

# Article 99: UN Charter Limitations and Enduring Insights from India's Experience of R2P in 1971

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The League of Nations' failure to prevent World War II prompted representatives from 50 nations to convene in San Francisco in June 1945, leading to the creation of the United Nations Charter. As delineated in the UN Charter, Article 99, Chapter XV, conferred upon the UN Secretary-General a unique role, enabling him to bring to the Security Council's attention any situation deemed a threat to international peace and security. Unlike the conventional rights granted to states, Article 99 granted the Secretary-General the authority to independently address potential global conflicts or threats. Widely acknowledged as a potent diplomatic tool, it serves as a means for the Secretary-General to alert the Security Council. Since the establishment of the United Nations, multiple Secretary-Generals have exercised this authority. Previous invocations of this Article include addressing the upheaval in the Republic of the Congo in 1960, Tunisia's complaint against France's military actions in 1961, the creation of Bangladesh in 1971, the release of American hostages held by Iran Militia in 1979, calling for a ceasefire during the escalating Lebanon Civil War

in 1989 and the most recent one in 2023 to warn the UNSC of the escalating Israel-Hamas War.

## Reflections on Past Invocations of Article 99

The invocation of Article 99 has yielded mixed results in the past, as it lacks the capacity to challenge or alter the positions of Security Council members with veto power, upon whom resolutions and decisive actions often hinge. Consequently, it has not consistently led to peace or significant changes in previous instances.

The first Secretary-General, Trygve Lie, refrained from invoking Article 99, even though he contemplated doing so during the Korean War in 1950. However, since the matter was already on the Security Council's agenda placed by the United States, it wasn't a straightforward case of Article 99 invocation<sup>1</sup>.

In the case of the Congo, Secretary General Dag Hammarskjöld invoked Article 99, leading to the adoption of Resolution 143. The Resolution called for

<sup>1</sup>After receiving confirmation from UN field observers in Korea, the Secretary-General implored the Council to take action, which it could because the Soviet Union was absent and therefore unable to exercise its veto right. The General Assembly originally adopted the "Uniting for Peace" resolution during the Korean War. G.A. Res. 377(V), U.N. GAOR, 5th Sess., Supp. No. 20, U.N. Doc. A/1775, at 10 (Nov. 3, 1950). Korea till date remains a case study of a successful intervention of the United Nations even though the unification of Korea has not taken place.

More at <https://walterdorn.net/30-early-and-late-warning-by-the-un-secretary-general-of-threats-to-the-peace-article-99-revisited#:~:text=In%20the%20case%20of%20Korea,General%20from%20invoking%20Article%2099.>

Belgium to withdraw<sup>2</sup> its troops and established the United Nations Operation in the Congo (Opération des Nations Unies au Congo, or ONUC). Unfortunately, the conflict persisted and the assassination of Prime Minister Patrice Lumumba left the Country in ongoing crisis. Furthermore, mystery surrounds the death of Hammarskjöld in an air crash near Zambia. The cause of the crash was the subject of much speculation, though some investigations indicated pilot error; many believed that the aircraft was intentionally brought down by those with a vested interest in the mining business and those who supported Katanga's secession in Congo.

During Kurt Waldheim's tenure as the fourth Secretary-General, the Iran Hostage Crisis unfolded. Waldheim invoked Article 99, urging the release of American hostages. Despite the call, the hostages endured captivity for 444 days, with two casualties. Though, the US military planned a daring rescue mission under 'Operation Eagle Claw' to free the hostages, the operation encountered numerous challenges, including mechanical failures, a sandstorm, and a helicopter collision. In the end, eight American servicemen lost their lives, and the mission had to be aborted. Following the failed rescue attempt, the militants dispersed the hostages to different locations throughout Iran, making any subsequent rescue efforts more complex and challenging. The prisoners were released only after the Algiers Accords were signed in 1981. The crisis underscored the UN's limited influence in such hostile situations and undermined US foreign policy efforts.<sup>3</sup>

Later, during Javier Pérez de Cuéllar's term as the fifth Secretary-General, he advised the Security Council<sup>4</sup>, calling on all sides in Lebanon to work towards a ceasefire in 1989. Despite these diplomatic efforts, the conflict continued unabated<sup>5</sup>. The involvement and support of Syria,

Israel and Iran on behalf of different factions contributed to the ongoing hostilities. Despite the presence of various peacekeeping forces, such as the Multinational Force in Lebanon and the United Nations Interim Force in Lebanon, peace remained elusive, a situation that persists even today.

In the latest instance, António Guterres invoked Article 99 in 2023 to address the humanitarian situation in Gaza amid the Israel-Hamas war. Unfortunately, the conflict shows no signs of abating and civilian casualties continue to rise, leaving the population at the mercy of the warring sides.

