

UN SECRETARY- GENERAL'S FORMS OF INVOLVEMENT IN THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES. THE DIPLOMATIC MEANS

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Abstract

The United Nations Secretary- General is a symbol and an instrument of the peaceful settlement of international disputes, with a proven effectiveness in the prevention and resolution of conflicts, even in the most difficult political contexts. The configuration of this distinguished function is largely the result of a long evolutionary process which ultimately provided the occupants with a repertoire of practices that define a powerful and influential role in maintaining the international peace and security. The UN Secretary General's endeavours in the field of peaceful resolution of conflicts may include traditional diplomatic means, such as good offices, mediation and international inquiries. Nevertheless, sometimes the traditional techniques of diplomatic approach require the complementary use of unofficial, discreet diplomatic means (such as secondary diplomacy - track two diplomacy - and hybrid diplomacy - track one and a half diplomacy) which may enable a superior information and trigger new ways of action. The present study aims to explore the political and diplomatic means, as forms of involvement of the UN Secretary-General in the peaceful settlement of international disputes and as part of the wider and powerful role in the maintenance of international peace and security.

Keywords: *United Nations, Secretary-General, peaceful settlement, diplomatic means.*

1. Introduction

Evolving from the concepts of idealism in international politics, that have emerged in the first half of the twentieth century, inspired by a new vision on the evolution of the international system, the United Nations Organization has proved countless times its centrality in the maintenance of international peace and security. The foundation of the United Nations Organization was not, however, inspired simply by an idealistic enthusiasm, but also by the international community's necessity of ensuring a favourable environment for the consolidation of inter-state harmony, cooperation and structural peace. Beyond the common goals and principles, agreed by the Member States with the adoption of the UN Charter, given the genesis and composition of the Organization, there is a risk that the Organization's work is subjected to a combination of national interests. Often in UN 's history, even if the Organization acted as an independent structure, Member States (whether it was a single powerful state or several states with common interests) tried to impose their own interests and influence UN's actions to their own benefit. In such a context, antagonisms and subsequent blockages have emerged, inevitably, within the main deliberative and executive bodies.

In this institutional context, marked by various combinations of national interests, there was a great necessity for an impartial, neutral agent that would protect the UN's highest ideals and principles. It would be the Secretary General of the United Nations, head of one of the Organization's main bodies (the Secretariat), that, despite the function's

lack of decisional powers, through its position and role in the institutional structure of the UN, was enabled to exert enough influence in order to effectively intervene as a pacificator agent and as a defender of UN's principles. Perhaps, initially, UN's founders did not foresee the potential of this high function, but a number of factors - like the configuration, in rather vague terms, of the High Official's attributions in the UN Charter, the continuous challenges that the international political context posed to the various occupants of this function and, not least, the latter's remarkable personalities and knowledge that influenced greatly the evolution of the function - endowed the position of the UN Secretary General with some unique features.

One of the key features of this position, underlying every action taken by the Secretary General for the maintenance of international peace and security, is impartiality. Impartiality is a guarantee of efficiency for actions undertaken for the peaceful settlement of international disputes, as well as for any other activity implemented by the Secretary General with the scope of preventing or defusing antagonisms that may endanger international peace and security. Any breach of impartiality could cast a shadow on the High Official's reputation and prestige as well as on the usefulness of the office and ultimately on the Organization's role in the maintenance of international peace.

The Secretary General's involvement in the processes of peaceful settlement of disputes can take various forms. For instance, mediation, good offices and international enquiries undertaken by the High

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Official have proven to be efficient in numerous cases of international disputes. Gradually, the international developments and the emergence of new concepts in international law, have also imposed new types of approach to conflictual situations.

This study aims to explore, through descriptive and logical analysis, from a legal and historical perspective, the political and diplomatic means, as forms of involvement of the Secretary General in the peaceful settlement of international disputes. The elaboration of the study is based on the analysis of the UN Charter's provisions regulating the peaceful settlement of international disputes, as well as of the subsequent legal developments consecrated by other international documents and of the relevant regulations of UN Secretary General's role and attributions. The analysis of the legal basis for the Secretary General's involvement in the peaceful settlement of disputes also has in view some of the author's previous research findings, as reflected in the study "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"¹.

Various Secretary Generals' reports and speeches, revealing important theoretical constructions, inspiring new directions in the evolution of the function and revolutionizing the techniques used for the peaceful settlement of disputes, have been analysed and cited as primary sources. In addition, the paper also has in view the existing literature on the role of the Secretary General.

2. Stages of conflicts and the UN Secretary General's involvement in their peaceful resolution

Previous research in the field of conflict resolution showed that conflicts are dynamic processes, "composed of alternating cycles of escalation and de-escalation".² Usually, researchers and specialists illustrate graphically this dynamic process through a curve or a chart, divided so as to represent the different stages identified in the evolution of a conflict³: latent conflict, emergence of conflict, escalation, stalemate, de-escalation, dispute settlement and peace-building. It must be

said, however, that, most often, in practice, conflicts do not go through a pre-established trajectory and the transition from one phase to another is very difficult to determine.⁴

Theoretically, the Secretary-General may intervene - including by making use of diplomatic means of peaceful settlement - in either phase of the conflict. However, it was demonstrated that the intervention of the Secretary General is generally more efficient in the early stages of the conflict, through activities of preventive diplomacy, undertaken with the purpose of averting the conflict or stopping its escalation. Boutros B. Ghali⁵ stated, in his well known report "An Agenda for Peace: preventive diplomacy, peacemaking and peacekeeping", that "the most desirable and efficient employment of diplomacy is to ease tensions before they result in conflict - or, if conflict breaks out, to act swiftly to contain it and resolve its underlying causes."⁶

The intervention of the UN Secretary General can also be effective in times of calmness and de-escalation subsequent to outbursts of aggression, through diplomatic activities within peacemaking, that entail actions undertaken with the purpose of bringing closer the views of the parties in conflict, using the means of peaceful settlement provided in Chapter VI of the UN Charter.⁷ The Secretary-General may also intervene when the communication between the parties is irretrievably blocked, in situations that require the establishment of peace-keeping operations, as well as within subsequent missions of peace-building, conducted with the purpose of identifying and consolidating post-conflict structures in order to avoid a relapse of conflict.

