

# The «Colonial Clause» and Extraterritorial Application of Human Rights: The European Convention on Human Rights Article 56 and its Relationship to Article 1

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**Abstract:** Article 56 of the European Convention on Human Rights is often referred to as the «colonial clause» and it has received little attention by commentators, whereas there has been extensive writing on Article 1 of the Convention regarding the extraterritorial reach of that treaty. Article 56 has nevertheless the effect of limiting the responsibility of Member States for acts and omissions of the authorities of its dependent territories, although the Member State is still responsible if it acts directly through its own metropolitan officials in such territories. By employing an example of Norway, this paper finds it unnecessary for this country to undertake obligations pursuant to Article 56 in relation to its dependent territories in and around Antarctica, since there is currently little activity there which is not already covered by the extraterritorial regime of Article 1 of the Convention. The paper additionally considers the pros and cons of extending the Convention to territories under Article 56 should future developments lead to a larger and more permanent population of these areas.

**Key words:** European Convention on Human Rights, extraterritoriality, dependencies, South Atlantic, Antarctica

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## 1. Introduction

Two important judgments from the European Court of Human Rights (the Court) regarding the use of military forces abroad were delivered in the summer of 2011.<sup>2</sup> In the *Al-Skeini* judgment, the Court also upheld its former jurisprudence on a more peripheral issue; the relationship of Articles 1 and 56 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, often referred to as the European Convention on Human Rights (the Convention).<sup>3</sup>

Hence, responsibility may be incurred by a Member State under both provisions, and although territories possibly covered by declarations under Article 56 may be found all over the world, a number of such territories are located in the area covered by the 1959 Antarctic Treaty; south of 60° S latitude.<sup>4</sup> This article will primarily consider these areas. A central issue here is whether jurisdiction under Article 1 may bring territory which could have been covered by a declaration under Article 56 within the jurisdiction of the Court, even where no declaration has been made by the relevant Member State.<sup>5</sup>

In the following, the issues of jurisdiction under Article 1 and specialized territories under Article 56 will be addressed, before the relationship between these two provisions is analyzed.

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2. *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber) and *Al-Jedda v. the United Kingdom*, Appl. No. 27021/08, 7 July 2011, Judgment (Grand Chamber). Both cases refer to the activities of British troops in Iraq.
  3. CETS No. 005. *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber), § 140. Art. 56 numbered before Protocol 11 as Art. 63, and slight changes were made by this protocol to the wording of the article. For the sake of convenience, however, the paper will only refer to the provision as Art. 56 unless it is necessary for the sake of clarity to refer to former Article 63.
  4. 402 UNTS 71. Under Art. VI «[t]he provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.»
  5. Clauses similar to Art. 56 are found in Protocols 1, 4, 6, 7, 12 and 13, but these clauses will not be discussed further in this article. However, it should be noted that in Protocol 6 and onwards, there is no longer any reference to these territories having to be territories for whose international relations a Member State is responsible.

## 2. Jurisdiction following Article 1

As both of the abovementioned provisions may establish responsibility for activities undertaken outside a State's metropolitan area, it makes sense to consider when responsibility may arise under each one of them. Article 1 thus offers a valuable alternative if no declaration has been made under Article 56.

Article 1 provides that «[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.»<sup>6</sup> The key term is thus *jurisdiction* and it has been discussed in numerous academic articles and monographs since especially the Court's 2001 *Banković* decision.<sup>7</sup>

The Court's approach to this issue has been rather ad hoc, establishing on a case-by-case basis exceptions to an application otherwise limited merely to the territory of a Member State.<sup>8</sup> Broadly speaking, beyond the national territory of the Member State, jurisdiction may also exist where the Member State holds authority and control over an individual, or exercises effective control over an area.<sup>9</sup> There is no need for the geographical place where the alleged violation takes place to have any historical connection to the said Member State, or even to be located in a territorial entity recognized by that Member State as a State. The violation may therefore take place anywhere in the world.

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6. Provisions are found in the protocols to the Convention which extend the reach of Art. 1 to also cover the provisions of those protocols, e.g. Protocol 1 Art. 5.

7. *Banković and Others v. Belgium and Others*, Appl. No. 52207/99, 12 December 2001, Decision as to the admissibility (Grand Chamber). The case concerned the potential responsibility for among other things deaths following an air attack by NATO in 1999 on a target in Beograd.

8. Moor, Louise and AW Brian Simpson, «Ghosts of Colonialism in the European Convention on Human Rights», *British Year Book of International Law*, (76) 2005 pp. 121–93, p. 125. See also the concurring opinion of Bonello in *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber).

9. *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber), §§ 133–40.

As regards the effective control alternative, jurisdiction arises when a Member State assumes such control over foreign territory, either through its own troops or through a local administration which is under the control of the said State.<sup>10</sup> It makes no difference here whether that control is of a semi-permanent or temporary nature.<sup>11</sup>

The Court's jurisprudence in relation to vessels is also illustrative. Accordingly, the Convention applies when command over a vessel is assumed by naval forces of a Member State and the vessel is thereafter forcefully escorted to one of its harbors,<sup>12</sup> when persons are taken on board a Member State's naval vessel during rescue operations on the high sea,<sup>13</sup> when a vessel is hindered from entering the territorial waters of a Member State by the naval forces of that state,<sup>14</sup> and when a naval vessel of a Member State, upon consent from a flag state to control vessels flying its flag, navigates outside the territorial waters of the Member State in such a way that damage is inflicted upon another vessel belonging to the said flag state with resulting loss of life.<sup>15</sup>

