

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS
SUPPLEMENT NO. 10 (2000-2009)**

VOLUME VI

ARTICLE 99

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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. However, the Secretary-General did make a reference to the rights conferred upon him by Article 99 in the 2005 report entitled “In larger freedom: towards development, security and human rights for all.”¹ In addition, the Secretary-General continued to highlight to the Security Council situations that were already on the Council’s agenda but were at risk of deteriorating.² He also made a reference to the role of the Secretary-General in the maintenance of international peace and security in reports to the General Assembly and the Security Council.³

2. The general survey considers the manner in which the successive Secretaries-General have expressed their powers under Article 99 through conflict prevention as a means of monitoring threats to international peace and security. The analytical summary of practice addresses the consideration of the question of the maintenance of international peace and security by the Special Committee on the Charter of the United Nations and also addresses the strengthening of the role of the Secretary-General under Article 99 by referring to statements made by the Secretary-General and annual reports of the Secretary-General on the work of the Organization. The analytical summary of practice also discusses a 2004 report of the Secretary-General’s High-level Panel on Threats, Challenges and Change entitled “A more secure world: Our shared responsibility,”⁴ which was commissioned by the Secretary-General to “assess current threats to international peace and security,”⁵ and the 2005 report referred to above. This section also indicates that the period under review was marked by an expansion of what activities were deemed by the United Nations to constitute a threat to international peace and security and, thereby, increasing the Secretary-General’s role under Article 99.

¹ A/59/2005, para. 105.

² *See, e.g.*, Letter dated 28 June 2003 from the Secretary-General addressed to the President of the Security Council regarding the crisis in Liberia, in which the Secretary-General wrote: “In my letter of 18 June (S/2003/659), I brought to the attention of Members of the Security Council the ceasefire agreement signed by the Liberian parties in Accra on 17 June 2003 under the stewardship of ECOWAS. I saw your prompt endorsement of a United Nations role in support of the implementation of that agreement as reflecting the Council’s commitment to promote the peaceful resolution of the Liberian conflict. I believe that the time has now come for the Security Council to take action to give practical effect to that commitment, in the light of the most recent grave deterioration in the situation.” Annex to S/2003/678.

³ *See, e.g.*, A/55/985–S/2001/574, para. 51.

⁴ A/59/565.

⁵ Note by the Secretary-General transmitting Report of the High-level Panel on Threats, Challenges and Change, entitled “A more secure world: Our shared responsibility,” A/59/565, para. 3.

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I. GENERAL SURVEY

3. Article 99 of the United Nations Charter confers on the Secretary-General the power to bring to the attention of the Security Council any matter that in his or her own opinion may threaten the maintenance of international peace and security, adding a political role to the Secretary-General's functions under the United Nations Charter. In a lecture delivered in September 2001, the Secretary-General Kofi Annan acknowledged that Article 99 "makes [the Secretary-General] clearly a political rather than a purely administrative official" by requiring him or her to "act politically".⁶

4. During the period under review, Article 99 was not invoked by the Secretary-General. At the same lecture referred to above, the Secretary-General Kofi Annan remarked that he had "never yet found it necessary" to invoke Article 99.⁷

5. Yet, the Secretary-General has used his powers under Article 99 to initiate fact-finding missions, investigative commissions and the offer of good offices or mediation, all as mechanisms of conflict prevention and resolution.

6. It was noted in the preceding *Supplement No. 9* of the *Repertory* that, over the period of review concerned in that supplement, "a trend emerged towards enlarging the role of the Secretary-General in the sphere of the maintenance of international peace and security,"⁸ manifested mostly by a focus on conflict prevention.⁹ The period currently under review saw a similar expansion of the Secretary-General's role in conflict prevention, with the Security Council expressly urging the Secretary-General to strengthen his focus in this area at various different points and the Secretary-General himself undertaking to dedicate more attention to conflict prevention. In a report published on 7 June 2001, the Secretary-General pledged his intention to:

"[E]nhance the traditional preventive role of the Secretary-General in four ways: first, by increasing the use of United Nations interdisciplinary fact-finding and confidence-building missions to volatile regions; second, by developing regional prevention strategies with our regional partners and appropriate United Nations organs and agencies; third, by establishing an informal network of eminent persons for conflict prevention; and fourth, by improving the capacity and resource base for preventive action in the Secretariat."¹⁰

7. The Security Council also voiced its encouragement for the Secretary-General to expand his role in conflict prevention. On 20 July 2000, the President of the Security Council issued a statement that the Security Council:

"[R]ecalls the essential role of the Secretary-General in the prevention of armed conflicts in accordance with Article 99 of the Charter of the United Nations, and

⁶ SG/SM/7941.

