

**THE OFFICE OF THE UN SECRETARY GENERAL:**

**AN ANALYSIS OF THE OFFICE WITHIN THE UN  
SYSTEM AND THE EXCLUSIVE INTERNATIONAL  
CHARACTER THEREOF**

A dissertation submitted in partial fulfillment for the  
award of the degree of Bachelor of Laws (LL.B) - 1997

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(i)

**DEDICATION**

To my family; George, Laetitia, Nic, Maurice and mum, Seraphine.  
You've always been there for me.

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### ACKNOWLEDGEMENT

I would like to thank the following who have contributed to the completion of this work.

My supervisor Mr. Harvey Agumba, who was instrumental in sensitizing me to have a proper focus on the issues under study.

My mum Seraphine Momanyi, my brothers George, Nic and Maurice and my sister Laetitia for all the moral and financial support throughout my studies.

All the members of the graduating class of 1997 and especially Alison, Beatrice, MaryAnn, Ivy, Sally and Jackie for the times we shared.

Dan for time and patience employed in typing this work.

I, however, take responsibility for all the shortcomings of this work.

## INTRODUCTION

The United Nations Organization is an International Organization founded on October 24, 1945 whose purposes are stated in Article 1 of its Charter as:

"to maintain international Peace and Security..., to develop friendly relations among nations..., and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character..."

The UN Charter also sets up the principal organs of the organization, namely, the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat<sup>1</sup>. It is principally in respect to the latter that this study will be based with particular reference to the organization's Secretary-General who is the head of the said Secretariat besides being the 'Chief administrative officer'<sup>2</sup> of the entire organization. The study will analyze the roles he plays both internally and externally. The former shall relate to those specified in the UN Charter while the latter shall be treated from the stand point of such points as may be implied by the provisions of the Charter. The analysis of these roles shall be carried out, as far as possible, with a view to bringing out the exclusive international character of the office of the UN Secretary-General.

The functions and powers of the Secretary-General are broadly stated, inter alia, in Chapter XV of the Charter and can be briefly outlined under 2 heads: Administrative and Executive. Administrative functions relates to those powers which are either administrative, technical or financial whereas the executive functions referees to those which are pre-eminently political in character as conferred upon the Secretary-General under Article 99 of the Charter.

### Statement of Problem

The Charter of the UN describes the Secretary-General as the 'Chief administrative officer'<sup>3</sup> of the organization. His role however involves more than that. He is equal parts diplomat and activist, conciliator and provocater. Indeed, to the world community, he stands as the very emblem of the United Nations<sup>4</sup>. The significance of his role is underscored by the fact that under the UN Charter, the Secretary-General may bring to the attention of the Security Council any matter which in his opinion (emphasis added) may threaten the maintenance of

International peace and security<sup>5</sup>. There are other important provisions in the Charter which provides further evidence of the eminence of his office, thus Article 98 calls upon the Secretary-General to perform such other functions as are entrusted to him by the principal organs of the organization. He, therefore, functions as both spokesman of the International Community and servant of the member states.

It is precisely because of the rather broad manner in which the foregoing provisions on the powers and functions of the Secretary-General are that these respective roles seem to provide a rare recipe for some amount of friction with regard to the exercise of the said powers. The broad outlines do certainly grant the Secretary-General extra-ordinary mandate for action and yet it stands to be questioned as to how far the Secretary-General can really enjoy the said powers unimpeded. Under the Charter, it is instructive to note that the Secretary-General of the UN is endowed with powers which are political in nature. This is unprecedented for the same were withheld from his predecessors in the League of Nations. It is also worth noting that equally new to the UN System is the concept of exclusively international character of the Secretary-General and the international secretariat as illustrated by the provision in relation to this as found in Article 100 of the Charter which states:

- (1) In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any government or from other authority external to the organization. They shall refrain from any action which might reflect on their position as international officials responsible to the organization.
- (2) Each member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities<sup>6</sup>.

These provisions were inserted at the San Francisco Conference<sup>7</sup> because it was foreseen that the national and international loyalties of the members of the Secretariat might clash.

The implementation of these particular provisions has been rather difficult. It may be worth noting that Article 100 of the Charter is couched in emphatic language admitting of on

qualification and given the said difficulty it has consistently been subject of violation by member states as well as members of the International Civil Service. In this connection, the words of Oscar Schachter in his discussion of Dag Hammarskjöld's Lecture, "The International Civil Servant in Law and in Fact" appear appropriate:-

"The questions raised were perhaps most difficult in their philosophical and psychological aspects. Is 'objectivity' possible in applying political principles? Is personal integrity adequate to reconcile deep differences in perspective and values? Is legitimacy grounded in the consensus or in transcendent principles? Can any individual be entrusted to rise above personal and social conditioning?"<sup>8</sup>

From the foregoing, the following questions can be raised:

1. Are the provisions of Chapter XV of the UN Charter adequate for ensuring that the office of the Secretary-General is of exclusively international character?
2. What arrangements can be/have been put into place to preserve the international character of the Secretary-General of the UN?
3. Does the current legal framework of the UN provide a good way to enforce these arrangements and if not, what changes in the UN system and practice can ensure that these arrangements are enforced?

#### **Objectives of the Study:**

1. Assess the state of provisions of the UN Charter as relates to the functions and powers of the Secretary-General and his international character.
2. Analyze the UN legal framework and the mechanisms for implementing these provisions.
3. Find out if the existing provisions of the UN Charter relating to the international character of the Secretary-General's office are adequate. If there are any limitations to the UN legal framework, to comment on them and suggest appropriate changes.
4. Forecast on future prospects for an office of the Secretary-General truly international in character.

#### **Justification of Study**

The powers and functions of the Secretary-General of the UN, as already stated are two fold: Administrative and executive. In his administrative functions is, for example, the duty to ensure efficient working of the meetings of the various UN organs and committees, and also of such conferences as may be convened under the auspices of the UN. Executive functions are such as the power to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of International Peace and Security<sup>9</sup>. This endows the Secretary-General of the UN immense political powers which are wide and comparatively new to the powers of the Secretary-General of the League of Nations. It is imperative that a clear understanding of the proper working and/or exercise of such powers be analyzed hence the principal justification of this study.

Within the United Nations, the Secretary General is at one and the same time both Chief administration and Chief executive<sup>10</sup>. This makes this office the most important and highest international office. This reality provides yet another reason for a close examination of the nature and character of the said office. It should be pointed out that the provisions of Article 100 on the exclusively international character of the Secretary-General and the Secretariat were inserted at the San Francisco Conference<sup>11</sup> because of the foreseen clash between national and international loyalties of the Secretariat. The participants of the Conference had apparently foreseen the possibility of future attempts by member states to influence the Secretariat and the Secretary-General in the discharge of their duties. This would be threats to the international character of the Secretariat and the Secretary-General which should under no circumstances be allowed and yet the reality on the ground seems to point otherwise. A pathology of the said phenomena with a view to finding out ways and means of rectifying same provides yet another justification for this study.

International law scholars have paid attention to the exclusively international character of the Secretariat in so far as international allegiance of this organ is concerned. Little attention was, however, been paid to the violation of the international character of the members of the Secretariat by member states who seek to influence them in the performance of their responsibilities. In particular, the interference by member states in the independence of the Secretary-General has been given a blackout by scholars. This interference is particularly eminent in the exercise of his political powers and the underlying reasons for this state of



affairs makes a strong case for this study. The instances of violation of Article 100 of the UN Charter, which this study will look into, have not been given any attention and hence there is need for a clear UN policy on the international character of the Secretary-General with particular emphasis on the impartiality his selection or election process should take.

For the above said reason, this study is worth undertaking as it is very relevant at this particular time given the recent problems in relation to the occupant of the Secretary-General's office and the various lessons relevant from the concerted jockeying and lobbying which went on to identify a compromise success on acceptance to the 'big powers'.

### **Literature Review**

In spite of the eminent threat, the independence of the Secretary-General's office with regard to performance of his various functions, little material on this exists. There is no thesis by Kenyan international law scholars and the few that have been written by other international scholars around the world have not been published or not easily available. On the other hand, a lot has been written on the other organs of the UN so that it is only the Secretariat which has been given very little attention apparently because it is merely an administrative body of the UN whose functions are presumed fairly clear. There is however little material in the area which we shall briefly review.

