

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 specific references to Article 99 on three occasions.
2. In the General Survey the various functions performed by the Secretary-General under Article 99¹ are summarized briefly. The Analytical Summary of Practice covers three cases of different types arising under this Article.

¹ For discussion of the background of a legal basis for of the exercise by the Secretary-General of diplomatic and political functions, see this *Supplement* under Article 98. See also a statement by the Secretary-General in his annual report (G A (XVI), Suppl. No. 1A, p. 5).

I. GENERAL SURVEY

3. Article 99 was invoked by the Secretary-General in the Security Council in two instances between 1 September 1959 and 31 August 1966. One was the situation in the Republic of the Congo in 1960 and the other the complaint by Tunisia in 1961.

4. In the first case, on 13 July 1960, the Secretary-General requested an urgent meeting of the Security Council under Article 99 of the Charter in connexion with the situation which had arisen in the newly independent Republic of the Congo. In submitting the question to the Council the Secretary-General referred to the Congo situation as one which, in his opinion, "... may threaten the maintenance of international peace and security."²

5. In the second case, the Secretary-General made two references³ to his obligations under Article 99 during consideration by the Security Council of the complaint by Tunisia against France. On 22 July 1961 the Secretary-General made an appeal to the Council under Article 99 to take immediate action on the question pending its further consideration and conclusion of the debate. On 28 July 1961 the Secretary-

General referred again to Article 99 to explain his acceptance of an invitation to visit the President of Tunisia for an exchange of views regarding certain developments pertaining to this question.

6. On one occasion, on 7 September 1959, the Secretary-General referred to Article 99 in order to indicate that his request for a meeting of the Security Council to consider his report on the question of Laos was not based on the explicit rights granted to him under Article 99.

6a. It may be also noted that, in connexion with the situation in Yemen, the Secretary-General, without referring to Article 99, reported to the Security Council that he had been consulting the States concerned with a view to making assistance available to the parties towards "ensuring against any developments in that situation which might threaten the peace of the area".⁴ The Security Council in its resolution 179 (1963) noted with satisfaction the initiative of the Secretary-General and quoted the phrase cited above.⁵

² S C, 15th yr., Suppl. for July-Sept., p. 11, S/4381.

³ See paras. 15 and 17 below.

⁴ S C, 18th yr., Suppl. for April-June, p. 33, S/5298.

⁵ For further discussion of the steps taken by the Secretary-General in this case, see this *Supplement* under Article 98.

II. ANALYTICAL SUMMARY OF PRACTICE

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

8. By a telegram⁶ dated 12 July 1960, addressed to the Secretary-General, the President and the Prime Minister of the Republic of the Congo requested the urgent dispatch by the United Nations of military assistance. The telegram stated that the Congolese request was justified by the dispatch to the Congo of metropolitan Belgian troops in violation of the treaty of friendship signed between Belgium and the Republic of the Congo on 29 June 1960, under the terms of which Belgian troops might only intervene at the express request of the Congolese Government. No such request had been made, and therefore the President and the Prime Minister regarded the unsolicited Belgian action as an act of aggression against their country and a threat to international peace. In a second telegram⁷ dated 13 July 1960, it was made clear that the purpose of the request for military aid was not to restore the internal situation in the Congo but rather to protect the national territory against acts of aggression committed by Belgian metropolitan troops.

9. By a letter⁸ dated 13 July 1960 requesting an urgent meeting of the Security Council, the Secretary-General informed the President that he wished to bring to the attention of the Council a matter which, in his opinion, "may threaten the maintenance of international peace and security". He suggested that the meeting be called in the evening of that very day to hear his report on a demand for United Nations action in relation to the Republic of the Congo.

10. In pursuance of the request a meeting⁹ 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 13 July 1960 from the Secretary-General addressed to the President of the Security Council (S/4381)."

After the adoption of the agenda, the Secretary-General stated:¹⁰

"The reason for my request, under Article 99 of the Charter, for an immediate meeting of the Security Council is the situation which has arisen in the newly independent Republic of the Congo."

11. At subsequent meetings of the Council, during consideration of the Congo question, the Secretary-General again mentioned to his initiative under Article 99. Referring to the first two resolutions adopted by the Security Council on the situation in the Congo, the Secretary-General stated: "The resolutions of the Security Council of 14 July [S/4387] and 22 July

[S/4405] were not explicitly adopted under Chapter VII, but they were passed on the basis of an initiative under Article 99."¹¹ In another meeting the Secretary-General said that the telegrams of the President and the Prime Minister of the Republic of the Congo, were what provoked him to action under that Article.¹²

