

## ARTICLE 99

### CONTENTS

#### Text of Article 99

	<i>Paragraphs</i>
Introductory note .....	1-2
I. General survey .....	3-7
II. Analytical summary of practice .....	8-23
A. Requests by the Secretary-General under Article 99 for a meeting of the Security Council.....	8-12
B. Scope of rights and obligations of the Secretary-General under Article 99 .....	13-23
1. Statement by the Secretary-General in his annual report on the work of the Organization .....	13-14
2. The Manila Declaration on the Peaceful Settlement of International Disputes ..	15-17
3. 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 (thirty-ninth session) .....	18-23

## 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 invoked both implicitly and explicitly. The Secretary-General took actions pursuant to it, or made reference to it on three occasions. As a matter of law, Article 99 has been subject to intensive discussions in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and in the Sixth Committee of the General Assembly.

2. In the general survey, the various functions performed by the Secretary-General under Article 99 are summarized briefly.<sup>1</sup> The analytical summary of practice covers the three cases in which reference was made to the Article during the period under review and the interpretation that was given to Article 99 by the Manila Declaration on the Peaceful Settlement of International Disputes.

<sup>1</sup>For 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

3. Article 99 was invoked implicitly by the Secretary-General in connection with two matters he brought to the attention of the Security Council between 1 January 1979 and 31 December 1984.

4. In the first case, on 25 November 1979, the Secretary-General sent a letter to the President of the Security Council in which he expressed the opinion that the prevailing crisis between the United States and Iran posed "a serious threat to international peace and security". Accordingly, he requested that "the Security Council be convened urgently in an effort to seek a peaceful solution of the problem".<sup>2</sup>

5. In the second case, in a letter dated 23 September 1980 to the President of the Security Council, the Secretary-General stated that it was "urgently necessary, as a first step, for the members of the Security Council to meet in consultation" regarding the conflict between Iran and Iraq which constituted, in his opinion, "a potentially grave threat to international peace and security".<sup>3</sup>

6. In his annual report on the work of the Organization dated 7 September 1982, the Secretary-General made suggestions aimed at strengthening the system prescribed in the Charter.<sup>4</sup> On that occasion, he expressed the view that, "in order to avoid the Security Council becoming involved too late in critical situations, it may well be that the Secretary-General should play a more forthright role in bringing potentially dangerous situations to the attention of the Council within the general framework of Article 99 of the Charter".<sup>5</sup>

7. On 15 November 1982, the General Assembly adopted the Manila Declaration on the Peaceful Settlement of International Disputes, the text of which is annexed to resolution 37/10. With respect to Article 99, the Declaration provides that "the Secretary-General should make full use of the provisions of the Charter . . . concerning the responsibilities entrusted to him" and that "(he) may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security".

<sup>2</sup>S C (34), Supplement for October-December 1979, S/13646.

<sup>3</sup>S C (35), Supplement for July-September 1980, S/14196.

<sup>4</sup>G A (37), Supplement No. 1 (A/37/1)

<sup>5</sup>*Ibid.*, p. 3.

## II. ANALYTICAL SUMMARY OF PRACTICE

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

8. In a letter dated 25 November 1979, the Secretary-General, referring to the "grave situation which has arisen in the relations between the United States and Iran", stated that the Government of the United States was deeply disturbed at the seizure of its Embassy in Tehran and the detention of its diplomatic personnel in violation of the relevant international conventions. He also stated that the Government of Iran was seeking redress for the injustices and abuse of human rights which, in its view, had been committed by the previous regime.<sup>6</sup> That regime was viewed widely as a puppet of the United States. Without explicitly invoking Article 99, the Secretary-General stated:

"In my opinion, therefore, the present crisis poses a serious threat to international peace and security. Accordingly, in the exercise of my responsibility under the Charter of the United Nations, I ask that the Security Council be convened urgently in an effort to seek a peaceful solution of the problem in conformity with the principles of justice and international law."