⁷ *Ibid.*

⁸ *Repertory, Supplement No. 9*, vol. 6, under Article 99, para. 4.

⁹ *Ibid.* at para 5.

¹⁰ A/55/985-S/2001/574, para. 60.

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expresses its willingness to take appropriate preventive action in response to matters brought to its attention by . . . the Secretary-General and which it deems likely to endanger the maintenance of international peace and security . . . It invites the Secretary-General to make recommendations to the Council, taking into account the views of Member States, and in light of past experiences, on the most effective and appropriate early warning strategies, bearing in mind the need to link early warning with early response. The Council invites the Secretary-General to present to the Council reports on such disputes, including, as appropriate, early warning and proposals for preventive measures.”¹¹

8. In the same statement, the President of the Security Council highlighted the importance of regional co-operation in the maintenance of international peace and security and emphasized the Secretary-General’s role in working in partnership with regional bodies and fostering channels for mediation and engagement.

9. By resolution 1325 (2000), adopted on 31 October 2000,¹² the Security Council reaffirmed the important role of women in the prevention and resolution of conflicts and in peacebuilding and stressed the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution. To that end, the Security Council encouraged the Secretary-General to implement his strategic plan of action¹³ calling for “an increase in the participation of women at decision-making levels in conflict resolution and peace processes.”¹⁴

10. By resolution 1327 (2000), adopted on 13 November 2000,¹⁵ the Security Council stressed the important role of the Secretary-General in the prevention of armed conflicts, welcomed the Secretary-General’s decision to instruct the Executive Committee on Peace and Security to “formulate a plan on the strengthening of the United Nations capacity to develop peace-building strategies and to implement programmes in support of them,” and requested the Secretary-General to submit recommendations to the Security Council and the General Assembly on the basis of this plan.¹⁶ Again, in resolution 1366 (2001), adopted on 30 August 2001,¹⁷ the Security Council recognized “the essential role of the Secretary-General in the prevention of armed conflict and the importance of efforts to enhance his role in accordance with Article 99 of the Charter of the United Nations” and:

“[Expressed] its willingness to give prompt consideration to early warning or prevention cases brought to its attention by the Secretary-General and in this regard, [encouraged] the Secretary-General to convey to the Security Council his assessment of potential threats to international peace and security with due regard to relevant regional and subregional dimensions, as appropriate, in accordance with Article 99 of the Charter of the United Nations.”¹⁸

¹¹ S/PRST/2000/25.

¹² S/RES/1325(2000).

¹³ A/49/587.

¹⁴ S/RES/1325(2000), para. 2.

¹⁵ S/RES/1327(2000).

¹⁶ *Ibid.*, Sec. VI.

¹⁷ S/RES/1366 (2001).

¹⁸ S/RES/1366(2001), para. 5.

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11. By resolution 1379 (2001), adopted on 20 November 2001,¹⁹ the Security Council requested the Secretary-General to submit a report to the Council on the implementation of resolutions related to children and armed conflicts.²⁰ It further requested the Secretary-General to “attach to his report a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council’s agenda or that may be brought to the attention of the Security Council by the Secretary-General, in accordance with Article 99 of the Charter of the United Nations, which in his opinion may threaten the maintenance of international peace and security.”²¹

12. By resolution 1625 (2005), adopted on 14 September 2005,²² the Security Council affirmed its determination to strengthen United Nations conflict prevention capacities by, in particular, “assessing regularly the developments in regions at risk of armed conflict and encouraging the Secretary-General to provide information to the Council on such developments pursuant to Article 99 of the Charter” and “promoting the follow-up of preventive-diplomacy initiatives of the Secretary-General.”²³

13. Further, in the same resolution 1625 (2005), the Security Council requested the Secretary-General to:

- (a) provide to the Council regular reports and analysis of developments in regions of potential armed conflicts, particularly in Africa, and as appropriate a presentation of ongoing preventive-diplomacy initiatives;
- (b) assist countries at risk of armed conflict in performing strategic conflict risk assessments, in implementing the measures agreed by the concerned countries, in enhancing national dispute management capacities, and in addressing the root causes of armed conflict;
- (c) promote coordination with regional conflict management machinery in Africa which would provide the Security Council with additional reliable and timely information to facilitate rapid decision-making.²⁴

14. In a statement made to the Security Council on 8 January 2007, the President of the Security Council stated that he “encourages the Secretary-General, as already requested in Security Council resolution 1625 (2005), to provide the Council with more regular, analytical reporting on regions of potential armed conflict and stresses the importance of establishing comprehensive strategies on conflict prevention in order to avoid the high human and material costs of armed conflict.”²⁵

15. During the period under review, the Secretary-General continued the use of good offices as a mechanism for conflict prevention. For example, between January 2002 and February 2003, under the auspices of the Secretary-General direct talks were held between the parties in Cyprus. As a result of a report submitted by the Secretary-

¹⁹ S/RES/1379(2001).