Activities of peaceful settlement may be mandated by the deliberative bodies or undertaken independently by the Secretary General. Any intervention of the Secretary General must take place in accordance with the Charter's provisions, within the limits of the international law.

3. Legal basis for the UN Secretary General's involvement in the peaceful settlement of disputes

The UN Secretary General's involvement in the peaceful settlement of disputes is legally based

¹ See Oana - Adriana Iacob, *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* - paper presented at the International Conference "Challenges of the Knowledge Society", the 6th Edition, Bucharest, 11-12 May 2012.

² Magdalena Denisa Lungu, *Rolul organizațiilor internaționale în soluționarea pașnică a diferendelor internaționale*, (Bucharest, Universul Juridic, 2010), p. 52.

³ *Ibidem*, p. 53.

⁴ *Ibidem*, p. 52.

⁵ Boutros Boutros - Ghali was an Egyptian politician and diplomat who served as the sixth Secretary-General of the United Nations from January 1992 to December 1996.

⁶ Boutros B. Ghali, *An Agenda for Peace. Preventive Diplomacy, Peacemaking and Peace-keeping*, 17 iunie 1992, A/47/277 -S/24111, para. 23, available <http://www.un-documents.net/a47-277.htm>, accessed 12.02.2016.

⁷ *Ibidem*, para. 20.

on the UN Charter's provisions, being implemented under the function's attributions contained therein.

Activities with the scope of peacefully settling international disputes are undertaken under Article 98 (for mandated tasks) and Article 99 (for independent actions). But neither Article 98, nor Article 99 could be implemented effectively unless in perfect complementarity and strict compliance, in letter and spirit, with Article 100 of the UN Charter. Article 100 highlights the necessity of ensuring the Secretary General's total independence from any influences coming from the Member States.⁸

When implementing an activity, either mandated or undertaken independently, the Secretary General must use the available means and resources, among which an utmost importance have: the principles and purposes of the UN Charter, the legal doctrine and precepts, complementing the UN Charter's principles and reflected in the content of the the resolutions adopted by the UN main bodies.⁹

3.1. Article 98 of the UN Charter - the Secretary General's assignments mandated by the UN main bodies

In accordance with Article 98 of the UN Charter, the General Assembly and the Security Council may mandate the Secretary-General to execute their political decisions, which may take, among others, the form of mediation, good offices, international enquiries or peacekeeping missions. Often, the vague wording of mandates allowed the Secretary General a degree of discretion in the execution of the mandated tasks, even in the sensitive area of political inter-state differences.

Especially in the first decade of UN's activity and existence, the Secretary General's actions were most often undertaken under the mandate of the Security Council and of the General Assembly, being, thus, subordinated, to their instructions.¹⁰ Even so, in order to implement a mandated task, the High Official found a way of exerting some influence on the respective action, through his own specific interpretation of the resolutions. Of course, the Secretary General's degree of discretion depends on how accurately the assigned tasks are configured by the mandate. However, it must be said that the mandates, usually being the result of compromises between states, often have a rather vague formulation, offering a wide area for interpretation. Nonetheless, one should take into consideration the fact that, in delicate political situations, the Secretary General's discretion may be seriously impeded by

restrictions imposed by the Security Council, by the General Assembly or even by some powerful and influential Member States. In reverse, it has been argued that in such circumstances, limitations imposed by the deliberative bodies are actually beneficial for the Secretary General, protecting the impartiality and neutrality of his function, as well as the prestige of his office, which may be subject to strong political pressure.

Over time, the function of UN Secretary General has established itself as a diplomatic instrument of great value, importance and exceptional efficiency not only at the operational level, as "impartial intermediary, investigator of abuses and voice of world conscience"¹¹, but also symbolically, as an interpreter and defender of the true ideals of the United Nations. Generally, the Secretary General's prestige is a fairly accurate barometer for the importance and utility of the Organization's activity. Therefore, the deliberative bodies should be particularly cautious when mandating the Secretary General's tasks. In order to ensure efficiency in the execution of the mandated tasks and protect the prestige and credibility of the Secretary General's function, the deliberative bodies should avoid the High Official's involvement in extremely delicate circumstances. One such situation would be that of assigning to the Secretary General tasks of peaceful settlement of disputes that are impeded by the total lack of will of the parties to communicate and reach a compromise or by the refusal of the Member States to contribute with funds and personnel or, simply, by the general disinterest of the international community in resolving the dispute in question at that specific time. There were also situations (especially in the first decades of UN's existence) when the deliberative bodies, faced with difficult, controversial situations, being on the verge of failure, but, nevertheless, wishing to create the illusion of action, sought to transfer the responsibility to the Secretary General.¹²

On the other hand, however, it must be said that, despite the risky, controversial character of such situations, that were specific to the general context of the Cold War, Secretary Generals have excelled in identifying original ways of tackling this challenges, prompting new directions in the evolution of the function. Although there have been situations that may or could have overshadowed, to a greater or lesser extent, the reliability of the function, the High Official's efforts in the peaceful

⁸ 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, 1962, p. 14

⁹ Dag Hammarskjöld, *The International Civil Servant in Law and in Fact*, UN Secretary General's lecture delivered at Oxford University, 30th of May 1961, available at <http://www.un.org/depts/dhl/dag/docs/internationalcivilservant.pdf>, accessed 21.02. 2016.

