

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 the Secretary-General made formal reference to Article 99 only once. From time to time, however, the Secretary-General played a role, at the request of States or on his own initiative, in relation to situations that had a direct or potential bearing on international peace and security, without indicating whether his actions in these circumstances were based on Article 99 of the Charter. These instances are described in the General Survey. The Analytical Summary of Practice deals with two different cases which have a bearing on this Article.

I. GENERAL SURVEY

2. In the introduction to his last annual report on the work of the Organization,¹ U Thant “felt it incumbent upon [him] to review briefly the political role of the Secretary-General”.² On this occasion, without linking his remarks to a particular situation or set of circumstances, he made the following statement:

“Article 99 goes furthest of all, in clearly and expressly conferring a political role on the Secretary-General, independent of the decisions of the deliberative organs, by authorizing him to ‘bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security’.

“As a matter of commonsense interpretation, in order to exercise his right under Article 99, the Secretary-General must necessarily have all the powers, including those of inquiry, to reach a reasoned and independent opinion on whether or not a particular matter may threaten international peace and security. He may also endeavour, through the exercise of good offices, to play a part in ‘preventive diplomacy’ designed to ensure that a matter does not become a threat to international peace and security.”³

3. He further recalled that the political role of the Secretary-General was expressly recognized by the Preparatory Commission of the United Nations; in chapter VIII, section 2, of its report it stated that:

“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.”⁴

4. The Secretary-General also recalled that the Security Council, for its part, had expressly recognized the political role played by the Secretary-General and stated that:

“At the 1329th meeting, on 2 December 1966, in a statement made by the President on behalf of the Council, it was recorded that the members of the Council fully respect [the Secretary-General’s] position and his action in bringing basic issues confronting the Organization and disturbing developments in many parts of the world to their notice”.⁵

5. Stating that what followed from the law was also borne out by the facts, the Secretary-General recalled that he had, at the request of Governments, assisted in the determination of the wishes of the inhabitants of certain territories regarding their future status, as in Sabah (North Borneo) and Sarawak and, most recently, in Bahrain, and that he had sought to resolve certain specific differences between particular States through personal representatives.⁶

6. Regarding the factual implementation of his political powers, the Secretary-General expressed the view that:

“When the Secretary-General considers exercising a political role on his own initiative, or at the request of the parties, he must necessarily arrive at his decision taking into account specific legal limitations, such as Article 2, paragraph 7, of the Charter, and practical limitations such as a determination whether action on his part would be likely to produce useful results.

“ . . .

“When the Secretary-General decides that he may usefully act, it is in nearly every case essential that he should, in the initial stages, act privately and without public fanfare. Governments are not likely to entrust a matter to him, or to entertain any of his proposals, in the full glare of publicity. This is not to say that, at an appropriate stage, the Secretary-General should not inform—as has always been my policy—the competent deliberative organs either privately or in a public report; but the element of confidentiality is an essential one at the start, or when a matter is at a stage when public opinion on both sides is strongly committed.”⁷

7. In a report of 3 December 1971 to the Security Council,⁸ the Secretary-General disclosed that, on 20 July

1971, he had taken "the unusual step of reporting to the President of the Security Council on a question which [had] not been inscribed on the Council's agenda".⁹ The submitted memorandum, which did not formally invoke Article 99, dealt with developments in East Pakistan and the adjacent Indian states and their consequences, or possible consequences.

8. On one occasion the Secretary-General informed the members of the Security Council by a note¹⁰ dated 28 March 1970, without explicit reference to Article 99, that, in response to approaches made to him by the Governments of Iran and the United Kingdom he had agreed to exercise his good offices in a matter pertaining to Bahrain by appointing a personal representative to ascertain the wishes of the people of Bahrain. He stated that, in agreeing to do so, he had in mind that such action, when initiated by the Secretary-General at the request of Member States, had become customary in United Nations practice and had proved to be a valuable means of relieving and preventing tension by a quiet approach in certain situations which could only be prolonged or aggravated by premature disclosure and public debate.

9. In three instances the Secretary-General took actions relating to the situation in Cyprus without explicitly indicating whether his actions were based on Article 99. In 1972 he reactivated the intercommunal talks on Cyprus and travelled on this behalf to Cyprus.¹¹ On 16 July 1974 he requested the President of the Security Council, in view of the seriousness of the situation in Cyprus in relation to international peace and security and in view of the United Nations involvement in Cyprus, to convene the Security Council so that he could report to the Council on the information he had received.¹² At the outset of the Security Council's meeting on 20 July 1974 the Secretary-General revealed that, in the early hours of that morning, the Turkish Ambassador in Nicosia had informed the Commander of UNFICYP that Turkish troops would intervene in Cyprus very soon.¹³ On 18 September 1975 the Secretary-General informed the Security Council by a note that he had acceded to the request of his special representative in Cyprus, Mr. Luis Weckmann-Muñoz, to be relieved of his post and that he had appointed Ambassador Javier Pérez de Cuéllar to replace Mr. Weckmann-Muñoz as his special representative in Cyprus.¹⁴

10. In some other cases the Secretary-General offered his good offices or visited the areas of conflict. On one occasion he sent a personal representative on an exploratory mission.

