

---

## Article 12

### Contents

	<i>Paragraphs</i>
Text of Article 12	
Introductory note . . . . .	1–4
I. General survey . . . . .	5–8
II. Analytical summary of practice . . . . .	9–15
**A. Scope of the term “recommendation” as used in Article 12 (1)	
B. Meaning of the phrase “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter” and its effect on the powers of the General Assembly . . . . .	9–10
**C. Inclusion in the agenda of the General Assembly, for its consideration, of an item that falls within the primary responsibility of the Security Council	
D. Constitutional relationship between the General Assembly and the Security Council as envisaged in Member States’ proposals to amend the Charter and strengthen the United Nations. . . . .	11–13
**E. Consideration of and making recommendations on items already before the Security Council	
**F. Requests by the Security Council to the General Assembly in accordance with the provision of Article 12 (1)	
G. Documents of the Secretariat bearing on Article 12 . . . . .	14–15

### Annexes

- I. List of resolutions adopted by the General Assembly on issues examined simultaneously by the General Assembly and the Security Council
- II. List of resolutions and documents of the Security Council bearing on Article 12

---

## Text of Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

## Introductory note

1. During the period under review, unlike the previous period, the scope and effect of restrictions on the powers of the General Assembly under Article 12 were not discussed as such in the Assembly, nor in the Security Council. However, proposals for the revision of the Charter, in particular to increase the efficiency of the work of the United Nations, continued to be formulated and/or discussed, either in the context of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, or in the statements made by some Member States.
2. In addition, several situations, in particular that in Bosnia and Herzegovina, were considered by both the General Assembly and the Security Council, although the Council had not made the sort of request authorized under Article 12 (1).
3. Finally, a legal opinion was issued by the Secretariat on 8 October 1991 to decide, given the practice of the General Assembly, on the interpretation of “Restrictions imposed on the General Assembly by Article 12, paragraph 1, of the Charter of the United Nations, whereby ‘While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests’.”<sup>1</sup>
4. The resolutions adopted by the General Assembly on matters considered simultaneously by the General Assembly and Security Council are referenced in Annex I. Annex II lists the resolutions and other documents of the Security Council relating to Article 12.

---

<sup>1</sup> Legal opinion of the Secretariat of the *United Nations*, published in the *United Nations Juridical Yearbook*, 1991, Chapter VI, section A (8).

## I. General survey

5. During the period under review in this Supplement, Article 12 was not mentioned in any resolution adopted by the General Assembly, while the debates in the Security Council included only one explicit reference (see below, para. 13).

6. Moreover, the General Assembly adopted no resolution on the basis of a request by the Security Council under the exception envisaged in Article 12 (1). In particular, the Security Council called for no special session of the General Assembly during the period under review. However, two situations, the case of Bosnia and Herzegovina and that of Haiti, are relevant to the study of the Article. Article 12 was also mentioned at a meeting of the Council to discuss its working methods.

7. During the period under review, the following questions were examined both by the General Assembly and by the Security Council: “The situation in the Middle East”, “The situation in the occupied Arab territories”, “Question of Palestine”, “The situation in

Central America: threats to international peace and security and peace initiatives”, “The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development”, “Policies of apartheid of the Government of South Africa”, “The situation in Afghanistan and its implications for peace and security”, “The situation in Cambodia” and “The situation in Bosnia and Herzegovina.”

8. Moreover, only one of the documents issued by the Secretariat during the period under review referred explicitly to Article 12, namely, the legal opinion addressed to the Secretary of the Fourth Committee on 8 October 1991, which addressed the limitations imposed on General Assembly under Article 12 (1) of the Charter.<sup>2</sup>

<sup>2</sup> See note above.

## II. Analytical summary of practice

### **\*\*A. Scope of the term “recommendation” as used in Article 12, paragraph 1**

### **B. Meaning of the phrase “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter” and its effect on the powers of the General Assembly**

9. During the period under review, no referral to the General Assembly was made by the Security Council that could be interpreted as an application of the exception provided for in section 12 (1).