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10. *Loizidou v. Turkey*, Appl. No. 15318/89, 18 December 1996, Judgment (Grand Chamber), § 52 and *Cyprus v. Turkey*, Appl. No. 25781/94, 10 May 2001, Judgment (Grand Chamber), §§ 77–80. This case concerned the right of displaced persons from Northern Cyprus to return to their former homes and properties.
  11. *Issa and Others v. Turkey*, Appl. No. 31821/96, 16 November 2004, Judgment, § 74. Here, Turkey's extraterritorial military operation lasted 6 weeks, but jurisdiction was not found to exist after an evaluation of the facts of the case. The case concerned potential responsibility for the detention and killing of Iraqi citizens.
  12. *Rigopoulos v. Spain*, Appl. No. 37388/97, 12 January 1999, Decision as to the admissibility, and *Medvedyev and Others v. France*, Appl. No. 3394/03, 29 March 2010, Judgment (Grand Chamber).
  13. *Hirsi Jamaa and Others v. Italy*, Appl. No. 27765/09, 23 February 2012, Judgment (Grand Chamber).
  14. *Women on Waves and Others v. Portugal*, Appl. 31276/05, 3 February 2009, Judgment. See Geiß, Robin and Anna Petrig, *Piracy and Armed Robbery at Sea*, Oxford University Press, Oxford 2011 pp. 110–1.
  15. *Khavare et al. v. Italy and Albania*, Appl. No. 39473/98, 11 January 2001, Decision as to the admissibility. See Geiß and Petrig 2011 p. 114.

These days the main issue in relation to Article 1 would seem to be the extent to which responsibility of a Member State may be replaced by that of another State or organization which is not a party to the Convention<sup>16</sup> – an issue introduced by the Court in its landmark *Behrami and Saramati* decision.<sup>17</sup>

### 3. The territories of Article 56

#### 3.1 Which territories may be covered by declarations under Article 56?

The obligations of a treaty are applicable even to non-metropolitan territories for whose international relations a State is responsible, unless a different intention appears from the treaty or is otherwise established.<sup>18</sup> Moreover, the term jurisdiction itself does not limit the Convention to only apply to the territory of a Member State.<sup>19</sup> However, the abovementioned ‘different intention’ and corresponding limi-

16. See e.g. Stein, Torsten, «Kosovo and the International Community. The Attribution of Possible Internationally Wrongful Acts: Responsibility of NATO or of its Member States?», in Tomuschat, Christian (ed.) *Kosovo and the International Community: A Legal Assessment*, Kluwer Law International, The Hague 2002 pp. 181–92; Larsen, Kjetil Mujezinovic, «Attribution of Conduct in Peace Operations: The ‘Ultimate Authority and Control’ Test», *European Journal of International Law*, (19) 2008 pp. 509–31; Van der Toorn, Damien, «Attribution of Conduct by State Armed Forces Participating in UN-authorized Operations: The Impact of *Behrami* and *Al-Jedda*» *Australian International Law Journal*, (15) 2008 pp. 9–27; Bell, Caitlin A., «Reassessing Multiple Attribution: The International Law Commission and the *Behrami* and *Saramati* Decision», *New York University Journal of International Law and Politics* (42) 2009–10 pp. 501–48; Geiß and Petrig 2011 pp. 116–30; and Frostad, Magne, «The Responsibility of Sending States for Human Rights Violations during Peace Support Operations and the Issue of Detention», *Military Law and Law of War Review*, (50) 2011 pp. 127–188. This is not merely a question of who is responsible for an established breach of human rights, but might also show that there was no breach of any substantive human rights rule should e.g. an international governmental organization be found responsible. This since such an organization is probably a non-party to the relevant treaty, might not have human rights obligations following from its own constitutive instrument, and since there might be a lack of relevant customary international law obligations binding on that subject of international law.

17. *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, Appl. Nos. 71412/01 and 78166/01, 2 May 2007, Decision as to the admissibility (Grand Chamber). These cases relate to acts and omissions of the UN-mandated and NATO-led Kosovo Force (KFOR) which resulted in death and injury of children having played with non-detonated ammunitions, and the arbitrary detention of a suspect, respectively.

18. 1969 Vienna Convention on the Law of Treaties, 1155 UNTS 331, Art. 29.

19. Jacobs, Francis G., *The European Convention on Human Rights*, Clarendon Press, Oxford 1975 pp. 11 and 14–5.

tation on the reach of Article 1 is found in Article 56 which provides a *lex specialis* regulation for the type of territory covered by that provision.<sup>20</sup> No similar regulation would seem to exist in the main United Nations' conventions on human rights or in the other regional human rights conventions.<sup>21</sup>

When the Convention was negotiated, a number of potential Member States held colonial territories and among these the United Kingdom strongly argued for the Convention not applying automatically to such geographical areas – a view supported to a large extent by the *travaux préparatoires*.<sup>22</sup> This led to former Article 63 which now constitutes Article 56 of the Convention and which is often referred to as the 'colonial clause.' Paragraph 1 of Article 56 thus provides that «[a]ny State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.» Thus, the Member State may choose whether none, some, or all of its relevant territories should enjoy the benefits of such a declaration.

It has been pointed out that this power to extend the protection of the Convention also constitutes by default the power to withhold it,<sup>23</sup> and the former European Commission of Human Rights (Commission) held in relation to the purpose of this provision, that Article 56 is «not only the territorial extension of the Convention but its adaptation to the measure of self-government attained in particular non-metropolitan territories and to the cultural and social differences in such territories».<sup>24</sup> Obviously, this provision cannot limit the responsibility for other Member States than the said metropolitan State under the ordinary regime for extraterritorial jurisdiction in Article 1.

The key term is thus 'territories for whose international relations [the Member State] is responsible.' It would seem as if the *travaux préparatoires* largely reserved

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20. For the view that without this provision, the Convention would presumably have applied to territories covered by Art. 56 as well, see Jacobs, Francis G., *The European Convention on Human Rights* p. 14, and White, Robin C.A. and Clare Ovey, *Jacobs, White & Ovey The European Convention on Human Rights*, 5<sup>th</sup> ed., Oxford University Press, Oxford 2010 p. 98.

21. An exception here is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, Art. 12. See Moor and Simpson 2005 p. 137, n. 89.

22. On the *travaux préparatoires* of Article 56, see Vasak, Karel, «The European Convention of Human Rights beyond the Frontiers of Europe», *The International and Comparative Law Quarterly*, (12) 1963 pp. 1206–1231, and Moor and Simpson 2005 pp. 132–50.