Stephen Schweb has written two works that are specifically on the Secretary-General. There are the International Character of the Secretariat of the United Nations<sup>12</sup> and The Secretary-General of the United Nations<sup>13</sup>. He discusses in these two works the need for the Secretariat and the Secretary-General to owe their allegiance to the UN. The latter work analyses the functions of the Secretary-General and his future role in the maintenance of world peace. In the former work, he suggests that there should be a qualification on Article 100 to ensure its enforcement. These two works do not propose amendments to the whole of Chapter XV of the Charter which will enhance the international character of the Secretary-General which this study will do.

Robert S. Jordan in his work "Law of International Civil Service"<sup>14</sup> analyses the specified and implied powers of the Secretary-General and the concept and character of the International

Civil Service. On the specified and implied powers of the Secretary-General, he maintains the position the legal framework is important, but only as a basis for, and not as an irrefutable guide as to how far any particular Secretary-General will actually go in carrying out the duties of his office as he perceives them. He does not however touch on how the Secretary-General should act in making decisions of controversial nature (which he apparently contemplates in the work) and what should be done to ensure that such decisions are not made under the influence of any one or group of member states.

D.W. Bowett in his book The Law of International Institution<sup>15</sup> discusses in detail the role of the secretariat as a principal organ of the organization. He goes to analyze both the administrative and political functions of the Secretary-General. He also analyses the procedure for as has evolved in the U.N, the appointment of the Secretary-General. This work is an analytical discussion of the functions and powers of the Secretary-General and does not evaluate the provisions in relation to the exclusive international character of the Secretary-General's responsibilities.

Maxwell Cohen in the work "The UN Secretariat Constitutional and Administrative Developments"<sup>16</sup>, has done a comparative analysis of the secretariat of the League of Nations and the secretariat of the United Nations organization. His main subject of analysis is the nature and extent of administrative functions of this organ.

A very important piece of work is by the second Secretary-General of UN, Mr. Hammarskjöld in a lecture delivered in Oxford University in 1961 titled "The International Civil Servant in Law and in Fact"<sup>17</sup>. This work is an extensive analysis of how the international civil servant should carry out his responsibilities impartially. He maintains the position that the international civil servant should base his decisions on the principals of the UN Charter and accepted legal principles of law. He however did not discuss the other side of the stone which is the respect of the international character of the international civil servant by member states as this had not arisen at the time this lecture was delivered.

Former Secretary-General Perez de Cuellar's work "The role of the UN Secretary-General"<sup>18</sup> is centered around a discussion on the role that should be played by the Secretary-General in maintenance of international peace and security.

### **Working Hypothesis**

1. The provisions of the UN Charter do not guarantee the respect of the exclusive international character of the Secretary-General by member states.
2. The UN system and practice is not conducive for the implementation of an exclusive international character of the Secretary-General's office.
3. There is no legal obligation/framework for the development or articulation of respect of the Secretary-General's exclusive international character.

### **Research Methodology**

The information base for this study will be both primary and secondary.

The primary data will be derived from the UN Charter, official UN reports and other documents of the UN.

The secondary data will be derived from text books, articles, periodicals, newspapers, journals and magazines.

### **Chapter Breakdown**

Chapter 1: The area covered by this chapter is the law as contained in the UN Charter that governs the office of the Secretary-General. It is an analysis of the procedure of the appointment of the Secretary-General and his functions and powers as provided for under the Charter Articles and as have developed in the UN practice.

Chapter 2: This chapter is an account of what the practice in the UN has been in relation to the international character of the Secretary-General. It is started by giving a number of facts of instances where the Secretary-General has been called on to act in controversial matters. The second part is an account of the Secretary-General should act in the said instances. The last part of this chapter is an analysis of the effect of political influences on the Secretary-General's office and the UN in general.

Chapter 3 The contents of this chapter are the prospects for the Secretary-General's, office, recommendations on how the independence of the Secretary-General is to be achieved.

## FOOTNOTES

1. Article 7, UN Charter.
2. Article 97.
3. Ibid.
4. Basic Facts about the United Nations. United Nations Newyork, 1995. p.94.
5. Art.99.
6. Art. 100 is a classic provision, which is substantially duplicated in the Constitution of the Specialized Agencies (Art 9 para 4 & 5 of the Constitution of the ILO, Art. 12 para 4(c) of Articles of Agreement of IMF, Art. 37 of the Constitution of WHO etc).
7. United Nations Conference on international organization (U.N.C.I.O) At San Francisco, June - July 1945.
8. Schachter, "The International Civil Servants: Neutrality and Responsibility." In Dag Hammarskjold Revisited: The UN Secretary General as a force in World politics. R. Jordan (ed) (1953) pp 40-41.
9. Article 99.
10. Bowett D.W. The Law of International Institutions  
London, 1982. Stevens at pp 90.
11. Supra Note 7.
12. 1953, BYIL 71.
13. Clarendon Press (1952).
14. In United Nations Legal Order. U.N, (1994).
15. 4th ed, (1982) Stevens.
16. 49 AJIL (1955) at 295.
17. Clarendon Press (1961).
18. In United Nations; Divided World: The UN's Roles in International Relations (1988).

## CHAPTER 1

### THE LAW GOVERNING THE OFFICE OF THE UN SECRETARY GENERAL

Before the establishment of the league of Nations the idea of a chancellor, a world statesman playing an active and dominant role in world politics was seriously entertained. In the outcome however, the League Covenant provided for a Secretary-General. The history of the office under the League shows that the interpretation placed upon the powers accorded to the Secretary-General depended very largely upon the individual characters of the office holder, thus the contrast between this office under its first holder Sir Eric Drummond who was an eminent British Civil servant and the second holder thereof M. Avenol, a French Diplomat by training is not a contrast between different functions but one between individuals upon whom the responsibility for carrying out those functions was placed. The functions remained the same, similarly, in the United Nations, any differences in the interpretation placed upon the office of Secretary-General under Mr. Trygve Lie and Mr. Dag Hammarskjold can be explained mainly on the basis of the difference in character and temperament of the two personalities. Naturally, prevailing conditions at any one given time are also bound thus to influence the scope of the Secretary-General's political powers. The less dynamic character of the office under U Thant was certainly attributable not only to the personal temperament of the holder but also to the changed political conditions at the time. However, it is clear that the way in which the office develops does depend as much on the personality of the office holder as on the scope one is willing to accord to the powers wielded by the holder thereof as set out in the UN Charter.

Within the United Nations, the Secretary-General is, at one and the same time, both the organization's Chief Administrator and Chief Executive. Prior to the San Francisco Conference, which formally founded the organization, there was a plan to divide the functions between a Secretary-General and a President, who would be the Chief Executive with the former being the Chief Administration. However, this never materialized such that the position as it stands now under the Charter of the United is that the Secretary-General combines both these roles, as will be shown presently by a survey of his functions.

## 1. **Appointment of the Secretary-General**

The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council<sup>1</sup>. The interpretation given to his provision in practice resulted in the evolution of a certain procedure whereby the Security Council discusses candidates in private meetings and, after a non-procedural vote, proffers but one candidate in its recommendation to the General Assembly. The justification of this practice lies in the need for a Secretary-General to be a person acceptable all the permanent members, for experience has shown that the office holder is most effective when commanding the support of all the permanent members in the Security Council stage, therefore, a veto is possible. Other administrative heads of the Specialized Agencies of the United Nations do not, in the procedures for their appointment, have to face a possible veto because they do not possess the political powers comparable to those of the Secretary-General under Article 99 of the Charter.

The tendency recognized in the past, especially during the cold war between the East and the West, has been to choose candidates from amongst neutral European states or from the third world such that all the previous Secretary-Generals have successively come from the following geographical regions; Western Europe, Asia, Western Europe, Latin America, Africa. The Charter is silent as to whether or not there is any obligation to rotate the top Secretariat position. However, what is quite clear is that the practice so far pursued by the United Nations indicates that the provisions of the Charter, which prescribe that the paramount consideration in employment of UN staff as being the necessity for securing the highest standards of efficiency, competence and integrity<sup>2</sup>, is not regarded as governing the appointment of the Secretary-General.

Upon receiving the recommendation of the Security Council, the General Assembly conducts its own discussions in private, and then holds the actual vote by secret ballot but in public meetings, the decision is by a simple majority vote<sup>3</sup>.