11. In April 1972 the Secretary-General offered his good offices to the parties to the Viet-Nam conflict.¹⁵ As this offer was not accepted and as the situation in Viet-Nam became graver, the Secretary-General addressed a memorandum to the President of the Security Council and informally consulted with its members.¹⁶ No further action resulted.

12. From 22 to 27 November 1975 the Secretary-General visited the Middle East. In a report¹⁷ dated 24 November 1975 on the United Nations Disengagement Observer Force for the period 22 May to 24 November 1975 he stated¹⁸ that his visit was directly related to his efforts to advance the implementation of Security Council resolution 338 (1973). The latter did not explicitly request the Secretary-General to undertake the visit. But, in operative paragraph 3 of its resolution, the Security Council had urged the parties concerned to start negotiations under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

13. As the dangers of stalemate and stagnation of the Middle East problem were increasing, the Secretary-General in 1976 requested his personal representative for the Peace Conference on the Middle East, Under-Secretary-General Roberto E. Guyer, to undertake an exploratory mission to the region.¹⁹ Mr. Guyer visited the area from 25 February to 2 March 1976 and held talks with the parties concerned. Although the exploratory mission was primarily based upon the Secretary-General's own initiative, it was embedded into the negotiating framework, erected fundamentally around Security Council resolutions 242 (1967) and 338 (1973).

14. From 17 to 19 April 1978 the Secretary-General himself visited the Israel-Lebanon area on his own initiative. In a report dated 17 April 1978 on the United Nations Interim Force in Lebanon he indicated that he had informed the Security Council that he would undertake the visit to meet with the parties concerned at the highest level.²⁰ In a letter dated 19 April 1978 the Secretary-General informed the Security Council, on completion of his visit to the area, about the state of affairs concerning the implementation of resolution 425 (1978), especially in relation to the withdrawal of Israeli forces from Lebanese territory.²¹

15. A further trip in 1978 led the Secretary-General to Chad and the Libyan Arab Jamahiriya where he lent his good offices to the parties involved in a struggle within Chad.²²

II. ANALYTICAL SUMMARY OF PRACTICE

A. The situation in the India-Pakistan subcontinent

16. On 20 July 1971, the Secretary-General submitted a memorandum²³ to the President of the Security Council regarding developments in East Pakistan and the adjacent Indian states and their consequences. With respect to "the possible consequences of the present situation, not only in the humanitarian sense, but also as a potential threat to peace and security and for its bearing on the future of the United Nations as an effective instrument for international co-operation and action",²⁴ the Secretary-General stated:

"It is for these reasons that I am taking the unusual step of reporting to the President of the Security Council on a question which has not been inscribed on the Council's agenda. The political aspects of this matter are of such far-reaching importance that the Secretary-General is not in a position to suggest precise courses

of action before the members of the Security Council have taken note of the problem. I believe, however, that the United Nations, with its long experience in peace-keeping and with its varied resources for conciliation and persuasion, must, and should, now play a more forthright role in attempting both to mitigate the human tragedy which has already taken place and to avert the further deterioration of the situation.

"The Security Council, the world's highest body for the maintenance of international peace and security, is in a position to consider, with the utmost attention and concern, the present situation and to reach some agreed conclusions as to measures which might be taken. Naturally, it is for the members of the Council themselves to decide whether such consideration should take place formally or informally, in public or in private. My primary purpose at this stage is to provide a basis and an opportunity for such discussions to take place and to express my grave concern that all possible

ways and means should be explored which might help to resolve this tragic situation."²⁵

No meeting was called by the President of the Council to consider the matter until 4 December 1971²⁶ when he received a request from the representatives of Argentina, Belgium, Burundi, Italy, Japan, Nicaragua, Somalia, the United Kingdom and the United States²⁷ to convene immediately an urgent meeting of the Security Council to consider the situation between India and Pakistan.