### **India's Experience with Article 99: A Case of the UN's Failure to Invoke Chapter VII**

On December 3, 1971, the UN Secretary General U Thant proposed to the UN Security Council, based on UN Secretariat reports, that the UN should deploy observers in India and Pakistan, alongside a call for the withdrawal of Indian troops from the border with East Pakistan. This proposal received support from the United States and was incorporated into the initial draft resolution presented by Ambassador George H.W. Bush, the US Envoy to the UN (who later became the 41<sup>st</sup> President of the US in 1989), on 04 December 1971, during the UNSC session.

However, when U Thant referenced Article 99 for the conflict in East Pakistan in 1971, it was not during the early stages of the internal conflict that eventually escalated into a full-scale genocide. Despite India's hopes for a Chapter VII intervention, the UN was regrettably unable to prevent the genocide or improve the conditions of the millions of refugees who had fled to India from East Pakistan as a result of Operation Search Light launched in March 1971 to kill all dissidents.

<sup>2</sup> May see details at <https://digitallibrary.un.org/record/112108?ln=en>

<sup>3</sup> The Iranian Hostage Crisis <https://history.state.gov/departmenthistory/short-history/iraniancrises#:~:text=The%20Iranians%20held%20the%20American,Carter's%20conduct%20of%20foreign%20policy>.

<sup>4</sup> Details of the Article 99 is available at this link [https://legal.un.org/repertory/art99/english/rep\\_supp8\\_vol6\\_art99.pdf](https://legal.un.org/repertory/art99/english/rep_supp8_vol6_art99.pdf)

<sup>5</sup> Details of the Article 99 is available at this link [https://legal.un.org/repertory/art99/english/rep\\_supp8\\_vol6\\_art99.pdf](https://legal.un.org/repertory/art99/english/rep_supp8_vol6_art99.pdf)

Secretary-General U Thant's proposal, supported by the United States<sup>6</sup>, sought a resolution for a ceasefire, the withdrawal of armed forces from each other's territories and the deployment of UN observers. Notably, it was peculiar that the United States condemned a struggling third-world democracy dealing with the burden of a refugee influx from East Pakistan. American author Bass quotes Bush's statement at the UN: "The time is past when any of us could justifiably resort to war to bring about change in a neighbouring country that might better suit our national interests as we see them." Bush overruled the need for any discussion of the origins of the conflict, categorizing it as an internal matter.

India opted for military action, yet the stigma of being the aggressor was nullified when Yahya Khan ordered pre-emptive airstrikes on December 3, 1971, on the Western Borders of India. India, already prepared for an all-out war, seized the opportunity when the declaration of war came on that day. Unfortunately, India found minimal international support and the race against time began once war was officially declared. The global stance was not shaped by considerations of justice or morality, but rather by Cold War alliances. The Nixon administration and the UN applied pressure, urging a ceasefire to prevent further escalation and interference. In tandem with these diplomatic efforts, President Nixon deployed the US Seventh Fleet to the Bay of Bengal to pressure India to halt its military operations in East Pakistan.

U Thant, relying on UN Secretariat reports, suggested to the UN Security Council a ceasefire along with the deployment of observers in India and Pakistan. Additionally, he called for the withdrawal of Indian troops from the border with East Pakistan. However, Mrs. Gandhi rebuffed the UN proposal to station observers on the India-East Pakistan border, questioning, "Would League of Nations

observers have been successful in convincing refugees who fled from Hitler's tyranny to return while the pogroms against the Jews and political opponents of Nazism persisted unchecked?"

Indian Armed forces achieved a spectacular victory in East Pakistan and true to intent expressed all throughout, withdrew from the newly created Bangladesh, ceased operation in the West, proving it was not a war for conquest but a liberation of oppressed people and enacted in the intent of what is now called "responsibility to protect"<sup>7</sup>.

India, amidst global opposition, set a sterling example of what R2P entails. The enduring lessons from this case study are pertinent for the UN, illustrating how India successfully established a prospering nation.



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<sup>6</sup> The US supported this proposal, which was included in the first draft resolution tabled by Ambassador George H.W. Bush, the envoy of the US to the UN (who would become the 41st President of the US in 1989 and lead the First Gulf War against Iraq on the pretext of invasion of Kuwait), on December 4, 1971 in the UNSC

<sup>7</sup>The humanitarian intervention of India was justified in 1971 also by Indian Ambassador to the UN Samar Sen, invoking Art 55 and 56 of the UN Charter. In his statement, he referred to "refugee aggression" against India. The R2P doctrine that the Western countries have now built up sadly ignores the violations of genocide.