23. Moor and Simpson 2005 p. 121.

24. *Cyprus v. Turkey*, Appl. Nos. 6780/74 and 6950/75, 25 May 1975, Decision as to the admissibility, § 9 in relation to Art. 63.

this category for non-European entities,<sup>25</sup> but the non-opposition by other Member States to the practice of the United Kingdom in extending (or withholding) the protection of the Convention to dependencies like Jersey and the Isle of Man, has led to the category also including European dependencies.<sup>26</sup>

The Commission moreover observed in the *Belgian Congo* case that this term has succeeded other, more restrictive terms employed such as ‘colonies’, or ‘non-metropolitan areas’; whereas this change represents an effort to facilitate, although without rendering compulsory, the application of the more important international treaties to territories the status of which is as varied as it is interchangeable but without assigning a final degree of importance to any one such status.<sup>27</sup>

Miltner is nevertheless correct in pointing out that the Commission «failed to clarify what characteristics such ‘territories’ might have, or how they might be identified.»<sup>28</sup>

Whether an area may be covered by a declaration under Article 56 or should instead be considered as part of the metropolitan territory of a Member State depends on the domestic legislation of the relevant State.<sup>29</sup> Hence, the metropolitan territory may cover a rather diverse set of territories and this is shown *inter alia* by the incorporation of the Jan Mayen Island and Svalbard into Norway, the Åland Islands into Finland, Rockall into the United Kingdom, Madeira and the Azores into Portugal, and the Canary Islands and the enclaves of Ceuta and Melilla on the Moroccan coast into Spain. In theory, this wide freedom of choice may help to circumvent the protection intended to follow from the Convention.

The United Kingdom is among the few States having applied this provision, and the Convention is therefore applicable to Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, the Bailiwick of Guernsey,

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25. Tomuchat, Christian, «Turkey’s Declaration under Article 25 of the European Convention on Human Rights», in Nowak, Manfred, Steurer, Dorothea and Tretter, Hannes (eds.), *Progress in the Spirit of Human Rights: Festschrift für Felix Ermacora*, N.P. Engel Verlag, Kehl am Rhein 1988 pp. 109–39, p. 128. However, an alternative but rejected version of the colonial clause included the term «overseas territories», see Moor and Simpson 2005 p. 145.

26. Tomuchat 1988 pp. 128–9.

27. *X and Others v. Belgium*, Appl. No. 1065/61, 30 May 1961, Decision as to the admissibility (Commission), *Yearbook of the European Convention on Human Rights*, (4) 1961 pp. 260–70, p. 266.

28. Miltner, Barbara L., «Revisiting Extraterritoriality: the ECHR and its Lessons», *ExpressO*, 2011 p. 22 at: [http://works.bepress.com/barbara\\_miltner/1](http://works.bepress.com/barbara_miltner/1) (last visited September 6, 2012).

29. Harris, David J., Michael O’Boyle, Ed P. Bates and Carla M. Buckley, *Harris, O’Boyle & Warbrick Law of the European Convention on Human Rights*, 2<sup>nd</sup> ed., Oxford University Press, Oxford 2009 p. 807.

Isle of Man, the Bailiwick of Jersey, Montserrat, St Helena, Ascension and Tristan da Cunha, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, and the Turks and Caicos Islands.<sup>30</sup> Formerly the United Kingdom's declarations covered many additional territories, but these have later largely obtained independence.<sup>31</sup> Similar declarations have also been issued by Denmark,<sup>32</sup> the Netherlands,<sup>33</sup> Germany<sup>34</sup> and France<sup>35</sup> in relation to some or all of their respective dependencies.

The Commission first applied this provision in the above mentioned *Belgian Congo* case, where it found the case inadmissible since no relevant declaration had been made by Belgium.<sup>36</sup> Although the applicants held that a declaration under Article 56 was unnecessary since the relevant territory constituted an integral part of Belgium, the Commission nevertheless held it to be manifest that the territory fell into the Article 56 category.<sup>37</sup> Thus, Moor and Simpson correctly hold that «the territory in question was, in common sense, a clear example of an overseas colonial territory.»<sup>38</sup>

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30. See <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=17/03/2012&CL=ENG&VL=1> (last visited September 6, 2012).

31. For an overview of the wide geographical application which the Convention gained through U.K. declarations, see Vasak 1963 pp. 1210–11.

32. In 1953 in relation to Greenland. See Vasak 1963 p. 1210.

33. In 1955 and 1985 for Surinam, Netherlands Antilles and Aruba. See Lush, Christopher, «The Territorial Application of the European Convention on Human Rights: Recent Case Law», *The International and Comparative Law Quarterly*, (42)(4) 1993 pp. 897–906, p. 902 with further references.

34. In 1952 the old Federal Republic of Germany resumed responsibility for West-Berlin. See Lush 1993 p. 902 with further references.

35. Its 1974 declaration covers a number of its overseas territories (territories d'outre-mer), whereas some of its overseas territories are treated the same as metropolitan France (départements d'outre-mer). See Lush 1993 p. 902 with further references, and Harris, O'Boyle, Bates and Buckley 2009 p. 807.

36. *X and Others v. Belgium*, Appl. No. 1065/61, 30 May 1961, Decision as to the admissibility (Commission), *Yearbook of the European Convention on Human Rights*, (4) 1961 pp. 260–70, p. 266–8. It would seem as if the Belgian Congo was treated by domestic Belgian law as part of Belgium, but at the same time the Belgian declaration upon ratification assumed that a declaration would be necessary for the application of the Convention to this territory, see Moor and Simpson 2005 pp. 165 and 166–9, and *X and Others v. Belgium*, Appl. No. 1065/61, 30 May 1961, *ibid.*, p. 266.