17. Meanwhile, on 20 October 1971, the Secretary-General offered his good offices in addressing identical messages²⁸ to the Prime Minister of India and the President of Pakistan. He therein explained that:

"In this potentially very dangerous situation, I feel that it is my duty as Secretary-General to do all that I can to assist the Governments immediately concerned in avoiding any development which might lead to disaster."²⁹

18. In a message dated 22 November 1971 to the Prime Minister of India, in reply to her letter of 16 November, the Secretary-General made a further remark on his role stating that: ". . . as Secretary-General, I cannot under the Charter ignore a potential threat to international peace and security such as now seems to exist in the subcontinent."³⁰

19. In a letter, received on 23 November, the President of Pakistan asked for the Secretary-General's personal initiative and good counsel in view of the grave situation in the subcontinent. In his reply of 26 November 1971 the Secretary-General noted that:

". . . While I am deeply anxious to do anything that I can to avert a further catastrophe, I have been obliged to conclude that I have gone, for the moment, as far as my authority under the Charter permits me, usefully and meaningfully, to go in the present circumstances. As you mentioned in your letter of 23 November, I have brought this situation to the attention of the members of the Security Council, both in July, through my memorandum to the President of the Security Council, and in October, when I offered my good offices . . ."³¹

20. The President of the Security Council was kept continuously informed of the action of the Secretary-General relating to his offer of good offices. Copies of all messages addressed and received by the Secretary-General in this regard were immediately communicated to the President of the Security Council for his information.

21. On 29 November 1971 the Secretary-General transmitted to the President of the Security Council the request³² of the same date by the President of Pakistan for the stationing of a force of United Nations observers on the Pakistan side of the East Pakistan border. At the same time he addressed a message to the President of the Security Council stating his position concerning the request as follows:³³

". . . In the context of the present military conflict, the stationing of observers by the United Nations on the territory of a sovereign State, even at the request of that State, is obviously an action for which the authority of the Security Council should be obtained. I believe therefore that the members of the Security Council should be informed, in whatever manner you as President might deem desirable, of the request of President Yahya Khan for the stationing of United Nations observers.

"I also feel that, in the light of its primary responsibility under the Charter for the maintenance of international peace and security, the Security Council should give serious consideration to the situation

prevailing in the subcontinent. In this connection I would wish to add that I have been obliged to conclude that in this matter I have gone, for the moment, as far as the Secretary-General may usefully and meaningfully go in the present circumstances."

22. On 3 December 1971, in the light of reports of a further grave deterioration in the situation along the borders of East Pakistan and elsewhere in the subcontinent, the Secretary-General reported³⁴ to the Security Council on the efforts he had made so far in regard to the problem:

". . . In view of his conviction that this situation constitutes a threat to the maintenance of international peace and security, the Secretary-General feels that he should report to the Security Council on the efforts he has made so far in regard to this problem. The Secretary-General has kept the President of the Security Council informed of these efforts under the broad terms of Article 99 of the United Nations Charter, which provides that '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'. The Secretary-General feels that an initiative on this matter in the Security Council can best be taken by the parties themselves or by the members of the Council."

B. Question of Bahrain

23. In a letter³⁵ dated 2 April 1970 addressed to the Secretary-General, the Permanent Representative of the Union of Soviet Socialist Republics objected to the Secretary-General's attitude in handling the matter. He drew attention to the fact that the Secretary-General had considered it possible to communicate information to the members of the Security Council, on an *ex post facto* basis and without consulting the members of the Council beforehand, concerning the adoption of measures in connection with the problem of Bahrain, which related to a type of situation that could lead to complications in international relations. Furthermore he stated³⁶ that:

"It is a matter of common knowledge that according to the Charter of the United Nations, questions of this kind and the decisions taken on them come within the jurisdiction of the Security Council. The statement in the note that actions such as this by the Secretary-General 'have become customary in United Nations practice' cannot serve to justify these actions, for it is widely known that this illegal practice was forced upon the United Nations in the past by certain Powers contrary to and in violation of the Charter.

"In this connection the USSR Mission to the United Nations considered it necessary to emphasize once again that under the United Nations Charter, decisions on matters connected with action by the United Nations relating to the maintenance of international peace and security are taken by the Security Council."

24. On 4 April 1970 the Secretary-General replied³⁷ that, while he fully understood the views of the Mission of the Soviet Union, he found himself at variance with some aspects of those views on the subject of the exercise of good offices by the Secretary-General. He continued:³⁸

"In this regard, the position of the Secretary-General, to which he adheres, has been clearly set forth in his letter dated 7 March 1969 to the President of the Security Council [S/9055]. The Secretary-General believes that it is not necessary to restate that position at this time. The Secretary-General feels, none the less, that it may be useful to call attention to one aspect of

this question. From time to time, as in the present case affecting Bahrain, Member States of the United Nations approach the Secretary-General directly asking for the exercise of his good offices on a delicate matter. They explain that they do so because they feel that a difference between them may be capable of an amicable solution if dealt with at an early stage quietly and diplomatically and, therefore, it would be inadvisable to take the particular matter before the Security Council or to consult its members individually on it. They express the wish to have the matter worked out through the good offices of the Secretary-General on a completely confidential basis. In all such cases the Secretary-General, naturally, examines the proposals carefully. If those proposals are fully consistent with the principles and purposes of the United Nations Charter, and if they in no way impinge upon the authority of the Security Council or any other organ of the United Nations, he unavoidably feels obligated to afford the Member States the assistance in the manner requested. To do otherwise would be to thwart a commendable effort by these Member States to abide by a cardinal principle of the Organization, namely, the peaceful settlement of disputes.

