

Repertory of Practice of United Nations Organs

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Volume IV

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. For this 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 sections: II. Analytical Summary of Practice, subsection B. "The mandatory

character of Article 57” And subsection C. “Other inter-governmental organizations.”

2. The following issues, though closely related to the provisions of Article 57, are not dealt with here to prevent the duplication of material contained in other studies: 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 Economic and Social Council. While this 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 these organizations.

I. GENERAL SURVEY

3. The present study deals with the establishment of relations between the United Nations and the specialized agencies, as provided under Article 57.¹ Relations with other intergovernmental organizations not defined as “specialized agencies” of the United Nations are also dealt with in this study, although the United Nations Charter contains no Article or provision for establishing relations with intergovernmental organizations other than the specialized agencies, as provided for in Articles 57 and 63.² The United Nations, as noted in the *Repertory* and previous *Supplements*, however has developed various practices with respect to these “non”-specialized agencies or non-United Nations intergovernmental organizations. These United Nations practices range from whether a formal relationship agreement similar to that of a specialized agency’s is concluded with the intergovernmental organization,³ to whether working arrangements more akin to

¹ As noted in the *Repertory*, 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 . . .”; Article 57(2) suggests that the term “specialized agencies” is applicable *only after* this 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. See *The United Nations Conference on International Organization*, vol. 10, p. 272-273, doc. 861, II/3/5 (1), para. 12 (b), and vol. 8, p. 82-83, doc. 924, II/12, para. 12 (b) and the *Repertory*, under Article 57, note 1, and its *Supplements*, under Article 57.

² 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.” This is in line with the United Nations Conference on International Organization’s understanding of the Article’s intended purpose “to provide for agreements sufficiently flexible to enable satisfactory arrangements to be worked out on the basis of need and experience.” *The United Nations Conference on International Organization*, vol. 10, p. 272-273, doc. 861, II/3/5 (1), para. 12 (b), and vol. 8, p. 82-83, doc. 924, II/12, para. 12 (b).

³ These types of organizations with the potential to become a specialized agency or analogous organization, are generally discussed under Part A. “Relationship with the United Nations” of the Analytical Summary of Practice. See *Supplement No. 1 and 2*, under Article 57, particularly the sections of the study dealing with the International Atomic Energy Agency (IAEA); and *Supplement No. 5*, under Article 57, particularly the section of the study dealing with the World Tourism Organization (WTO).

inter-secretariat ones are made,⁴ or to whether a hybrid of the former two types of practices is reached.⁵

4. During this period, a trend emerges with respect to relationship agreements in the preparatory stage between the United Nations and proposed intergovernmental organizations during the period under review. Although no specialized agencies are brought into relationship with the United Nations in the course of this period, the United Nations considered a link with four proposed intergovernmental organizations similar to the relationship agreement concluded in 1957 with the International Atomic Energy Agency (IAEA),⁶ which was modeled on the relationship agreements concluded with specialized agencies under Articles 57 and 63. The question during the period under review of a relationship agreement, at the preparatory stage, between the United Nations and two of these organizations – the International Tribunal for the Law of the Sea,⁷ and the International Criminal Court – constitute cases *sui generis*, insofar as they constitute judicial, rather than economic or social, institutions. Without prejudice to which Article of the Charter their development will fall, these are not treated in the Analytical summary. Once finalized, agreements with these Organizations also could be found under other Articles in the *Repertory*, e.g., Article 13(1)(a). For the present study, it should be noted, however, that the International Law Commission, considering in the context of the draft statute of the International Criminal Court⁸ the type of relationship to establish between the United Nations and the proposed Court, considered the option of a relationship agreement between the ICC and the United Nations.⁹ Some within the Commission advocated such a link as similar to the relationship agreement concluded with the IAEA,¹⁰ and those envisaged at the time between the International Seabed

⁴ These types of organizations are generally discussed under Part C. “Other inter-governmental organizations” of the Analytical Summary of Practice and also under Article 70. The arrangement with the Council of Europe is such an example. See also *Supplement No. 4*, under Article 70, paras. 3 - 4.

