

CONFIGURING THE ROLE OF THE UNITED NATIONS SECRETARY-GENERAL IN THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES. RELATIONS WITH THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY

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Abstract

In an international context embracing the idealist concepts of harmony, cooperation, structural peace, illegality of war, the United Nations Organization has created a system of peaceful settlement of disputes, based on principles of justice and international law. In this framework, the organs bearing the responsibility of peaceful resolution of conflicts are the International Court of Justice, the Security Council, the General Assembly and the Secretary-General. The latter has a unique position, triggering a spectacular evolution of its role in the maintenance of international peace and security. The challenges of the international environment and the outstanding ways in which they were addressed by the distinctive personalities that filled the function of the Secretary General, creating precedents and influencing its future development, have led to a continuous enlargement of its role. The purpose of the present paper is that of defining the role of the Secretary-General in the system of peaceful settlement of international disputes created by the United Nations, by analysing the relevant provisions consecrated in the Charter and by revealing and explaining the outstanding evolution of this institution, with an emphasis on the relations of mutual influence between the High Official, on one side, the Security Council and the General Assembly, on the other.

Keywords: *peaceful settlement of disputes, Secretary-General, Charter of the United Nations, Security Council, General Assembly.*

1. Introduction

The United Nations Organization proposes a system of peaceful settlement of international disputes that is complementary to the usual means of peaceful resolution, consecrated by the international law.¹ The peaceful settlement of conflicts in the UN system is based, according to the UN Charter, on principles of justice and international law, the organs responsible in this matter being the International Court of Justice, the Security Council and the General Assembly. In addition, the Secretary General's competencies, as well as its influent position and unique role make this institution suitable to international actions of peaceful resolution.

According to the UN Charter, the Security Council is primarily responsible for the maintenance of international peace and security² because, due to its selective composition and permanent functioning, it was considered to be more efficient when it came to dealing with potentially dangerous situations and inter-state antagonisms. A dispute can be referred to the Security Council if it has an international character and might constitute a danger to the international peace and security. In order to settle a dispute, the Security Council may adopt non-mandatory resolutions, containing recommendations, based on Chapter VI of the UN Charter. These recommendations may be general or

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¹ "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." (Art.33 of the Charter of the United Nations, San Francisco, 1945, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>, accessed 08.01.2012, art. 33, para. 1)

² Charter of the United Nations, San Francisco, 1945, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> accessed 08.01.2012, art. 24

specific.³ Although not compulsory, these resolutions are politically significant and thus, in light of the general responsibility of maintaining the international peace and security, provided for by the Charter, Member States feel obliged to take into consideration any recommendation made by the Council and to examine in good faith the possibility of conforming to it.

After the Second World War the general mentality was that the most suitable structure, when it came to settling international disputes, was the Security Council, due to its five prominent permanent members. The General Assembly had rather limited attributions in this matter. Nevertheless the Assembly had been endowed with a general competence that allowed it to discuss and make recommendations on any questions within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter⁴.

Although it may be true that, regularly, issues concerning the maintenance of international peace and security are addressed and decided upon within the deliberative organs, it is the Secretary-General who, in fact, has taken most of the initiatives to settle or prevent conflicts which were threatening the international peace. The Secretary-General of the United Nations has had one of the most spectacular evolutions in the history of UN's structures. Its contribution to the peaceful resolution of international conflicts is significant, covering a wide range of actions undertaken in accordance with the authority and prestige of this function. The original manner in which the different personalities that occupied this function addressed the numerous challenges of the international environment has influenced the evolution of this institution, increasing its political autonomy. With the expansion of its political space of manoeuvre towards fields that were traditionally under the jurisdiction of the deliberative organs, new tensions have arisen between the Secretary-General, on one side, and the Security Council the General Assembly and certain Member States⁵, on the other. The different personalities who occupied this position have conducted an intense activity of promoting and developing the role of the Secretary-General, while trying to ensure the cooperation with the deliberative bodies, in order to maintain the institutional balance of the United Nations.

Within the institutional framework configured by the UN Charter, having in view the vague wording of the articles establishing the Secretary-General's attributions, leaving room for wide interpretations of its role, and also taking into consideration the constant international challenges that UN has to cope with, one can say that the High Official exercises a certain influence on the deliberative organs' activities. Defining influence as "the performance of an action by an agent that results in a change in some state of another agent"⁶, it can be inferred that the Secretary-General's acts of influence on the political organs' actions are responses to the demands and expectations of the latter, as they are defined in a particular international context. It is important to note that any influence exercised by the Secretary-General on the main organs is also based on their acceptance and need. Using available resources consecrated by the UN Charter (such as the wording of a mandated assignment, the right to make oral and written statements before the principal organs, the regular or the requested reports and "the special right" of initiative before the Security Council provided by art. 99) and taking advantage of the neutral stance specific to its function that is often indispensable for the efficiency of the process of peaceful settlement, the office holders have had the

³ Raluca Miga-Beșteliu, *Drept internațional. Introducere în dreptul internațional public*, (Bucharest: All Beck, 2003), p. 368

⁴ Charter of the United Nations, San Francisco, 1945, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>, accessed 08.01.2012, art. 10

⁵ The Soviet Union ostracized Hammarskjöld during his second term for surpassing his responsibilities. The US, in 1993, reminded Boutros Boutros Ghali that he is only the 'servant' of the embers, a view sustained France and the United Kingdom (T.M. Franck, *The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture*, 6 EJIL (1995), 363).

⁶ J. Knight, *On the Influence of the Secretary-General: Can We Know What It Is?*, "International Organization", Vol. 24, No. 3, 1970, p.597

opportunity to leave an imprint on the evolution of their office and of the Organization as a whole as well as on the general world order.

The present paper undertakes the task of defining the Secretary-General's role in the peaceful settlement of disputes by exploring its capacity to influence through means made available by the Charter, taking into consideration the historical evolution of the function and the existing research on the personal leadership styles of the office holders. This study will have in view the relevant literature on the influence of the Secretary-General – for instance, Gordenker's and Rivlin's edited work *The Challenging Role of the UN Secretary-General. Making „The Most Impossible Job in the World”* containing valuable studies on the Secretary-General's role and evolution, and Michel Virally's insightful analysis of the High Official's political role, *Le rôle politique du Secrétaire Général des Nations Unies*, published in 1959 in “Annuaire français de droit international” – as well as the existing research on the relationship between the personal qualities of the office holder and its political behaviour, explored by Kent J. Kille in his work *From Manager to Visionary. The Secretary-General of the United Nations*. The analysis of the function's evolution, from legal and historical perspectives, corroborated with the existing research results on the political behaviour of the Secretary-General will be used to determine the extent to which the distinctive occupants of the function, endowed with different personal features and placed in an ever-changing political context, have identified and used the possibilities to exert influence in the process of peaceful settlement of disputes.