The term of office is nowhere fixed in the Charter, but in 1946, the Assembly fixed a five-year term, which can be renewed or extended<sup>4</sup>. Thus whereas Trygve Lie was appointed to one five year term, the General Assembly later extended it by three

years, towards the end of which Mr. Lie resigned. Mr. Hammerskjold was on the other hand appointed to two successive five year terms and died in the course of the second one. Mr. U. Thant was first appointed Acting Secretary-General for the expired term of his predecessor and was subsequently appointed in his own right for an initial five year term, retroactive to when he assumed office in an acting capacity.

This appointment was then extended and afterwards he was appointed for a second term. Waldheim and Perez de Cuellar were appointed for two successive five year terms. However, Mr. Boutros Boutros Ghali was appointed to a single five year term and a second term was blocked by the US at the Security Council stage. Mr. Koffi Annan, the current holder of the office, has so far been appointed to a single five year term.

The only real constitutional difficulty which has arisen over the foregoing procedure was when Mr. Lie's term expired in 1950 when the Security Council reported to the General Assembly that it was unable to form a recommendation whereupon the General Assembly placed the matter of the appointment of the Secretary-General on its own agenda, against the opposition of former USSR, and decided to continue with Mr. Lie in office for a further period of 3 years<sup>5</sup>.

## 2. **Functions and Powers of the Secretary-General**

The UN Charter gives only a framework description of the functions entrusted to the Secretary-General which have received further refinement in the practice of the United Nations. In addition to the specific functions contained in Articles 12(2), 20, 73(e), 101 and 110, statute of the ICJ and other international treaties which nominate the Secretary-General as depository thereof, the functions and powers of the Secretary-General are broadly stated in Articles 97, 98, 99 and 101 of the Charter. These functions can briefly be outlined under two heads: administration and executive. The first category includes a variety of functions and powers which are administrative, technical and financial while the second category relates to functions which are pre-eminently political in character.



(i) **Administrative Functions**

As stated in Article 97 of the Charter, the Secretary-General is the 'Chief administrative officer' of the organization. He has, amongst his primary duties, to ensure the efficient working of the meetings of the organs and committees and also of such conferences as maybe convened under the auspices of the United Nations. In this connection, he draws up provisional agenda<sup>6</sup>, notifies invited states and other bodies of the convening of the sessions and meetings<sup>7</sup>, provides staff and facilities, examines the credentials of representatives and reports thereon to the organ concerned. For special conferences he may submit proposals regarding their method of work and procedure, and provide draft agenda and rules of procedure. During the course of a meeting or conference, he will, through his staff, undertake studies, advise on matters of procedure and assist in drafting of documents, resolutions and reports, as well as giving legal and technical advice<sup>8</sup>.

The Secretary-General also has the duty in his capacity as Chief administrator, to secure adequate co-ordination and integration of the work programmes of the various branches of the Secretariat and of the Specialized Agencies and other inter-government organizations. The need for co-ordination was been particularly evident in the economic and social fields. The problems arising such as elimination of duplication of work, fixing responsibility for and priority of projects, preparation of budgets, allocation of staff, scheduling of meetings and conferences, and the dissemination of information are covered in this way. This stands in stark contrast to Specialized Agencies in relation to which the primary responsibility lies with the General Assembly and the Economic and Social Council. Specific powers have, however, been assigned to the Secretary-General under the agreements with the Specialized Agencies. In addition, as Chairman of the Advisory Committee on Co-ordination (ACC), he can consult with the heads of the Specialized Agencies in a practical way so as to co-ordinate policies and work programmes. However, it should be noted that the function of the Secretary-General to co-ordinate between the UN organs, in the strict sense, applies only to the core of the United Nations. The

establishment of quasi-autonomous organs such as the United Nations Development Programme (UNDP), United Nations High Commission on Refugees (UNHCR), United Nations Environmental Programme (UNEP), which have a Secretariat of their own has led to an erosion of the Secretary-General's functions in this respect.

When UN agencies and Committees reach decisions, they may embody in these decisions requests for the preparation of studies and reports. The responsibility of this work is assumed by the Secretary-General, and such studies normally extend over all aspects of the organization's work. The work requested is, however, only a fraction of the informative work and study which the Secretariat undertakes as part of its routine work programme. This work supplies much of the essential data which the UN organs rely on in reaching these decisions. It is generally of a high standard although occasionally it may lack positive opinions or proposals in an understandable attempt to be impartial. With regard to this, the independent Secretariat of the United Nations Conference on Trade and Development (UNCTAD) during the period of office of Prebisch as the Secretary-General was exceptional in its advocacy of the policies and aims of the developing countries<sup>9</sup>.

In financial matters, it is the duty of the Secretary-General to prepare the annual budget of the organization, which will then go before the Advisory Committee on Budgetary Questions, on which meetings he sits, then to the Fifth Committee, and ultimately to the Assembly itself. He also assumes custody of all UN funds and the responsibility for their expenditure outside the specific budgetary appropriations, he retains a limited authority to enter into commitment not provided for in the budget, as for example, where necessary in the interest of international peace and security or for urgent economic rehabilitation.

The duty of the Secretary-General of appointment of staff requires skill in the determination of integrity, competence and efficiency on the basis of a wide

and balanced geographical recruitment - especially with regard to the need to ensure loyalty and responsibility solely to the organization and its interests. This task is made more difficult of two additional factors: the criterion of a balanced geographical distribution is increasing in importance. Secondly governments try to direct the staff - those of their nationals who hold like-minded convictions - with the result that the availability of officers may depend upon the right party membership, and not necessarily on qualities of integrity and competence. Perez de Cuellar has pointed out the contradictions that, parallel to the dramatic use of his political responsibilities, the power of the Secretary-General in the administrative field had been strongly eroded.

There are more than 60 multi-lateral treaties of which the Secretary-General is entrusted to serve as depository thereof. Besides the function involving treaties which are registered with the Secretariat under Article 102 which require publication under that article, the Secretary-General may be required to undertake the notification of signatures accessories, and reservation to the states concerned.

The final administrative function of the Secretary-General is the submission of the annual report on the work of the organization<sup>10</sup>. This report is a comprehensive summary of the work undertaken, and has great value as a source of information. It however does involve the exercise of the Secretary-General's political powers, in so far as it contains suggestions and proposals relating to political questions. Indeed the Secretary-Generals in the past have been using the annual report not merely as a summarized overview of the work of the organization but as a means to bring criticism and suggestions for improving the general efficiency to the attention of the General Assembly.

(ii) **Executive Functions**

The preparatory Commission at San Francisco referred to the power given to the Secretary-General under Article 99 as "a quite special right which goes

beyond any power previously accorded to the head of an international organization"<sup>11</sup>. The Secretary-General is empowered to direct the attention of the Security Council to any matter which in his opinion may threaten the maintenance of international peace and security<sup>12</sup>. This power has been however only been invoked on very rare occasions as when on June 26, 1950, the Secretary-General brought to the Republic of Korea and when, on July 13th, 1960, the Secretary-General convened the Council to deal with the Congo crisis. Another example is the letter addressed by Secretary-General Waldheim to the President of the Security Council declaring the prolonged detention of American diplomatic and Consular staff as hostages to be a grave threat to international peace and security<sup>13</sup>. The probable reason why the power has not been invoked more frequently is not so much due to the fact that there is any lethargy in the Secretary-General as for the fact that member states are themselves quick to bring any threat to international peace and security to the attention of the council themselves<sup>14</sup>. In this respect, the Secretary-General's powers under Article 99 are equivalent to that given to member states under Article 35 or that of the General Assembly under Article 11(3). The scope of Article 99, however, is broader than the one under Article 35 since the latter only refers to disputes and situations. Further, Article 99 refers to the opinion of the Secretary-General thus vesting him with the power to assess the situation under its own authority.

Although the said power is limited to the Security Council under the Article, the Rules of Procedure of the Assembly give the Secretary-General as general power to place matters on its provisional agenda and, not unnaturally, this has been interpreted in practice to include items of a political character. A good example of this was the Secretary-General's memorandum concerning a 20-year programme for achieving peace through the United Nations, placed on the agenda of the 5th Session<sup>15</sup>.