9. In pursuance of that request, a meeting was called by the President of the Security Council, and the Council decided, without a vote, to include the following item in its agenda: "Letter dated 25 November 1979 from the Secretary-General addressed to the President of the Security Council (S/13646)."<sup>7</sup> After the adoption of the agenda, the Secretary-General referred briefly to the unsuccessful results of the various efforts which he, as well as the President of the Security Council and many Governments had carried out in order to find means of resolving the crisis between the United States and Iran, and stated that:

"It was in the light of these developments and of the escalation of tension that I concluded that the present crisis poses a serious threat to international peace and security. Accordingly, in the exercise of my responsibility under the Charter, I asked for the urgent convening of the Security Council. I may mention here that this move was supported and welcomed by the Governments of Iran and the United States."<sup>8</sup>

10. In a letter to the President of the Security Council dated 23 September 1980, the Secretary-General expressed his deep concern over the escalation of the conflict between Iran and Iraq, saying that it constituted "a potentially grave threat to international peace and security". He further stated:

"In view of the dangers which will inevitably arise from a further escalation of this conflict, I feel that it is urgently necessary, as a first step, for the members of the Security Council to meet in consultation."<sup>9</sup>

11. On the same date, the President of the Council issued a statement which indicated that "members of the Security Council have today exchanged views in informal consultations" on the situation prevailing between Iran and Iraq.<sup>10</sup>

<sup>6</sup>S C (34), Supplement for October-December 1979, S/13646.

<sup>7</sup>S C (34), 2172nd mtg., provisional agenda item 2.

<sup>8</sup>Ibid., para. 9.

<sup>9</sup>S C (35), Supplement for July-September 1980, S/14196.

<sup>10</sup>S/14190, in Resolutions and Decisions of the Security Council, 1980, p. 23.

12. On 26 September 1980, the Security Council held a meeting<sup>11</sup> following a request by Mexico and Norway<sup>12</sup> to convene a meeting of the Council to consider the ongoing conflict between Iran and Iraq. A statement was made by the Secretary-General.<sup>13</sup>

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

#### 1. STATEMENT BY THE SECRETARY-GENERAL IN HIS ANNUAL REPORT ON THE WORK OF THE ORGANIZATION

13. In his annual report on the work of the Organization dated 7 September 1982,<sup>14</sup> the Secretary-General discussed several ways to strengthen the system prescribed in the Charter, and in particular, the role of the Security Council. He found unfortunate "a tendency to avoid bringing critical problems to the Security Council, or to do so too late for the Council to have any serious influence on their development."<sup>15</sup> In the report, the Secretary-General also made the following statement:

"In order to avoid the Security Council becoming involved too late in critical situations, it may well be that the Secretary-General should play a more forthright role in bringing potentially dangerous situations to the attention of the Council within the general framework of Article 99 of the Charter. My predecessors have done this on a number of occasions, but I wonder if the time has not come for a more systematic approach. Most potential conflict areas are well known. The Secretary-General has traditionally, if informally, tried to keep watch for problems likely to result in conflict and to do what he can to pre-empt them by quiet diplomacy. The Secretary-General's diplomatic means are, however, in themselves quite limited. In order to carry out effectively the preventive role foreseen for the Secretary-General under Article 99, I intend to develop a wider and more systematic capacity for fact-finding in potential conflict areas. Such efforts would naturally be undertaken in close coordination with the Council. Moreover, the Council itself could devise more swift and responsive procedures for sending good offices missions, military or civilian observers or a United Nations presence to areas of potential conflict. Such measures could inhibit the deterioration of conflict situations and might also be of real assistance to the parties in resolving incipient disputes by peaceful means."<sup>16</sup>

#### 2. THE MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

15. On 15 November 1982, the General Assembly adopted the Manila Declaration on the Peaceful Settlement of International Disputes, the text of which is annexed to resolution 37/10. The Declaration provides that, in the peaceful settlement of international disputes,

<sup>11</sup>S/PV 2247.

<sup>12</sup>S (35), Supplement for July-September 1980, S/14198.

<sup>13</sup>S/PV 2247, pp. 1-2.

<sup>14</sup>G A (37), Supplement No. 1 (A/37/1).

<sup>15</sup>Ibid., p. 2.

<sup>16</sup>Ibid., p. 3.