²⁰ Security Council resolutions 1379(2001), 1261(1999), and 1314 (2000).

²¹ *Ibid.*, paras. 15-16.

²² S/RES/1625(2005).

²³ *Ibid.*, paras. 2(a)-2(b).

²⁴ *Ibid.*, para. 3(a).

²⁵ S/PRST/2007/19.

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General in November 2002 and finalized in February 2003 regarding the basis for a comprehensive settlement of the Cyprus problem, the Security Council unanimously adopted resolution 1475 (2003)²⁶ and stated therein that it:

*“[g]ives its full support to the Secretary-General’s carefully balanced plan of 26 February 2003 as a unique basis for further negotiations, and calls on all concerned to negotiate within the framework of the Secretary-General’s Good Offices, using the plan to reach a comprehensive settlement as set forth in paragraphs 144-151 of the Secretary-General’s report.”*²⁷

16. Good offices of the Secretary-General were made available, *inter alia*, to Myanmar to facilitate national reconciliation and democratization,²⁸ to Cameroon and Nigeria as they negotiated a resolution of their border dispute,²⁹ to Colombia,³⁰ and in Darfur.³¹

17. During the period under review, the use of good offices, early warning and mediation were also encouraged by the Security Council as appropriate tools in conflict prevention and resolution. For instance, in a statement made at the Security Council’s meeting held on 28 August 2007,³² the President of the Security Council welcomed the efforts that have been made to strengthen the risk assessment and conflict prevention capacities of the United Nations, and encouraged the Secretary-General to continue those efforts in order to “improve the United Nations’ early warning, mediation support and other preventive activities in Africa and around the world.”³³ In this connection, the Security Council also stressed “the crucial role of the Secretary-General’s Special Advisers on the Prevention of Genocide and Mass Atrocities and on matters relating to the prevention and resolution of conflict as well as, where appropriate, the contribution of United Nations bodies such as the Peacebuilding Commission and the Human Rights Council.”³⁴

18. Similarly, in its resolution 1809 (2008),³⁵ adopted on 16 April 2008, the Security Council “not[ed] with interest the Secretary-General’s proposal of conducting joint reviews by the United Nations and regional organizations of the state of peace and security and of mediation endeavours, particularly in Africa where joint mediation is being undertaken, ... recogniz[ed] the important role of the good offices of the Secretary-General in Africa, and encourage[d] the Secretary-General to continue to use mediation as often as possible to help resolve conflicts peacefully, working in coordination and closely with the African Union and other sub-regional organizations in that regard, as appropriate.”³⁶

²⁶ S/RES/1475(2003).

²⁷ *Ibid.*, para. 4.

²⁸ A/57/1 of 28 August 2002, para. 27.

²⁹ A/58/1 of 28 August 2003, para. 29.

³⁰ A/58/1 of 28 August 2003, para. 31.

³¹ A/62/1 of 31 August 2007, para. 46.

³² S/PRST/2007/31.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ S/RES/1809 (2008).

³⁶ *Ibid.*, para. 15.

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19. During the period under review the Secretary-General also initiated fact-finding missions. For example, following the coup in December 2006 an inter-agency fact-finding mission was dispatched to Fiji.³⁷ In order to assess allegations of grave human rights violations committed in the post-election period and to gather first-hand information from diverse sources, a three-week fact-finding mission was deployed to Kenya in February 2008.³⁸

20. Finally, in 2009 the Secretary-General published his report on “Implementing the responsibility to protect,”³⁹ which was followed by the adoption of the General Assembly’s first resolution on the subject.⁴⁰

II. ANALYTICAL SUMMARY OF PRACTICE

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

21. The Secretary-General did not invoke Article 99 to request a formal 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

22. Pursuant to General Assembly resolutions,⁴¹ during the period under review 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 issues surrounding the maintenance of international peace and security at each of the annual sessions held during the period under review.

2. Statements by the Secretary-General

23. During the period under review, Secretaries-General did not implicitly or expressly refer to Article 99 in the annual reports on the work of the Organization.⁴² However, the reports stressed the role of the Secretary-General in conflict prevention and peacemaking, as well as in peacekeeping and peace-building activities. For example, in his 2000 annual report, the Secretary-General stressed the role of conflict prevention and, consequently, importance of the continuous strengthening of the UN’s early

³⁷ A/62/1 of 31 August 2007, para. 45.