Before the Secretary-General proceeds in accordance with Article 99, a comprehensive knowledge of the situation in the crisis area is required. Thus,

at the very least, the Secretary-General must be able to implement a preparatory fact-finding mission. In the era of peace and security, it was Mr. Hammarskjold who instituted, for the first time in 1958, (without a mandate from the principal UN organs), the special representative, responsible to the Secretary-General, as a mediator between two feuding parties. The Swedish Ambassador to the United Nations was thus in 1958 instructed to mediate in the territorial dispute between Thailand and Cambodia over the Temple of Preah Vihear. Thus in this case, none of the principal organs of the UN were involved directly and they considered the action to be within the scope of the 'good offices' of the Secretary-General. Even as early as 1946, the implied power to make investigations and inquiries, on his own initiative, as may be necessary in order to fully inform the appropriate organ of the matter, had been claimed by the Secretary-General in connection with the Greek question<sup>16</sup>, which measure has never been challenged todate.

The Secretary-General has also claimed, and exercised, a general power to act on his own initiative whenever such action seemed to him necessary in the interests of international peace and security thus upon accepting a further term of office on 26th September, 1957. Mr. Hammarkjold stated that he would act "to help in filling any vacuum that may appear in the systems which the Charter and traditional diplomacy provide for the safeguarding of peace and security"<sup>17</sup>. Many instances of this are to be found throughout his tenure one of which involved his decision to enlarge UNOGIL (UN observer Group in Lebanon) forces, after the USSR blocked a Security Council Resolution in 1958, on his own initiative which he justified to the Security Council as follows:

"Under the Charter, the Secretary-General should be expected to act without any guidance from the Assembly or the Security Council should this appear to him necessary towards helping to fill any vacuum that may appear in the systems which the Charter and traditional diplomacy provide for the safeguarding of peace and security"<sup>18</sup>.

Another example is his role in Laos in 1959 when he proposed to visit it at the time it was rocked by a bloody civil war, which visit he stressed would have no connection with the activities of other UN organs concerned with this question but would eventually be undertaken in his capacity and within his responsibilities as Secretary-General. After his arrival in Laos, he instructed his representative to review the economic situation of the country and further, to follow up the discussions initiated by himself and thereafter to provide him with further information regarding the same.

Mr. Hammarskjold's activities in Bizerta were yet another example of his own initiative. In this case, Tunisia had on 20th July, 1961 requested an urgent meeting of the Security Council to consider its complaint against France. In an explanatory memorandum submitted on the same day, Tunisia added that since the afternoon of July 19th, Bizerta had been under attacks by the French Navy and airforce and that French paratroopers had been dropped in violation of Tunisian airspace. In a statement before the council, the Secretary-General stated that news coming from Tunisia indicated a threatening development. Under Article 99, he considered it his duty to make an urgent appeal to the Security Council to consider without delay taking an intermediary decision. The President of Tunisia further appealed for a direct and personal exchange of views between him and the Secretary-General which the Secretary-General granted noting that he had a duty to place himself at the disposal for a personal exchange of views, which took place throughout several meetings in the following weeks.

All of Mr. Hammarskjold's successors have followed this approach and have invoked the spirit of Article 99, sometimes in connection with Article 33, as justification for their independent initiatives for the maintenance and restoration of international peace and security. In the discussions between Mr. Hammarskjold and the government of the Union of South Africa in 1960 on the segregation, the government concerned rejected the competence of the

Security Council but accepted that it was a matter upon which the Secretary-General had initiative to act. Mr. U. Thant, who was Mr. Hammarskjold's immediate successor, made proposals on the Vietnam in 1966 and 1968<sup>19</sup> on his own initiative. Another example is Mr. Thant's decision in May 1967 to withdraw the UNEF without reference to the General Assembly, (a decision which is extremely difficult to justify on legal grounds). His decision to extend the use of his good offices in 1970 over the Bahrain dispute is yet another example, although he exercised great care in emphasizing that any findings would require endorsement by the Security Council<sup>20</sup>. In all such cases where the Secretary-General so acted, he did so, not arbitrarily but guided by the purposes and principles of the Charter which he regarded as setting the legal limits to his political discretion<sup>21</sup>.

In addition to the specific power of Article 99, Article 98 provides that the Secretary-General shall act in the capacity of Chief administrative officer of the principal organs (other than the court), and the rules of procedure of these organs authorize the Secretary-General to place items on their provisional agenda to make statements, to submit proposals or draft resolutions, and to submit amendments to other proposals. These further powers afford the Secretary-General a sufficient basis upon which he can exercise considerable political influence in these organs. An example of the likely scope/extent of these powers is to be found in the Secretary-General's statement in 1958<sup>22</sup>, which outlined a comprehensive programme of far reaching political importance for the solution of the Middle East crisis in which US and British forces had landed in Lebanon and Jordan. A reading of the subsequent debate shows how greatly this influenced the views of many member states and the action taken.

Yet another important means by which the Secretary-General can develop his initiative in the political field lies in his annual report on the work of the organization. This as has already been mentioned, has tended to become as much of a 'review of the world situation' as an occasion for laying of such

constructive proposals as the Secretary-General may think necessary and appropriate.

There are other situations in which the Secretary-General carries out "such other functions as are entrusted to him" by the UN organs<sup>23</sup>. This often appears in the area of peaceful settlement of Disputes. Diplomatic activity, performed thereunder by the Secretary-General has, unfortunately not always prevented the outbreak of armed conflicts. As directed by the Security Council, Secretary-Generals have been mediating for example in the Cyprus question as well as in the conflict Iraq/Kuwait and the Yugoslavian crisis through their good offices. These have repeatedly brought the parties together to discussions and negotiations, both within and outside the United Nations framework. Furthermore, the Secretary-Generals, on their Special Representatives have guided the consultation process and have worked on compromise solutions. At its third emergency session on August 21st, 1958, the General Assembly, by resolution<sup>24</sup>, requested the Secretary-General to "make such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances". The margin of discretion left to the Secretary-General under this general directive is clearly wide. Yet, in this and every such other cases where the Secretary-General acts under a specific resolution, it is his practice to regard this as a mandate with terms of reference binding upon him<sup>25</sup>. The Congo situation affords a remarkable illustration of a UN organ, the Security Council, authorizing the Secretary-General, in the widest possible terms, to take action<sup>26</sup>. This resolution provided that the Secretary-General:

"... take the necessary steps, in consultation with the government of the Republic of Congo to provide the government with such military assistance, as may be necessary, until ... the national security forces may be able, in the opinion of the government, to meet fully their tasks".



When in due course, criticism developed of this adherence to a policy of non-intervention in the sense of refusing to allow UN troops to be used for the conquest of Katanga, he referred back to the Security Council for explicit guidance. Tragically, no such guidance was forthcoming in any formal resolution, for the lack of unanimity of the permanent members had again appeared; however, as he declared to the council, "I have the right to expect guidance, But ... if the Security Council says nothing, I have no other choice than to follow my conviction"<sup>27</sup>. His subsequent action was thus once more guided by the principles and purposes of the Charter as conceived by him. Thus the differences between his powers under Article 99, his residuary powers to act, and his powers under a mandate from an organ are real, but possibly deceptive; his discretionary powers obviously increase, even when acting under a mandate, in proportion to the generality of the terms of the mandate<sup>28</sup>.

Another important political played by the Secretary-General is to act "as a mediator and as an informal adviser of many governments"<sup>29</sup>. This role was a familiar one under the league and its usefulness is increasingly evident in the United Nations. In some cases, as in the question of the treatment of the people of Indian origin in the Union of South Africa<sup>30</sup>, the Secretary-General may be specifically requested by the Assembly to undertake such a role. In others, he may undertake this role on his own initiative, often with the minimum of publicity, and this was a technique favoured by Mr. Hammarskjold in his "quiet diplomacy". He may do this personally or through a representative<sup>31</sup> as was done in the cases of Bizerta and Laos respectively. Governments tend to prove for more tractable in private discussion than in the full glare and publicity of an open debate in the Council or the assembly.

The political role of the Secretary-General is, therefore, an essential part of the office as now constituted. The Soviet proposal for a "troika" in 1961 as a consequence of the Security Council's dissatisfaction with Mr.

Hammarskjöld's use of the role if adopted would have inevitably destroyed that role and reduced the Secretary-General to an administrative head and little else as was in the cases of the covenant of the League. Fortunately, the proposal found little support in the Assembly.