¹⁰ See for instance the UN Security Council's Resolution no 203 / 14.05.1965 regarding the situation in the Dominican Republic or UN Security Council's Resolution no 294 / 15.07.1971 regarding the conflict between Portugal and Senegal.

¹¹ T.M. Franck, *The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture*, 6 EJIL (1995), p.366.

¹² *Ibidem*.

settlement of disputes have proved many times their efficiency even in such controversial circumstances.

However, to ensure the protection of his office, it was often felt necessary to introduce a public or private instrument through which the Secretary General could decline the tasks considered to be faulty in their conception or insufficiently supported by the Member States. One such instrument was created by Dag Hammarskjöld¹³, during the American hostage crisis in China, in 1954-1955 - the so-called "Peking formula". In this particular conjecture, the Secretary General dissociated himself from the wording of the General Assembly's Resolution (Resolution 906/1954) - which authorized him to provide good offices for the release of the "unlawfully detained" American war prisoners - and adopted a neutral and impartial position, absolutely necessary for the successful fulfilment of the mission. In front of the Chinese officials, who felt offended by the critical text of the resolution, Hammarskjöld explained his position in the affair, by citing the responsibility he has, by virtue of the general principles and purposes of the UN Charter.¹⁴ Through "the Peking formula", Hammarskjöld created a model that was subsequently emulated in an entirely different international conjecture, by Javier Perez de Cuellar¹⁵ in 1990, in the context of the first Gulf war, when he dissociated himself from the Security Council's Resolution no 664 of 18 august 1990, which assigned to him the role of good offices provider.¹⁶ Also, in 1998, in the context of the crisis of the alleged presence of weapons of mass destruction on Iraqi territory, Kofi Annan¹⁷ made use of Hammarskjöld's formula, in order to separate his good offices from US and UK's firm position, as expressed within the Security Council.¹⁸

3.2. Article 99 of the UN Charter - activities undertaken independently by the Secretary General

The provision of Article 99 is based on a genuine political authority with which the UN Secretary General is endowed. According to this article, 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". Apart from the recognition of a valuable right of initiative for the Secretary General, that doesn't have any equivalent in other international structures, this article is

particularly relevant for the peaceful settlement of disputes, as it provides the legal basis for a significant part of the activities undertaken by the Secretary General in this field. Thus, through a broad interpretation of this provision (absolutely justified from a conceptual and logical perspective, as well as from a functional point of view), by virtue of the political authority conferred to him by Art. 99 of the UN Charter, the Secretary General may investigate conflictual situations and be involved in their regulation by initiating investigative operations, good offices and other forms of diplomatic activity, conducted with the scope of maintaining the international peace and security.¹⁹

A logical and systemic analysis of Article 99, including a research of its application and its logical integration within the UN Charter's regulatory system, reveals that only such a broad interpretation of this provision could ensure its utility and applicability. In order to be able to distinguish the potential danger of a situation and subsequently refer the matter to the Security Council, the Secretary General must keep a high level of information, based on the development of a vast network of formal and informal contacts.

It is true that Article 99 was rarely invoked in its letter, for various reasons related, in general, to the reluctance of the Secretary Generals towards assuming the risk of expressing an official opinion, representing an assessment of a situation, which, even if it is well documented, retains a degree of subjectivity that can arouse controversy. However, the provision has proved extremely useful in the field of peaceful settlement of disputes, precisely through its logical extrapolation.

In this regard, Dag Hammarskjöld has developed a comprehensive theory on the role of the UN and its Secretary-General, which was the basis for his initiatives when the issue of intervention for the appeasement of potential conflictual situations was raised. Dag Hammarskjöld's theoretical construction (largely expressed in his entries to his annual reports) has influenced significantly the evolution of the Secretary General's position, all his successors driving their inspiration from this construction when assuming political functions in accordance with the "spirit" of Article 99. U Thant²⁰, for instance, reiterated the Secretary General's role of good offices provider, recalling, at the same time,

¹³ Dag Hammarskjöld was a Swedish diplomat and economist who served as the 2nd Secretary General of the United Nations Organization, from April 1953 until September 1961.

¹⁴ Jorge E. Vinuales, *Can the U.N. Secretary-General Say 'No'? Revisiting the 'Peking Formula'*, (July 28, 2006), *bepress Legal Series Working Paper 1478*, available at <http://law.bepress.com/expresso/eps/1478>, accessed 25.02.2016, p. 11.

¹⁵ Javier Perez de Cuellar is a Peruvian diplomat who served as the 5th Secretary-General of the United Nations, from January 1, 1982 to December 31, 1991.

¹⁶ *Ibidem*, p. 16.

¹⁷ Kofi Annan is a Ghanaian diplomat who served as the seventh Secretary-General of the United Nations from January 1997 to December 2006.

¹⁸ *Ibidem*, p.18.

¹⁹ Magdalena-Denisa Lungu, *op. cit.*, p. 282.