2. The Secretary-General's competencies according to the Charter of the United Nations

The Secretary-General is the head of the Secretariat – UN's administrative and technical service – the chief administrative officer of the Organization, appointed by the General Assembly upon the recommendation of the Security Council, for a 5 – year mandate, with the possibility of renewal. The high importance of this position in the institutional structure of the Organization is apparent even from the appointment procedure. The designation of the chief administrative officer of the Organization implies a major political stake. It is, in fact, a legally organized political act which requires a minimum of consent or, at least, passivity on the side of the permanent Members of the Security Council. The permanent Members, because of their recognized right of veto, have, if not the power to impose their preferences, at least the ability to prevent an application. The different appointments that took place over time illustrate this negative capability and explain the generally neutral position of the states whose nationals have come to occupy this function.⁷

The statute and the powers of the Secretary-General are unique, specific to the Organization, without any equivalent in other international or internal structures.⁸ This high official has a strategic position as head of the only international universal organization with a multidimensional purpose. “Through the Secretary-General and its office pass all the interrelations represented by the United Nations Organization.”⁹

The Charter sets out the Secretary-General's competencies in a few articles with a rather vague wording. According to article 97 of the Charter, the Secretary-General is “the chief administrative officer of the Organization”. Article 98 provides that “the Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council and shall perform such functions entrusted to him

⁷A. Pellet, & J. P. Cot, *La Charte des Nations Unies. Commentaire article par article*, (Paris:Editions Economica, 1987), 1310

⁸ Magdalena Denisa Lungu, *Rolul organizațiilor internaționale în soluționarea pașnică a diferendelor internaționale*, (Bucharest: Universul Juridic, 2010), 268

⁹ Benjamin Rivlin, *The Changing International Political Climate and the Secretary-General*” in Benjamin Rivlin, Leon Gordenker (eds.) 1993 *The Challenging Role of the UN Secretary-General. Making „The Most Impossible Job in the World” Possible*, (London: Praeger, 1993), 5

by the other principal organs”, which, naturally, may include those in the field of the prevention and peaceful settlement of disputes. The same article establishes that the Secretary-General shall make an annual report to the General Assembly on the work of the Organization. Art. 101 states yet other responsibilities of the Secretary-General, establishing its control over the appointment of the Secretariat’s staff, while art. 100 emphasizes the necessity of ensuring the independence of the Secretary-General and of the Secretariat’s staff from any possible influence of the Member States. However, of all the Charter’s provisions, art. 99 is the one that confers the Secretary- General the possibility to exercise its direct influence upon the activities of the Organization, enabling it to bring to the attention of the Security Council any matter which in its opinion may threaten the maintenance of international peace and security.

As a fundamental principle of any administrative structure, the hierarchical power is the faculty recognized to the highest official of the UN structure to ensure the adequate functioning of the secretarial services, the proper execution of the instructions and the overall control of the Secretariat. As head of the administration, the Secretary-General shall prepare and implement the budget, direct the staff, manage assets and represent the organization in front of private or public agencies and bodies, outside the United Nations.¹⁰

The importance of the manner in which the administrative and representational attributions are accomplished, depending on the political context and the personal features of the office holder, is not negligible. Depending on the international context and on the way each of the occupants of this function has interpreted the role of the Secretary-General, some of them have tried to make suggestions regarding the administrative reform, observing the existing gaps and proposing solutions to redress them. Also, the Secretary-General could use the activities of representation and participation at the meetings of the deliberative organs to try to exercise a political influence and interfere in the decision-making process. On the other hand, some of the Secretaries preferred, for various reasons, to keep a low profile and to limit their activities to the mere execution of the administrative tasks.

In addition to the technical-administrative and representational responsibilities, specific to this function, the High Official undertakes other type of actions as well, in accordance to the Charter’s provisions: good offices, mediations, consultations with government representatives, research in various fields, organizing of international conferences, information activities and coordination of peacekeeping operations.¹¹

Although, the attributions consecrated by the UN Charter for the Secretary-General seem to have mainly a technical and administrative character, a co-reading of art. 97, representative for the executive-administrative character of this function, art. 98, opening the door to a measure of political responsibility, and art. 99, illustrating its true political, autonomous character in the maintenance of international peace and security, demonstrates the dual nature of the Secretary-General’s role, deriving from “a unique mixture of independence and dependence”.¹² Thus, the Secretary- General will act as head of the administration in the management of the Secretariat, while, on the international stage and before all UN structures, it will act as a high official vested by the UN Charter with a very special right: a right of diplomatic initiative, of political nature, consecrated in art. 99. In fact, art. 98 entitles the General Assembly and the Security Council to “entrust the Secretary-General with tasks involving the execution of political decisions even when this would bring him – and with him the Secretariat and its members - into the arena of political conflict.” The political responsibility implied by art. 98 is different from the political authority accorded by art. 99, but in perfect conformity with its spirit. Of course any political stance taken by the Secretary-General must not depart fro the

¹⁰ A. Pellet, *op. cit.*, 1309

¹¹ Magdalena Denisa Lungu, *op. cit.*, p.269

¹² Howard H. Lentner, *The Political Responsibility and Accountability of the United Nations Secretary-General*, “The Journal of Politics”, Vol. 27, No. 4 (Nov., 1965), p.839

concept of “neutrality”. Neither art. 98 nor art. 99 could be implemented without “the complement of art. 100 strictly observed in letter and spirit”.¹³

The Rules of Procedure of the General Assembly, as well as those of the Economic and Social Council and of the Trusteeship Council have confirmed over time the extensive interpretation of the Secretary -General’s competences. Therefore, the Secretary-General shall act in this capacity in all meetings of the General Assembly of the Economic and Social Council and of the Trusteeship Council, but also of their committees and subcommittees. The dispositions of the rules of procedure state the unity of the Secretariat and the primacy of the Secretary-General, regardless of any merger of the subsidiary organs. “Through the Secretary-General pass all communications between the Organization and any of its organs. By performing its attributions, the Secretary-General must do so that the activities undertaken by the different organs form a whole and ensure that this entirety functions in the best conditions and efficiently”.¹⁴

As head of the Secretariat, one of UN’s main organs, the Secretary-General disposes of a certain degree of power within the Organization, in the sense that it is endowed with attributions of control over the staff of its office and representation inside and outside of the Organization. “Externally, in the arena of world politics, he may have influence, but he has no real power. He may have influence as a moral voice or because he is well informed, being at the centre of diplomatic activity or because he is able to facilitate contacts between leaders who wield real power.”¹⁵ Although lacking any decision-making powers and despite the some-what limited attributions formally consecrated by the Charter, the High Official is still able to influence UN’s policy. Through its strategic position, the Secretary-General often has the opportunity to influence the way decisions are taken and implemented in the Organization. Many of the activities that have become nowadays specific to this function, developed in time based on a broad interpretation of the Charter’s provisions, triggered by the need to adapt the Organization to new international challenges. Therefore, the Secretary-General’s role should not be judged solely in terms of the Charter’s provisions as they only establish a framework, a “skeleton”.¹⁶

3. The style of leadership and the degree of involvement in the peaceful settlement of disputes

If the Charter provides an invariable framework for the position of the Secretary-General, a “skeleton” that has not changed yet, the personal profile of the occupant along with the political context in which it operates constitute two variable elements of high importance for the proper understanding of this institution.