³⁸ A/63/1 of 12 August 2008, para. 67.

³⁹ A/63/677.

⁴⁰ A/RES/63/308.

⁴¹ See General Assembly resolutions A/RES/55/156, A/RES/56/86, A/RES/57/24, A/RES/28/248, A/RES/59/44, A/RES/60/23, A/RES/61/38, A/RES/62/69, A/RES/63/127, and A/RES/64/115.

⁴² A/55/1 of 30 August 2000; A/56/1 of 6 September 2001; A/56/1/Add.1 of 14 September 2001; A/57/1 of 28 August 2002; A/58/1 of 28 August 2003; A/59/1 of 20 August 2004; A/60/1 of 5 August 2005; A/61/1 of 16 August 2006; A/62/1 of 31 August 2007; A/63/1 of 12 August 2008; and A/64/1 of 4 August 2009.

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warning and conflict prevention capacities, and stated that his primary objective was to “make early warning and conflict prevention a day-to-day concern for United Nations staff, both at Headquarters and in the field.”⁴³

24. In his 2001 annual report, the Secretary-General again stressed the importance of conflict prevention and expressed his intent to:

“Continue dispatching United Nations interdisciplinary fact-finding and confidence-building missions to volatile regions; to start submitting periodic regional or subregional reports to the Security Council on disputes that may potentially threaten international peace and security; to develop regional prevention strategies with regional partners, and organs and agencies of the United Nations, as appropriate; to establish an informal network of eminent persons for conflict prevention; and to improve the capacity and resource base for preventive action in the Secretariat.”⁴⁴

25. In his 2008 annual report, the Secretary-General again noted the need for a more effective use of tools such as preventive diplomacy, mediation and Secretary-General’s “good offices” in the service of Member States and UN’s partners in regional organizations.⁴⁵ He further state that:

“With voluntary support, we have already taken important strides in implementing the 2005 decision of Member States to strengthen my good offices capacity, including in the mediation of disputes. We now have a fully operational Mediation Support Unit and a rapidly deployable Standby Team of Mediation Experts which are at the service of United Nations envoys, Member States and regional organizations. We have increasingly solid partnerships with regional organizations and can call upon an array of experts to assist in peacefully resolving and preventing disputes.”⁴⁶

26. Apart from the annual reports on the work of Organization, successive Secretaries-General referred in statements and speeches to threats against international peace and security. In his address to the General Assembly in September 2003, the Secretary-General expounded the view that new threats to international peace and security included “new forms of terrorism, and the proliferation of weapons of mass destruction.”⁴⁷ During this address, the Secretary-General announced that he would be establishing a High-level Panel with focus “primarily on threats to peace and security,” but also examining “other global challenges, in so far as these may influence or connect with those threats.”⁴⁸

27. The Panel was asked to analyze and assess future threats to peace and security and to evaluate existing approaches, instruments and mechanisms, including the organs of the UN system. More specifically, the Panel was assigned four tasks:

⁴³ A/55/1 of 30 August 2000, paras. 40-41.

⁴⁴ A/56/1 of 6 September 2001, para. 21.

⁴⁵ A/63/1 of 12 August 2008, para. 34.

⁴⁶ *Ibid.*, para. 35.

⁴⁷ *The Secretary-General’s Address to the General Assembly*, New York, 23 September 2003.

⁴⁸ *Ibid.*

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- First, to examine the current challenges to peace and security;
- Second, to consider the contribution which collective action can make in addressing these challenges;
- Third, to review the functioning of the major organs of the United Nations and the relationship between them; and
- Fourth, to recommend ways of strengthening the United Nations, through reform of its institutions and processes.⁴⁹

28. The final report of the High-level Panel, entitled “A more secure world: Our shared responsibility,”⁵⁰ sets out a number of recommendations to address problems and issues in the six main areas of concern, i.e. economic and social threats, including poverty, infectious diseases and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime.⁵¹

29. One of the most important recommendations of the Panel was the establishment of a Peacebuilding Commission as a United Nations body,⁵² with its core functions being:

“To identify countries which are under stress and risk sliding towards State collapse; to organize, in partnership with the national Government, proactive assistance in preventing that process from developing further; to assist in the planning for transitions between conflict and post-conflict peacebuilding; and in particular to marshal and sustain the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary.”⁵³

30. By General Assembly resolution 60/180 of 20 December 2005⁵⁴ and Security Council resolution 1645 (2005) of 20 December 2005⁵⁵, the General Assembly and the Security Council established the Peacebuilding Commission as a subsidiary body of both the General Assembly and Security Council respectively, consisting of representatives of the General Assembly, Security Council, ECOSOC, the top providers of assessed and voluntary contributions to the United Nations and the top providers of military personnel and civilian police in order to advise on proposed strategies for post-conflict peacebuilding and recovery. Further, the Peacebuilding Support Office was created to assist and support the Peacebuilding Commission with strategic advice and policy guidance, administer the Peacebuilding Fund and to serve the Secretary-General in coordinating United Nations agencies in their Peacebuilding efforts.