"The Secretary-General should make full use of the provisions of the Charter of the United Nations concerning the responsibilities entrusted to him. 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. He shall perform such other functions as are entrusted to him by the Security Council or by the General Assembly. Reports in this connection shall be made whenever requested to the Security Council or the General Assembly."

16. The origins of the Manila Declaration are found in the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The scope of rights and obligations of the Secretary-General under Article 99 was discussed at each of the four sessions held by the Committee during the period under review.<sup>17</sup> The Sixth Committee also examined the same topic at length when reviewing the work of the Special Committee.<sup>18</sup>

17. The main trends of the debate on Article 99 held within the Working Group of the Special Committee have been summarized in the informal compilation of proposals as determined from unofficial notation at the 1982 session of the Special Committee.<sup>19</sup> The most relevant proposals with respect to Article 99 read as follows:

*Proposal 65:* "The Secretary-General should be encouraged to exercise his powers with regard to the maintenance of international peace and security more fully, in particular in drawing the attention of the [Security] Council to situations of tension under Article 99, stationing his representatives in such areas and providing the facts on which the Council can base informed discussions and the adoption of appropriate measures. All Member States should cooperate to the maximum extent with the Secretary-General in his carrying out of such tasks."<sup>20</sup>

*Proposal 66:* "The proper discharge of the Secretary-General's responsibilities under the provisions of Article 99 requires that, without prejudice to the rights of States under the Charter, he undertakes steps to acquire information and ascertain facts on developments the continuance of which is likely to endanger international peace and security and report on these developments, when appropriate, to the Security Council and to the General Assembly."<sup>21</sup>

*Proposal 67:* "The Secretary-General should be given the authority to request a meeting of the Security Council, when he deems it necessary, to deal with a problem that could endanger international peace and security,

instead of merely 'bringing matters to the attention of the Council . . . as provided in Article 99.'"<sup>22</sup>

*Proposal 68:* "The Secretary-General should be encouraged to bring matters threatening international peace and security to the attention of the General Assembly through his introduction to the annual report which he is required under Article 98 to make to the General Assembly on the work of the United Nations, and through the exercise of the right to include in the provisional agenda of the General Assembly all items which he deems necessary to put before that body."<sup>23</sup>

### 3. 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 (THIRTY-NINTH SESSION)

18. At its 1984 session, the Special Committee, upon the recommendation of the General Assembly,<sup>24</sup> considered the proposal<sup>25</sup> contained in the working paper entitled "Prevention and removal of threats to the peace and of situations which may lead to international friction or give rise to a dispute",<sup>26</sup> the content of which had some bearing upon Article 99.

19. With regard to the Secretary-General's ability to gather information that could be conveyed, as appropriate, to the Security Council,<sup>27</sup> it was recalled<sup>28</sup> that he already had the capability of submitting reports to the General Assembly or the Security Council upon their request. The concern was raised that information-gathering by the Secretary-General on his own initiative might prove detrimental to conflict prevention in certain circumstances.

20. Questions were raised as to the basis for information-gathering personally initiated by the Secretary-General.<sup>29</sup> Such activity was not authorized specifically under the Charter and in most cases he acted pursuant to a request as envisaged in Article 98. Doubts were expressed as to whether the Secretary-General had the right under the Charter to engage in information-gathering activity on his own initiative, and the view was expressed that the text of the Charter made it clear that he might gather information only at the request of a competent organ. In response, a spokesman for the sponsors of the Proposal remarked that Article 99 provided, by necessary implication, the basis for information-gathering by the Secretary-General on his own initiative.<sup>30</sup>

21. A number of delegations stressed<sup>31</sup> the indispensable role which the Secretary-General played in preventive action through quiet diplomacy and informal contact with parties.<sup>32</sup> They noted that that role was based on his moral

<sup>17</sup>G A (34), Supplement No. 33 (A/34/33), p. 8; G A (35), Supplement No. 33 (A/35/33), pp. 11-12, 17-18, 22, 27, 32, 50; G A (36), Supplement No. 33 (A/36/33), pp. 55, 68; G A (37), Supplement No. 33 (A/37/33), pp. 45-52.

