

**Repertory of Practice of United Nations Organs  
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**Volume VI**

**ARTICLE 99**

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# ARTICLE 99

## TEXT OF ARTICLE 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

## INTRODUCTORY NOTE

1. During the period under review, Article 99 was not invoked by the Secretary-General. The Secretary-General took no actions pursuant to Article 99, but did make reference to the rights conferred upon him under Article 99 in the report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict<sup>1</sup>. Furthermore, the Secretaries-General continue to inform the Security Council of new situations that may threaten peace and security in informal consultations and made reference to the role of the Secretary-General in the maintenance of international peace and security in reports to the General Assembly.

2. The general survey presents the report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict<sup>2</sup> and the Secretaries-Generals' continuing focus on the need to increase effective preventative actions. The analytical summary of practice covers Security Council actions taken after the presentation of the *Report*; and references made by the Secretaries-General in statements and in their annual reports to the General Assembly on the work of the Organization in relation to the role of the Secretary-General in the maintenance of international peace and security and the scope of the rights conferred upon him under Article 99.

## I. GENERAL SURVEY

3. Article 99 of the United Nations Charter empowers the Secretary-General to bring to the attention of the Security Council any matter which in his or her opinion may threaten the maintenance of international peace and security. Article 99 established definitively that the Secretary-General is not only the chief administrative officer of the Organization<sup>3</sup>, but that he is also entitled to take the political initiative in the maintenance of international peace and security. In practice, Article 99 has been invoked in respect of matters which in the opinion of the Secretary-General

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<sup>1</sup> S/1999/957 of 8 September 1999.

<sup>2</sup> *Id.*

<sup>3</sup> Pursuant to article 97 of the United Nations Charter.

constituted a direct or imminent threat to international peace and security. That having been said, successive Secretaries-General have rarely invoked Article 99 expressly or by implication<sup>4</sup>.

4. Article 99 was invoked neither implicitly nor explicitly by the Secretary-General during the period under review. Despite this, a trend emerged towards enlarging the role of the Secretary-General in the sphere of the maintenance of international peace and security and encouraging the Secretary-General to use the powers conferred upon him under Article 99.

5. The most significant development in this regard was the Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict which expressly encourages the Security Council to “devote greater attention to conflict prevention”<sup>5</sup>. In paragraph 13 of the Report, the Secretary-General recommends that the Security Council:

“[S]trengthen the relevance of Article 99 of the Charter by taking concrete action in response to threats against peace and security as there are identified by the Secretariat.”

6. The implicit powers of the Secretary-General in the spirit of Article 99 have been more liberally construed to include the right to initiate fact-finding missions, investigative commissions and the offer of good offices or mediation. During the period under review, the Secretary-General was encouraged to use the powers conferred upon him under Article 99. At its 403<sup>rd</sup> meeting in connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, the President of the Security Council made a statement on behalf of the Council, emphasizing the important role of the Secretary-General in the prevention of armed conflicts<sup>6</sup>. The Security Council:

“[I]nvites the Secretary-General to present to the members of the Council periodic reports on such disputes, including, as appropriate, early warnings and proposals for preventative measures. In this regard the Council encourages the Secretary-General to improve further his capacity to identify potential threats to international peace and security and invites him to indicate any requirements to fulfil these capacities, including the development of the Secretariat’s expertise and resources.”<sup>7</sup>

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<sup>4</sup> These rare occasions include the Korean operation in 1950, the Congo crisis in 1960, the Indo-Pakistani situation in 1971, the hostage-taking of the United States embassy in Iran in 1979 and the crisis in Lebanon in 1989. See *Repertory*, vol. V, paras 6-14; *Repertory, Supplement No. 3*, vol. IV, paras 8-12; *Repertory, Supplement No. 5*, vol. V, paras 16-22; *Repertory, Supplement No. 6*, vol. VI, paras 8-9; and *Repertory, Supplement No. 8*, vol. VI, paras 12-13, respectively.

<sup>5</sup> S/1999/957 *supra* note 1 at para 45.

<sup>6</sup> S/PRST/1999/34 of 30 November 1999.

<sup>7</sup> *Id.* at p. 2.

7. The Secretaries-General emphasised the importance of fact-finding capabilities and information analysis tools which enabled them to discharge their responsibilities under Article 99 during the period under review.

8. The Secretary-General exercised implicit powers conferred on him under Article 99 when he sent a mission to the Republic of Yugoslavia to establish the capacity to assess developments in Kosovo and when he sent a good offices mission to assist the government of Zaire in the assessing of the deteriorating stability in the South Kivu Province<sup>8</sup>. Concerning Zaire, the Secretary General stated:

“I have come to the conclusion that this deteriorating situation requires me to offer my good offices to assist the Government of Zaire in addressing the political and security aspects of the problems in the eastern part of the country, not only because of the threat they present to peace and security in the region but also because they could have a negative impact on the efforts already launched by the United Nations . . .”<sup>9</sup>.

