

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 explicitly or implicitly pursuant to Article 99, but did make reference to the rights conferred upon him by Article 99 in a verbal statement. As a matter of law, Article 99 continued to be the subject of detailed discussions in the Sixth Committee of the General Assembly and in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Those discussions culminated in the drafting of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, which was approved by the General Assembly in its resolution 43/51 of 5 December 1988 and annexed to that resolution. The Declaration is highly relevant to the scope of the rights and obligations of the Secretary-General under Article 99.

2. In the general survey, the approval by the General Assembly in 1988 of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field is presented, along with the role for the Secretary-General foreseen in the Declaration. The analytical summary of practice covers the process resulting in the approval of the Declaration, what the Secretary-General is encouraged to do, a statement by the Secretary-General in relation to his role in the maintenance of international peace and security and the scope of the rights conferred upon him under Article 99, and the implementation of the Manila Declaration on the Peaceful Settlement of International Disputes.

I. GENERAL SURVEY

3. 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 rights conferred upon him under Article 99.

4. The most significant development in this regard was the approval by the General Assembly in 1988 of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, which was the result of several years of intensive discussions by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. In paragraph 23 of the Declaration, the General Assembly explicitly encouraged the Secretary-General to consider using, at as early a stage as he deemed appropriate, the right accorded to him under Article 99. The Assembly also encouraged him, in paragraph 20, to urge disputing States to seek a solution by peaceful means of their choice under the Charter and to offer his good offices or other means at his disposal to that end. In paragraph 21, the As-

sembly further encouraged him to consider approaching the disputing States in an effort to prevent the dispute from becoming a threat to the maintenance of international peace and security. In addition, the Secretary-General was encouraged, in paragraph 22, to make full use of fact-finding capabilities; and, in paragraph 24, to encourage efforts undertaken at the regional level to prevent or remove a dispute or situation in the region concerned.

5. The Secretary-General discussed his role in the maintenance of international peace and security in an address entitled, "Must We Live with Conflicts? The Role of the United Nations", which he delivered to the Strategic and International Security Studies Programme of the Institut Universitaire de Hautes Etudes Internationales, in Geneva, on 19 April 1988.¹ In his statement, the Secretary-General emphasized the importance of fact-finding capabilities and information analysis as tools which enabled him to discharge his responsibilities under Article 99.

¹ Issued as United Nations press release SG/SM/4124 of 20 April 1988, pp. 6-7.

II. ANALYTICAL SUMMARY OF PRACTICE

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

6. 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

7. Pursuant to General Assembly resolutions,² the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization continued to assign priority to the consideration of the question of the maintenance of international peace and security at each of its annual sessions held during the period under review. The Special Committee concentrated on the question of the prevention and removal of threats to peace and of situations that might lead to international friction or give rise to a dispute. Several revised versions of a working paper³ on the subject were considered by the Special Committee at its sessions in 1985, 1986 and 1987, the content of which had some bearing on the scope of the rights and obligations of the Secretary-General under Article 99.⁴ The main proposals regarding Article 99 that were put forward by delegations during those sessions of the Special Committee were summarized in the relevant reports of the Special Committee.⁵

8. In its resolution 42/157 of 7 December 1987, the General Assembly requested the Special Committee, at its session in 1988, to complete and submit to the Assembly an appropriate draft document on the prevention and removal of threats to peace and of situations that might lead to international friction or give rise to a dispute, on the basis of the provisionally adopted paragraphs and other proposals set forth in the report of the Special Committee on its work at the 1987 session.⁶

² G A resolutions 40/78, 41/83 and 42/157.

³ See A/AC.182/L.38/Rev.1, A/AC.182/L.38/Rev.2 and A/AC.182/L.38/Rev.3, which are revisions of the working paper submitted to the Special Committee in 1984 by Belgium, Germany, Italy, Japan, New Zealand and Spain. See also *Reportory, Supplement No. 6*, vol. VI, under Article 99, paras. 18-22.

⁴ See G A (40), Suppl. No. 33; G A (41), Suppl. No. 33; and G A (42), Suppl. No. 33.

⁵ *Ibid.*

⁶ See G A (42), Suppl. No. 33.