²⁰ U Thant was a Burmese diplomat who served as the third Secretary-General of the United Nations from 1961 to 1971.

the legal basis of his actions. Corroborating Article 99 with Article 2.3.²¹ and Article 33²², which compel the parties to a dispute to seek its settlement by peaceful means, U Thant believed that if the parties seek or accept the Secretary-General's involvement in fulfilling their obligations under the Charter to identify a solution to the dispute, the Secretary General is manifestly competent to do so.²³

3.3. Article 100 - the UN Secretary General's impartiality

Impartiality is an essential requirement for the Secretary General in order to effectively conduct activities in the field of peaceful settlement of disputes, as well as a guarantee for the utility of this function.

According to Article 100: "1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only 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."

The impartiality of the Secretary-General has been extensively debated in the first decades of the UN's existence. In the turbulent context of the Cold War, characterized by a climate of mistrust and irreconcilable differences of vision, the impartiality of the Secretary General, defining an independent structure that represents the interests of the international community as a whole, did not enjoy the unanimous consent of the Member States. Although there were more or less obvious political pressures, from each of the two powers - US and USSR - the most intense controversy was aroused by the Soviet bloc. As a result of these controversies, Dag Hammarskjöld has developed an interesting theory, in his efforts to explain some aspects that seemed vague at the time.

Thus, the Soviet bloc argued that "while there are neutral countries, there can be no neutral men". "There can be no such thing as an impartial civil servant in this deeply divided world. "The kind of political celibacy, which the British theory of the

civil servant calls, is in international affairs a fiction."²⁴

In fact, in the High Official's vision, to be neutral, the Secretary General does not have to be apolitical, but rather it is necessary that its policies are not formally joined with the governmental policies of some states. The Secretary General should not pursue or support the interests of certain states.²⁵

Since the UN Charter doesn't offer any guarantees for the impartiality of the Secretary General in the execution of his tasks, there is a dilemma on the appropriate operational approach that would ensure the total neutrality of his actions. Dag Hammarskjöld addressed this dilemma, invoking the strict compliance with the High Official's international obligations, as agreed within the UN Charter. The Secretary General's impartial position should be translated into the absence of any adherence to particular national or ideological attitudes and interests. Indeed, even when his tasks are mandated by the deliberative bodies, the Secretary General retains a degree of discretion when implementing the mandate, based on his freedom of interpretation and assessment. Of course, interpretations and assessments are delivered in accordance with the UN Charter, within the limits set by international law. It is true that any interpretation implies some degree of subjectivity, however this does not necessarily constitute a breach of impartiality. In order to reduce discretion and ensure that his position is representative for the Organization as a whole, the Secretary General should use constitutional means such as "consultations with permanent missions to the United Nations, safeguarded by diplomatic privacy"; advisory committees "composed of representatives of the governments most directly concerned, and representing diverse political positions."²⁶

If, however, the Secretary General inevitably retains a generous area of assessment, risking to become the 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 it 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

²¹ UN Charter - Article 2.3. - 'All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.'

²² UN Charter - Article 33 - "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."

²³ A. Pellet & Cot, J. P., *La Charte des Nations Unies. Commentaire article par article*, (Paris, Editions Economica, 1987), p. 1323.

²⁴ Dag Hammarskjöld, *The International Civil Servant in Law and in Fact*, UN Secretary General's lecture delivered at Oxford University, 30th of May 1961, p. 1, available at <http://www.un.org/depts/dhl/dag/docs/internationalcivilservant.pdf>, accessed 21.02. 2016.

²⁵ Howard Lentner, *The Diplomacy of the United Nations Secretary-General*, "The Western Political Quarterly", Vol. 18, Nr. 3 (Sep., 1965), p. 533.

²⁶ Eric Stein, *op. cit.*, pp. 20-21.

have to deal here with a question of integrity or (...) conscience. (...) and if integrity in the sense of respect for law or 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".²⁷

4. Diplomatic means of peaceful settlement

The activities implemented by the UN Secretary General in the field of the peaceful settlement of disputes, whether they are mandated by the deliberative UN bodies or undertaken independently, often take the form of one or another of the political and diplomatic means consecrated by the UN Charter. The role of third party pacificator - which has proven its efficiency countless times, even in the most difficult and delicate circumstances, during missions of good offices or mediation involving the High Official - is the one that conferred popularity and visibility to this function. But the Secretary General's demarches in this field are not confined to this role, which generally corresponds to the use of the specific methods of traditional diplomacy.

The High Official's position in the institutional framework of the United Nations, based on the essential requirement of impartiality in the performance of his duties, opened the opportunity for the development of a dense network of contacts, including at an informal level, allowing the Secretary General to effectively intervene in various delicate situations. Due to his position, the Secretary General can also opt for an informal approach to conflictual situations, making use of alternative diplomatic means, such as those that are specific to the unofficial type of diplomacy - track II diplomacy - or to the hybrid type of diplomacy (which combines official and unofficial diplomatic means).

4.1. Traditional diplomatic means

Often, the Secretary General's involvement in the peaceful settlement of disputes corresponds to the use of traditional diplomatic means, circumscribed to a set of classical procedures, flexible and accessible to the parties involved in a dispute, perfectly compatible with situations in which there is a genuine will to compromise.

The use of such means is concordant with the provision of Article 33 of the UN Charter stipulating that: "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."

The most popular diplomatic means used by the High Official are mediation and good offices, as traditional procedures of peaceful resolution of disputes that involve the participation of a third party and are, therefore, compatible with the role and functions of the UN Secretary General. Also conducting international enquiries, based on a previous mandate or undertaken independently, is one of the means often used by the Secretary General, with the purpose of clarifying certain aspects or collecting information on a dispute or a potential conflictual situation.

