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## 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. The general survey will present the circumstances surrounding the invocation of Article 99 by Secretary-General Javier Pérez de Cuéllar on the crisis in Lebanon in 1989, the role of the Secretary-General foreseen in the *Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security*<sup>1</sup> approved by the General Assembly in 1991 and in the *Handbook on the Peaceful Settlement of Disputes between States*,<sup>2</sup> also approved by the General Assembly in 1991, and the increasing focus on preventive diplomacy under Secretary-General Boutros Boutros-Ghali.

2. The analytical summary of practice covers the invocation of Article 99 by Secretary-General Pérez de Cuéllar in respect of the crisis in Lebanon; the process resulting in the approval of the Declaration and the *Handbook*; and references made by the Secretaries-General in statements and in their annual reports to the General Assembly on the work of the Organization in relation to the role of the Secretary-General in the maintenance of international peace and security and the scope of the rights conferred upon him under Article 99.

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<sup>1</sup> G A resolution 46/59.

<sup>2</sup> United Nations publication, Sales No. E.92.V.71.

## I. General survey

3. Article 99 of the Charter of the United Nations empowers the Secretary-General to bring to the attention of the Security Council any matter which in his or her opinion may threaten the maintenance of international peace and security. Article 99 established definitively that the Secretary-General is not only the chief administrative officer of the Organization,<sup>3</sup> but that he is also entitled to take the political initiative in the maintenance of international peace and security. In practice, Article 99 has been invoked in respect of matters which in the opinion of the Secretary-General constituted a direct or imminent threat to international peace and security. That having been said, successive Secretaries-General have rarely invoked Article 99 expressly or by implication.<sup>4</sup>

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<sup>3</sup> Pursuant to Article 97 of the Charter of the United Nations.

<sup>4</sup> These rare occasions include the Korean operation in 1950, the Congo crisis in 1960, the Indo-Pakistani

4. During the period under review, Secretary-General Pérez de Cuéllar invoked Article 99 in relation to the crisis in Lebanon in 1989. In a letter dated 15 August 1989 addressed to the President of the Security Council, the Secretary-General called for an urgent Security Council meeting in view of the serious threat to international peace and security “in order to contribute to a peaceful solution of the [Lebanese crisis]”.<sup>5</sup> The Security Council met the same day, expressed its deep concern at the further deterioration of the situation in Lebanon and issued a statement appealing to all the parties to observe a total and

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situation in 1971 and the hostage-taking at the United States embassy in Iran in 1979. See *Repertory*, vol. V, paras. 6-14; *Repertory, Supplement No. 3*, vol. IV, paras. 8-12; *Repertory, Supplement No. 5*, vol. V, paras. 16-22; and *Repertory, Supplement No. 6*, vol. VI, paras. 8-9, respectively.

<sup>5</sup> See [S/20789](#).

immediate ceasefire and to support the efforts of the Tripartite Committee of the Arab Heads of State.<sup>6</sup>

5. The implicit powers of the Secretary-General in the spirit of Article 99 have been more liberally construed to include the right to initiate fact-finding missions, investigative commissions and the offer of good offices or mediation. During the period under review, the Secretary-General was encouraged to use the rights conferred upon him under Article 99. The most significant development in this regard was the approval by the General Assembly in 1991 of the *Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security*,<sup>7</sup> which was the result of intensive discussions by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

6. In paragraph 28 of the Declaration, the General Assembly explicitly encouraged the Secretary-General to use the rights accorded to him under Article 99 when the monitoring of the state of international peace and security provided early warning of disputes or situations which might threaten international peace and security. The Assembly also encouraged the Secretary-General, to this end, in paragraph 29, to keep under review the improvement of those capabilities. In paragraph 7, the Assembly stated that fact-finding missions could be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities for the maintenance of international peace and security in accordance with the Charter. Paragraph 12 provided that the Secretary-General should pay special attention to using United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations. In paragraph 13, the Assembly encouraged the Secretary-General, on his own initiative or at the request of the States concerned, to undertake a fact-finding mission when a dispute or a situation existed; and, in paragraph 14, to prepare and update lists of experts in various fields who would be available for fact-finding missions and to maintain and develop capabilities for mounting emergency fact-finding missions.

7. The *Handbook on the Peaceful Settlement of Disputes between States*, approved by the General Assembly by its resolution 46/59 of 9 December 1991,

<sup>6</sup> See [S/PV.2875](#).

<sup>7</sup> G A resolution 46/59.

expressly referred to the competence of the Secretary-General under Article 99 in paragraphs 373 and 374. Paragraph 373 referred to the competence of the Secretary-General under Article 99 being used effectively for the purposes of the peaceful settlement of disputes and paragraph 374 provided illustrations of such competence.