“Each incumbent brings to the office a different cultural background, life experience, personality, intellectual acumen, ideology and mode of operation. These factors play an important role in determining the manner in which a Secretary-General functions in any particular international political climate.”¹⁷

The Secretary-General’s role in the peaceful settlement of disputes was configured progressively and often on the basis of precedents created by the various office holders through their specific manner of addressing the international issues they had to cope with. Thus, the political

¹³ Eric Stein, *Mr. Hammarskjöld, the Charter Law and the Future Role of the United Nations Secretary-General*, in “The American Journal of International Law”, Vol. 56, No. 1 (Jan., 1962), p.14

¹⁴ A. Pellet, *op. cit.*, p.1311

¹⁵ Stephen M. Schwebel, Arthur W. Rovine, James Barros and David A. Morse, *A More Powerful Secretary-General for the United Nations?* in „The American Journal of International Law”, Vol. 66, No. 4 (September 1972), p.85

¹⁶ Kent J. Kille, *From Manager to Visionary. The Secretary-General of the United Nations*, (New York: Palgrave Macmillan, 2006), 17

¹⁷ Benjamin Rivlin, *op. cit.*, p.6

behaviour of each occupant has the power to affect the authority and prestige of the function in a particular context, as well as its future evolution.

Previous researches on the political behaviour of leaders have identified three styles of leadership: managerial, visionary and strategic. Kent J. Kille used these previous findings in order to explore the Secretaries' distinctive ways of interpreting their role within the Organization and on the international arena and the extent to which each of them managed to make a difference in the evolution of their Office.

In order to distinguish between the different types of leadership styles, there have been identified six relevant features: the capacity to react (sensitivity towards the context and analytical abilities), confidence in the personal ability to influence events, need for recognition of efforts and labour, need to relate to others, internationalism (defined as attachment to the UN and desire to protect its values), emphasis on solution identification and task accomplishment.¹⁸ All the office holders possess these qualities, to some extent. But in order to determine which of these traits are predominant for each incumbent and, thus, determine which style of leadership is more fitting, researchers have put to analysis primarily their spontaneous manifestations, for instance statements made during press conferences, focusing less on their previously prepared official discourses. On this basis there have been observed the past incumbents' inclinations towards a particular pattern of behaviour: the managerial style will register higher scores at the capacity to react and need to relate; the strategic style has as predominant features the capacity to react, the confidence in the personal ability to influence events, the need to relate and the internationalism, while the visionary style will focus primarily on the confidence in the personal ability to influence events, the need for recognition of the personal efforts, the internationalism and the emphasis on solution identification and task accomplishment. According to the results of this research, Lie, Hammarskjöld and, then, Boutros-Ghali are predominantly visionary, Thant, Waldheim and Perez de Cuellar are mainly managerial, while Annan is mostly strategic.¹⁹

Keeping these coordinates, we could determine the various occupants' degree of involvement in the peaceful settlement of disputes and the extent to which each of them contributed to the configuration of the Secretary-General's role. Thus, it has been noted that the managerial style is specific to those incumbents that prefer to receive and execute instructions and less compatible to activities of peaceful settlement of disputes, which imply a greater degree of independence and confidence in the personal ability to influence events. These office holders will limit their involvement in the peaceful resolution of conflicts to merely executing mandated assignments, without any intention to exert influence on the deliberative organs. Any independent initiatives would often be less efficient, lacking the necessary sustained effort.

The visionary style is probably the best suited for activities of peaceful settlement. If managers are ideal executants, visionaries are creators. They prefer independent actions and even when they are mandated an assignment they try to contribute to its shaping and give a personal interpretation to its *modus operandi*. Visionaries always try to exert influence and are in a constant search for solutions to the major issues that affect international peace and security. For instance, Dag Hammarskjöld's personality, the original and creative manner of approaching the international issues of his time, his confidence in UN's mission and values have played an outstanding part in the evolution of the Office, of the Organization, as a whole, and of the world's perception on its role on the international arena. The echo of its actions is still found today in the way some of the attributions of the Secretary-General are shaped.

The strategic style implies a rather moderate desire to influence. Strategists prefer consensus and act cautiously without forcing the events, waiting for the right moment to intervene, so that their

¹⁸ Kent J. Kille, *op. cit.*, p.18

¹⁹ *Ibidem*

actions would benefit from a favourable framework that would enhance their efficiency. Strategists opt for a slow, but certain evolution of their demarches.

A brief analysis of these patterns of political behaviour would lead us to the conclusion that the visionary and the strategic styles are more inclined towards an active involvement in the peaceful settlement of disputes, determining in greater measure the evolution of the Secretary-General's role in this field. Nevertheless it is important to note the fact that all the office holders possess features that are specific to each of the three styles and that can be activated in the sense of exerting a specific approach on international issues, when favoured by other factors such as the international context and the general evolution of international law.

3. The Secretary-General's relations with the Security Council and the General Assembly – potential influences of the decision-making process

Having in view the above-mentioned analysis of the incumbents' pattern of behaviour, it becomes obvious that the Secretary-General's relation with the deliberative organs varies in intensity and content, depending on the political context and the individual occupying the position.

Legally speaking, as we have noted in a previous section of this study, and also taking into account the further evolution of the Secretary-General as mediator and provider of good offices (imposed by a reconfiguration of the peaceful settlement of disputes system, as a result of the continuous developments of the international relations) the High Official's attributions in the field of peaceful settlement of disputes derive either from the assignments mandated by the Security Council and the General Assembly (art. 98) or from its voluntary involvement (under art. 99) on its own initiative or at the request of the parties to the conflict.²⁰

3.1. Assignments mandated by the General Assembly or the Security Council, under art. 98 of the UN Charter

Considering exclusively the Charter's dispositions, it could be said that the Secretary-General is, normally, an executive body, subordinated to the instructions and decisions of the deliberative organs. The only exception is art. 99 establishing the Secretary-General's initiative function. This article has sometimes been interpreted as providing a specific legal basis for the Secretary's informal political activity. Initially, during the first decade of the Organization's existence, while the Secretary-General was evolving as a valuable agent of peaceful settlement of international disputes, the High Official would most often act under the Security Council's or the General Assembly's mandate.²¹

The further development of this function, based on the extensive interpretation of the Secretary-General's role in the UN's institutional architecture covering areas that were traditionally under the jurisdiction of the deliberative organs, has often generated tensions. The Secretary-General was caught between "the idealism and the hope that find their bright expression" in the Charter's provisions and the national interests of UN members, in particular those of the permanent members of the Security Council, as powerful, influential states, largely sustaining the Organization's financial and constitutional performance.²² Sometimes, the Secretary-General's missions of peaceful settlement have been obstructed by constraints imposed by the Security Council, the General Assembly or important Member States. Some would argue that, sometimes, these very constraints helped protecting the impartiality and the reputation of the tenure, subject to various pressures.