Typically, the use of diplomatic means is especially compatible with disputes that have a predominantly political character. Nevertheless, in the recent period, the use of soft, flexible, diplomatic means generally enjoys a certain prevalence to the detriment of the use of jurisdictional means of peaceful settlement, regardless of the disputes' typology.²⁸

International conciliation, although is one of the diplomatic means consecrated by the UN Charter, that require the intervention of a third party (a commission), combining elements of mediation and enquiry, has certain features that make it resemblant to the jurisdictional means, constituting a somewhat transitory procedure between the two categories (diplomatic and jurisdictional). As international conciliation usually involves the activity of an established body (a permanent or an ad hoc commission), this means of peaceful settlement is less compatible with the role of Secretary General. However, in the past, the High Official participated in processes of international conciliation, providing assistance and advice for the establishment of various international commissions of conciliation.²⁹

It must be said that generally the diplomatic means of peaceful settlement are derived or inspired from the spirit of negotiations. It is common in the international practice that the use of a diplomatic procedure, implemented in the spirit of negotiations, can not be accurately categorized as it combines specific features of different diplomatic means (for example, when passing imperceptibly from good offices to mediation).³⁰

Although the diplomatic means are traditional procedures, that have known a historical evolution and developed within the framework of the official

²⁷ Dag Hammarskjöld, *op. cit.*, pp. 19-20.

²⁸ Magdalena-Denisa Lungu, *op. cit.*, pp. 64-65.

²⁹ For instance, the General Assembly, in its resolution 1474 (ES-IV) of 20 September 1960, requested the Advisory Committee on the Congo to appoint, in consultation with the Secretary-General, a conciliation commission for the settlement of the Congo issue. (*Handbook on the Peaceful Settlement of Disputes Between States*, Office of Legal Affairs, United Nations, New York, 1992, p. 48, available at <http://www.un.org/law/books/HandbookOnPSD.pdf>, accessed 12.02.2016).

³⁰ Magdalena-Denisa Lungu, *op. cit.*, pp. 64-65.

inter-state diplomacy, their flexibility and adaptability make them quite compatible with the more modern types of diplomacy - track II diplomacy and hybrid diplomacy.

The specific features of the diplomatic means make them fit to the UN Secretary General's functions and popular in the international practice. Parties to a dispute experiencing blockages in their direct communication during the process of peaceful settlement can benefit from the Secretary General's prestigious and impartial position, that many times proved to be very efficient in the prevention or appeasement of conflicts. The use of the diplomatic procedures of peaceful settlement always requires the consent of the parties. Even when this use is mandated to the Secretary General by UN's deliberative bodies, the respective resolutions do not impose it on the parties to the dispute, but only recommend it. Also, if the parties accept the Secretary General's intervention as a third party pacificator, the High Official cannot impose on them the identified compromise solution. The parties always enjoy the freedom of option between accepting or rejecting any such proposal.

4.1.1. Good offices and mediation

The UN Secretary General often intervenes for the peaceful settlement of disputes through good offices or mediation missions. Good offices or mediations may be mandated by the UN deliberative bodies, offered independently by the Secretary General or requested directly by the parties. Sometimes, parties can show a reluctance towards asking themselves for the Secretary General's good offices.³¹ It is preferred that the good offices are either recommended by the General Assembly or by the Security Council or offered independently by the Secretary General.

In the first years of the UN's existence, missions of good offices and mediation were usually mandated by the deliberative bodies. But the often vague wording of the mandates conferred to the Secretary General an extensive discretion in the implementation of the mandates, stimulating the evolution his role of good offices provider, to such extent that, in a short time, the Secretary General had established himself as a valuable agent of peace, with an independent political role.

The two diplomatic means - the mediation and the good offices - are very similar. Their common objective is that of ensuring a favourable environment for negotiations. The difference between the two means resides in the intensity of the third party intervention, which in the case of the good offices is moderate.

Good offices are not expressly consecrated by the UN Charter as a peaceful procedure for the settlement of disputes (being considered a mild variant of mediation). Nevertheless, they were mentioned in the Hague Conventions of 1899 and 1907. Subsequently, good offices find their consecration in international documents adopted by the UN, such as the General Assembly Declaration in 1982 at Manila, on the peaceful settlement of international disputes.

This diplomatic procedure entails the amicable intervention of the Secretary General in order to appease the contradictions and unblock the negotiations between the parties, previously obstructed by political antagonisms and / or legal differences. Therefore, the role of the Secretary General, during the good offices procedure is to facilitate contacts between the parties, by providing a neutral and secure environment, in order to stimulate a common approach that would cover the divergent points of view to a sufficient extent that the parties should be able to reinstate negotiations.

The good offices procedure consists of activities of exploration and information (to this end, enquiries and informal contacts with non-state actors could also be used), in order to provide an adequate communication channel between the parties, that would enhance their exchange of ideas and opinions and, eventually, would serve their efforts to formulate the objectives of the process of peaceful settlement (including the determination of the specific rights and obligations of each party) and to agree on the necessary procedures for initiating or resuming negotiations.³²

The main qualities that recommend the intervention of the UN Secretary-General as good offices provider are his impartiality, objectivity, credibility, prestige and, not least, the high level of expertise and information regarding the international context. Adequate knowledge of the situation, of the parties to the dispute and of the characteristics of their differences is a key factor for the efficiency of the peaceful settlement process.

In a good offices procedure, the UN Secretary General's role as a third party intervener ceases with the resumption of negotiations. In a mediation procedure, on the other hand, the Secretary General's intervention goes even further and deeper.