⁵ These types of organizations are generally discussed under Part C. “Other inter-governmental organizations” of the Analytical Summary of Practice and also under Article 70. See *Supplement No. 5*, particularly the section of the study dealing with International Criminal Police Organization (INTERPOL), and *Supplement No. 6*, particularly the sections of the study dealing with the University of Peace.

⁶ See the Statute of the IAEA of 26 October 1956, article XVI in United Nations, *Treaty Series*, vol. 276, No. 3988, p.

³. See Agreement governing the relationship between the UN and the IAEA, GA resolution 1145(XII) of 14 November 1957 and Annex; United Nations, *Treaty Series*, vol. 281, No. II-548, p. 369. See also GA resolution 1146(XII) of 14 November 1957.

⁷ In 1982, the Third United Nations Conference on the Law of the Sea adopted the United Nations Convention on the Law of the Sea (UNCLOS), wherein provisions were made to establish the International Tribunal for the Law of the Sea (ITLOS). *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (U.N. publication, Sales No. E.84.V.3), doc. A/CONF.62/122; United Nations, *Treaty Series*, vol. 1833, No. I-31363, p. 397. See *Draft Agreement on Co-operation and Relationships between the United Nations and the International Tribunal for the Law of the Sea*, LOS/PCN.SCN.4/WP.9 of 16 March 1990. See also GA resolution 49/28 of 6 December 1994, preamb. para. 7.

⁸ Article 2 of the draft statute, entitled “Relationship of the Court to the United Nations”, is as follows:

“The President, with the approval of the States parties to this Statute (“States Parties”), may conclude an agreement establishing an appropriate relationship between the Court and the United Nations.” See ILC Report, A/49/10, 1994, chp. II, paras. 53-55; art. 2, pp. 45-47, paras. 1-8; and Appendix III, pp. 157-161.

⁹ See G A (49), Suppl. No. 10 (A/49/10), Appendix, pp. 159 – 161 for options considered in this vein.

¹⁰ Under the possible option of the ICC coming into relationship with the United Nations via an agreement with the United Nations, the ILC noted the following:

“Cooperation agreements are the typical way whereby specialized agencies and analogous bodies enter into relationship with the United Nations under *Articles 57 and 63 of the United Nations Charter*. Agreements are concluded between the specialized agencies concerned and the Economic and Social Council of the United Nations and are subject to the approval of the General Assembly. The agreements regulate, *inter alia*, matters of collaboration with the United

Authority and the International Tribunal for the Law of the Sea.¹¹ The inclusion of the other two proposed organizations – the International Seabed Authority and the World Trade Organization -- in the present study does not prejudice the question of whether an eventual agreement bringing any of these proposed organizations into relationship with the United Nations would constitute an application of Article 57.

5. The Council also continued to allow for the participation of intergovernmental organizations in its deliberations, and this matter is further discussed under Article 70 of this *Supplement*.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Relationship with the United Nations

1. THE INTERNATIONAL SEABED AUTHORITY (ISBA)

6. The General Assembly had proclaimed in its resolution 2749 (XXV) of 17 December 1970 that the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (“the Area”), as well as its resources, are the “common heritage of mankind”¹² which shall be governed by an international régime to be established by an international treaty of a universal character.¹³ With the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the framework for implementing this concept of the common heritage of mankind, as applied to deep sea-bed mineral resources, was established in the International Seabed Authority (ISBA).¹⁴ Under the provisions of UNCLOS, the ISBA would be an autonomous international organization through which States Parties would organize and control activities in the deep sea-bed Area, including the exploitation of the Area’s resources.¹⁵ ISBA would come into existence once the 1982 UNCLOS entered into force.

7. During this period, the General Assembly continued to call upon all States to consider ratifying or acceding to UNCLOS in order for the entry into force of this “new legal régime for the uses of the sea and its resources”.¹⁶ Meanwhile, prior to the entry into force of UNCLOS, the Preparatory Commission for the ISBA and the ITLOS (PrepCom) met regularly. Within the work programmes of the PrepCom, one of the tasks entrusted to the Plenary on the ISBA was to “[m]ake recommendations concerning the relationship between the Authority and the United Nations and other international

Nations in the respective fields of action of each specialized agency and questions related to a common system as regards personnel policies. Each specialized agency constitutes an autonomous international organization with its own budget and financial resources.” (*emphasis added*) See ILC Report, A/49/10, 1994, chp. II, Appendix, p. 159, para. 13.