10. The situation in Haiti was considered by the Assembly and the Council in parallel, a prime example of a situation where Article 12 is relevant. The sharing of responsibilities was arranged by exchange of letters. The letter of the President of the Security Council stated that “without prejudice to their positions on the competence of the organs of the United Nations (...) and without prejudice to the right of any member of the Council to raise the matter at any later time in the

Council (...) [members] concur that it is important that you respond positively to the request for assistance (...) on an urgent basis. They note that the proposed assistance to [Haiti’s] electoral process (...) does not include the use of any United Nations peacekeeping forces, [and] will be considered in its entirety by the General Assembly”.<sup>3</sup> Subsequently, the Security Council adopted a number of resolutions on the situation in Haiti.<sup>4</sup> Only resolutions 841 (1993) and 867 (1993) made explicit reference to the resolutions adopted by the Assembly, either by listing them,<sup>5</sup> or by referring to the “relevant resolutions adopted by the General Assembly”.<sup>6</sup> The discussions within the Council also mentioned its decisions on the situation in question, particularly with regard to the necessity to restore democracy in that country and the condemnation of the illegal acts perpetrated, but did not address the allocation of competences of the two bodies in question

<sup>3</sup> Document S/21847. Underlining added.

<sup>4</sup> Security Council resolutions 841 (1993), 861 (1993), 862 (1993), 867 (1993), 873 (1993), 875 (1993), 905 (1994), 917 (1994), 933 (1994), 940 (1994), 944 (1994), 948 (1994) and 964 (1994).

<sup>5</sup> Security Council resolution 841 (1993), preamble.

<sup>6</sup> Security Council resolution 867 (1993), preamble.

when dealing with the same situation.<sup>7</sup> Thus, there is nothing in the proceedings of the Council that would enable one to determine whether the division of tasks between it and the General Assembly followed a consistent practice of United Nations organs or was simply a *sui generis* reaction to deal with a unique case. At most, it reflected a certain parallelism in the actions undertaken to address a specific topic in accordance with which the General Assembly and the Council addressed distinct but complementary aspects of the same situation.

**\*\*C. Inclusion in the agenda of the General Assembly, for consideration, of an item that falls within the primary responsibility of the Security Council**

**D. Constitutional relationship between the General Assembly and the Security Council as envisaged in Member States' proposals to amend the Charter and strengthen the United Nations**

11. During the period under review, the General Assembly continued its consideration of the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", and at each session it adopted a resolution on the matter.<sup>8</sup> In those resolutions it particularly requested the Special Committee to assign priority in its work to proposals on the maintenance of international peace and security, including proposals on strengthening the effectiveness of the Security Council in that area.<sup>9</sup>

12. The case of Bosnia and Herzegovina is of interest in connection with Article 12. At the 3428th meeting of the Security Council and given the growing complexity of the situation in Bosnia and Herzegovina, the

representative of Malaysia, without actually mentioning Article 12, said the following: "If the Council fails to fulfil its Charter responsibility, the recourse for the general membership is to request the convening of a special session of the United Nations General Assembly on Bosnia and Herzegovina".<sup>10</sup> That proposal elicited no response in the discussions that followed.

13. At its 3483rd meeting, the Council studied the question of transparency in its work by looking for ways to improve the flow of information between the Council and the General Assembly and the access to the debates of the Council by Member States in general. In that connection, the representative of the Indonesia remarked that "the provisions contained in Article 12 of the Charter should be made more liberal. In this connection, the authority and credibility of the Council would obviously profit from ascertaining that there is a broad consensus among the general membership of the United Nations, as represented in the General Assembly, on a particular course of action proposed by the Council."<sup>11</sup> In that regard, the representative of Pakistan stated that "the question of transparency should not be addressed in a manner that brings about only cosmetic changes", in that it should seek not only "to give fuller information to non-members, but also to improve the relationship between the Security Council and the General Assembly".<sup>12</sup> It would seem, however, that, during the period under review, no definitive action was adopted. Some measures were proposed, such as public debates in the Council,<sup>13</sup> but no action addressing specifically the respective powers of the two bodies concerned and the division of those powers was adopted.

**\*\*E. Consideration of and making recommendations on items already before the Security Council**

**\*\*F. Requests by the Security Council to the General Assembly in accordance with the provision of Article 12 (1)**

<sup>7</sup> Security Council, 3238th meeting: Canada, p. 6, Security Council, 3413th meeting: Mexico, p. 4, Argentina, pp. 15 and 16, Russian Federation, p. 24. Security Council, 3437th meeting: Spain, pp. 8 and 9.

<sup>8</sup> GA resolutions 44/37 of 4 December 1989; 45/44 of 28 November 1990; 46/58 of 9 December 1991; 47/38 of 25 November 1992 and 48/36 of 9 December 1993.

<sup>9</sup> GA resolutions 44/37 para. 3 (a), 45/44 para. 3 (a), 46/58 para. 4 (a), 47/38 para. 3 (a) and 48/36 para. 3 (a).