As a mediator, the Secretary General performs a variety of tasks from the examination of the actual substance of the issue in dispute to providing a communication channel and support for the parties in the configuration of their key objectives, offering them an objective and impartial assessment as a foundation for their peaceful settlement. In addition to offering a neutral environment, conducive to

³¹ *Ibidem*.

³² Craig Collins, John Packer, *Options and Techniques for Quiet Diplomacy*, Conflict Prevention Handbook Series, Folke Bernadotte Academy, p. 12, available at <http://www.corteidh.or.cr/tablas/29575.pdf>, accessed 10.02.2016.

negotiations, the Secretary-General performing his functions as a mediator, shall formulate concrete proposals for the identification of a compromise solution and for the definitive resolution of the dispute. The role of the Secretary General in the mediation process ceases either when his compromise solution is accepted by the parties or when it is rejected by them or when it is found that the hostilities between the parties have resumed, the possibilities of communication being irremediably blocked, in the respective circumstances.

In practice, both diplomatic means - mediation and good offices - are often used in the context of the same dispute, a strict delimitation between the two being very difficult to distinguish.

Mediation, as well as good offices, can be used both in the initial stages of a conflict within the framework of preventive diplomacy - often with the scope of clearly defining the substance of the issue in dispute and of identifying a compromise solution that would address the claims of the parties - as well as in the more advanced and difficult phases of the conflict within the diplomatic interventions of peacemaking - sometimes with the purpose of identifying an interim solution (for instance, concluding a ceasefire) and prepare the ground for future negotiations.³³

The problem of the most adequate timing for a third party intervention through mediation is crucial for the effectiveness of the peaceful settlement process. An untimely intervention can seriously affect the usefulness of the approach. If for instance, an offer of mediation is made prematurely and, therefore, meets the acceptance of only one of the parties, it can create the impression of bias. In addition, it can be assumed that the party who rejected the offer deems itself to be the stronger one, with greater chances of imposing its demands in the process of peaceful settlement and, therefore, sees the third party intervention as being detrimental to it. Such situations give the impression of an unequal relationship between the parties, which would ultimately lead to the indefinite blockage in communication, suppressing their willingness to initiate or continue negotiations. If, on the other hand, the offer of mediation is belated, the parties refusing to communicate and lacking any will of reaching a compromise, the chances of a successful mediation are very low. Usually, the best time for a third party intervention is that of mutual exhaustion or generalized stalemate.³⁴ To identify this moment, the Secretary General can call on his network of

formal and informal contacts to obtain adequate information on the status of the dispute.

In processes of peaceful resolution of conflicts, the UN Secretary General does not intervene as a third party from a position of strength. In the practice of international relations, in the past, powerful states would often intervene to mediate regional conflicts, applying sanctions or rewards in order to stimulate the communication between the parties. Naturally, the UN Secretary General cannot use such means.³⁵ At the core of the High Official's diplomatic procedures there is persuasion, not coercion. The Secretary General's strengths are his impartiality, his objectivity, his prestige, that confer him availability within a dialogue, without criticizing, judging or condemning. This unique position enabled the Secretary General to conduct mediations even in extremely delicate situations, between governments that had no diplomatic relations or did not recognize each other.

It must be said that in the practice of the United Nations, as well as within the international documents adopted under its aegis, the semantics of the term "good offices" is very flexible, often covering a variety of juxtaposed diplomatic processes³⁶ implemented in a cumulative manner for the peaceful settlement of a dispute, such as international enquiries, use of special envoys³⁷, mediation activities. "Good offices" is a "very flexible term as it may mean very little or very much." The most modest role that the UN Secretary General can assume as a provider of good offices is that of simple channel of communication between the parties. A more active involvement entails facilitating exchanges of information between the parties. The Secretary General's role becomes even more important when it implies the his efforts to explain and interpret objectively the information exchanged between the parties in order to avert misunderstandings, build confidence and prevent possible negative reactions. To this end, the High Official may use a variety of tools such as his network of formal and informal contacts, international enquiries or special envoys. Also, in the general, extensive sense of the term, during a "good offices" process, the Secretary General may suggest possible procedures to be initiated for further exchanges and negotiations between the parties and may go even further, suggesting compromise solutions. There were rare cases in which the parties to a dispute have agreed in advance to accept as binding the solutions identified by the Secretary-General. In these cases, actually the procedure would

³³ Magdalena Denisa Lungu, *op.cit.*, p. 105.

³⁴ Kjell Skjelsbæk, *The UN Secretary-General and the Mediation of International Disputes*, "Journal of Peace Research", Special Issue on International Mediation (Feb., 1991) Vol. 28, Nr. 1, p. 100.

³⁵ Howard H. Lentner, *op. cit.*, p. 539.

³⁶ One such example, would be Hammarskjöld's activity in Congo, consisting of a variety of procedures.

³⁷ For instance, Folke Bernadotte, dr. Ralph Bunche and Ambassador Gunnar Jarring represented the Secretary General during his missions in the Middle East.

surpass the usual limits of the diplomatic means used by the High Official.³⁸

4.1.2. Fact-finding missions

For the effectiveness of a peaceful settlement process, the UN Secretary General must acquire and maintain a high level of information. In order to ensure a proper level of information, indispensable for any active and effective involvement in a peaceful settlement process, regardless of the chosen diplomatic procedure or the status of the conflict, it is imperative that an additional research is conducted. This research takes the form of international enquiries (fact-finding missions) as an adjacent means with the role of elucidating certain matters of fact, that are subject to a dispute.³⁹

According to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/RES/46/59), from 9 December 1991, fact-finding is defined as “any activity designed to obtain detailed knowledge of the relevant facts of any dispute or situation which the competent United Nations organs need in order to exercise effectively their functions in relation to the maintenance of international peace and security”.⁴⁰

Therefore, investigations within the UN framework will be circumscribed to the facts, namely to that information correspondent to the objective reality, without referring exclusively to physical entities (they may, for example, refer to government policies or to instructions and intentions of decision makers in relation to a physical entity).⁴¹

According to the above-mentioned Declaration, “the sending of a United Nations fact-finding mission to the territory of any State requires the prior consent of that State”.