¹¹ See *ibid.*, ch. II, p. 46, para. 1, and Appendix, pp. 159-60, paras. 14-15.

¹² GA resolution 2749 (XXV) of 17 December 1970, para. 1.

¹³ *Ibid.*, paras. 4 and 9.

¹⁴ *Supra* note 7 at Articles 156-170.

¹⁵ *Supra* note 7 at Article 157.

¹⁶ GA resolutions 44/26 of 20 November 1989, para. 4; 45/145 of 14 December 1990, para. 4; 46/78 of 12 December 1991, para. 6; 47/65 of 11 December 1992, para. 6.

organizations".¹⁷ Thus the PrepCom considered the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority during this period.¹⁸ Similar to the ITLOS's draft relationship agreement, the articles of the ISBA draft agreement were patterned after provisions found in United Nations relationship agreements with the IAEA, the World Tourism Organization (WTO), and specialized agencies.¹⁹ By 1992, the PrepCom's Plenary on the ISBA had "succeeded in resolving almost all of the problems arising in connection with"²⁰ the draft Relationship Agreement with the United Nations, and the only pending article concerned the reciprocal representation by the ISBA and the United Nations in their organs.

8. By 16 November 1993, the General Assembly noted that the sixtieth instrument of ratification of, or accession to UNCLOS was deposited, and consequently, UNCLOS would enter into force on 16 November 1994.²¹ In its resolution 49/28 of 6 December 1994, the Assembly expressed its profound satisfaction at the entry into force of UNCLOS, and also at the establishment of the ISBA.²² Although the draft Agreement concerning the Relationship between the United Nations and the ISBA had yet to be finalized at the close of the period under review, the only issue pending remained the article on reciprocal representation, which deals with the question of observers in the United Nation's and ISBA's organs.²³

2. THE WORLD TRADE ORGANIZATION (WTO)

9. In its resolution 49/97 of 19 December 1994, the General Assembly welcomed the successful conclusion of the Uruguay Round of multilateral trade negotiations at the Ministerial Meeting of the Trade Negotiating Committee from 12 to 15 April 1994, particularly, the Agreement Establishing the World Trade Organization (WTO).²⁴ The Assembly also noted "the ongoing exchange of views between the [United Nations] Secretary-General and the Director-General of the General Agreement on Tariffs and Trade on the issue of establishing a relationship between the United Nations and the World Trade Organization."²⁵

10. Upon the entry into force of the WTO, the Organization would be the successor to the General Agreement on Tariffs and Trade (GATT) which had been considered as a United Nations specialized agency on a *de facto* basis,²⁶ and had been administered by

¹⁷ See also Res. I, para. 5(d) in LOS/PCN/27/L.103 of 7 July 1992.

¹⁸ E.g., LOS/PCN/L.97, para. 3 of 29 August 1991; LOS/PCN/L.102, paras. 3-12 of 13 March 1992; LOS/PCN/L.103, para. 52 of 7 July 1992; LOS/PCN/L.108, para. 6 of 20 August 1992.

¹⁹ See LOS/PCN/WP.50/Rev.1 of 25 July 1991; LOS/PCN/WP.50/Rev.2 of 28 July 1992; LOS/PCN/WP.50/Rev. LOS/PCN/WP.50/Rev.3 of 2 February 1993.

²⁰ LOS/PCN/L.103, para. 52.

²¹ GA resolution 48/28 of 9 December 1993, preambular para. 8.

²² GA resolution 49/28 of 6 December 1994, para. 2 and para. 4.

²³ LOS/PCN/L.102, para. 12 of 13 March 1992; LOS/PCN/L.108, para. 8 of 20 August 1992.

²⁴ See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done in Marrakesh on 15 April 1994*, (GATT secretariat publication, Sales No. GATT/1994-7), vols. 1 and 27-31. The "Final Act Embodying the Results of the Uruguay Round" was adopted and signed on 15 April 1994. GATT, Focus Newsletter, No. 107, May 1994, p. 7 &16.

²⁵ GA resolution 49/97 of 19 December 1994, para. 1.