²⁰ Magdalena Denisa Lungu, *op. cit.*, p.271

²¹ For instance, Resolution 203/14.05.1965 on the Dominican affaire and Resolution 294/15.07.1971 on the conflict between Portugal and Senegal gave such mandates to the Secretary-General.

²² Simon Chesterman, *Secretary or General? The UN Secretary General in World Politics*, (New York: Cambridge University Press, 2007), p.9

It is important to notice that over the years the number of assignments has grown significantly. The magnitude and the wide range of executive functions entrusted to the Secretary-General have, in themselves, a political significance. In time, it becomes somewhat evident that the Secretary-General, as head of the Secretariat, one of the main UN organs and legally based participant at the meetings of the deliberative organs, is best qualified to execute resolutions, even if the given assignments surpassed the limits of simple administrative services.

When mandated such an assignment, there rise opportunities for the High Official to exercise its own influence on the way a certain situation is approached. Thus, the Secretary-General has "the power to interpret the mandate".²³ Of course, the given instructions can be more or less precise, more or less coordinated, but the Secretary-General often enjoys a certain autonomy in the performance of its attributions. Many assignments, because of their vague wording, leave the Secretary-General a significant freedom of appreciation and, sometimes, even the independence of entirely choosing the means of execution. Nevertheless, the degree of autonomy is highly dependent on the incumbent's personal features. Researchers of the Secretary-General's political behaviour have concluded that each style of leadership is different from this point of view. Visionaries, like Lie and Hammarskjöld, have the tendency to act more autonomous, strategists are more cautious, while managers, like Thant, Waldheim and Perez de Cuellar tend to act carefully, seeking the approval of the main organs. However, it is important to note the fact that each and every one of the Secretaries have contributed to the evolution of the function. Visionaries were the most creative and independent incumbents, leaving behind a precious legacy that was to be developed by their successors.

Placed in various international contexts, the Secretary-General's autonomy has proven to be a useful instrument, ensuring and preserving, as much as possible, the institutional balance and the effectiveness of the Organization. During the Cold War, the Secretary-General would often use its growing political independence in order to mediate the antagonistic positions of the two superpowers. However, through these actions, the Secretary-General often risked to undermine the very authority of his Office, if, for instance, he lost the support of one superpower or if the function itself became the object of an international dispute. Nevertheless, in this turbulent international context, the position of the Secretary-General knew the most spectacular evolution, from Trygve Lie, who founded the independence of the Office, and continuing with Dag Hammarskjöld, who, among other things, trying to avoid blockage of the collective action through the so-called "Peking formula", obtained the autonomy of the Secretary-General in implementing mandates on international peace and security. Also, the second Secretary-General prepared the ground for the establishment of the UN Emergency Force (UNEF), in order to put an end to the Suez crisis in 1956.²⁴ Seeking a creative use of limited resources – especially military resources - Dag Hammarskjöld, in partnership with the General Assembly's President, Lester Pearson, established UNEF, creating an original pattern for peacekeeping missions, the so-called "Chapter VI and a half" of the Charter, which have actually been used very often ever since. Important developments also occurred during the mandates of U Thant, Kurt Waldheim and Javier Perez de Cuellar, each of them trying to maintain the delicate institutional balance of the Organization.

The end of the Cold War brought an infusion of optimism, of expansive and proactive practice within the deliberative organs. The number of mandates establishing peacekeeping and peace building missions, as well as legal and administrative activities, increased.²⁵ At the same time, the political space available to the Secretary-General expanded, generating tensions that had to be coped with by the High Official (in particular by Boutros Boutros-Ghali and Kofi Annan).

²³ Kent J. Kille, *op. cit.*, p. 52

²⁴ Simon Chesterman, *op. cit.*, p. 19

²⁵ For example, in the five years after 1988, as many peace-keeping operations were authorized as in the previous forty-three years. (UN Press Release SG/SM/4748, 13 May 1992, at 1-2)

Subsequently, the Secretary-General's efforts to mediate and to ensure the cooperation and the balance within the Organization have not diminished. From the ingrate position of reconciliation agent, caught between the interests of the Western states, facing new challenges to their security, international terrorism and nuclear proliferation, on one hand, and the interests of the developing states, troubled by other issues and having totally different priorities, on the other, the Secretary-General has sought to defuse the inevitable tensions.

In the field of international peace and security, over time, the Secretary-General had to assume increasingly numerous executive functions, while the practice of peacekeeping missions has charged the Secretary-General with responsibilities that were much higher than those initially envisaged by the Charter. In the absence of any tradition or indication coming from the deliberative organs, the founding principles on which these operations were conducted were elaborated by the Secretary-General himself. Many of the aspects regarding the peacekeeping mechanism were developed on the initial principles defined by Dag Hammarskjöld in 1956. Frequently, the vagueness of the mandate prompted the Secretary-General to provide its own interpretation to the resolution and to adapt the operations to the international situation and the local situation. Sometimes, the imprecision of a mandate on a peacekeeping operation triggered serious consequences. For instance, because of the inability of the Security Council and of the General Assembly to properly define the UN mission in Congo, in 1960, when the civil war was imminent and the threats of secession were pressing, Dag Hammarskjöld and his representatives were forced to solely assume the responsibility for the UN action in the field. The whole situation was extremely controversial and led to a serious financial and constitutional crisis within the UN. In this context, the USSR proposed to replace the Secretary-General with a triumvirate, with the risk of importing the antagonisms existing within the political organs into the executive, thus creating a blockage of its activity. Some years later, in 1967, U Thant decided to withdraw the United Nations Emergency Force which was established ten years earlier in the Middle East on the basis of a resolution adopted by the General Assembly without determining any time limit for its existence. The further attacks against the Secretary-General, following this decision, left a deep imprint on his work until the end of his mandate. As a result, peacekeeping operations began to be established for a limited period and subjected to a periodic review and renewal, every 3 or 6 months. Thus, at short intervals, the Secretary-General was to report to the Security Council, recommending the renewal of the Force, if applicable, describing any problems that had to be faced and making suggestions to improve its efficiency and to adapt its objectives to the changing context. Based on this report, the Security Council would make a decision. Thus, the Secretary-General's activity was to be periodically evaluated and its mandate reconfirmed.²⁶