"In the case in question, the good offices mission to Bahrain is engaged only in a fact-finding exercise. The facts found will, in due course, be presented to the Security Council in the form of a report from the Secretary-General. Any substantive action would be taken at that time and only by the Security Council."

25. By a note³⁹ dated 30 April 1970 the Secretary-General submitted the report of his personal representative in charge of the good offices mission in Bahrain to the Security Council for its consideration and endorsement. On 11 May the Security Council unanimously adopted a resolution⁴⁰ endorsing the personal representative's report and welcoming his conclusions and findings, in particular that the overwhelming majority of the people of Bahrain wished to gain recognition of their identity in a fully independent and sovereign State free to decide for itself its relations with other States. The parties concerned agreed and had no reservations about the conclusions. Comments on the procedure followed in the action undertaken by the Secretary-General were made by the representatives of the Soviet Union and France. The first stated that his Government adhered to the position set forth in his note of 2 April 1970 to the Secretary-General.⁴¹ The second saw no reason why one could not depart from customary means since the Security Council had the final say in considering and endorsing the

conclusions of the inquiry.⁴² He stressed, however, that this was a special case which could not be considered as having established a precedent.⁴³

NOTES

¹ G A (26), Suppl. No. 1A.

² *Ibid.*, p. 15, para. 124.

³ *Ibid.*, pp. 15-16, paras. 125-126. See also in this *Supplement*, under Article 98, paras. 668-718. The present commentary focuses on the relations between the Secretary-General and the Security Council prior to, following or during a mission of good offices initiated by the Secretary-General.

⁴ *Ibid.*, p. 16, para. 128.

⁵ *Ibid.*, p. 16, para. 128.

⁶ *Ibid.*, p. 16, para. 129.

⁷ *Ibid.*, p. 17, paras. 133-134.

⁸ S C (26), Suppl. for Oct.-Dec. 1971, S/10410, p. 80.

⁹ *Ibid.*, p. 81.

¹⁰ S C (25), Suppl. for Jan.-March 1970, S/9726, p. 175.

¹¹ S C (27), Suppl. for April-June 1972, S/10664, paras. 61-63.

¹² S C (29), Suppl. for July-Sept. 1974, S/11334, p. 22.

¹³ *Ibid.*, 1781st mtg., para. 7.

¹⁴ S C (30), Suppl. for July-Sept. 1975, S/11824, p. 61.

¹⁵ G A (27), Suppl. No. 1A, p. 4.

¹⁶ *Ibid.*

¹⁷ S C (30), Suppl. for Oct.-Dec. 1975, S/11883, pp. 44-46.

¹⁸ *Ibid.*, p. 46, para. 31.

¹⁹ S C (31), Suppl. for Oct.-Dec. 1976, S/12210, pp. 4-6, para. 7.

²⁰ S C (33), Suppl. for April-June 1978, S/12620/Add.3, para. 15.

²¹ *Ibid.*, S/12657, p. 29.

²² G A (33), Suppl. No. 1A, p. 3.

²³ S C (26), Suppl. for Oct.-Dec. 1971, S/10410.

²⁴ *Ibid.*, p. 81.

²⁵ *Ibid.*, p. 81, para. 3.

²⁶ S C (26), 1606th mtg., para. 2 (a).

²⁷ *Ibid.*, Suppl. for Oct.-Dec. 1971, S/10411.

²⁸ *Ibid.*, S/10410, para. 5.

²⁹ *Ibid.*, p. 82.

³⁰ *Ibid.*, p. 83, para. 8.

³¹ *Ibid.*, p. 85, para. 10.

³² *Ibid.*, para. 12.

³³ *Ibid.*, para. 13.

³⁴ *Ibid.*, p. 80, para. 1.

³⁵ S C (25), Suppl. for April-June 1970, S/9737, p. 143.

³⁶ *Ibid.*

³⁷ *Ibid.*, S/9738, pp. 143-144.

³⁸ *Ibid.*, p. 144.

³⁹ *Ibid.*, S/9772, pp. 166-170.

⁴⁰ S C resolution 278 (1970).

⁴¹ S C (25), 1536th mtg., para. 73.

⁴² *Ibid.*, para. 156.

⁴³ *Ibid.*