²⁶ See A/49/363, para. 45 of 6 September 1994. For further background details, see A/46/565 and Annex of 16 October 1991. Chapter IV of the stillborn International Trade Organization (ITO) of the 1948 Havana Charter provided the

the Interim Commission of the International Trade Organization (ICITO). The replacement of GATT by the WTO therefore posed the question of WTO's need to have a formal relationship with the United Nations since during the time of GATT, there had never been any formal agreement between the United Nations and GATT regulating their mutual relationship.²⁷ The GATT never concluded a specialized agency agreement with the United Nations, nor had it been brought into any other formal relationship with the United Nations because originally, it was the stillborn ITO²⁸ that was supposed to be brought into relationship²⁹ with the United Nations as a specialized agency. Instead, GATT's treatment as a *de facto* United Nations specialized agency had been defined in an exchange of letters between the United Nations Secretary-General and the Executive Secretary of the GATT in 1952.³⁰ Thus, the United Nations Secretary-General in his report entitled "Strengthening International Organizations in the Area of Multilateral Trade" suggested that these existing *de facto* cooperation agreements "should be strengthened to reflect the new context created by the establishment of WTO."³¹

11. As the Secretary-General highlighted in his report, several ministerial decisions had been adopted to ensure the transition from GATT to WTO, including the establishment of a Preparatory Committee for WTO (WTO PrepCom).³² Under paragraph 8(b)(iii) of the Decision on the Establishment of the Preparatory Committee for the WTO, the WTO PrepCom would make "recommendations to the General Council of the WTO concerning the appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement".³³ Consideration of this matter began in July 1994 on the basis of two factual background notes "describing (a) intergovernmental organizations, including the United Nations, that are mentioned in the Uruguay Round agreements, and their functions and activities; (b) other intergovernmental organizations whose work might be relevant to WTO and their main functions and activities, and (c) existing arrangements between GATT and the Uruguay Round bodies and respective international organizations, including the United Nations and UNCTAD."³⁴ Although the status of work on this issue was of a preliminary nature, the emerging approach among participating Governments indicated a preference, at the initial phase of WTO's existence, for establishing relations with a minimal number of intergovernmental organizations; however it was agreed that the United Nations and

basis for GATT, which, until now, has been applied "provisionally" (i.e., until the Havana Charter entered into force – which it never did) by virtue of the Protocol of Provisional Application of 30 November 1947. United Nations, *Treaty Series*, vol. 55, No. 814.I(c).

²⁷ A/49/363, paras. 45, 48.

²⁸ See *supra*, text of note 38.

²⁹ The Executive Committee of the ICITO had previously prepared and approved a specialized agency agreement for the ITO, but the ITO never entered into force. See ICITO/EC.2/2/Add.1 (draft) of 3 August 1948; ICITO/EC.2/14 and Annex A of 15 September 1948; ICITO/EC.2/21 (revision) of 4 October 1948; ICITO/EC.2/SR.5, p. 1-5 of 3 September 1948; ICITO/SR.13, p. 3 (1948 approval of draft agreement of relationship between the United Nations and the ITO).

³⁰ A/49/363, para. 45. See Exchange of Letters 11/25 August 1952 between Trygve Lie and Eric Wyndham White in E/5476/Add.12 of 24 May 1974.

³¹ *Ibid.* para. 49.

³² A/49/363, para. 18 of 6 September 1994. See also GATT, Focus Newsletter, No. 107, May 1994.

³³ GATT, Focus Newsletter, No. 107, May 1994, p. 10, para. 8(b)(iii).

³⁴ A/49/363, para. 19.

UNCTAD are two organizations which the WTO should establish a relationship with on a “priority basis”.³⁵

12. As noted in General Assembly resolution 49/97 of 19 December 1994, an exchange of views proceeded between the United Nations Secretary-General and the Director-General of the GATT on this issue of establishing a relationship between the United Nations and the WTO. Further exchanges would be required “aimed at developing common approaches that could guide the submissions to be made to the respective legislative bodies of the United Nations and WTO for their action.”³⁶ Consideration would thus continue on the WTO and its relationship to the United Nations.

****B. The mandatory character of Article 57**

****C. Other inter-governmental organizations**

³⁵ *Ibid.*

³⁶ *Ibid.*, para. 50.