In addition to the administrative and executive functions, the Secretary-General performs representation functions whereby he acts as an agent or representative of the United Nations. This function is apparent not only when he speaks publicly about the UN but more important when he undertakes agreements on behalf of the United Nations. These agreements may have to be negotiated and concluded with governments, as for example the Headquarters Agreement with the USA, or agreements with other organizations; such is the case with agreements between the United Nations and the Specialized agencies which are concluded by the heads of the organizations. The Headquarters Agreement also provides for consultation and negotiation on several matters between the Secretary-General and the United States government after the agreement has come into force.

As a general rule, such agreements are concluded by him at the request of one of the UN organs, but in certain cases, notably in those which concern agreements on the privileges and immunities of the United Nations, the Secretary-General will act on his own initiative. Further to the negotiation and conclusion of treaties, there are many other agreements and contracts which the Secretary-General concludes under private law with private agencies for supplies and services and, of course, with individuals who become staff members. This representational function also extends to the conduct of court proceedings on behalf of the United Nations. The Secretary, through his representatives, has made statements in the interest of the organization before the International Court of Justice on several occasions in which the issues raised affected the organization. He also represents the organization before the UN Administrative Tribunal on staff matters. Many treaties of which the UN is a party provide for the arbitration of disputes. In any such disputes, it

would be the Secretary-General to represent the organization. There is, of course, no possibility under the statute of the International Court of Justice for the UN to appear before it as a 'party' in contentious proceedings mentioned above, although The Reparations case<sup>32</sup> left no doubt as to the capacity of the organization to present claims for damage to its property or its agents before other tribunals, be they national or international. Where, in any judicial proceedings, the questions of immunity arise for a UN official, it is for the Secretary-General to decide whether to waive or maintain the immunity.

## FOOTNOTES

1. Article 97, Charter of the United Nations.
2. Article 101(3).
3. Rule 141. Rules of Procedure of the General Assembly A/520/Rev. 15/Amend. 2.
4. GA res. 11(i) of 24 January, 1946.
5. GA res. 492(V), Repertory Vol. V, pp.115-116.
6. Rule 7. Rules of Procedure of the Security Council; & Supra note 4 Rule 12.
7. Ibid. Rule 5, 10.
8. Ibid. Rule 14.
9. Bowett D.W. The Law of International Institutions. 4th ed. Stevens, (1982) p.91.
10. Article 98.
11. Preparatory Commission Report, Doc. Pc/20 P.87.
12. Article 99.
13. Doc. S/13646, 25 November, 1979.
14. Article 35.
15. An Agenda for Peace, Boutros-Bourtros Ghali. (1992) UN.
16. Official Rec. S.C. 70th Meeting, Doc. S/P. r./70, September 20, 1946.
17. A/P. V.690.
18. SCOR 13th year, 837th Meeting on 22 July, 1958 p.4.
19. UN Yearbook (1966) p.151.
20. 9 ILM 787-805.
21. Schachter, "Dag Hammarskjold and the relation of Law to Politics". (1962) 56 AJIL,
22. 3rd Emergency Session of the General Assembly on August 8, 1958.
23. Article 98.
24. Resol. 1237 (ES-III) on 21 August, 1956.
25. Doc. A/3934, September 29, 1958.
26. Resol. July 14, 1960.
27. August 21, 1960, 888th Session.
28. Supra Note 9 p.95.
29. Report of Preparatory Commission, Doc. PC/20 P/82.

30. GA resol. 511 VI.
31. S.C. resol. 242 of Nov. 22, 1967 on Middle East Crisis.
32. Reparation for injuries suffered in the service of the United Nations. I.C.J. Reports, 1949 PP 174-187.

### THE PRACTICE OF THE UN WITH REGARD TO THE EXCLUSIVELY INTERNATIONAL OF THE OFFICE OF THE SECRETARY-GENERAL

#### 1. **The facts of the UN Practice in relation to the International character of the role of the UN Secretary-General.**

It can hardly be disputed that over the years, regional problems in various international flash points or trouble spots and the general concern for international peace and security have brought tremendous pressure to bear on the office of the UN Secretary-General. The Articles of the UN Charter have, in the light of these pressures, had to undergo a continual process of interpretation. The Secretary-General has had to, on the one hand, enlist the service of government in staff recruitment to obtain applications for positions in the Secretariat and information about the applicants and on the other hand, he has had to maintain the principle of independent selection of the staff under Article 101 of the UN Charter. This has often compelled this office to refuse to dismiss staff members on the basis of mere suspicion of a government on a conclusion based on undisclosed evidence. Such was the case when, in 1952 and 1953, the US Government conducted a series of investigations of the loyalty of its nationals in the Secretariat. Pressures have, however often been exerted in a more subtle way when governments have insisted on seconding their national officials for brief fixed term appointments in the Secretariat, rather than allowing them to accept permanent career appointments. The late Hammarskjöld, the Secretary-General between 1953 and 1961, considered it desirable to have a reasonable number of seconded officials available to perform particular tasks calling for diplomatic or technical skills, but warned that a large position of such officials - perhaps in excess of one-third - would turn the present international Secretariat, based on career service, into an 'inter-governmental' Secretariat contrary to Article 100 and 101 of the Charter<sup>1</sup>. This seconding of officials to the secretariat by governments could result in unbalanced availability of officials depending on the right party membership and not necessarily on their qualities of integrity and competence<sup>2</sup> and the UN Secretary-General's office has to fend off such a possibility coping up with such

pressure together with the need to maintain a balanced geographical distribution in staff recruitment makes the Secretary-General's task of appointing of staff that much more difficult. Mr. Perez de Cuellar has pointed out the contradiction that, parallel to the dramatic rise of his political responsibilities, the power of the Secretary-General in the administrative field has been strongly eroded.

Indeed, the committee of Experts, on the rejection of permanent Civil Service in respect of the bulk of the higher secretariat position did note that "the ideological and cultural heterogeneity of the organization places heavy strains on the conception of international civil service and there are those who feel that in the conditions now facing the organization, there is a larger place for the fixed-term official " from his national administration<sup>3</sup>. The said committee however pointedly referred to the Charter Articles and Staff Rules and Regulations establishing a permanent UN membership as a while would itself impose any impairment on the concept of a permanent international civil service.

Apart from personnel matters, the UN Secretary-General has had to resist national pressures in the independent implementation of Controversial political decisions under mandates which are of a highly general character expressing the base minimum of agreement attainable in the political organs of the UN. Each of the Secretaries-General has often had to work under mandates in areas of peaceful settlement of disputes, fact-finding missions and the installation and/or the command of UN Peace-Keeping forces. Examples of such mandates are in the Palestine Armistice problem of 1956 where the Security Council requested the Secretary-General "to arrange with the parties for the adoption of any measures which he considered would reduce existing tensions along the Armistice Demarcation Lines" and in the same year after outbreak of hostilities in Egypt, the General Assembly's request to the Secretary-General immediately to obtain compliance of the withdrawal of foreign forces. In the same session the Secretary-General was also asked to submit a plan for a UN force to secure and supervise the cessation of hostilities, and he was subsequently authorized to take all necessary and executive action to organize this force and dispatch it to Egypt<sup>4</sup>. In 1958, the Secretary-General was authorized to dispatch urgently an

observation group to Lebanon so as to ensure that there was no illegal infiltration of personnel on supply of some or other material across the Lebanese borders. In July 1960, the Secretary-General was requested to provide military assistance to the Central Government of the then Republic of Congo<sup>5</sup>. The only additional guidance was provided by the Security Council's approval of principles concerning the use of UN forces drawn from the operation of the U.N.E.F in Egypt.

Other recent examples of similar open mandates to the UN secretary-General are; the Yugoslavian crises where in 1992 the Security Council invited the Secretary-General to offer his assistance to the parties in the creation aspect of the conflict; the General Assembly request to assist Chile with all means at his disposal in the re-establishment of basic freedoms and respect for human rights<sup>6</sup>, the Security Council's request to the Secretary-General to make new efforts on an urgent basis to monitor and to observe the situation of Palestinian Civilians under Israel's occupation without giving him any further indication on how to perform that function<sup>7</sup>; the General Assembly's request to the Secretary-General and the Chairman of OAU to intensify efforts for holding a UN-organized and supervised self-determination in Western Sahara in co-operation with the OAU<sup>8</sup>; the US and former U.S.S.R.'s joint communique to the Secretary-General suggesting that he personally undertake the negotiations in El Salvador<sup>9</sup>.