37. *X and Others v. Belgium*, Appl. No. 1065/61, 30 May 1961, *ibid.*

38. Moor and Simpson 2005 p. 169.



### 3.2 Due regard to local requirements

The Court had its first encounter with this provision in the *Tyrer* case<sup>39</sup> regarding corporal punishment on the Isle of Man – a territory not part of the United Kingdom but instead a dependency of the Crown with its own government, legislature and courts, and its own administrative, fiscal and legal systems.<sup>40</sup> Here, the issue was whether Article 56 paragraph 3 could help the United Kingdom to escape responsibility, as that paragraph states that «[t]he provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.» The Court nevertheless found that there were no relevant local requirements which could have limited the responsibility of the United Kingdom in that case, as the United Kingdom only referred to public opinion and did not offer positive and conclusive proof of a requirement for upholding the right to birch juvenile offenders.<sup>41</sup> Moreover, had the United Kingdom provided proof of such a requirement, the Court would nevertheless have refused to accept it as overriding the protection offered by Article 3.<sup>42</sup>

A similar issue was raised in *Piermont* in relation to some of the French overseas territories where the Court simply noted that

the arguments put forward by the Government relate essentially to the tense local political atmosphere taken together with an election campaign and therefore emphasise circumstances and conditions more than requirements. A political situation, admittedly a sensitive one but also one which could occur in the mother country, does not suffice in order to interpret the phrase «local requirements» as justifying an interference with the right secured in Article 10 (art. 10).<sup>43</sup>

The only case where the due regard notion has so far been upheld as a valid limitation on a right or freedom also relates to France – the *Py* case.<sup>44</sup> Here the Court focused on the turbulent political and institutional history of New Caledonia and found the relevant limitation to have been «instrumental in alleviating the bloody conflict».<sup>45</sup>

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39. *Tyrer v. the United Kingdom*, App. No. 5856/72, 25 April 1978, Judgment.

40. *Ibid.*, § 13.

41. *Ibid.*, § 38.

42. *Ibid.*, § 13.

43. *Piermont v. France*, Appl. Nos. 15773/89 and 15774/89, 27 April 1995, Judgment, § 59. Admittedly, France never made an explicit declaration on the application of the Convention to its dependencies, but its declaration upon ratification should be understood as an implied declaration sufficient for such purposes. See Moor and Simpson 2005 p. 176.

44. *Py v. France*, Appl. No. 66289/01, 11 January 2005, Judgment.

45. *Ibid.*, §§ 62–4.

It would thus seem that the fears held by Vasak regarding the due regard clause have not come to fruition:

This idea is one which leaves too much freedom to the executive organ responsible for its application and too much responsibility of a political nature to the judge. Fears were also expressed in the Consultative Assembly that the words «local requirements» might be understood as covering «political requirements».<sup>46</sup>

### 3.3 The individual right to petition

In contrast to the metropolitan territories of a Member State and its ‘ordinary’ presence abroad, where persons who are within the jurisdiction of that Member State now automatically hold the right to file individual applications,<sup>47</sup> the right to individual application in territories covered by a declaration under Article 56 requires a separate declaration under paragraph 4 of that provision.

However, it would seem as if most territories covered by declarations under Article 56 paragraph 1 are now similarly covered by declarations under Article 56 paragraph 4. The latter declarations tend even to permanently recognize the right to individual petitions under Article 34.

### 3.4 When do Article 56 declarations cease to apply?

Article 56 does not explicitly regulate the possibility of a Member State terminating a declaration under that provision, but this possibility follows from Article 58 paragraph 4. Moreover, the House of Lords has concluded that territory covered by a declaration may lose its protection under such a declaration if the said territory is transformed into a new but dependent territory (per Lord Hoffman):

In 1953 the United Kingdom made a declaration under article 56 of the European Convention on Human Rights extending the application of the Convention to Mauritius as one of the «territories for whose international relations it is responsible». That declaration lapsed when Mauritius became independent. No such declaration has ever been made in respect of [the British Indian Ocean Territory (BIOT)]. It is true that the territory of BIOT was, until the creation of the colony in 1965, part of Mauritius. But a declaration, as appears from the words «for whose international

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46. Vasak 1963 p. 1209 with further references.

47. This right was made obligatory as late as 1998 with Protocol 11. Both legal and natural persons may be considered as victims under Art. 34. See Harris, O’Boyle, Bates and Buckley 2009 pp. 790–800, and White and Ovey 2010 pp. 30–3. In addition to individual applications, Member States may also bring inter-state cases under Art. 33. This has only been done to a very limited degree, although the incidents are more frequent here than under the UN human rights instruments or other regional human rights instruments.

relations it is responsible» applies to a political entity and not to the land which is from time to time comprised in its territory. BIOT has since 1965 been a new political entity to which the Convention has never been extended.<sup>48</sup>

When territories covered by Article 56 declarations are released into independence, they are – in contrast to the normal understanding of a State’s human rights obligations after secessions<sup>49</sup> – typically seen as released from their obligations under the Convention. This since the new State may not be entitled to membership in the Council of Europe which is a requirement for being a party to the Convention.<sup>50</sup> However, if the new State is located within the expanded geographical notion of Europe applied by the Council of Europe, like some of the British dependencies, there is a stronger case for its obligations under the Convention following it into independence. Furthermore, after such territories have become independent, individual applications cannot be brought against the Member State formerly responsible for the international relations of the territory for ‘breaches’ occurring after that date, as the declaration of individual application automatically lapses when independence is granted.<sup>51</sup> However, responsibility may then exist under the notion of extraterritorial jurisdiction for the acts or omissions of that Member State.

Another way through which a declaration may be terminated was seen in 1953 when Greenland was redefined into a part of metropolitan Denmark only two months after Denmark had made a declaration under Article 56.<sup>52</sup> Although Greenland has lately been given a large degree of autonomy within the Kingdom of

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48. R (on the application of Bancoult) (Respondent) v Secretary of State for Foreign and Commonwealth Affairs (Appellant) [2008] UKHL 61, (22 October 2008), § 64. The case is currently before the Court as *Chagos Islanders v. the United Kingdom*, Appl. No. 35622/04, lodged on September 20, 2004.

49. Cassese, Antonio, *International Law*, 2<sup>nd</sup> ed., Oxford University Press, Oxford 2005 pp. 78–9.

50. Jacobs 1975 p. 15. This follows from Convention Art. 58 § 3 and Art. 59 § 1, and 1949 Statute of the Council of Europe, *CETS* No. 001, Art. 4 («Any European State...»). An interesting initiative in relation to this is mentioned by Vasak: «These newly independent States are unable, as we have seen, to renew the declaration of extension made on their account by the United Kingdom, since they are not members of the Council of Europe. Should they be given that possibility by «untying» the Convention from the Council of Europe? The Consultative Assembly thought so and adopted a recommendation to the effect that, in certain circumstances, States not Members of the Council of Europe (European or non-European) be allowed to adhere to the Convention. But the Committee of Ministers decided [in 1963] not to act on this recommendation»; Vasak 1963 pp. 1214–5.