In the diplomatic field, the General Assembly and the Security Council have charged the Secretary-General with increasingly numerous and rather vague responsibilities, which, eventually, led to the gradual enlargement of the office's capacity to influence world events and of its independence. Very often, the Secretary was vested with mediation and good offices missions, which tended to fill in the gap created by the inaction of the normally competent bodies. The High Official was sometimes asked to commit to the urgent implementation of resolutions that were adopted years ago, to renew its efforts in order to reach a global solution to issues that were a few decades old, to promote "the implementation of the present resolution" in crisis that were completely beyond UN's capabilities. Often, especially in the context of the Cold War, the only form of action upon which the Member States were able to agree consisted of a Secretary-General's report on the situation that was to become the basis of a new resolution.²⁷ In such situations, regardless of the leadership style, the Secretary-General had to be more creative than usually and to assume a greater degree of autonomy. This is a double-edged situation as what could lead to the enlargement of its role, could also affect its

²⁶ A. Pellet, *op. cit.*, 1315

²⁷ *Ibidem*

credibility, with negative consequences on the long run. Thus, the involvement of the deliberative organs in the sense of establishing rules and limits in the Secretary-General's activity can sometimes have a protective effect.

Confronted with controversial political situations, when receiving assignments from the deliberative organs, Dag Hammarskjöld took an emblematic stance: he addressed the dilemma of the Secretary-General's proper course of action when carrying out its tasks, by invoking the full regard to its international obligations under the Charter and the neutrality of its position, translated in the lack of "subservience to a particular national or ideological attitude." Hammarskjöld believed that in accomplishing its attributions, the Secretary-General should use the varied means and resources made available, of which primarily important are: the principles and purposes of the Charter and the body of legal doctrine and precepts, supplementing the Charter's principles, "accepted by states, generally and particularly, as manifested in the resolutions of the UN organs." In order to reduce the margin of discretion and ensure that its stance is representative for the opinion of the Organization as a whole, the Secretary-General should use constitutional means such as: "consultations with permanent missions of the United Nations safeguarded by diplomatic privacy" and advisory committees, "composed of representatives of the governments most directly concerned and representing diverse political positions"²⁸. If even so the Secretary-General inevitably keeps a large area of discretion and risks to become subject of political controversy, Hammarskjöld considers that:

"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." "... If integrity in the sense of respect for the law and respect for truth were to drive him into positions of conflict with this or that interest, then that conflict is 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."²⁹

Experience has proved that the deliberative organs must be very careful when mandating an assignment to the Secretary-General. In order to ensure the efficiency of the Secretary-General's mandated assignments and to protect its credibility as an independent negotiator, the deliberative organs should abstain from using the High Official as a messenger when the actual intention is to use force for the settlement of a particular dispute.³⁰ Also, failure has taught UN the lesson of not giving the Secretary-General assignments which are hopeless because of the obduracy of the parties³¹ or of the unwillingness of UN Members to supply the adequate funds and personnel³² or, simply, because the international community is not really interested in a settlement in that particular moment³³. Probably the worst mistake that could be made would be to assign the Secretary-General diplomatic functions as a way of shifting responsibility for failure or of dropping uncomfortable issues that some Members wish to forget, in order to create the illusion of action. In such situations, a solution would

²⁸ Eric Stein, *op. cit.*, 20-21

²⁹ *The International Civil Servant in Law and in Fact*, Address by the UN Secretary-General, Dag Hammarskjöld, at Oxford University, May 30, 1961 UN Press Release SG 1035 (May 29, 1961), p.19-20

³⁰ For instance, the 1992 crisis regarding the British-French-American demands on Libya for the extradition of suspected terrorists involved in two airline bombings.

³¹ For example, the case of Cyprus and the UN peace-keeping forces trying to sooth relations between the Greek-Cypriot and the Turkish-Cypriot.

³² For instance, UNAVEM, the original UN election verification mission to Angola was understaffed and its failure became evident when hostilities resumed, subsequent to the 1992 elections.

³³ In early 1994, in the context of the escalating tribal war and genocide in Rwanda and Burundi, the Secretary-General's diplomatic efforts were obstructed by the lack of political will because of UN members' reluctance to shoulder additional policing burdens.

be that the Secretary-General is given the possibility to use a private or public way in order to decline an assignment known to be ill-conceived or insufficiently supported within the Organisation.³⁴

Over the years, incumbent by incumbent, the Secretary-General's role in the peaceful settlement of disputes was configured as clearly separate from and, sometimes, even at variance with the policy of one or other of the deliberative organs. Nevertheless, while keeping a neutral stance on issues concerning international peace, the High Official had to be careful that his independence doesn't conflict with UN's definitive policy positions in order to ensure coherence and efficiency in all its activities. In order to act as a credible intermediary, the Secretary –General needs a wide margin of discretion. However, if a UN political organ expresses an obvious adversarial stance towards the actions of a state with which the High Official is trying to negotiate, the Secretary-General must retain, using diplomatic skills, the margin of discretion necessary for the proper accomplishment of the peaceful settlement activities.³⁵

3.2. Regular or requested reports to the General Assembly and to the Security Council

An opportunity to exercise an influence on the way a certain dispute is approached also arises with the presentation of regular or requested reports to the General Assembly and the Security Council. Thus, the High Official can make suggestions on how the efficiency of the Organization could be increased, through the improvement of certain aspects that depend on the Secretary-General's involvement.

The Secretary-General has often used the annual report on the work of the Organization that had to be presented to the General Assembly, as an occasion to expose its points of view on various issues. This responsibility – consecrated in art. 98 of the UN Charter – has been interpreted in different ways by the office holders, knowing an interesting development. Inherited from the League of Nations, this disposition was slightly diverted from its original purpose. Initially, it was neatly placed within the framework of strictly administrative attributions. Obviously, the report had to be a « compte-rendu », without implying any decision-making opportunities for the Secretary-General. It was soon to be noted that although the report must remain impartial and objective, it could not be just a chronology or a mere description of acts adopted by the various UN organs. The Secretary had to somehow juxtapose the events and the reactions they triggered within the Organization as well as the subsequent decisions adopted by the UN organs. In addition, the High Official had to make note of the consequences implied by any of the aforementioned. In other words, the annual report could not lack a certain degree of interpretation of the international conjuncture and the role of the United Nations within it, as well as an evaluative and predictive tendency.³⁶ Thus, the annual report has gradually become less of an administrative report and more of a diplomatic document, in which the Secretary-General expresses its own view on the overall UN policy. Although the analysis could be rather descriptive, the magnitude and the complexity of UN's activities asked for an effort of synthesis, allowing a general overview of the international arena. Trygve Lie understood very well these requirements and conceived his first annual report as divided in two parts: a general introduction, elaborated by the Secretary himself and the actual report as a historic description of UN's activities undertaken during the past year, anonymously drafted by the Secretariat. Dag Hammarskjöld introduced a new element, by publishing separately a substantial introduction. The annual report, published 45 days before the opening of the session, as established in art. 48 from the General Assembly's Rules of Procedure, became a "supplement" to the introduction that appeared in the General Assembly's session. The report remained a purely technical summary, while the much-