The foregoing examples suffice to demonstrate the colossal amount of responsibilities the member States have entrusted to the office of the UN secretary General involving tasks which have often required the holder of that office to take action which may and do at times run counter to the views of at least some of the member states. In all the foregoing circumstances, it may be observed that when more specific issues are presented, the agreement reached on the general terms of a resolution may no longer exist<sup>10</sup>. And even when the original resolution is fairly precise, subsequent unforeseen developments may render controversial the action called for under such resolution. The Secretary-General is thus faced with a dilemma on how to act and where to seek guidance from. In the past, secretaries-General have requested for guidance from the political organs under whose mandate they were acting and when it was not



forthcoming they have acted without such guidance when this appeared 'to them necessary towards helping to fill any vacuum...'<sup>11</sup> Such decisions have invited accusations of lack of impartiality by member States especially the permanent members of the Security Council. In some instances the parties to a dispute have refused to deal with the Secretary-General.

## **2. The Impact of Political Influences Upon the Secretary-General**

One of the heaviest blows upon the office and position of the UN Secretary General struck at the end of Mr. Hammarskjold's term of office as a result of his actions in the Congo crisis, with the former Soviet Union's proposal of a 'Troika' solution. On 23rd September, 1960, the then presiding Chairman of the Council of Ministers of the U.S.S.R., Nikita Krushchev declared before the General Assembly that it was time that the office of the Secretary-General was dissolved<sup>12</sup>. Because in his view there could only exist neutral states not impartial individuals, the position of the Secretary-General should be occupied by a three-person collective organ; one from a western industrialized country, one from the socialist Eastern bloc and one neutral. This suggestion would not only have affected the office of the Secretary-General, its implementation would have shaken the entire structure of the UN<sup>13</sup>. The 'troika' system would have placed an international secretariat with implementation functions subsidiary to a more or less static conference machinery against the concept of the office as a dynamic instrument for conciliation and dispute settlement. This would have certainly meant the end of the mediation functions of the UN in conflict situations<sup>14</sup>. Independent initiatives, actions such as those which have been conducted with varying levels of success since the founding of the organization, would have been subject to the will of the great powers and with that to a veto from any of them.

Although the initiative to curtail the functions of the Secretary-General failed, the inherent attack on the office and mostly on the first two Secretaries-General, was not without consequences for the future. The dwindling influence of the United Nations in the important development in the world politics during the 1960's corresponds to the restraints which were imposed by the third Secretary-General U Thant on his

peace keeping activities. Successes such as the conclusion of the Congo crisis in 1964 on the quietening of civil strife which broke out in Cyprus in 1964 stand in contrast to the unsuccessful attempts during the Viet Nam War, and the Six-Day war, which were due to the conflict of interests of the world powers. The political weight and influence of the office of the Secretary-General was so reduced that the fourth Secretary-General Kurt Waldheim directed that the reestablishment of trust in the UN be incorporated in his policy as a priority goal. The fifth Secretary-General to take office, Mr. Javier Perez De Cuellar, likewise publicly spoke in favour of more self-criticism with respect to the organization. In full view of the widespread dubiousness regarding international organizations which was evident in the mid-1980's and the considerable financial problems of the United Nations he conscientiously and decisively undertook his tasks with the intention to avoid nurturing false expectations and to concentrate on sound negotiating work. Perez De Cuellar's efforts in ending the 1988 Gulf War restored the importance of the office of the Secretary-General. In his report on the work of the organization from the 47th to the 48th Session Boutros-Ghali interlinked three great concepts and priorities: democracy, peace and development. He stated that without, there can be no development and there can be no democracy. Without development, the basis for democracy will be lacking and societies will tend to fall into conflict. And without democracy, no sustainable development can occur; without such development, peace can not long be maintained<sup>15</sup>.

The foregoing examples and recent trends in the UN show that the prospects of the independence of the occupant of the UN Secretary-General's office are not good. The veto by the US to block a second term for Secretary-General Boutros-Ghali, believed to have been caused by his independent stand on issues including the Middle East peace process and Yugoslavia, is a good example of the said ominous sign which now threatens the independence of the Secretary-General from influences by member States. In this era where there increasing possibility of consensus among the great powers, the political weight and influence of the office of the Secretary-General may be reduced considerably if the great powers feel threatened by the political influence of the Secretary General of the UN within the UN. If such misconception is not

fiercely exposed and fought off, it may well herald the beginning of the end of the effectiveness of the UN Secretary-General's office to discharge the powers and functions for which the UN's founding fathers ordained it.

### 3. The Secretary-General's Dilemma

What, then, in the aforesaid instances is the Secretary-General to do?

A simple solution would be to refer the problem back to the political organ as would a national executive under a national parliamentary regime. But so often the required majority in the Security Council and the General Assembly cannot be obtained for any particular solution. This is as a result of the clash of interests and positions of member states of the organization. When this is frequently evident in advance of a meeting, member states conclude that it would be futile for the organs to attempt to reach a decision. Thus the Secretary-General is left an interpretation of the instructions, rights and obligations of the organization <sup>as far</sup> as possible in view of international law and the decisions already taken<sup>16</sup>. Mr. Hammarskjold once posed the Secretary-General's dilemma thus: should the Secretary-General, to avoid offending one or another group of members, take the easy way out and refuse to implement a valid decision on the ground that a specific implementation ~~a valid decision on the ground that a specific implementation~~ would be opposed to positions some members might wish to take, as indicated perhaps by an earlier minority vote?<sup>17</sup>

Should Mr. Hammarskjold, for example, have abandoned the operation in the Congo, because almost any decision he made as to the composition or role of the Force would have been contrary to the attitudes of some members as reflected in the debates or in the votes, although not in a formal decision?

Under the law of the UN, the simple answer is no; He could not abandon the Congo operation. The crucial issue is, however, whether or not the Secretary-General can resolve controversial questions on a truly international basis without obtaining the formal decision of the organs. On the basis of experience, the Secretary-General can

do just that; the Secretary-General can carry out his tasks in controversial political situations with full regard to his exclusively international obligations under the Charter and without subservience to a particular national and ideological attitude<sup>18</sup>. He is not " a kind of Delphic oracle who alone speaks for the international community"<sup>19</sup>. He has available for his tasks, varied means and resources of which the following are of primary importance:

- (1) the principles and purposes of the Charter which is the fundamental law accepted by all as necessarily general and comprehensive yet specific enough to have practical significance in concrete cases;
- (2) the body of legal doctrine and precepts (supplementing the Charter principles) that has been accepted by states generally and particularly as manifested in the resolutions of United Nations organs<sup>20</sup>.

Problems of political judgement will however still remain even after resort is had to these sources of law. The Secretary-General must reduce the element of purely personal judgement by seeking to obtain what is regarded as representative opinion of the organization through such constitutional means as:

- (1) consultations with permanent missions to the United Nations which are safeguarded by diplomatic privacy;
- (2) advisory committees, such as those of UNEF and the Congo which are composed of representatives of the governments that are most directly concerned and representing diverse political concerned and representing diverse political positions. These committees often provide an essential link between the judgement of the executive and the consensus of the political bodies<sup>21</sup>.

The Secretary-General will carefully seek guidance in decisions of the main organs, in statements relevant for the interpretation of those decisions, in the Charter and in generally recognized principles of law, remembering that by his actions he may set important precedents. Further, he will report to the main organs as completely as circumstances will permit and seek their guidance whenever it seems possible to obtain such guidance.

In perusing reports of the Secretary-General on the Congo, it is interesting to note that at a time when the Security Council and the General Assembly showed substantially less interest in legal precepts than in earlier years, the Secretary-General displayed an acute awareness of the relevant law and great skill in legal reasoning<sup>22</sup>. But Mr. Hammarskjöld recognized that even if all of the steps summarized above are taken, the reduced area of discretion will be large enough to expose the international Secretariat to heated political controversy and to accusations of a lack of neutrality.

"The international civil servant cannot be accused of lack of neutrality simply for taking a stand on a controversial issue when this is his duty and cannot be avoided. But there remains a serious intellectual and moral problem as we move within an area inside which personal judgement must come into play. Finally we have to deal here with a question of integrity or ... a question of conscience.