Fact-finding missions can be undertaken under the mandate of the Security Council or of the General Assembly, at the Secretary General’s own initiative or at the request of the parties.

Often, when the deliberative bodies mandate to the Secretary General tasks related to preventive diplomacy or diplomatic interventions during peacemaking, for the proper execution of these instructions, the High Official needs concrete, detailed and precise data, which can only be obtained through a series of investigative activities that can be carried out even they are not expressly stipulated within the given mandate.

Fact-findings can be conducted by the Secretary General independently, based on the extensive interpretation of Article 99 of the UN Charter, even prior to the existence of any dispute, but justified by other reasons which fall within the area of maintaining international peace and security (for instance, protection of human rights or the fight against terrorism). When the use of a fact-finding mission is seen as an adjacent means within a process of peaceful settlement, it is usually carried out at the Secretary General’s own initiative or at the request of the parties.⁴²

To conduct a fact-finding operation, the Secretary General must have extensive means for the collection of data, as well as human, financial and technological resources. Often, when conducting an operation of data collection, the Secretary General makes use of his informal network of contacts, which was created by virtue of his position within the UN structure.

Once the Secretary General collects the necessary data, the information is analysed and selected, so that, in the end, the relevant pieces are distinguished and retained. In case of contradictory information, coming from different sources, a more thorough investigation is deemed necessary, including through interviewing witnesses or consultation with third parties.

It often happens that the information collected by the Secretary General and considered essential for the maintenance of the international peace and security is related, to a similar extent, to the vital interests and the national security of certain states. In such cases, strict confidentiality is required. Although in some cases the development of an efficient system for the protection of confidential data is recommended, on the other hand, in order to avoid controversies that could endanger the prestige of the Organization, the general use of transparent methods is deemed necessary.⁴³

Nevertheless, investigations conducted by the Secretary General are usually extremely discreet operations, as confidentiality often proved to be a guarantee for the efficiency of the activities undertaken by the High Official.

Although a fact-finding mission is not in itself a means of peaceful settlement, a fair and accurate understanding of the facts is essential to the identification of an acceptable solution in the shortest time. In addition, the mere deployment of

³⁸ In 1986, during the Rainbow Warrior Affair, Perez de Cuellar’s mediation of the dispute between New Zealand and France, surpassed the classical procedure of mediation, resembling a political arbitration.

³⁹ Magdalena-Denisa Lungu, *op.cit.*, p.129.

⁴⁰ Declaration of the General Assembly on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, 9 December 1991 A/RES/46/59, pct. 3, available at <http://www.un.org/documents/ga/res/46/a46r059.htm>, accessed 12.02.2016.

⁴¹ A. Walter Dorn, *Keeping Watch for Peace: Fact-Finding by the United Nations Secretary-General in „United Nations Reform: Looking Ahead After Fifty Years”, E. Fawcett, and H. Newcombe, Science for Peace/Dundurn Press, Toronto, 1995, pp.138–154.*

⁴² Declaration of the General Assembly on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, 9 December 1991 A/RES/46/59, pct. 3, available at <http://www.un.org/documents/ga/res/46/a46r059.htm>, accessed 12.02.2016.

⁴³ A. Walter Dorn, *op.cit.*, pp. 138-154.

international investigation operations can have beneficial effects, relieving tensions and encouraging the communication between the parties.

4.2. Alternative diplomatic means

In some cases, especially in the more recent international practice, official diplomacy, that makes use of traditional channels and requires the participation and consent of all the parties involved, cannot ensure the efficiency of the processes of peaceful settlement. The Secretary General is frequently involved in the settlement of sensitive issues, in which the outcomes and the evolution of the process can not be made public without risking its obstruction, especially when it is conducted in the early stages of a conflict, with a preventive scope.

Through his role and his central position, the Secretary General has the opportunity to develop a dense network of contacts both at a formal, official level, involving high-ranked governmental actors, as well as at an informal level, involving unofficial or lower ranked actors (sometimes even non-governmental entities). In time, these informal contacts proved to be extremely valuable for regulating politically sensitive situations.

Certainly, the occupant of this position needs a period of time to develop such informal contacts, depending, of course, on his previous diplomatic experience. However, many of these informal contacts are preserved and transmitted to the new occupant of the office. Some of these informal relationships may also come from other members of the Secretariat, with diplomatic experience.

Informal diplomacy (secondary diplomacy), based on the subtle and personal interaction with lower ranked or non-state actors can ensure a higher level of information, allowing timely intervention and supporting the efforts of official diplomacy. This type of diplomacy can be used in any stage of the conflict previously, concurrently or subsequently to the use of specific means of official diplomacy.

Also, unlike the traditional type of diplomacy, circumscribed to inter-state relations, informal diplomacy is compatible with interventions for the settlement of internal conflicts. After the end of the Cold War, when several outbreaks of internal instability were activated, it was found that most threats to international peace and security had their source in internal antagonisms with the potential of degenerating into conflicts that could disrupt the international relations (especially having in view the increasing inter-dependencies between states) and could destabilize large regions of the globe. As a

result, the popularity of the secondary diplomacy has augmented significantly.