³⁴ T.M. Franck, *The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture*, 6 EJIL (1995), 367

³⁵ *Ibidem*

³⁶ Michel Virally, *Le rôle politique du Secrétaire Général des Nations Unies* in "Annuaire français de droit international", vol. 4, 1958, p.366

awaited event was, in fact, the publication of the introduction containing the Secretary-General's analysis and suggestions. "The supplement" has gradually become a working document, a mere repertoire of dates and references with no actual development. The real "annual report" was, in fact, the document in which the Secretary-General made a synthesis of the events and expressed his views on the functioning of the Organization, on its strengths and its limits. It is clear that such a synthesis implied a use of interpretational skills and a personal appreciation on the value and the opportunity of UN's adopted decisions as well as a value judgement of UN's action or lack of it and its subsequent consequences. Of course, as an impartial and neutral agent the Secretary has to exert a certain degree of prudence and reservation when drafting the report, but in the same time, it manifested a unique authority in this sense. Surprisingly, this way of conceiving the annual report has not been criticized, but rather appreciated by the General Assembly and the Security Council alike. Nowadays, it is no longer a mere text made available to delegations and the public, summarizing discussions, decisions and the most important texts on the issues treated by the United Nations during the year, but a genuine diplomatic document. This means of asserting the moral and political authority of the Secretary-General illustrates an important power of influence.³⁷ Some would argue that because it focuses on past events and situations, the annual report couldn't be an efficient means of exerting influence on the actual way of approaching issues. In fact, it creates an effective opportunity to enhance past suggestions and announce future ones.³⁸

Given this evolution, it could be said that the annual reports, alongside other reports requested by the General Assembly and by the Security Council, can be effective instruments of exercising influence on the activity of the deliberative organs in the field of international peace and security. This does not mean that all the office holders have used them to this end. Having in view the personal features of each occupant, the evolution of the function and the international context which had to be coped with, some of the Secretaries used the reports to make important political suggestions in various fields, from the administrative reform to the major issues concerning the maintenance of international peace and security, while others were more reserved in expressing their opinions mostly in order to avoid antagonizing some permanent Members of the Security Council and, thus, endanger their office. Using the paradigm of the leadership style, it can be observed that visionaries and strategists are more likely to use reports to exert influence and assert their authority, while managers rarely shape the content of their mandate and, if they do, they immediately seek the approval of the political bodies.

3.3. Oral and written statements before the deliberative organs

The High Official's right to make statements is highly linked to UN Charter's provisions establishing some degree of political competence. Thus, if according to art. 99 the Secretary-General may seize the Security Council with any issue which in its opinion may threaten the maintenance of international peace and security, naturally it must have the right to say why and how it was estimated the danger of a certain issue. Therefore the Secretary-General must be endowed with the right to make statements before the Security Council whenever it finds necessary to take a stance against a potentially dangerous situation. Art. 98 providing that "the Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council and shall perform such functions entrusted to him by the other principal organs", also offers a legal ground for this right, as a logical consequence of any participation at such events.

The Secretary-General's power to influence the activity of the deliberative organs through the exertion of the right to make statements, also has a legal basis in their rules of procedure. Thus, the Secretary-General, in addition to the responsibility of coordinating the Secretariat's specific services,

³⁷ A. Pellet, *op. cit.*, p.1316

³⁸ Michel Virally, *op. cit.*, p.369

in accordance to the deliberative organs' rules of procedure³⁹, also has the possibility of making oral and written statements on any issue under consideration and the right to suggest the insertion on their daily agenda of those problems considered by the High Official to be worthy of discussion within these organs. The corroboration between art. 98 and the General Assembly's Rules of Procedure⁴⁰ offers the Secretary-General, in relation to the plenary organ, prerogatives that are comparable to those conferred by art. 99, in relation to the Security Council. On the other hand, associating art. 98 with the Security Council's Provisional Rules of Procedure⁴¹, the Secretary-General has the opportunity of intervening within this organ, without invoking the controversial dispositions of art. 99.⁴²

The Secretary-General often used its right to make statements within the Security Council and the General Assembly in order to make its views known. However, the exercise of this right in the General Assembly is very delicate in practice, as the Secretary-General risks to compromise its authority and prestige in endless debates.⁴³ Similarly, the High Official avoided for the same reasons, the explicit invocation of art. 99, which establishes the High Official's initiative function in front of the Security Council, although many of the activities undertaken by the Secretary-General in the field of international peace and security were based on the extensive interpretation of this article.

Of course, in this case as well, the extent to which the various office holders have used this right in order to exercise their influence depended on the international context and on the personal view about the function and its role. Researchers concluded that the incumbents with a predominantly visionary style would most often make statements in order to express political opinions and voice a point of view on a situation; also strategists would sometimes make use of this right to this respect, while managers would rather avoid taking a personal stance in their statements. On the other hand, it would be reasonable to affirm that regardless of any leadership style, the Secretary-General should manifest a great deal of prudence when intervening, even if the form of intervention is that of a simple statement within a wider political debate before the General Assembly or the Security Council. Hammarskjöld himself once stated that the Secretary-general should avoid taking a public stance on any conflicts between Member States. This discretion is dictated by a political concern: that of preserving the utility of the function.⁴⁴

3.4. Article 99 – “letter” and “spirit”

Article 99 establishes for the Secretary-General attributions that lack any equivalent in other international structures: “the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security”. Obviously, the Secretary-General is endowed with a responsibility in the maintenance of international peace and security. To this respect, the High Official also has the duty to observe the

³⁹ It consists, essentially, in the preparation, translation and distribution of documents, the organization of sessions, as well as in ensuring the availability of the necessary personnel for the deliberative organs, when needed.

⁴⁰ „The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to the General Assembly concerning any question under consideration by it.” (*Rules of Procedure of the General Assembly*, art. 70, accessed 11.12.2011, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/520/rev.17&Lang=E)

⁴¹ „The Secretary-General, or his deputy acting on his behalf, may make either oral or written statements to the Security Council concerning any question under consideration by it.” (*Provisional Rules of Procedure of the Security Council*, art. 22, accessed 12.12.2011, available at <http://www.un.org/Docs/sc/scrules.htm>)

⁴² A. Pellet, *op. cit.*, p.1319

⁴³ The occasions in which the Secretary-General urged the inclusion of a political issue on the General Assembly's daily agenda often had the opposite results than what it was expected, rather showing the limits of UN's activity than increasing its efficiency. This was the case of Trygve Lie whose proposal of the 20 year Program, in 1950, had quite a low audience. Similarly, Kurt Waldheim's attempt to include, in 1972, the “Measures to Prevent International Terrorism”, on the Assembly's daily agenda, had a low impact.