8. The Secretaries-General emphasized the importance of fact-finding capabilities and information analysis as tools that enabled them to discharge their responsibilities under Article 99 during the period under review.

9. Secretary-General Javier Pérez de Cuéllar implicitly and expressly referred to Article 99 when considering the prevention of armed conflicts in his annual reports on the work of the Organization.<sup>8</sup>

10. Secretary-General Boutros Boutros-Ghali's report, entitled "An Agenda for Peace", explicitly referred to Article 99 in the section on fact-finding.<sup>9</sup> The General Assembly welcomed the Secretary-General's report in resolution 47/120 A of 18 December 1992 and encouraged the Secretary-General

"to continue, in accordance with Article 99 of the Charter of the United Nations, to bring to the attention of the Security Council, at his discretion, any matter which in his opinion may threaten the maintenance of international peace and security, together with his recommendations thereon;"<sup>10</sup>

11. The Security Council held a number of meetings to examine specific proposals made in the report entitled "An Agenda for Peace" and the President of the Council issued a number of statements and letters as part of that process.<sup>11</sup> The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization also considered the recommendations contained in the report.<sup>12</sup> Secretary-General Boutros Boutros-Ghali's annual reports on the work of the Organization did not refer to Article 99 explicitly, but contained a section on preventive diplomacy and conflict resolution.<sup>13</sup>

<sup>8</sup> [A/44/1](#), p. 5; [A/45/1](#), p. 7; [A/46/1](#), p. 3.

<sup>9</sup> [A/47/277-S/24111](#), p. 14.

<sup>10</sup> Part II, para. 4.

<sup>11</sup> See [S/24728](#).

<sup>12</sup> [A/49/1](#), para. 397.

<sup>13</sup> See [A/48/1](#), paras. 276-291; [A/49/1](#), paras. 397-416.

## II. Analytical summary of practice

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

12. While not expressly referring to Article 99, Secretary-General Javier Pérez de Cuéllar implicitly invoked his powers under the Article in his letter dated 15 August 1989 to the President of the Security Council requesting an urgent meeting of the Security Council to be convened after an escalation in the military confrontation in and around Beirut, Lebanon. The Secretary-General stated in his letter: “In my opinion, 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 order to contribute to a peaceful solution of the problem”.<sup>14</sup> The Secretary-General stated in his letter that he believed an effective ceasefire was imperative to end the bloodshed and to enable the Tripartite Committee of the Arab Heads of State to proceed unimpeded with its mandate.<sup>15</sup>

13. The Security Council met the same day and adopted a statement expressing its deep concern at the further deterioration of the situation and appealed to all the parties to observe a total and immediate ceasefire. The Council also expressed full support for the efforts of the Tripartite Committee of the Arab Heads of State “with a view to putting an end to the trials of the Lebanese people through the establishment of an effective and definitive ceasefire and the putting into effect of a plan for the settlement of the Lebanese crisis in all its aspects by guaranteeing the full sovereignty, independence, territorial integrity and national unity of Lebanon” and appealed to all States and to all parties likewise to support these efforts.<sup>16</sup> The statement reflected the recommendations of the Secretary-General in his letter to the Council.<sup>17</sup>

<sup>14</sup> S/20789.

<sup>15</sup> Ibid.

<sup>16</sup> S/PV.2875.

<sup>17</sup> S/20789.

### 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

14. Pursuant to successive General Assembly resolutions,<sup>18</sup> the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (‘the Special Committee’) continued to assign priority to the consideration of the question of the maintenance of international peace and security at each of the annual sessions held during the period under review. In doing so, the Special Committee concentrated on proposals concerning fact-finding activities by the United Nations. Working papers on the subject introduced by Member States were considered by the Special Committee at its sessions in 1989 and 1990. Those papers, inter alia, addressed the scope of the rights and obligations of the Secretary-General under Article 99.<sup>19</sup> The main proposals regarding the Secretary-General’s use of Article 99 that were put forward by delegations were summarized in the relevant reports of the Special Committee.<sup>20</sup>

15. At its thirty-eighth meeting, on 15 November 1991, the Special Committee adopted without a vote a draft resolution entitled “Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security”<sup>21</sup> and submitted it to the General Assembly for approval and adoption.<sup>22</sup>

16. By its resolution 46/59 of 9 December 1991, the General Assembly approved the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, the text of which was annexed to the resolution. The General Assembly requested the Secretary-General to

<sup>18</sup> G A resolutions 44/37, 45/44, 46/58, 47/38, 48/36 and 49/58.

<sup>19</sup> A/AC.182/L.60, A/AC.182/L.62, A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1.

<sup>20</sup> See A/44/33, paras. 20-83; A/45/33, paras. 21-69; and A/46/33, paras. 17-21.

<sup>21</sup> A/AC.6/46/L.9.

<sup>22</sup> See A/46/33, paras. 17-21 and A/46/690, pp. 6-11.