9. In two letters addressed to the Republic of Cameroon and the Federal Republic of Nigeria, the Security Council welcomed the Secretary-General’s proposal to send a fact finding mission to the Bakassi peninsula and asked him to continue to monitor developments in the region<sup>10</sup>.

10. The Secretary-General’s 1995 “Supplement to ‘An Agenda for Peace’” discussed the context in which military force may be utilized as a useful tool of diplomacy. The Security Council issued a presidential statement in support of the Supplement<sup>11</sup> and the General Assembly utilized the language of the Supplement when adopting a 1997 resolution concerning the coordination among United Nations organs and the question of sanctions<sup>12</sup>.

11. The Secretaries-General did not refer to Article 99 in their annual reports on the work of the organization, but all the reports contained a section on preventative diplomacy and conflict resolution<sup>13</sup>.

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<sup>8</sup> S/Res/1203 of 24 October 1998, preamble; S/1996/875 of 25 October 1996.

<sup>9</sup> S/1996/875 *supra* note 8 at p. 2.

<sup>10</sup> S/1996/150 of 29 February 1996, at p. 2.

<sup>11</sup> S/PRST/1995/9.

<sup>12</sup> A/RES/51/242 of 26 September 1997.

<sup>13</sup> See A/54/1 of 31 August 1999, paras 68-9; A/53/1 of 27 August 1998, para. 39; A/52/1 of 3 September 1997, para 79; A/51/1 of 20 August 1996, para 643; A/50/1 of 22 August 1995, para 582.

## II. ANALYTICAL SUMMARY OF PRACTICE

### A. Requests by the Secretary-General under Article 99 for a meeting of the Security Council

12. The Secretary-General did not invoke Article 99 to request a meeting of the Security Council during the period under review.

### B. Scope of rights and obligations of the Secretary-General under Article 99

#### 1. CONSIDERATION OF THE QUESTION BY THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

13. Pursuant to successive General Assembly resolutions,<sup>14</sup> the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization [hereinafter “Special Committee”] continued to assign priority to issues surrounding the maintenance of international peace and security at each of the annual sessions held during the period under review.

#### 2. STATEMENTS BY THE SECRETARIES-GENERAL

14. During the period under review, the Secretaries-General did not implicitly nor expressly refer to Article 99 in their annual reports on the work of the Organization<sup>15</sup>. However, the reports stressed the Secretary-General’s role in solving conflicts through peace-keeping and peace-making measures and through preventative activities launched on his initiative<sup>16</sup>. In the report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, the Secretary-General explicitly referred to Article 99, recommending that the Security Council strengthen the article by taking action to respond to threats against peace and security identified by the secretariat<sup>17</sup>.

15. The Secretary-General presented his report on the Protection of Civilians in Armed Conflict, pursuant to the Security Council request in September 1999<sup>18</sup>. In the report, the Secretary-General referred explicitly to Article 99, encouraging the Security Council to react to threats to peace and security identified by the secretariat<sup>19</sup>. The Secretary-General urged the Security Council to devote greater

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<sup>14</sup> See GA resolutions 50/52 of 15 December 1995, 51/209 of 16 January 1997, 52/161 of 16 January 1998 and 53/106 of 20 January 1999.

<sup>15</sup> A/50/1 of 22 August 1995; A/51/1 of 20 August 1996; A/51/1 of 3 September 1997; A/53/1 of 27 August 1998; and A/54/1 of 31 August 1999.

<sup>16</sup> *Id.*

<sup>17</sup> S/1999/957 *supra* note 1.

<sup>18</sup> S/PRST/1999/6.

<sup>19</sup> S/1999/957 *supra* note 1.

attention to conflict prevention and give effective leadership and strong backing to efforts in the field of prevention. He recommended that the Security Council:

“[S]trengthen the relevance of Article 99 of the Charter by taking concrete action in response to threats against peace and security as these are identified by the Secretariat”<sup>20</sup>.

16. The Secretary-General, in his report entitled “The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa”, stressed the importance of early warning mechanisms in conflict prevention<sup>21</sup>. He also stressed that without early action such warning mechanisms are of no use. In this regard he noted that better responses to conflicts necessitate the Security Council being warned at the earliest possible stage<sup>22</sup>.

17. In his 1995 report on the work of the Organization, the Secretary-General introduced the supplement to *An Agenda for Peace*. In the supplement he built on themes from the 1992 report, continuing to stress that an important focus of the secretariat is a more active role for the United Nations in solving conflicts through peace-keeping and preventative diplomacy launched on the Secretary-General’s initiative<sup>23</sup>.

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<sup>20</sup> Id., p. 13.

<sup>21</sup> S/1998/318 of 13 April 1998.

<sup>22</sup> Id.

<sup>23</sup> S/1995/1 of 25 January 1995.