⁴⁴ Michel Virally, *op. cit.*, p.374

evolution of the international conjecture in order to detect and evaluate potential dangers, using any available means (mostly those that don't imply a particular juridical habilitation): public information, communications from governments, any relevant contacts with officials or even particulars, the right to conduct investigations etc.⁴⁵

Surprisingly, the article was adopted without difficulty in 1945, at the Conference in San Francisco, the states agreeing, in principle, to confer the Secretary-General an important political dimension. The Charter's authors' intention to consolidate the Secretary-General's political authority emerges from the interpretation of this article, given by the Preparatory Commission: "The Secretary-General may have an important role to play as mediator and as an informal adviser of many governments, and will undoubtedly be called upon from time to time, in the exercise of his administrative duties, to take decisions which may justly be called political. Under art. 99 of the Charter, moreover, he has been given a quite special right which goes beyond any power previously accorded to the head of an international organization: to bring to the attention of the Security Council any matter (not merely any dispute or situation) which, in his opinion, may threaten the maintenance of international peace and security. It is impossible to foresee how this article will be applied; but the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgement, tact and integrity."⁴⁶

Article 99 was to constitute the legal basis for the High Official's initiatives surpassing the Charter's provisions. The only debates generated, at the time, were limited to whether the faculty recognized by this article was, in fact, a right or an obligation, whether "may" should to be replaced by "shall". It was finally decided that the exercise of this power should be left to the Secretary-General, without being imposed as an obligation. The same discretion was left to the Secretary-General when evaluating issues that could be considered worthy of being brought to the attention of the Security Council.⁴⁷

However, art. 99 provides for a discretionary right that could prove to be very difficult to exercise. For the Secretary-General to exercise this right, it would have to previously make a judgement on an international situation, considering it to be a threat to international security. This implies a personal appreciation and a political choice as there aren't any precise and universally accepted criteria upon which it could be determined whether a certain situation constitutes a threat to international security or not. Thus, if a group of states could consider a certain issue as representing a danger to international security, others could see it as strictly a matter of internal jurisdiction. By invoking article 99, the Secretary-General decides that such an issue is of interest for the international security and, therefore, should be discussed within the organization, anticipating a similar appreciation from the Security Council. This initiative could be full of consequences, in particular if the Secretary-General, overestimating its power of influence, brings to the attention of the Security Council an issue that one or some of the permanent members refuse to take into consideration. In such a case, by invoking art. 99, the Secretary-General could endanger the prestige and the reputation of its office. Therefore, the High Official must be cautious in implementing this provision for the following reasons: because it implies a value judgement on a situation that may be controversial; it anticipates a favourable response from the Security Council; but also because the Secretary-General would assume a risk by associating its office to any subsequent measures taken by the Security Council.⁴⁸ In fact, art. 99 gives the Secretary-General similar prerogatives to those conferred to the

⁴⁵ *Ibidem*, p. 369

⁴⁶ Report of the Preparatory Commission of the United Nations (23 December 1945), Chapter VIII, section 2, para. 81 in Chesterman, S 2007, *Secretary or General? The UN Secretary General in World Politics*, Cambridge University Press, New York, 244-245

⁴⁷ A. Pellet, *op. cit.*, 1316

⁴⁸ *Ibidem*, 1319

General Assembly, under art. 11 paragraph 3, with the difference that the Secretary-General does not have the same means to exert them as the plenary organ.

For all these reasons, the office holders have avoided using explicitly art. 99, this disposition being invoked, in the context envisaged by the Charter, only in the case of the Congolese crisis, on July, the 13th 1960, when Dag Hammarskjöld asked the Security Council's President to urgently convoke the Council, under art. 99. The Council was reunited on the 13th of July, the Secretary-General making, on this occasion, a long exposure in which he was justifying his decision to invoke art. 99 for the first time in the history of the United Nations and was asking to be granted an extended mandate that would allow him to take adequate measures in order to provide military assistance to the Congolese government. The fact was unprecedented.

Later, in November 1979, the Security Council was reunited again at the urgent request of the Secretary-General, Kurt Waldheim, stating that the prolonged detention of U.S. diplomatic personnel in Iran constituted a threat to the international peace and security. Waldheim did not cite explicitly art. 99, but situated his approach under the general exercise of the responsibilities incumbent upon him, according to the UN Charter. However, the Member States have rightly interpreted this initiative as an application of art. 99.⁴⁹

In other cases, although this article was not invoked openly, its provisions have been used to draw the Council's attention on some issues and to make known the Secretary-General's point of view on serious situations that were not on the Council's daily agenda.⁵⁰

Usually, when an issue that is considered threatening for the international peace and security is not brought to the Security Council's attention by any of the Member States, it means that the political obstacles are so high that the Secretary-General would, unnecessarily, compromise the reputation of its office, by taking a potentially controversial initiative. That is why art. 99 was rarely applied in its letter, but its "spirit" has allowed the Secretary-General to make full use of the means consecrated in the UN Charter, in order to justify an extensive interpretation of its function and exercise its prerogatives in relation to the deliberative organs and the Member States. Thus, using a dialectical interpretation of Articles 97 and 99, each of them reinforcing the other, the first UN Secretary General put forth, from the start, his right to freely intervene in the Council's discussions in order to offer his own interpretation on issues concerning the international peace and security and make suggestions.⁵¹ Relying on the its spirit and on the need to collect all information in order to determine whether he should literally cite art. 99, the first Secretary-General also affirmed his right to conduct any research and investigation he considered necessary. If the Secretary-General may bring to the Security Council's attention any problem that could endanger the maintenance of international peace and security, an extensive interpretation of this provision could lead to the conclusion that the office holder has the responsibility to keep a high level of information and awareness on issues of international security that would, therefore, justify their independent initiatives of exploring potentially dangerous areas and situations, so that any decision to refer the matter to the Security Council would be thoroughly documented. When the Secretary-General gathers information on a dangerous situation or investigates an unstable area, there is no legal obligation to inform the Security Council on these details, unless those activities have been mandated.

Keeping the extensive manner of interpreting this article, one would conclude that the Secretary-General not only has the possibility of examining conflicts, but also the opportunity of intervening in their regulation. Thus, based on this provision, the Secretary-General disposes of wide

⁴⁹ *Ibidem*

⁵⁰ U Thant, on the 20th of July, 1970, referring to the refugee problem in East Pakistan; on the 11th of May, 1972, similarly, Waldheim sent a memorandum on the conflict in Vietnam to the President of the Security Council. In such cases, the Secretary General drew the attention of the Security Council leaving to their disposition whether and how the respective issue would be examined and approached.