9. At its 1988 session, the Special Committee completed a draft declaration on the prevention and removal of disputes and situations which might threaten international peace and security and on the role of the United Nations in that field, which it submitted to the General Assembly for its consideration and approval.⁷

10. By its resolution 43/51 of 5 December 1988, the General Assembly approved the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, the text of which was annexed to the resolution. The Assembly requested the Secretary-General to inform the Governments of the States Members of the United Nations or members of specialized agencies, and the Security Council, of the adoption of the Declaration and urged that every effort be made to ensure that the Declaration became generally known and fully implemented. Paragraphs 20 to 24 of the Declaration are highly relevant to the scope of the rights and obligations of the Secretary-General under Article 99. In introducing the report of the Special Committee that contained the draft declaration before the Sixth Committee of the General Assembly, the Chairman of the Special Committee stated that the aim of paragraphs 20 to 24 was to draw attention to the capabilities of the Secretary-General in taking preventative action.⁸ The paragraphs read as follows:

“20. The Secretary-General, if approached by a State or States directly concerned with a dispute or situation, should respond swiftly by urging the States to seek a solution or adjustment by peaceful means of their own choice under the Charter and by offering his good offices or other means at his disposal, as he deems appropriate;

“21. The Secretary-General should consider approaching the States directly concerned with a dispute or situation in an effort to prevent it from becoming a threat to the maintenance of international peace and security;

“22. The Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, sending a representative or fact-finding missions to areas where a dispute or a situation exists; where necessary, the Secretary-General should also consider making the appropriate arrangements;

“23. The Secretary-General should be encouraged to consider using, at as early a stage as he deems appropriate, the right that is accorded to him under Article 99 of the Charter;

⁷ See G A (43), Suppl. No. 33.

⁸ See G A (43), 6th Comm., 14th mtg., para. 5.

“24. The Secretary-General should, where appropriate, encourage efforts undertaken at the regional level to prevent or remove a dispute or situation in the region concerned”.⁹

2. STATEMENTS BY THE SECRETARY-GENERAL

11. The Secretary-General made no reference to Article 99 in his annual reports on the work of the Organization during the period under review.

12. In an address on 19 April 1988 to the Strategic and International Security Studies Programme of the Institut Universitaire de Hautes Etudes Internationales, in Geneva, entitled “Must We Live with Conflicts? The Role of the United Nations”, the Secretary-General made the following statement in relation to the role of the Secretary-General in the sphere of the maintenance of international peace and security and the scope of the right conferred upon him under Article 99:

“Being convinced of the advantages of ... prompt intervention in emergent conflicts, I have sought to provide the United Nations with means of detecting conflict situations as soon as they appear in order to alert the international community to them immediately. If the Secretary-General wishes to be able to discharge his responsibilities under the Charter and, in particular, Article 99 thereof, he must be perfectly informed, in the same way as Governments, about crises which are brewing or which have erupted. Information and analysis are the major tools available to him and to the Organization for the purpose of working to maintain and restore peace.

“I therefore requested the United Nations information centres, which are located throughout the world, to communicate to Headquarters all the information published in the press of their regions about local events which may have an impact on international peace and security. I then increased the resources available to the Secretariat for analysing this

⁹ G A resolution 43/51, annex. Also of relevance, the last preambular paragraph recalled “the important role conferred by the Charter on the General Assembly and the Secretary-General in the maintenance of peace and security”.

news by establishing a new department for research and data collection responsible, inter alia, for this essential task. This department immediately informs me of all incidents, situations or developments which may degenerate into conflicts and I then take the measures I deem appropriate.

“I am also encouraged by the draft declaration just adopted unanimously by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization regarding disputes and situations capable of threatening the peace, which will no doubt be adopted by the General Assembly at its next session. This draft calls upon me, where there is a risk that a particular dispute or situation might occur, to make contact with the States concerned, offer them my assistance and, as soon as possible, make use of Article 99 of the Charter.”¹⁰

3. IMPLEMENTATION OF THE MANILA DECLARATION ON THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

13. The Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly on 15 November 1982, provides in paragraph 6 of Part II, inter alia, that:

“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.”¹¹

14. During the period under review, the General Assembly, in its resolutions 40/68, 41/74, 42/150 and 43/163, urged all States to observe and promote in good faith the provisions of the Manila Declaration on the Peaceful Settlement of International Disputes.

¹⁰ SG/SM/4124, pp. 6-7.

¹¹ G A resolution 37/10, annex; see *Repertory, Supplement No. 6*, vol. VI, under Article 99, paras. 15-17.