51. *X v. the Netherlands*, Appl. No. 7230/75, 4 October 1976, Decision as to the admissibility, § 1. See Jacobs 1975 p. 15, and White and Ovey 2009 p. 98.

52. As mentioned by Jacobs 1975 p. 15, and White and Ovey 2009 p. 90.

Denmark,<sup>53</sup> it has not declared itself independent. Admittedly, the territory might have much in common with territories covered by Article 56 declarations, but it does not seem as if Denmark has notified the Council of Europe of any redefinition of Greenland into such a territory. As Denmark therefore seems to stand by her obligations under the Convention in relation to Greenland,<sup>54</sup> the Court remains available for cases regarding that territory.

## 4. The relationship of Article 1 and Article 56

### 4.1 General aspects

Article 56 has been held by Happold as «a colonial relic with no implications for the interpretation of other provisions of the Convention».<sup>55</sup> The relevant Convention organs have nevertheless upheld its existence and distinguished it from the regime of extraterritorial application developed under Article 1.<sup>56</sup> Thus, both provisions remain applicable in such a way that none of them may be interpreted away by the other one.

In addressing the relationship between these provisions, the Commission accordingly stated in its decision from 1975 on the admissibility of the *Cyprus v. Turkey* case, that Article 56 cannot be interpreted in such a way that it limits the scope of the term ‘jurisdiction’ in Article 1 to metropolitan territories.<sup>57</sup> Turning the table around and looking at Article 56 through the prisms of Article 1, applicants have also sought to apply the ever-developing notion of jurisdiction to ter-

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53. Law No. 473 from 12 June 2009 regarding Greenland Self-Government («Lov om Grønlands Selvstyre»), <https://www.retsinformation.dk/Forms/R0710.aspx?id=125052> (last visited September 6, 2012).

54. See also Commentary to Draft Act regarding Greenland Self-Government, presented February 5, 2009, p. 31–4 and p. 55–6: <https://www.retsinformation.dk/Forms/R0710.aspx?id=123055> (last visited September 6, 2012), and Guidelines No. 58 from July 2, 2012 regarding the handling of issues of relevance to Greenland, para. 4.3 («Vejledning om ministeriers behandling af sager vedrørende Grønland»), <https://www.retsinformation.dk/Forms/R0710.aspx?id=142582&exp=1> (last visited September 6, 2012).

55. Happold, Matthew, «Bankovic v Belgium and the Territorial Scope of the European Convention on Human Rights», *Human Rights Law Review*, (3) 2003 pp. 77–90, p. 88. Moor and Simpson 2005 p. 186 likewise consider the provision anachronistic.

56. See, e.g. *Loizidou v. Turkey*, Appl. No. 15318/89, 23 March 1995, Decision as to the admissibility, §§ 86–8, *Quark Fishing v. the United Kingdom*, Appl. No. 15305/06, 19 September 2006, Decision as to the admissibility, p. 4, and *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber), § 140.

57. *Cyprus v. Turkey*, Appl. Nos. 6780/74 and 6950/75, 25 May 1975, Decision as to the admissibility, § 9. Upheld later in e.g. *Ilaşcu and Others v. Moldova and Russia*, Appl. No. 48787/99, 4 July 2001, Decision as to the admissibility, p. 20.

ritories which could have been covered by a declaration but where no such declaration exists. The Commission dealt with this issue in the *Bui Van Than* case where the applicants claimed that «the acts of the Hong Kong authorities are based on United Kingdom policy with the consequence that the matters complained of by the applicants fall within the jurisdiction of the United Kingdom for purposes of Article 1 of the Convention.»<sup>58</sup> The Commission essentially held that no jurisdiction could arise in relation to such territories unless a declaration under Article 56 had been made, and stated that

[i]t is an essential part of the scheme of Article [56] that a declaration extending the Convention to such a territory be made before the Convention applies either to acts of the dependent Government or to policies formulated by the Government of a Contracting Party in the exercise of its responsibilities in relation to such territory. Accordingly, in the present case even if the Commission were to accept that the acts of the Hong Kong authorities were based on United Kingdom policy, it must find that it has no competence to examine the application since no declaration under Article [56] para. 1 has been made in respect of Hong Kong.<sup>59</sup>

Although it has been held that the Commission did not seriously address the issue of where the violations occurred – in the United Kingdom or in Hong Kong<sup>60</sup> – the decision does at least provide some predictability for the authorities as to the reach of their responsibility. The Commission's view was later upheld by the Court in the *Yonghong* case regarding the acts of the Portuguese Governor of Macau.<sup>61</sup> Here, Moor and Simpson are admittedly correct in observing that

[t]he Court did not address the question whether Macao was at this time a territory for whose international relations Portugal was responsible, so that the Convention was capable of extension to it; if it was not, and this was the position under the agreement [between China and Portugal on the gradual return of Macau to China], the outcome was that a territory under the [mere] administrative control of Portugal neither enjoyed, nor could enjoy, human rights protection under the Convention. So Macao was a black hole so far as Convention protection was concerned.<sup>62</sup>

58. *Bui Van Than and Others v. the United Kingdom*, Appl. 16137/90, 12 March 1990, Commission decision as to the admissibility, Vol. 65 European Commission of Human Rights Decisions July 1990 (1993), pp. 330–3, p. 332.

59. *Ibid.*, p. 333. A somewhat similar argument – focusing on extraterritorial jurisdiction under Art. 1 – is nevertheless pursued in Farran, Sue, «The Case of Pitcairn: A Small Island, Many Questions», *Journal of South Pacific Law*, (11)(2) 2007 pp. 124–50, pp. 128–9 and 149.

60. Moor and Simpson 2005 p. 170.

61. *Yonghong v. Portugal*, Appl. No. 50887/99, 25 November 1999, Decision as to the admissibility (English translation).

