

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. Although during the period under review the Secretary-General did not invoke Article 99, he made specific references to it on two occasions. These two instances are described in the General Survey.¹ The Analytical Summary of Practice deals with two cases which may be considered as having a bearing on this Article.

¹For a discussion of the legal basis for the exercise by the Secretary-General of diplomatic and political functions, see this *Supplement*, under Article 98.

I. GENERAL SURVEY

2. In the Introduction to his annual report on the work of the Organization, dated September 1969, the Secretary-General stated that:

“The Charter, unlike the Covenant of the League of Nations, foresaw, in Article 99, that the Secretary-General would have a political role to play. This was recognized, and elaborated upon by the Preparatory Commission which stated in section 2, chapter 8, of its report:

“The Secretary-General may have an important role to play as a mediator and as an informal adviser of many Governments, and will undoubtedly be called upon from time to time, in the exercise of his administrative duties, to take decisions which may justly be called political. Under Article 99 of the Charter, moreover, he has been given a quite special right which goes beyond any power previously accorded to the head of an international organization, viz: to bring to the attention of the Security Council any matter (not merely any dispute or situation) which, in his opinion, may threaten the maintenance of international peace and security. It is impossible to foresee how this Article will be applied; but the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgement, tact and integrity.”

“By its resolution 13(I), adopted unanimously on 13 February 1946, the General Assembly transmitted the foregoing section to the Secretary-General for his guidance.”²

3. In reporting³ to the Security Council on his efforts to resolve a situation that had arisen between Guinea and the Ivory Coast through the detention by each of these States of nationals of the other, the Secretary-General explained⁴ that he did not have in mind the Secretary-General's discretion, under Article 99, to bring to the attention of the Council any matter which in his opinion might threaten international peace and security. Instead, he thought it his duty to report on the situation and on the use of his good offices in relation thereto on the basis of the right of the Security Council, under Article 34 of the Charter, to investigate, if it so wished, any dispute or any situation which might lead to international friction or give rise to a dispute. In the light of this right of the Council, the Secretary-General felt it was his duty to notify the Council of any situation where his good offices had been invoked and in which it would appear to him that Article 34 would be applicable.

²G A (XXIV), Suppl. No. 1A, para. 183.

³S C, 22nd yr., Suppl. for July-Sept., pp. 164-174, S/8120 and Add.1 and 2.

⁴See also G A (XXII), Suppl. No. 1A, para. 156.

II. ANALYTICAL SUMMARY OF PRACTICE

Appointment of a Special Representative to Cambodia and Thailand

4. The representative of the Soviet Union, in a letter dated 27 August 1966 to the President of the Security Council,⁵ objected to the appointment by the Secretary-General of a Special Representative to Cambodia and Thailand.⁶ In the letter it was emphasized “that under the United Nations Charter decisions on matters con-

nected with action by the United Nations relating to the maintenance of international peace and security are taken by the Security Council.” The representative of the Soviet Union added that “when the Security Council takes a decision on the particular candidate put forward for the post, after consultation with the parties concerned, the Soviet Union will have no objection to make.”

5. With reference to that communication, the Permanent Representative of Argentina informed⁷ the President of the Security Council, by a letter dated 30 Sep-

⁵S C, 21st yr., Suppl. for July-Sept., pp. 108 and 109, S/7474.

⁶See in this *Supplement*, under Article 98, para. 312.

⁷S C, 21st yr., Suppl. for Oct.-Dec., pp. 2-4, S/7522.

tember 1966, that his Government did not share the view of the Soviet Union on this matter as it considered that the action taken by the Secretary-General was fully justified and fell within the competence conferred upon him by the Charter. After recalling the views of the Preparatory Commission of the United Nations in 1945 and of the General Assembly at its first session, on 13 February 1946, as to the political role of the Secretary-General under Article 99, the representative stated:

“In the light of the provisions of Article 99 of the Charter and the directives addressed by the General Assembly to the Secretary-General concerning his functions and responsibilities, my Government has no doubt whatever that the Secretary-General has the authority, and even the duty, to keep himself informed on all matters which may threaten the maintenance of international peace and security and to exert the utmost effort to relieve situations which may become threats to international peace and security. Most particularly, when a dispute arises between two or more countries, it lies within the authority of the Secretary-General to offer his good offices to the parties concerned, either directly or through a representative, in order to reduce tension and resolve the disagreement between them. The Secretary-General’s appointment of a representative for this purpose is, in my Government’s view, subject to only two requirements: that he should consult the parties concerned and obtain their consent to his

appointment of a representative, and that he should inform the Security Council of his decision.”

6. The representative of Argentina observed further that the appointment by the Secretary-General of a Special Representative in Cambodia and Thailand had precisely complied with those two requirements. In concerning itself with the question, his Government was prompted basically by its desire to promote in all cases the ability of the various organs of the United Nations to facilitate the peaceful settlement of disputes, observing the most scrupulous respect for the provisions of the United Nations Charter.

7. In a letter dated 12 October 1966 to the President of the Security Council,⁸ the Permanent Representative of Uruguay endorsed the views expressed by the representative of Argentina concerning the functions and responsibilities of the Secretary-General, and in particular that:

“the incumbent of such a high office ‘has the authority, and even the duty, to keep himself informed on all matters which may threaten the maintenance of international peace and security and to exert the utmost effort to relieve situations which may become threats to international peace and security’.”

⁸*Ibid.*, p. 38, S/7550.