The international civil servant must keep himself under the strictest observation. He is not required to be a neuter in the sense that he has to have no sympathies or antipathies, that there are to be no interests which are close to him in his personal capacity or that he is to have no ideas or ideals that matter for him. However, he is requested to be fully aware of those human reactions and meticulously check himself so that they are not permitted to influence his actions. This is nothing unique. Is not every judge professionally under the same obligation?

If the international civil servant knows himself to be free from such personal influences in his actions guided solely by the common aims and rules laid down for, and by the organization he serves and by recognized legal principles, then he has done his duty, but then he can face the criticism which, even so, will be unavoidable. As I said, at the final last, this is a question of integrity in the sense of respect for law and respects for truth, were to drive him into positions of conflict would be a sign of his neutrality and not of his

failure to observe neutrality, then it is in line, not in conflict with his duties as an international civil servant"<sup>23</sup>.

Not only did Mr. Hammarskjold, in the above passage, defend his personal integrity and that of his staff against an attack exceedingly entirely the bounds of criticism which a person engaged in political affairs must expect, but he was also constrained to defend the position of the Secretariat as one of the principal organs in the scheme of the Charter as a direct product of the constitutional life of the UN organization. Occasions on which he did so include when there was an attack by the former Soviet Union on the terms of his office and the exercise and the exercise of its powers and the 'troika' proposal by Krushchev which threatened to destroy the Secretariat as a whole.

The Secretary-General should therefore not abandon any operation, just because its nature is controversial and the possibility that his office will come under focus from member states who have taken sides in the controversy. Such criticism is unavoidable under mandates on controversial issues. His duties as an international civil servant should always be guided by the common aims and rules laid down for and by the organization he serves and principles of law which are recognized. Attacks on his office and criticism by the member states of he organization should not influence his decisions because if they do then, he has compromised his international character by giving in to national and bloc interests.

## FOOTNOTES

1. D. Hammarskjold, 'The International Civil Servant in Law and in Fact'. UN press release, 59/1035 May 29, 1961.
2. Article 101, Paragraph 3, Charter of the United Nations.
3. Report of Committee of Experts, pp.19-20.
4. CF. Ga res.998 (ES-1) of November 4, 1956.
5. SC. res. 138 (1960) of July 14, 1960.
6. Resolution 3219 (XXIX) of 6 November, 1974.
7. SC. res. 681 (1990) of 20 December, 1990.
8. GA res. 14/21 of 20 December, 1990.
9. DOC. 5/2296 3 of 3rd August, 1991.
10. Stein, "Mr. Hammarskjold, the Charter Law and the Future Role of the United Nations Secretary-General" 56 A.J.I.L. (1962) p.19.
11. SCOR 13th year, 837th meeting on 22nd July, 1958 p.4.
12. GAOR 15th Sess, Agenda item 9. 68-85).
13. Wolfrum and Phillip (ed) United Nations: Law, Policies and Practice. (1995) p.1144.
14. Jordan, "Law of the International Civil Service", in Schachter (ed) United Nations Legal Order, (1995) p. 1062.
15. An Agenda for Peace Boutros Ghali. UN (1992).
16. Cited in Supra Note 10, p.20.
17. Supra note 1.
18. Supra note 16.
19. Supra note 17.
20. Ibid.
21. Ibid.
22. Supra note 18.
23. Un Press release, at note 21, pp.1920.
24. Supra note 12.

## CHAPTER 3

### RECOMMENDATIONS AND CONCLUSIONS

#### 1. RECOMMENDATIONS

The role played by the Secretary-General of the UN is an onerous one given that he combines both administrative and executive functions as the analysis in Chapter 1 shows. To be able to perform these functions effectively, the UN Charter provisions envisages his impartiality in the discharge of the various functions under his office. Article 100 of the Charter places member states of the UN under an obligation to respect the exclusively international character of the Secretary-General and the rest of the Secretariat staff. This provision has been said to be necessary as without it, the functions of the Secretary-General and in particular the political ones cannot be performed freely and effectively. The attainment of the said necessary independence of the Secretary-General has however not in practice been easy to come by. Member states have in many instances attacked the Secretary-General on his alleged lack of impartiality in controversial cases and have in certain situations sought to influence his decisions to preserve their national interests.

The Secretary-General of the UN must continue to play an important role in the UN scheme<sup>and</sup> for as long as part of his role is a political one, his independence from influence by member states must be guaranteed and not just paid lip service to. It is our contention that the Charter provisions on the appointment of the Secretary-General do compromise the office of the Secretary-General's independence. The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council<sup>1</sup>. If the Security Council does not give a recommendation, a candidate will not be appointed because the General Assembly ~~always~~ does not object to the recommendation of the Security Council. During the cold war era, the two main political powers represented in the Security Council normally disagreed on who to recommend. Sometimes, as during the appointment of Mr. Hammarskjold, the two great powers had to be consulted on who was or was not agreeable to them<sup>2</sup>. The criterion of competence and integrity was not thus considered. In this post cold war era, the US has capitalised on the crumbling of the Eastern bloc and the fall of communism to exert her influence and wield the 'big stick' in the name of freedom,



democracy, human rights, peace and security across the world. There is a one state show and the UN Security Council has been turned into more than an American stooge, where the US influence is felt. To be recommended to the General Assembly for appointment as Secretary-General, you have to be 'politically-correct' from the stand point of the U.S. How, then, can the Secretary-General's decisions be said to be independent and free from influence of states? In our view, the recommendation of the candidate to the office of the Secretary-General by the Security Council should be done away with. In the alternative, the recommendation may be done by the Security Council but the veto should be done away with so that the votes of the fifteen Security Council members rank at par when it comes to voting for the candidate. The veto power of the permanent members of the Security Council should thus not be applicable in the appointment of the Secretary-General as it has in the past been misused by the great powers to get their national interests served and to support a candidate for the office of the Secretary-General who the state(s) in question reckon would champion their interests.

It should be noted that the founding fathers of the UN in making the requirement for the Security Council to recommend the candidature of the Secretary-General gave as their rationale the reason that, if he was thus endorsed by the Security Council, this would make it possible to come up with a person who agreeable to all the permanent members of the Security Council and hence the two would work together with better results. This rationale at conception was easier than its implementation as practice does clearly show that the permanent members have used this power to pick on people who would most likely further their particular interests and thus compromising the independence of the Secretary-General.

The General Assembly which is the representative body of all the members of the UN should be given a bigger role to play in deciding who should be the UN's chief administrator and chief executive. At any rate, the Security Council may not have the authority to speak on behalf of the 158 members of the UN. Again, the five permanent members of the Security Council should not be given the sole power to decide on who should be the Secretary-General for this lies in the face of global

democracy which would otherwise require participation of all member states, each with equal vote with other members of the UN as is the case in the General Assembly. The appointing of the Secretary-General in the General Assembly may admittedly have more difficulties in procedural terms as there will not be an obvious recommendation from anybody but it will give the Secretary-General the authority to deal more effectively with matters relating to international peace and security which authority comes from <sup>a majority of</sup> ~~all~~ members of the United Nations.

The provision of Article 98 of the Charter that gives the power to the Secretary-General to perform functions entrusted to him by the principal organs of the UN has created controversies in its application. The political organs of the UN have given mandates to the Secretary-General under it which have ostensibly tended to give a wide discretion to the Secretary-General as the analysis in the second chapter shows. It is our humble view that although the Secretary-General's role under Article 98 ought to remain, until the basic consensus within the political organs is attained and the UN policy making machinery evolved further, important policy decisions with political implications should be collectively made by governments of the various member states through the political organs and not delegated to the Secretary-General as is the case at present. Granted that this conclusion is warranted, steps should be taken to establish a balanced relationship between the Secretary-General and the political organs of the UN.

It is our view that efforts should also be made to improve the policy making role of the political organs hence our recommendation that various committees and commissions be set up as a matter of procedure, whenever important matters are brought before the General Assembly and the Security Council. Such committees and/or commissions will be charged with the duty of investigating the issue at hand, before proceeding, if necessary, to the scene of controversy and reporting back to the UN with appropriate recommendations. The use of such bodies by the Security Council or the General Assembly would be more appropriate to the Secretary-General in crises as they would offer him some guidance directly from the political organs. The operational tasks of the Secretary-General should not be hampered by such a

responsibility sharing device. Such committees have, especially during the early days of the UN, proved effective and useful to the Secretary-General.