62. Moor and Simpson 2005 p. 171.

However, it is only to be expected that the Court will avoid considering issues which may be bypassed in the handling of the case before it; why establish whether Portugal could extend the relevant protection under Article 56 if she never actually did so?

In the *Quark* case, the Court continued to consider Article 56 as different from the expanding notion of extraterritorial jurisdiction under Article 1,<sup>63</sup> and the Court's latest comment on Article 56 is found in the *Al-Skeini* case. It is of such brevity that it may be quoted *in extenso*:

The «effective control» principle of jurisdiction set out above does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories *overseas* for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, «with due regard... to local requirements,» to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term «jurisdiction» in Article 1. The situations covered by the «effective control» principle are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an *overseas* territory for whose international relations it is responsible (see *Loizidou* (preliminary objections), cited above, §§ 86–89 and *Quark Fishing Ltd v. the United Kingdom* (dec.), no. 15305/06, ECHR 2006[...]).<sup>64</sup>

Here the Court seemingly limits the application of Article 56 to overseas territories, or at least indicates that this was the intention of the drafters. Be that as it may, the quote does not explicitly limit the application of Article 56 to only such territories. The British tradition of extending the Convention through the use of this provision to e.g. the Isle of Man is moreover far too well known and accepted for the Court to reverse its jurisprudence without a far more elaborate discussion of the matter.

Accordingly, the notion of jurisdiction under Article 1 cannot be limited by the regime under Article 56, which on the other hand constitutes the exclusive regime for establishing 'ordinary' jurisdiction over territories for whose international relations the State Party is responsible. However, the exclusivity of Article 56 only

63. *Quark Fishing Ltd v. the United Kingdom*, App. No. 15305/06, 19 September 2006, Decision as to the admissibility.

64. *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber), § 140. Italics by author.

refers to responsibility for the acts of the local administration and the policies decided by the State Party itself in relation to that territory.<sup>65</sup> This is hinted at in *Loizidou* where the Court stated that

Article [56]...concerns a decision by a Contracting Party to assume full responsibility under the Convention for *all* acts of public authorities in respect of a territory for whose international relations it is responsible. Article [34]..., on the other hand, concerns an acceptance by a Contracting Party of the competence of the Commission to examine complaints relating to the acts of its *own* officials acting under its direct authority.<sup>66</sup>

Moor and Simpson state in relation to the term ‘all acts’ in the above quote that «there still might be responsibility for particular acts under Article 1, for example acts specifically authorized, even without a declaration.»<sup>67</sup> It is nevertheless just as plausible for the reference to merely point out that responsibility under Article 56 could then arise for all acts, as opposed to none. As regards the reference to ‘own officials’ in the quote above, Moor and Simpson correctly hold that a Member State would also incur responsibility for the acts of its own personnel when they act in territories not covered by a declaration under Article 56.<sup>68</sup> In the latter case, any consideration of responsibility for the said Member State would have to be assessed in relation to Article 1. This typically requires the person to have fallen under the authority and control of these officials, or that he finds himself in territory administered in a manner similar to those incidents which have established responsibility under the effective (overall) control notion, like e.g. the Turkish influence on the affairs of Northern Cyprus. As the Court still upholds the separate identity of Article 56, the said control over a territory would have to be different from that which is normally the case in territories which may be covered by Article 56. This would probably require something close to an occupational authority, and is probably seldom at hand beyond instances where the territory has tried to gain independence, but where these efforts have been kept in check by a metropolitan military presence.

Hence, the real question is what constitutes the said local administration. If the Member State holds military troop contingents on territory not covered by a

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65. A similar view is held by Roxstrom, Erik, Mark Gibney and Terje Einarsen, «The NATO bombing Case (Bankovic et al. v. Belgium et al.) and the Limits of Western Human Rights Protection», *Boston University International Law Journal*, (23) 2005 pp. 55–136, p. 97. Seemingly of the same view Tomuchat 1988 p. 129.

66. *Loizidou v. Turkey*, Appl. No. 15318/89, 23 March 1995, Decision as to the admissibility, §§ 88 (italics by author).

67. Moor and Simpson 2005 p. 182.

68. *Ibid.*, pp. 182 and 188.

declaration, these presumably belong to the Member State itself and do not constitute a part of the local administration, although questions may arise in relation to *inter alia* Home Guard detachments. Admittedly, such troops may be double-hatted, serving both as Member State armed forces and local police. In such cases responsibility under the Convention would probably depend on which role they were exercising in the case under consideration. Thus, if such troops detain persons during a period of political turmoil, an issue under the Convention may very well arise. The same would be the case with agents of the Member State sent to the territory to apprehend a person and bring him to the metropolitan territory.

This may amount to slipping jurisdiction under Article 1 through the back door into territory which is not covered by a declaration under Article 56, but this approach is fully in conformity with the case law of the Court. To avoid such responsibility the said State might admittedly be encouraged to redefine more of its officials as local administration, which in relation to empowering such territories for independence might nevertheless not be such a bad idea. As regards military forces, these will probably be immune to such transformation for reasons of integrated command and control, and the need to maximize military strength during a period of reduced defense budgets. Exceptions may nevertheless arise for troops dedicated to upholding law and order, typically military police and Home Guard units.

## 4.2 The possibility of extending the Convention to Norwegian dependencies in the South Atlantic and Antarctica

Current examples of territories not covered by relevant declarations are the British Antarctic Territory, the British Indian Ocean Territory and Pitcairn Island – the latter also held by the United Kingdom.<sup>69</sup> The same would be the case with the Norwegian territories Bouvet Island, Peter I Island and Queen Maud Land.

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69. Moor and Simpson 2005 pp. 140 and 154–5. For a listing of which territories are covered, see the declarations mentioned at <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=15/03/2012&CL=ENG&VL=1> (last visited September 6, 2012). Moor and Simpson 2005 p. 188 nevertheless find that these territories are covered by Art. 1, probably due to the territories having been created after the negotiations of the Convention. As regards the South Georgia and Southern Sandwich Islands, the Court found them covered by the Art. 56 regime in *Quark Fishing Ltd v. the United Kingdom*, App. No. 15305/06, 19 September 2006, Decision as to the admissibility. In relation to Pitcairn, it would still seem as if it has not been covered by an Art. 56 declaration, although The Pitcairn Constitution Order 2010 Sec. 25 (13) and (15) requires its courts to interpret a catalog of rights and freedoms in accordance with the Court's jurisprudence, see <http://www.government.pn/Pitcairn%20Islands%20Constitution%20Order%202010.pdf> (last visited September 6, 2010).