⁵¹ A. Pellet, *op. cit.*, 1320

competencies to initiate operations of inquiry, good offices or other forms of diplomatic activity, carried out with the scope of maintaining the international peace and security.⁵²

To this respect, Dag Hammarskjöld considered that it was his responsibility to develop the full potential of this unique diplomatic instrument created by the UN Charter. Aware of the fact that he had a special vocation, Hammarskjöld, a true visionary, gradually elaborated an extensive theory on the role of the United Nations and of its Secretary-General. Adept of discrete reconciliation diplomacy, he also developed a theory on preventive diplomacy, giving a new dimension to the function of the Secretary-General and, thus, justifying all his personal initiatives when it came to appeasing potential conflict situations and preventing their deepening. Hammarskjöld's legacy is today an invaluable construction of great vision and bearing the mark of a lucid and penetrating spirit.⁵³

Dag Hammarskjöld's theoretical construction (broadly reflected in his Introductions to the Annual Report) has influenced determinately the evolution of the Secretary-General's role, all of his successors taking their inspiration from his actions and assuming their political functions in conformity with the "spirit" of art. 99. Naturally, this considerable expansion of the Secretary-General's role was not always agreed.⁵⁴ In such a situation, having to cope with some resistance, U Thant, although more managerial and less innovative than his predecessor, reiterated the Secretary-General's diplomatic function, at the same time, enunciating the legal basis for his actions. In his opinion, seeking a supplementary support for his actions, this basis consists in the association of art. 99 and art. 33 (which requires that the parties to a dispute seek resolution by peaceful means). Thus, "if the parties to a dispute request or accept the Secretary-General's involvement, in order to fulfil the obligation consecrated by the Charter to seek a peaceful solution to the dispute, the Secretary-General is, manifestly, empowered to offer its contribution."⁵⁵

U Thant had in view an extensive interpretation of art. 99, which would allow him to act only according to the will of the parties to the dispute, the Secretary-General's obligations towards the Security Council being limited to "informing" without "consulting". Progressively, based on this broad view on the Secretary-General's powers, the notion of "political responsibility" and than that of "moral responsibility" emerged. U Thant and Waldheim often gave expression to this tendency, considering that it was their "duty" to intervene, whenever they could, in order to seek a peaceful solution. Perez de Cuellar also gave a similarly generous interpretation to the Secretary-General's role. In his first annual report, he insisted on the necessity to intensify the High Official's preventive role, envisaged by art. 99 of the UN Charter and announced his intention to develop a wider and more systematic capacity of fact-finding in areas of potential conflict.⁵⁶

Using the aforementioned theory on the Secretary-General's leadership style, it can be noted that visionaries like Lie and Hammarskjöld, being more likely to invoke art. 99 and to fully act according to its spirit, set the direction of evolution for their function, while their successors, although maybe less creative, had to take it over and expand it further, in order to keep a coherent stance on the Secretary-General's role. The result has been a continuous tendency to increase it and enhance its visibility within UN's institutional architecture.

Thus, the Secretary-General's independent initiatives are the result of a gradual evolution of its role, influenced by the ever-changing international context, by the continuous necessity to adapt the institutional structures to the international realities and, last, but not least, by the outstanding personalities that occupied this function. The constantly growing responsibilities entrusted to the

⁵² Magdalena Denisa Lungu, *op. cit.*, p.371

⁵³ Michel Virally, *op. cit.*, 382

⁵⁴ For instance, the USSR letter dated the 30th of September 1966, addressed to the President of the Security Council, in which the soviets expressed dissatisfaction with U Thant's good offices in Cambodia and Thailand.

⁵⁵ A. Pellet, *op. cit.*, 1323

⁵⁶ *Ibidem*

Secretary-General were often dictated by political circumstances and international crisis and its initiatives were sometimes imposed by necessities of the moment, but some of these had to become permanent features of the function in order to ensure its coherence and efficiency. Naturally, every Secretary-General had his own policy, his own view on the position and its role, but the invariable elements considered to be at the core of the function would always be integrated.

“It had become unremarkable for the incumbent to venture where States could not or would not go, guided solely by an understanding of the principles and purposes of the Charter. In effect, successive Secretaries-General had established a right to act on their own to safeguard what they perceived as minimum standards of world order.”⁵⁷ It seems that only prudence, manifested in a given international context, and the political ability of an office holder, could limit the margin of initiative with which the Secretary-General is considered to be vested, in accordance with “the spirit” of art. 99.

4. Conclusions

The function of the Secretary-General, as it is presently configured, is mostly the result of a creative long-term process that, eventually, made available for today’s office holder a repertory of practices defining a strong, influential role in the maintenance of international peace and security. The Secretary-General’s capacity to exert influence on the decision-making process gradually increased along side its ability to master the various instruments provided by the UN Charter. Using the existing research results on the political behaviour of the Secretary-General when analysing its possibilities to exert influence in the decision-making process can lead us to a better understanding of the function’s evolution. Thus, identifying an incumbent’s leadership style and analysing its actions within a certain international context may offer a pattern of argumentation and “diagnosis” for its past and present behaviour as well as an instrument of prediction of its future reactions.

Generally, in relation to the political organs, regardless of their leadership style, the occupants of this function, whether they are acting on their own initiative or at the request of the parties to the dispute, whether they are mandated by the Security Council or by the General Assembly must coordinate their activity with that of the plenary and executive organs, in order to ensure the effectiveness of their interventions and to keep the institutional balance within the United Nations. There are situations in which the Secretary-General’s independent activities subsequently obtain the official recognition from UN’s main organs. In other situations, where discretion is essential, the High Official may be involved in informal consultations with the executive organ and some of the Member States.

However, the Secretary-General’s power to influence and its unique role are the result of its growing independence and find their basis in its general neutrality. In a world where national interests prevail, the Secretary-General does not operate with the concept of sovereignty, enabling it to act as “impartial intermediary, investigator of abuses and voice of world conscience, at the same time”⁵⁸. The office holders do not represent any state and should not defend the position of any political community. Unlike the deliberative organs, inevitably subjected to a combination of national interests, the Secretary-General can be a genuine interpret of UN’s ideals. Its involvement in the peaceful settlement of disputes often has a discrete nature and its diplomatic services are considered increasingly reliable, being sometimes requested by the parties to the dispute. However, even so, the Secretary-General’s activity in the field of the peaceful settlement of disputes, together with the Security Council’s and the General Assembly’s actions should be regarded as a whole aiming to maintain the international peace and security.

⁵⁷ T. M. Franck, *op. cit.*, p.365

⁵⁸ *Ibidem*, p 366

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