In dealing with controversies, depending on the nature of the case, political organs may resort to individual mediators, experts and the Secretary-General but for the purpose of more specific tasks and within fairly specific directives. The means through which the Secretary-General obtains information should be improved. There should also be a panel of mediators who would mediate in disputes so that in times when one of the feuding parties or both of them are not agreeable to the Secretary-General mediating, the panel of mediators may be used. If a mediator outlives his utility, he should be replaced without an institutional crisis.

The General-Assembly with a current membership of 158 should also be improved in its decision-making process. Eric Stein proposes that a generation of parliamentary diplomats be introduced in the Assembly who combine political skill with keen awareness of the importance of parliamentary procedure, unlimited capacity for human contact and realistic knowledge of the changing world<sup>3</sup>. We propose that if such parliamentary diplomats were to be introduced, they should be from all the UN member states and should be the principle of 'one member, one vote'. The use of persons will hopefully make decision-making easier. The structure of the Assembly must also be streamlined. The "committee-of-the-whole" concept should be scrapped entirely and replaced with a mechanism which will actually ensure that substantive work is done in sub-committees of the workable sizes. In the latter case, the sub-committees may become standing groups so that they can continue to function even after the General Assembly has adjourned. The Rules of Procedure of the Assembly should be more rigorously enforced especially on the area of limits on speeches which would make the work of the General Assembly less cumbersome. A more forceful steering committee action by the General Committee may also be helpful.

In view of the increase of the members of the UN, the number of representatives on the Security Council, the Economic and Social Council and other bodies must reflect the new interests represented in the UN. An increase might, especially in the Security

Council, under decisions more difficult to reach, but it would act to strengthen the authority of the bodies concerned and contribute to redressing the balance among the UN organs thus alleviating, to some degree, the various problems of the Secretary-General. Such an increase would also inspire confidence in the member states in the Security Council who sometimes refuse to deal with it for reasons of impartiality. Within the Security Council, the veto power must be done away with. The veto is a conception of the post Second World War which has been used, misused and abused over the years by its wielders to serve their national interests. Its use in the past has at the height of the cold war, paralysed the Security Council. It has also been used to paralyse the operational tasks of the Secretary-General in controversial crises. It is time the responsibility of maintaining world peace and security was removed from five members in an organization of 158 members. The recent proposal by the US of expanding the Security Council by admitting Japan and Germany and one country each from Asia, Latin America and Africa is therefore a welcome one although it does not deal with the problem that the veto power will always paralyse operations of the Security Council.

In the Secretariat, every effort should be made to avoid one-sidedness or the appearance of one-sidedness. This would create trust between the Secretariat and the parties which the Secretariat is dealing with. Wide geographical representation in the Secretariat will ensure that different points of view and perspectives are represented. Secretariat members must maintain self-restraint and discipline in their responsibilities. They must obey the directives of the UN organs, and must insist on guidance from them.

In relation to Article 100 of the Charter, there should be some qualification to the provisions. It would seem needless to require the Secretariat to be impartial and the member states to respect this impartiality of the Secretariat without providing for enforcement of this obligation.

While making these recommendations, we acknowledge the fact that international law is not easily enforceable. Some members of the UN, over the years, have been

irresponsive to the decisions of the UN while others have not honoured their obligations under the Charter. Another difficulty is that such changes as the removal of the veto needs approval from the Security Council which immediately raises an obstacle for the great powers may not be agreeable to a change that takes away the powers they have enjoyed since the formation of the UN. They would not light the fire that consume them painfully. We also acknowledge the fact that the office of the Secretary-General is occupied by a human being who is given to personal and social conditioning which follows, therefore, that the character of the holder of the office of the Secretary-General will depend on the incumbent's use of the powers given to him and not necessarily as laid down and or implied in the Charter.

## CONCLUSION

The UN Charter provisions on the office of the UN Secretary-General bestow this office with both administrative and executive functions. The former includes a variety of functions which are administrative, technical and financial while the latter relates to functions which are pre-eminently political in character. Article 97 provides that the Secretary-General shall be the chief administrative officer and Article 98 provides that he shall act in that capacity in all meetings of the principal organs of the UN (except the International Court of Justice). The two provisions provide the basis of administrative functions of this office. Article 98 and 99 provide for the political functions. Article 99 in particular gives this office a political role to play by providing that the Secretary-General may bring to the attention of the Security Council matters which in his opinion threaten the maintenance of international peace and security. To be able to perform the aforesaid functions effectively, Article 100 provides for the independence of the Secretary-General's functions from member states of the UN and also requires that the Secretary-General be impartial when performing his functions.

The implementation of the provisions of Article 100 as seen over the years in the UN has been difficult. The independence of the Secretary-General from influence by the member states of the UN has been compromised especially in the exercise of his political functions under Articles 98 and 99 of the Charter. In the administrative field, the independence of his functions has been tampered with in the appointment of Secretariat staff as many governments have sought to influence his choice of staff.

In the present world situation where many conflicts rock all parts of the world, the role the Secretary-General plays in maintenance of peace is important. He engages in preventive diplomacy with parties to a conflict. Preventive diplomacy has proved to be an effective form of resolution of conflicts and the Secretary-General's role here must remain the same. The member states must therefore respect the international character of the Secretary-General if his functions are to be performed effectively. The appointment of a Secretary-General should not remain in the hands of the permanent members of the Security Council. The Secretary-General must be free from influence by these permanent members. The decision making policy in the political organs must also be improved so that the competence of the

Secretary-General in dealing with conflicts is explicit and leaves no room for a wide exercise of discretion by the Secretary-General which will allow political influence.

If the international character of the Secretary-General's office is not respected, there will be loss of confidence in the said office especially when it comes to settlement of disputes and on issues relating to the political functions, the Secretary-General will be a flop because, in any event, no parties will want to deal with a person who they think is not independent.

## FOOTNOTES

1. Article 97, UN Charter.
2. B. Urquhart, Hammarskjold, (1972) p.45.
3. "Mr. Hammarskjold, The Charter Law and The Future Role of the United Nations Secretary-General" 56 A.J.I.L. (1962) p.29.



## SELECTED BIBLIOGRAPHY

1. S. Schwab, The Secretary-General of the United Nations, (1952).
2. Bowett, D., The Law of International Institutions (London: Stevens & Sons, 1982).
3. Roberts A. and Kingsbury B, (eds), United Nations: The UN's role in International Relations (Oxford: The Clarendon press, 1989).
4. Hammarskjold, D. The International Civil Service in Law and in Fact (Oxford: The Clarendon press, 1961).
5. Jordan R. (ed); Dag Hammarskjold Revisited: The UN Secretary General as a Force in World Politics (Durham; NC: Carolina Academic Press, 1953).
6. Gordenker, L., The UN Secretary-General and the Maintenance of Peace (1967).
7. Urquhart B, Hammarskjold, (1972).

## ARTICLES

1. Schwebel, S., "The International Character of the Secretariat of the United Nations", 30 BYIL 71 (1953).
2. Kunz, J., "The legal position of the Secretary-General of the United Nations", 40 AJIL 786 (1946).
3. Jonah, J., "Independence and Integrity of the International Civil Service. The Role of Executive Heads and the Role of States", 14 NYUJILP 849 (1982).
4. Cohen M., "The United Nations Secretariat - Some Constitutional and Administrative Developments", 49 AJIL 295 (1955).
5. Perez de Cuellar, "The Role of the UN Secretary-General", in Roberts & Kingsbury (eds), United Nations, Divided World: The UN's Roles in International Relations (1988).
6. Bailey, "The Secretary-General of the United Nations", 17 The World today of 2 January, 1961.
7. Schwebel, "The origin and development of Article 99 of the Charter" 28 byil 371. 380.
8. Stein, "Mr. Hammarskjold, The Charter Law and The Future Role of the United Nations Secretary-General", 56 AJIL. 17 (1962).
9. Pechota, "Good offices of the Secretary-General of the United Nations: Contemporary Theory and Practice", in M. Nawaz (ed) Essays on International Law, (1976) 191.
10. M. Petrolia-Ammanite, "The position of the Secretary-General of the UN in the organization and in the international community" in The Law of the UN Thesaurus Acroasium II, (1976) 353.