It will be for Norwegian legislation to establish whether the dependencies of Bouvet Island, Peter I Island and Queen Maud Land constitute parts of the Kingdom of Norway proper, or if they are rather to be seen as territories for whose international relations Norway is responsible. Domestic law currently defines them as dependencies ('biland'),<sup>70</sup> and hence they do not constitute 'parts' of the Kingdom of Norway as that term is understood under Article 1 of the Norwegian Constitution of 1814.<sup>71</sup> They are nevertheless seen as falling under Norwegian sovereignty and would as such seem to fit the category of territories able to be covered by Article 56 declarations. Alas, these dependencies have not been included in Section 5 of the 1999 Human Rights Act which makes e.g. the Convention applicable to Svalbard and Jan Mayen.<sup>72</sup>

Taking into consideration the size of current Norwegian operations in Antarctica, there is probably little reason for Norway to issue a declaration under Article 56 in relation to these areas. However, should Norway decide to establish more permanent all-year research stations in these dependencies than just Troll (located on Queen Maud Land) or expand the current one, it might be fitting to symbolize the importance of the Convention by making it applicable to the relevant dependency.

Such an extension is of lesser importance to the acts or omissions of Norwegian public servants present there, as these would be capable of establishing extraterritorial responsibility under Article 1 when they act in their public capacity. The said declaration would on the other hand ensure that acts or omission of private individuals – like scientists not working for the Norwegian government although

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70. Act of 17 February 1930 regarding the Bouvet Island, Peter I Island and Queen Maud Land, etc.

71. See: e.g. Castberg, Frede, *Norges statsforfatning* (I), 3. ed., Universitetsforlaget, Oslo 1963 p. 152, Andenæs, Johs. and Arne Fliflet, *Statsforfatningen i Norge*, 10. ed., Universitetsforlaget, 2006 pp. 109–10, and Fliflet, Arne, *Kongeriket Norges Grunnlov: Grunnloven med kommentarer*, Universitetsforlaget, Oslo 2005 p. 50.

72. Admittedly, Sec. 2 of the Act of 17 February 1930 regarding the Bouvet Island, Peter I Island and Queen Maud Land, etc. makes Norwegian penal law applicable to these territories. As Sec. 1 § 2 of the General Civil Penal Act of 22 May 1902 modifies the reach of that penal act by Norwegian obligations under treaty and customary international law, this might give the impression that the Convention is applicable to these territories, too. However, due to the non-issuing of a declaration under Art. 56, the Convention is not per se applicable to those areas. Also, the explicit application of the Human Rights Act to Svalbard and Jan Mayen, whereas no reference is made to the territories at issue here ('biland'), would seem to create a *lex specialis* regulation of the reach of the Convention in Norwegian law for the hypothetical situation that it would otherwise have applied through Sec. 1 § 2 of the General Civil Penal Act of 22 May 1902.

their research might be financed largely by that government – could be covered by Norway’s positive obligations under the Convention.<sup>73</sup>

Nevertheless, issuing such a declaration for e.g. Queen Maud Land is not without its problems, as Norway’s positive obligations would to a lesser or larger extent establish responsibility for violations of the Convention undertaken by personnel from the multiple foreign research bases found on that territory, whereas there is little Norwegian enforcement capability in the territory. Moreover, the jurisdictional immunity granted some categories of personnel under the 1959 Antarctic Treaty Article VIII<sup>74</sup> would have to be taken into consideration during discussions on the establishment of responsibility for Norway.

Be that as it may, should a permanent population of more than a minimum size manifest itself at some later stage, due to e.g. a lifting of the current ban on exploiting minerals other than for scientific research,<sup>75</sup> it is submitted that Norway should accept the challenges which come with the issuing of a relevant declaration; it should be politically unacceptable to leave a non-negligible group of such people outside the protection of the Convention, whereas it would be unrealistic to define the whole population as Norwegian public servants on duty 24/7 in order to establish extraterritorial jurisdiction under Article 1.

## 5. Conclusions

Moor and Simpson concluded in 2006 that «[t]he jurisprudence, meagre as it is, wholly fails to address the way in which the world in which Article 56 operates today has changed since the 1950s, and this notwithstanding the fact that the conception of the Convention as a living instrument, [is] to be interpreted in the light of

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73. Positive obligations are now recognized under probably all provisions of the Convention, see White and Ovey 2010 p. 100.

74. Art. VIII (1) reads as follows: «In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under sub-paragraph 1(b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.»

75. See the 1991 Protocol on Environmental Protection to the Antarctic Treaty, 30 *ILM* (1991) 1455, Art. 7.

present-day conditions...».<sup>76</sup> The Court nevertheless upholds the regime of Article 56, finding that it is not empowered to rewrite the Convention. However, this view holds few obstacles to establishing responsibility under the Convention for public servants acting abroad through the notion of extraterritorial jurisdiction.

Here it would seem like the more open formulation of Article 1 has provided fertile ground for a rather expanding notion of jurisdiction – although not as radical an expansion as has been the case with the development of many of the substantive provisions of the Convention under the living instrument approach. As regards Article 56, its very wording represents an obstacle to a similar human rights friendly development. This might be regretted, but it does provide a certain degree of predictability to governments, at the same time as it provides an avenue for these governments to expand the reach of the Convention in cooperation with local populations.

In relation to acts or omissions of the local administration of territories which may be covered by declarations under Article 56, it should be stressed that there are currently merely a few territories for whose international relations Member States are responsible without there also existing relevant declarations under Article 56.