<sup>18</sup>A/C.6/34/SR.30, para. 57; SR.33, para.39; SR.34, para. 45; SR.35, para. 41; SR.37, para. 9; SR.39, para. 32; A/C.6/35/SR.36, paras. 7 and 15; SR.38, paras. 58 and 71; SR.40, para. 100; SR.41, paras 15, 31 and 40; SR. 43, paras. 11 and 48; A/C.6/36/SR.30, para. 54; SR.34, paras. 24 and 68; A/C.6/37/SR.22, para. 5; SR. 23, para. 35; SR.24, paras. 18 and 36; SR.25, para. 17; SR.26, para. 55; and SR.27, para. 20.

<sup>19</sup>G A (37), Supplement No. 33 (A/37/33), pp. 15 and 45-52.

<sup>20</sup>See A/AC.182/WG/44/Rev.1 and G A (37), Supplement No. 33 (A/37/33), paras. 140-141.

<sup>21</sup>A/AC.182/WG/46/Rev. 2 and G A (37), Supplement No. 33 (A/37/33), paras. 146-247.

<sup>22</sup>A/AC.182/L.5 and G A (37), Supplement No. 33 (A/37/33), paras. 149-150.

<sup>23</sup>A/AC.182/WG/42 and G A (37), Supplement No. 33 (A/37/33), paras. 153-163.

<sup>24</sup>G A resolution 38/141.

<sup>25</sup>Working paper submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain (A/AC.182/L.38).

<sup>26</sup>See G A (39), Supplement No. 33 (A/39/33), para. 20.

<sup>27</sup>*Ibid.*, pp. 8-9 (sect. II(b) of the working paper).

<sup>28</sup>*Ibid.*, para. 31.

<sup>29</sup>*Ibid.*, pp. 8-9 (sect. II(b) and (c) of the Working Paper).

<sup>30</sup>*Ibid.*, para. 41.

<sup>31</sup>*Ibid.*, para. 88.

<sup>32</sup>*Ibid.*, p. 9 (sect. III(b) and (c) of the working paper).

authority and was not limited to Article 99. The view was expressed that it was an extremely sensitive matter to prompt the Secretary-General to react in any given manner to an approach made, particularly if made by only one party. The Charter gave the Secretary-General the right under Article 99 to bring certain matters to the Council's attention, but did not provide for other actions to be taken by him unless authorized.<sup>33</sup>

22. Several delegations, in response to the proposal that the Secretary-General be encouraged to send information-gathering missions into potential conflict areas,<sup>34</sup> stated that, given that the Secretary-General was empowered to draw the attention of the Security Council to any matter which in his opinion might threaten the maintenance of international peace and security by Article 99 of the Charter, his right to seek information about such matters was clearly implied.<sup>35</sup> Such information-gathering was also

said to be important for the swift handling of conflicts by the Security Council.

23. Certain delegations suggested that the word "encouraged"<sup>36</sup> should be softened, noting that although the Secretary-General had only twice made use of his powers under Article 99 of the Charter, that did not mean that he was not active enough.<sup>37</sup> The observation was also made that a distinction existed between merely drawing the Security Council's attention to potential conflict and actually requesting meetings in accordance with Article 99, and that this distinction should appear more clearly in the text.<sup>38</sup> Other delegations saw no point in altering the clear terms of Article 99, under which the Secretary-General already had the authority to bring matters to the Security Council, and which had proved its effectiveness. The procedure foreseen in Article 99 should remain the exception and its importance should not be reduced by too frequent use.<sup>39</sup>

<sup>33</sup>*Ibid.*, para. 89.

<sup>34</sup>*Ibid.*, p. 10 (sect. II2(b)(i) of the working paper).

<sup>35</sup>*Ibid.*, para. 104.

<sup>36</sup>*Ibid.*, p. 10 (sect. II2(b)(ii) of the working paper).

<sup>37</sup>*Ibid.*, para. 106.

<sup>38</sup>*Ibid.*

<sup>39</sup>*Ibid.*, para. 107.1 See this *Supplement*, under Article 100.