a post of a United Nations High Commissioner for Human Rights, in accordance with the provisions and concepts of General Assembly resolution 32/130 and other relevant texts.

²⁷See also G A resolution 37/200.