12. When the General Assembly took up the question of the situation in the Republic of the Congo at the first part of its fifteenth session, there were some references to the responsibilities of the Secretary-General under Article 99. During a discussion of the developments which occurred after the dismissal of the Prime Minister by the President of the Republic of the Congo on 5 September 1960, one representative referred to the question of the responsibility of the Secretary-General in implementing the United Nations resolutions and stated that the Secretary-General had not complied with Article 99 as he had not initiated any meetings of the Security Council, not even when developments had become more and more dangerous.¹³ In replying to this statement, the Secretary-General said that his duty under Article 99, in the prevailing situation, had been fulfilled when, "by reports and documentation", he had "fully provided the Members with the facts, giving them a chance to judge for themselves".¹⁴

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

1. APPEAL TO THE SECURITY COUNCIL FOR IMMEDIATE ACTION ON THE COMPLAINT BY TUNISIA AGAINST FRANCE

13. During the course of the meetings of the Security Council on the complaint by Tunisia against France, an urgent appeal to the Council under Article 99 was made by the Secretary-General.¹⁵

14. By telegram¹⁶ dated 20 July 1961 addressed to the President of the Security Council, the Secretary of State for Foreign Affairs of Tunisia requested a meeting of the Security Council as a matter of extreme urgency for the purpose of considering a complaint against France "for acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security". The telegram was referring to actions by the French navy and air force

¹¹ S C, 15th yr., 884th mtg., para. 26.

¹² S C, 15th yr., 920th mtg., para. 76.

¹³ G A (XV/1), Plen., 950th mtg., para. 143.

¹⁴ G A (XV/1), Plen., 953rd mtg., para. 171. For another exchange of views on Article 99 in the Congo case, see *ibid.*, 968th mtg.; Ukrainian SSR, para. 159; 977th mtg.: Secretary-General, paras. 26 and 27; 978th mtg.: Ukrainian SSR, paras. 12-20 and 22-24.

¹⁵ See para. 15 below.

¹⁶ S C, 16th yr., Suppl. for July-Sept., p. 6, S/4861.

⁶ S C, 15th yr., Suppl. for July-Sept., p. 11, S/4382.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ S C, 15th yr., 873rd mtg.

¹⁰ *Ibid.*, para. 18.

against the town and the *Gouvernorat* of Bizerta which the Secretary of State described as a flagrant violation of the air space and of the territorial integrity of Tunisia. The request for a meeting of the Security Council was reiterated in a letter¹⁷ of the same date from the representative of Tunisia to the President of the Security Council.

15. A meeting was called by the President of the Council to consider the matter and the following item was included¹⁸ in the agenda: "Telegram dated 20 July 1961 addressed to the President of the Security Council by the Secretary of State for Foreign Affairs of the Republic of Tunisia (S/4861). Letter dated 20 July 1961 from the Permanent Representative of Tunisia addressed to the President of the Security Council (S/4862)." At the 962nd meeting of the Council¹⁹ the President, after opening the meeting, announced that the Secretary-General would make a statement immediately. The Secretary-General then made the following statement:

"News reaching us from Tunisia indicates that the serious and threatening development which the Council took up for consideration yesterday continues, with risks of irreparable damage to international peace and security. In view of the obligations of the Secretary-General under Article 99 of the Charter, I consider it my duty in the circumstances to make an urgent appeal to this Council. Whatever the problems which may arise in an effort to get a complete and definitive resolution, there is need for immediate action which cannot wait for the more time-consuming consideration necessary in order to reach an agreed conclusion to this debate.

"I therefore take the liberty to appeal to the Council to consider, without delay, taking an intermediary decision pending the further consideration of the item and conclusion of the debate. Such a decision should not prejudice the final outcome of the deliberations of the Council, as it should, in my view, only request of the two sides concerned an immediate cessation, through a cease-fire, of all hostile action. Naturally, this demand should be combined with a demand for an immediate return to the *status quo ante*, as otherwise the cease-fire would be likely to prove too unstable to satisfy the urgent needs of the moment. I repeat that this is an appeal which is related exclusively to the immediate dangers and does not pretend to indicate the direction in which a solution to the wider conflict should be sought."²⁰

2. STATEMENT BY THE SECRETARY-GENERAL IN RELATION TO HIS VISIT TO TUNISIA

16. At the 964th meeting,²¹ in connexion with the complaint by Tunisia, one representative asked the President of the Security Council to call upon the Secretary-General to make a statement in relation to his visit to Tunisia.