Informal diplomacy allows a disaggregated approach to the conflict, making it possible to address the causes of the conflict and to identify communication channels and areas of action that are less visible. Also, this type of "quiet diplomacy" allows the Secretary General to enjoy a greater freedom of movement and enables him to establish valuable bridges between the parties to the dispute.

Besides secondary diplomacy, in order to better respond to a variety of situations, another type of diplomacy was developed - the so-called hybrid diplomacy (track one and a half diplomacy). Hybrid diplomacy entails the use of means of official diplomacy in a less formal setting. For instance, decision making actors of the states involved in the conflict may confer to non-state actors the authority to represent them, to negotiate and act on their behalf.⁴⁴ Hybrid diplomacy has proven especially efficient for interventions in civil conflicts (but not only), when the Secretary-General had to provide a channel of communication between officials actors and unofficial entities.

5. Structures that support the UN Secretary General's activity in the peaceful settlement of disputes

The Secretary General's activities in the field of peaceful settlement of disputes are supported by the staff of the Secretariat (he may even may appoint special representatives and envoys to carry out good offices and mediation on his behalf) and by other structures in order to ensure the effectiveness of these interventions. One such structure would be the "Group of Friends"⁴⁵ that consisting of a number of UN member states, acting to support the Secretary-General to find a solution for the peaceful settlement of a specific crisis. If within a mediation process, apart from the UN Secretary General, there are also other third parties acting as mediators, the "Group of Friends" will make efforts in order to determine them to act in the same direction during the mediation. The "Group of Friends" acting under the coordination of the Secretary General, can not undertake activities for the peaceful settlement of disputes unless they are requested to do so. Groups of states, supporting the Secretary General's good offices were more frequent in the early 1990s, after the end of the Cold War. Nowadays, there has been a departure from these groups as they have been conceived in the 1990s. There is, however, a

⁴⁴ Magdalena Denisa Lungu, *op. cit.*, p. 69.

⁴⁵ At the origin of the "Group of Friends" stays Hammarskjöld's idea of using advisory committees to support him in the creation and management of the peacekeeping operations. Such committees were used, for instance, for UNEF (United Nations Emergency Force) and for ONUC (United Nations Operation in the Congo). The first Group of Friends was created during Javier Perez de Cuellar for the El Salvador situation. (Teresa Whitfield, *Good Offices and „Groups of Friends“* in Simon Chesterman, „Secretary or General? The UN Secretary General in World Politics“, New York, Cambridge University Press, 2007, pp. 87-88).

proliferation of groups, both within the UN framework and beyond it.⁴⁶

Within the Secretariat, a structure with an important role in conducting processes of mediation and good offices is the Department of Public Affairs, within which there is a Policy and Mediation Division. This department carries out a variety of activities, including activities with the scope of conflict prevention, by monitoring political developments and assisting the Secretary General in activities of preventive diplomacy. In mediation processes, the Department of Public Affairs defines and plans the mission, also offering support and guidance to special representatives and mediators.⁴⁷ Recently, a Mediation Support Unit was established within the Policy and Mediation Division of the Department of Political Affairs and, within this unit, a Standby Team of mediation experts was created with an important role in supporting operational activities and projects aimed at achieving sustainable peace.

6. Conclusions

The UN Secretary General is a symbol and an instrument of peaceful settlement, which has proven its effectiveness in preventing and settling conflicts, even in the most difficult political contexts. The Secretary General's functions, as they are currently configured, are largely the result of a long evolution which, ultimately, provided the occupants with a repertoire of practices that define a strong and influential role in the maintenance of international peace and security.

This role entails a specific approach to international problems, which can be influenced both by objective factors related to the evolving

international context and by subjective factors, related to the occupants' personal traits.

The current international context is characterized by a strong interdependence between international actors so that any threat to peace and security, regardless of its location, becomes a problem for the entire international community. In this context, when there is a situation that may endanger international peace and security, the Secretary General must have a multilateral approach, as an impartial agent, representing the interests of the international community.⁴⁸

The Secretary General's actions may involve the use traditional diplomatic means, such as good offices, mediation and international enquiries, either under the mandates of the UN deliberative bodies, or independently, at his own initiative or at the request of the parties, in accordance with the provisions of Article 99 of the UN Charter. Sometimes the traditional diplomatic approach is completed by the use of unofficial diplomatic processes, with a discreet character, that can provide a superior level of information and new directions in the process of peaceful settlement. In fact, the Secretary-General's involvement in the process of peaceful settlement of disputes is often a discreet one, his actions usually being perceived by the states as credible and reliable.

In time, the discreet character of the Secretary General's interventions, especially when they involve the use of diplomatic means of peaceful settlement, was deemed as an essential condition and as a guarantee for the effectiveness of the activities undertaken. In this regard, Perez de Cuellar declared that "no one will ever know how many conflicts have been prevented or limited through contacts that have taken place in the famous glass mansion, which can become fairly opaque when necessary."⁴⁹

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⁴⁶ *Ibidem*, p. 92.

⁴⁷ Magdalena Denisa Lungu, *op. cit.*, p. 284.

⁴⁸ Dag Hammarskjöld, *New Diplomatic Techniques in a New World*, Address to the Foreign Policy Association, New York, 21 October 1953, p. 7, available at <http://www.un.org/depts/dhl/dag/docs/newdiplomatic.pdf>, accessed 15.02.2016.

⁴⁹ T.M. Franck, *op. cit.*, p. 361.

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