31. In his 2005 report “In larger freedom: towards development, security and human rights for all” the Secretary-General stated that “the United Nations has almost certainly prevented many wars by using the Secretary-General’s “good offices” to help resolve

⁴⁹ *Ibid.*

⁵⁰ A/59/565.

⁵¹ A/59/565, p. 12.

⁵² A/59/565, paras. 261-269.

⁵³ *Ibid.* at para. 264.

⁵⁴ A/RES/60/180.

⁵⁵ S/RES/1645(2005).

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conflicts peacefully”.⁵⁶ He reaffirmed their important role in mediation and resolving international conflicts and urged Member States to allocate more resources to the “good offices” function of the Secretary-General.⁵⁷

32. In his 2006 report on the prevention of armed conflicts,⁵⁸ the Secretary-General recommended the comprehensive and global approach to conflict prevention. This approach, as reiterated by the President of the Security Council in his statement S/PRST/2007/31, includes “structural prevention, to address the root causes of conflict; operational prevention, to ensure the effective operation of early warning mechanism, mediation, humanitarian access and response, the protection of civilians and targeted sanctions in the face of immediate crises; and systematic prevention, to prevent existing conflicts from spilling over into other States.”⁵⁹

33. In his 2008 Report on the implementation of Security Council resolution 1625 (2005) on conflict prevention, particularly in Africa,⁶⁰ the Secretary-General again stressed the role of his good offices in conflict prevention by stating that:

“Recognizing the need to improve the on-the-ground results of preventive action by the United Nations, I am increasingly utilizing my good offices and mediation role as well as other political means at my disposal. At the same time, I am working to systematize support for my preventive efforts and to create and strengthen a system of interlinking preventive mechanisms. These include the quick dispatch of my special envoys and mediation experts, the deployment of fact-finding missions to gather information on the ground and an analysis of information and trends, with the provision of options for action, as well as the establishment of short- and long-term special political missions to directly facilitate the on-site efforts of the United Nations and its partners.”⁶¹

34. Furthermore, with explicit reference to Article 99 of the Charter as a basis for his role in conflict prevention, the Secretary-General stated that his good offices constitute a “primary tool” for the prevention of conflict, allowing the Secretary-General to exercise preventive diplomacy through “persuasion, confidence-building and mediation in order to find solutions and alternatives to conflict.”⁶² As noted by the Secretary-General, recognizing the role of the “quiet diplomacy”, the United Nations is “actively improving the effectiveness of [the Secretary-General’s] good offices, expanding its mediation support capacity and building a pool of skilled, well-respected and experienced individuals who can serve, as needed, to provide technical and political advice to special representatives, envoys or advisers and to United Nations agencies, offices, funds and programmes.”⁶³

⁵⁶ A/59/2005, para. 108.

⁵⁷ *Ibid.*

⁵⁸ A/60/891.

⁵⁹ S/PRST/2007/31.

⁶⁰ S/2008/18.

⁶¹ *Ibid.*, para. 21.

⁶² *Ibid.*, para. 22.

⁶³ *Ibid.*

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35. Finally, in the same 2008 report, the Secretary-General referred to the use of good offices and special envoys in Africa and referred to the efforts of the Secretary-General's Special Envoy, Joaquim Alvaro Chissano which,

“have helped defuse the deeply unstable situation caused by the continued activities of the Lord's Resistance Army (LRA), and in 2006 he began a process to facilitate peace in the area. Since then, peace talks between the Government of Uganda and the LRA have gained momentum, notably with the signing of the protocol on the root causes of the conflict and its comprehensive solutions in May 2007 and of the agreement on the principles of accountability and reconciliation in June 2007. As a result, the security situation has improved sufficiently to allow for an increase in humanitarian access to northern Uganda, and internally displaced persons have continued to return to their homes. In future, a peace agreement that addresses the issues of poverty and of the social and political marginalization of the people of northern Uganda will be crucial to fully resolving the conflict.”⁶⁴

⁶⁴ *Id.*, para. 23.