The issue is nevertheless of importance to the admittedly small populations of the candidates to such declarations, and the size of the relevant populations may increase over the years. Moreover, Member States occasionally avoid, fully or partially, the application to their abovementioned territories of some of the additional protocols to the Convention which have nevertheless been made binding on their metropolitan areas. The expansion of the geographical reach of such protocols may thus be of importance. Furthermore, not every declaration under Article 56 would seem to constitute a permanent commitment, and non-permanent declarations may be revoked.<sup>77</sup> Under the current regulation, even non-temporary declaration may actually be revoked through the mechanism in Article 58 paragraph 4 for denouncing the Convention in relation to territories covered by declarations under Article 56. Lastly, should satellite photography and surveillance finally locate the lost islands of some of the Member States, like the Norwegian Schjetnan's

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76. Moor and Simpson 2005 p. 183. On *ibid.*, pp. 183–92 they also show how the Court could argue in order to largely interpret away the limitations provided by Art. 56 on the reach of human rights protection. The Court has not acted upon this suggestion.

77. For a list of such declarations, see <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=17/03/2012&CL=ENG&VL=1> (last visited September 6, 2012). As seen here, the United Kingdom has moved from using time-limited declarations to permanent ones. The most accessible overview of the territorial application of the Convention is nevertheless found at [http://en.wikipedia.org/wiki/Territorial\\_scope\\_of\\_European\\_Convention\\_on\\_Human\\_Rights](http://en.wikipedia.org/wiki/Territorial_scope_of_European_Convention_on_Human_Rights) (last visited September 6, 2012).

Island (Schjetman Reef) in the Pacific Ocean, or the British Thompson Island in the Atlantic Ocean, and these claims be recognized by other States, the need may arise to further widening the geographical net of the Convention through the use of Article 56 should these territories at some later stage receive a non-negligible population.

## Postscript

The Court dismissed the application in the *Chagos Islanders v. the United Kingdom*<sup>78</sup> case on 11 December 2012. In general, the Court upholds its former case law on the issues covered by this note. It thus supports the view that the United Kingdom's total control of the territory does not as such make that territory part of metropolitan United Kingdom,<sup>79</sup> whereas the fact that decisions regarding the territory is made by politicians and officials within the United Kingdom «is not considered a sufficient ground on which to base competence under the Convention for an area otherwise outside Convention space.»<sup>80</sup> However, the Court addresses the relationship between Article 1 and Article 56 in an unsatisfying way. Referring to the *Al-Skeini* case where the Court held that Article 56 paragraph 1 «cannot be interpreted in present conditions as limiting the scope of the term «jurisdiction» in Article 1»,<sup>81</sup> the Court addresses whether that passage «must now be considered to be alternative bases of jurisdiction which may apply even where a Contracting State has not extended application of the Convention to the overseas territory in issue, namely, that the United Kingdom can be held responsible for its acts and omissions in relation to the Chagos Islands, despite its exercise of its choice not to make a declaration under Article 56, if it nonetheless exercised «State agent authority and control» or «effective control» in the sense covered by the Grand Chamber judgment.»<sup>82</sup> It comes as no surprise that «[t]his interpretation is strongly rejected by the respondent Government»,<sup>83</sup> but it is difficult to agree with the Court's view that such an interpretation «would indeed render Article 56 largely purposeless and devoid of content since Contracting States generally did, and do, exercise au-

78. *Chagos Islanders v. the United Kingdom*, Appl. No. 35622/04, 11 December 2012, Decision as to the admissibility.

79. *Ibid.*, § 64.

80. *Ibid.*, § 65.

81. *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, 7 July 2011, Judgment (Grand Chamber), § 140.

82. *Chagos Islanders v. the United Kingdom*, Appl. No. 35622/04, 11 December 2012, Decision as to the admissibility, § 75.

83. *Ibid.*

thority and control over their overseas territories.»<sup>84</sup> In such settings a Member State will admittedly retain some degree of control over the local administration, but as shown above it is possible to differentiate that power from the more direct «authority and control» over an individual or the «effective control» over an area as those grounds for establishing jurisdiction have been understood in the Court's previous case law. Be that as it may, the weight of the Court's view is reduced by the fact that it finds it unnecessary to rule on this particular issue<sup>85</sup> (since the applicants were inter alia considered not to have retained their status as victims). Also, the decision was given by a chamber and was not unanimous, although it is not known how large the minority was nor on which issues its views differed from that of the majority.

**«Колониальный пункт» и экстерриториальное применение прав человека: Статья 56 Европейской конвенции по правам человека и ее отношение к Статье 1.**

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**Резюме**

Статья 56 Европейской конвенции по правам человека часто упоминается как «колониальный пункт», со стороны комментаторов ей уделяется мало внимания, в то время как Статье 1, которая касается экстерриториальной досягаемости, посвящены обширные исследования. Статья 56 обладает, однако, эффектом ограничения ответственности государств-участников за свои действия и упущения административных органов на принадлежащим им территориям, хотя государство-участник все еще несет на себе ответственность, при непосредственном участии государственных служащих, работающих на таких территориях. В нижеприведенной статье, автор, при-

84. *Ibid.* The Court admittedly states in the next paragraph that «...even accepting the above interpretation, the Court finds it unnecessary to rule on this particular argument...». It would seem as if the «above interpretation» refers to that of the applicants, but the sentence – arguably – merely shows that even if the applicants' view was correct, it would nevertheless not have influenced the outcome of the case. This is different from the Court adopting the applicants' view as its own. The Court's own view on this issue is thus found in para. 75.

85. *Ibid.*, § 76. A similar approach is taken to the question whether an express denunciation is required before a territory formerly covered by a declaration is redefined into a different territory for whose international relations the Member State continues to be responsible, see *ibid.*, § 62.

водя для примера Норвегию, считает ненужным для этой страны брать обязательства в соответствии со Статьей 56, в отношении ее территорий в Антарктиде, и прилежащим к ней землям, так как ведущаяся здесь деятельность в настоящее время довольно незначительна, и уже входит в экстерриториальный режим Статьи 1. Далее в статье рассматриваются доводы за и против распространения действия конвенции на территории, подпадающие под Статью 56, если дальнейшее развитие приведет к возникновению более многочисленного и постоянного населения на этих территориях.

Ключевые слова: Европейская конвенция по правам человека, экстерриториальность, зависимость, Южная Атлантика, Антарктида