17. In the statement which he made in accordance with this request, the Secretary-General pointed out that the scope and character of his visit had been defined (1) in the invitation of the President of Tunisia²² as "a direct and personal exchange of views" regarding the developments following the adoption of the interim resolution of the Security Council of 22 July 1961²³ in which the Council called for a cease-fire and a return of all armed forces to their original position and decided to continue the debate and (2) in his own reply²⁴ in which he noted that he considered the question of substance as falling outside his personal competence since it was pending before the Council. The Secretary-General added:

"Quite apart from the fact that it is naturally the duty of the Secretary-General to put himself at the disposal of the Government of a Member State, if the Government considers a personal contact necessary, my acceptance of the invitation falls within the framework of the rights and obligations of the Secretary-General, as Article 99 of the Charter authorizes him to draw to the attention of the Security Council what, in his view, may represent a threat to international peace and security, and as it is obvious that the duties following from this Article cannot be fulfilled unless the Secretary-General, in case of need, is in a position to form a personal opinion about the relevant facts of the situation which may represent such a threat."²⁵

18. The Secretary-General further explained that implementation of the Security Council resolution of 22 July 1961 remained incomplete, as the cease-fire had not led to an immediate cessation of all actions which should be ruled out, nor had the demand by the Council for a return of the armed forces to their original positions been met. On the basis of personal observation, the Secretary-General confirmed the presence of French military units in the city of Bizerta, and at a fairly considerable distance from Bizerta on the main road to Tunis, and that the fact that these troops, at the time of his visit exercised functions for the maintenance of law and order in the city.²⁶

C. Request by the Secretary-General for a meeting of the Security Council outside the framework of Article 99

19. In a letter²⁷ dated 5 September 1959 addressed to the Secretary-General the Minister for Foreign Affairs of the Royal Government of Laos requested the assistance of the United Nations, in particular, the dispatch of an emergency force at a very early date to that country to halt an aggression by elements from the Democratic Republic of Viet-Nam. The Secretary-General was also asked to take the appropriate proce-

¹⁷ *Ibid.*, p. 7, S/4862.

¹⁸ S C, 16th yr., 961st mtg., para. 2.

¹⁹ S C, 16th yr., 962nd mtg., para. 1.

²⁰ *Ibid.*, paras. 2 and 3.

²¹ S C, 16th yr., 964th mtg., paras. 82 and 83.

²² S C, 16th yr., Suppl. for July-Sept., p. 26, S/4885, I.

²³ S C, resolution 164 (1961).

²⁴ *Ibid.*, S/4885, II.

²⁵ S C, 16th yr., 964th mtg., para. 86.

²⁶ S C, 16th yr., 964th mtg., paras. 89 and 91.

²⁷ S C, 14th yr., Suppl. for July-Sept., p. 7, S/4212.

dural action on the request. In response to this letter, the Secretary-General, on 5 September 1959, requested²⁸ the President of the Security Council to convene an urgent meeting of the Council to consider an item entitled "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted on 4 September 1969 by a note from the Permanent Mission of Laos to the United Nations".

20. During consideration by the Council of the adoption of the agenda, the Secretary-General observed²⁹ that his request to convene the meeting was "not based on the explicit rights granted to the Secretary-General under Article 99 of the Charter. If it had been so based, the Council, under rule 3 of the provisional rules of procedure, would not have been free to refuse the Secretary-General to address it — as it is now free to do — and it would have meant the inscription by the Secretary-General of a substantive issue on the agenda". This, in turn, he pointed out would have involved a judgement as to facts for which, at that time, the Secretary-General did not consider that he had a sufficient basis.

21. The Secretary-General also said that he was basing his action on a practice which had developed over the years in the Security Council. According to that practice, the Secretary-General, when he requested it, was granted the floor to make such statements on subjects within the range of the responsibility of the Council as he considered called for under the terms of his own responsibilities; in so doing, he "does not

introduce formally on the agenda of the Council anything beyond his own wish to report to the Council".³⁰

22. After the adoption of the agenda, the Secretary-General made a further reference to the nature of his request for the meeting. After briefing the Council on those aspects of the question which had been theretofore within his purview, the Secretary-General stated:

"The specific request for the urgent dispatch of an emergency force falls within a field in which, in the first place, the Security Council carries the responsibility. Therefore, when the Government of Laos in its recent message finally asks me to apply to their request the appropriate procedure, I have, in order to meet their demand, to report to the Security Council on the request received for such consideration and such initiatives as the Council may find called for. I have found that this could not be done simply by circulating the letter to the Secretary-General as a Security Council document, but that I should, to the information thus given to the members of the Council, add orally the information regarding my previous contacts with the question, which I have now put before you."³¹

23. The procedural debate³² which centred around the method employed in convening the meeting, not being concerned with the application of Article 99, is dealt with elsewhere in this *Supplement*.³³

²⁸ *Ibid.*, p. 8, S/4213.

²⁹ S C, 14th yr., 847th mtg., para. 12.

³⁰ *Ibid.*, para. 11.

³¹ *Ibid.*, para. 54.

³² *Ibid.*, paras. 14-30.

³³ See this *Supplement*, under Article 30.