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<sup>23</sup> and urged that every effort be made to ensure that it became generally known and fully implemented.<sup>24</sup>

17. Paragraphs 12 to 14 and 28 and 29 of the Declaration are highly relevant to the scope of the rights and obligations of the Secretary-General under Article 99. Those paragraphs read as follows:

“12. The Secretary-General should pay special attention to using the United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations.

“13. The Secretary-General, on his own initiative or at the request of the States concerned, should consider undertaking a fact-finding mission when a dispute or a situation exists.

“14. The Secretary-General should prepare and update lists of experts in various fields who would be available for fact-finding missions. He should also maintain and develop, within existing resources, capabilities for mounting emergency fact-finding missions.

“... ”

“28. The Secretary-General should monitor the state of international peace and security regularly and systematically in order to provide early warning of disputes or situations which might threaten international peace and security. The Secretary-General may bring relevant information to the attention of the Security Council and, where appropriate, of the General Assembly.

“29. To this end, the Secretary-General should make full use of the information-gathering capabilities of the Secretariat and keep under review the improvement of these capabilities.”

18. During the period under review, the General Assembly, by its resolution 44/37 of 4 December 1989, requested that the Secretary-General continue, on a priority basis, the preparation of a draft handbook on the peaceful settlement of disputes between States. In

its resolution 45/44 of 28 November 1990, the Assembly requested the Secretary-General to complete the work on the preparation of the draft handbook and to submit it, in its final form, to the Special Committee at its session in 1991. The Special Committee examined the completed *Handbook* in 1991 as requested and at its 146th meeting, on 8 February 1991, recommended its publication.<sup>25</sup> In its resolution 46/58 of 9 December 1991, the General Assembly expressed its appreciation to the Secretary-General for the completion of the *Handbook* and requested him to publish and disseminate it widely in all the official languages of the United Nations.<sup>26</sup>

19. The *Handbook on the Peaceful Settlement of Disputes between States* expressly referred to the competence given to the Secretary-General under Article 99:

“373. The competence given to the Secretary-General under Article 99 has mainly been used by him in the sphere of the maintenance of peace and security, rather than in the peaceful settlement of disputes. His functions in the field of the prevention and peaceful settlement of disputes are provided in this Article, under which 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’. However, such competence of the Secretary-General has also been effectively used for purposes of the peaceful settlement of disputes. The importance of this competence is underlined by further mention that was given to Article 99 in the Manila Declaration and in the 1983 annual report of the Secretary-General on the work of the Organization, in which he stressed the need ‘to carry out effectively the preventive role foreseen for the Secretary-General under Article 99’, in order to ‘inhibit the deterioration of conflict situations’ and to assist the parties ‘in resolving incipient disputes by peaceful means’.

“374. The Secretary-General’s activities performed under Article 99 can be illustrated by his action with regard to the situation between Iran and Iraq

<sup>23</sup> G A resolution 46/59, para. 3.

<sup>24</sup> *Ibid.*, para. 4.

<sup>25</sup> See [A/46/33](#), paras. 48-53.

<sup>26</sup> G A resolution 46/58, para. 2. See also [A/46/33](#), annex, for the *Handbook on the Peaceful Settlement of Disputes between States*.

in 1980. Among the more recent examples is his action in connection with the situation in Lebanon. On 15 August 1989, after an alarming escalation in the military confrontation in and around Beirut, and with the danger of even further involvement of outside parties, the Secretary-General requested the President of the Security Council to convene an urgent meeting of the Council, in view of the serious threat to international peace and security".<sup>27</sup>

## 2. Statements by the Secretaries-General

20. In his last three annual reports on the work of the Organization during the period under review, Secretary-General Javier Pérez de Cuéllar implicitly and expressly referred to Article 99 when considering the prevention of armed conflicts. Secretary-General Boutros Boutros-Ghali, who assumed the office on 1 January 1992, did not explicitly refer to Article 99 in his annual reports on the work of the Organization for the remainder of the period under review.<sup>28</sup> However, in his report entitled "An Agenda for Peace" presented to the Security Council on 17 June 1992,<sup>29</sup> Secretary-General Boutros Boutros-Ghali did explicitly mention Article 99 in stressing that an important focus of his activities would be a more active role for the United Nations in solving conflicts through peacekeeping and peacemaking measures and through preventive activities launched on his initiative. This emphasis was reflected in his subsequent annual reports on the work of the Organization during the period under review.<sup>30</sup>

### Secretary-General Javier Pérez de Cuéllar

21. In his report submitted to the General Assembly at its forty-fourth session, the Secretary-General implicitly referred to his invocation of Article 99 in requesting a meeting of the Security Council on the situation in Lebanon.<sup>31</sup> He also referred explicitly to Article 99 in noting the prevention of armed conflicts to be a responsibility of the Secretary-General. The Secretary-General wrote:

"Article 34 speaks of any situation which might lead to international friction or give rise to a

dispute and Article 99 of any matter which in the Secretary-General's opinion may threaten the maintenance of international peace and security. However, as has been repeatedly observed, it has been the general practice over the years to address a particular situation only after it has clearly taken a turn towards the use of force".<sup>32</sup>

22. The Secretary-General emphasized that timely, accurate and unbiased information was a prerequisite for activating the potential of the Organization for averting wars and that at that time the material available to him was manifestly insufficient. He stated the need to have at his disposal *prima facie* dependable information in order to be

"in a position to assess whether and when an issue needs to be brought to the attention of the Security Council under Article 99 of the Charter. The invocation of this Article is discretionary and the discretion has to be exercised with a most careful consideration of its possible outcome ... the lack or paucity of objective information can have most deleterious results".<sup>33</sup>

23. The Secretary-General continued to stress the inadequate means at his disposal for gathering the timely, accurate and unbiased information necessary for averting violent conflicts in his report on the work of the Organization to the General Assembly at its forty-fifth session.<sup>34</sup> In addition, the Secretary-General stated his belief that the peacemaking capacity of the United Nations would be considerably strengthened if the Security Council had a peace agenda not confined to items formally inscribed at the requests of Member States and if it held periodic meetings to survey the political scene and identify points of danger at which preventive or anticipatory diplomacy was required. Candid discussions would be encouraged since the proceedings of such meetings would not necessarily be published, "[n]or would the reports of the Secretary-General to such meetings amount to an invocation by him of Article 99 of the Charter". Such formal procedures might encumber the peace effort. He suggested that other ways

"to strengthen the Council's role in dealing with incipient disputes lie in improving fact-finding arrangements, in establishing a United Nations

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<sup>27</sup> A/46/33, annex.

<sup>28</sup> A/47/1, A/48/1 and A/49/1.

<sup>29</sup> A/47/277-S/24111.

<sup>30</sup> A/48/1 and A/49/1.

<sup>31</sup> A/44/1, p. 4.

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<sup>32</sup> *Ibid.*, p. 5.

<sup>33</sup> *Ibid.*

<sup>34</sup> A/45/1, p. 7.

presence in unstable areas and in instituting subsidiary bodies, where appropriate, for preventive diplomacy”.<sup>35</sup>

He urged Member States

“to consider afresh ways of enabling the Secretariat to monitor potential conflict situations from a clearly impartial standpoint. The strategy of peace must reflect a better regard for timing than has been the case so far. The Organization’s mediatory or investigative capacity should not be kept in reserve until it is too late to avert hostilities”.<sup>36</sup>

24. In his last report on the work of the Organization to the General Assembly at its forty-sixth session,<sup>37</sup> the Secretary-General referred to his previous discussion of what was required by the United Nations to fulfil the objective of preventive diplomacy. He stated that the traditional lack of access to technological means of information and inadequate field representation of the Organization

“hinders the use of Article 99 of the Charter, especially in its anticipatory aspect. The Charter does not contemplate that the United Nations should wait for fighting to erupt, for aggression to take place, for violations of human rights to attain massive proportions before it moves to rectify the situation. Too often, the Organization’s mediatory or investigative capacity, in situations threatening large-scale conflict, has been kept in reserve while wars have occurred and disputes have festered. There is a complementarity between the Secretary-General being fully equipped with the means presupposed in Article 99 of the Charter and the Security Council (in conformity with the spirit of Article 34) maintaining a peace agenda not confined to items formally inserted at the request of the State or the States concerned. I believe this complementarity can translate preventive diplomacy from a phrase into a working reality”.<sup>38</sup>

### Secretary-General Boutros Boutros-Ghali

25. The Security Council, in its statement of 31 January 1992,<sup>39</sup> invited the Secretary-General to prepare, for circulation to the States Members of the United Nations by 1 July 1992, an “analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peacekeeping”.<sup>40</sup>

26. In June 1992, the Secretary-General presented his report entitled “An Agenda for Peace” pursuant to the Security Council’s request made in January 1992.<sup>41</sup> In the section on fact-finding of the report, the Secretary-General wrote:

“An increased resort to fact-finding is needed, in accordance with the Charter, initiated either by the Secretary-General, to enable him to meet his responsibilities under the Charter, including Article 99, or by the Security Council or the General Assembly. Various forms may be employed selectively as the situation requires. A request by a State for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay”.<sup>42</sup>

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> A/46/1.

<sup>38</sup> Ibid., p. 3.

<sup>39</sup> S/23500.

<sup>40</sup> Ibid., p. 3.

<sup>41</sup> A/47/277-S/24111.

<sup>42</sup> Ibid., p. 14 at para. 25 (a).