<sup>10</sup> Security Council, 3428th meeting: Malaysia, p. 8.

<sup>11</sup> Security Council, 3483rd meeting: Indonesia p. 22.

<sup>12</sup> *Ibid.*, Pakistan: p. 10.

<sup>13</sup> *Ibid.*, Austria: p. 20, Indonesia: p. 21, Canada: p. 23, Bosnia and Herzegovina: p. 28.

### **G. Secretariat documents bearing on Article 12**

14. The only explicit mention of Article 12 was contained in a legal opinion issued by the Secretariat entitled “Restrictions imposed on the General Assembly by Article 12, paragraph 1, of the Charter of the United Nations, whereby ‘While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests’”.<sup>14</sup> The document in question is a memorandum addressed to the Secretary of the Fourth Committee on 8 October 1991.

---

<sup>14</sup> See above, note cxxiv.

15. The purpose of the opinion was to delineate the meaning of Article 12 (1) of the Charter. The legal opinion draws a distinction between, on one hand, making recommendations on a particular dispute or situation, and, on the other hand, the fact of discussing a dispute or situation. Indeed, “[t]he text does not bar debate or discussion in the General Assembly of any [...] dispute or situation”. It would be for the Committee to decide whether to discuss the matter, without other limitations to the discussion than the prohibition against issuing recommendations. Practice has shown that even that dividing line is fragile and that not all recommendations are precluded, because “[t]here have always been a number of matters which are simultaneously before the two organs and on which these two organs adopt decisions and recommendations.” Therefore, any dividing line between the competences of the two organs should, according to that view, be drawn on a case by case basis.

---

**Annex I****List of resolutions adopted by the General Assembly on issues examined simultaneously by the General Assembly and the Security Council**

- The situation in the Middle East:
  - \* resolution 44/40 of 4 December 1989
  - \* resolution 45/83 of 13 December 1990
  - \* resolution 46/82 of 16 December 1991
  - \* resolution 47/63 of 11 December 1992
  - \* resolution 48/59 of 14 December 1993
- Question of Palestine:
  - \* resolution 42/233 of 20 April 1989
  - \* resolution 44/41 of 6 December 1989
  - \* resolution 44/42 of 6 December 1989
  - \* resolution 45/67 of 6 December 1990
  - \* resolution 46/74 of 11 December 1991
  - \* resolution 47/64 of 11 December 1992
  - \* resolution 48/158 of 20 December 1993
- The situation in the occupied Arab territories:
  - \* resolution 44/48 of 8 December 1989
  - \* resolution 45/74 of 11 December 1990
  - \* resolution 46/47 of 9 December 1991
  - \* resolution 47/70 of 14 December 1992
  - \* resolution 48/81 of 6 December 1993
- The situation in Afghanistan and its consequences for international peace and security:
  - \* resolution 44/15 of 26 October 1989
  - \* resolution 45/12 of 7 November 1989
  - \* resolution 46/23 of 5 December 1991
- Policies of apartheid of the Government of South Africa:
  - \* resolution 44/27 of 22 November 1989
  - \* resolution 46/79 of 13 December 1991

– The situation in Central America: threats to international peace and security and peace initiatives:

\* resolution 44/10 of 23 October 1989

\* resolution 45/15 of 20 November 1990

\* resolution 48/161 of 20 December 1993

– The situation in Cambodia:

\* resolution 45/3 of 15 October 1990

\* resolution 46/18 of 20 November 1991

– The situation in Bosnia and Herzegovina:

\* resolution 48/88 of 20 December 1993

\* resolution 49/10 of 3 November 1994

---

**Annex II****List of resolutions and documents of the Security Council bearing on Article 12**

## Resolutions:

## The situation in Haiti:

- \* 841 (1993)
- \* 861 (1993)
- \* 862 (1993)
- \* 867 (1993)
- \* 873 (1993)
- \* 875 (1993)
- \* 905 (1994)
- \* 917 (1994)
- \* 933 (1994)
- \* 940 (1994)
- \* 944 (1994)
- \* 948 (1994)
- \* 964 (1994)

## Documents of another nature:

## The situation in Haiti:

- \* S/PV.3238
- \* S/PV.3413
- \* S/PV.3437
- \* Letter dated 5 October 1990, addressed to the Secretary-General by the President of the Security Council (S/21847).

## The situation in Bosnia and Herzegovina:

- \* S/PV.3428
- \* Proposals submitted by States relating to the revision of the Charter and to increasing the effectiveness of the Organization.
- \* S/PV.3483