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## The Office of the United Nations Secretary-General

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*United Nations*

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### I. *Introduction*

In the last decade of the twentieth century the international community is turning increasingly to international organizations to co-ordinate international protection of the common welfare, to promote global interests, and to help enhance human dignity and freedom. International organizations are not being entrusted with governmental functions *per se*, but they are being called upon to help develop and operate what may be described as strategies of international governance in the environmental, political, economic, social, and humanitarian sectors. The enhanced role of international organizations is accompanied by related innovations in international law.

One notable area of change is the law concerning the Office of the Secretary-General of the United Nations. In the words of the Secretary-General himself: "As rarely before, the Secretary-General is now being called upon to exercise his good offices in a widening range of situations in order to resolve disputes, to direct a growing number of peace-keeping operations established by the Security Council, and to exercise his preventive diplomacy in the interests of peace."<sup>1</sup>

In order to perform his growing functions effectively, the Secretary-General has taken steps to strengthen the capacity of his office and related parts of the Secretariat. In March 1987, the Secretary-General established the Office for Research and the Collection of Information to monitor global trends, to provide early warning of potential conflicts, and to undertake research on matters pertinent to his good offices and to peace-keeping activities. Then, in light of the increasing need for peace-keeping, the Secretary-General decided in October 1988 that the Office for Special Political Affairs should be structured in such a manner as to give greater focus to the planning, supervision, and co-ordination of all peace-keeping activities. Further, in January 1990, the Secretary-General established a Senior Planning and Monitoring Group for Peace-keeping Operations. Finally, in relation to his good offices and peace-making activities and missions, "which had seen a considerable increase in recent

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1. Draft Medium-Term Plan 1992-1997, A/45/6 (Prog. 1), 21 May, 1990, para. 1.2.

years,” the Secretary-General decided that those activities should be undertaken under his direct supervision, from within his Executive Office.<sup>2</sup>

In broad terms, the strategies pursued by the Secretary-General are: (a) to undertake appropriate measures to assist in the prevention and settlement of disputes; and for that purpose, and as required, to provide his good offices: (b) to prepare for, set up, and direct peace-keeping operations established by the United Nations; and, (c) to undertake research and collect information to support the efforts of the Secretary-General in matters relating to the maintenance of international peace and security.<sup>3</sup>

The initiatives of the Secretary-General have triggered significant innovations in the law and practice governing his Office especially in the following areas: the good offices and peace-making roles of the Secretary-General; the fact-finding role of the Secretary-General; the observance of elections; the use of the Secretary-General’s good offices for settling internal conflicts; and, the general leadership role of the Secretary-General. In this essay I will trace recent innovations in these five areas of the law on the Office of the Secretary-General. Before doing so, however, I will set the inquiry in perspective by offering a summary statement of the law governing the Office of the Secretary-General as it developed in the first forty years of the Organization.

## II. *The Law Governing the Office of the Secretary-General 1945-1985*

In his pathfinding work on the Office of the Secretary-General, Dr. (now Judge) Schwebel discussed the competence of the Secretary-General granted by Article 99 of the Charter and offered the following statement of “seven interlocking powers flowing from the Article and its official exposition”:<sup>4</sup>

1. The explicit authority of the Secretary-General to bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security.
2. The Secretary-General’s political personality pursuant to Articles 98 and 99 makes him the individual who “more than anyone else . . . stand(s) for the United Nations as a whole.”
3. The fact that his authority under Article 99 extends to “the reporting of *any* developments — for example, in the economic or social field — which in his view could have serious political implications remediable

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2. *Ibid*, para. 1.3

3. *Ibid*, para.

4. S. Schwebel, *The Secretary General of the United Nations. His Political Powers and Practice*. Cambridge, Harvard University Press, 1952, pp. 23-26.

only by political action” gives the Secretary-General the character of a “vital link” between the Security Council and other organs of the organization.

4. The Secretary-General has the right to make such inquiries and investigations as he may think necessary in order to determine whether or not to invoke his powers.

5. Flowing from the discretionary nature of his power under Article 99, the Secretary-General enjoys a right to choose the most appropriate means of implementing the Article. As a matter of strategy, he may exert his influence so that it will not be necessary for him formally to bring the matter in question to the attention of the Security Council: “Article 99, in other words, may be interpreted as providing a specific legal justification for that extensive, informal, behind-the-scenes political activity of the Secretary-General for which the essential character of his office, and the precedent of the League, provide a more general basis.”

6. Article 99 could be called into play as the authorizing clause of declarations, proposals, and draft resolutions which the Secretary-General may wish to offer in connection with the Security Council’s work.

7. Finally, Article 99 supplies the Secretary-General with a Security Council springboard for a dramatic appeal to world public opinion fully comparable to that provided in the case of the General Assembly by the annual-report provision of Article 98.

Some of the foregoing “powers”, even if legally valid, may have been somewhat optimistic, from a political point of view, for example the proposal of draft resolutions. Nevertheless, in the findings of the current editor of the *American Journal of International Law*, the Secretary-General: “has invented for himself a role as guardian of the principles of the UN Charter. To perform this function, Article 99 of the Charter permits him to ask the Security Council to meet when he perceives there to be a serious threat to the peace. In practice, however, Secretaries-General have evolved a far broader range of optional procedures for influencing the political organs and individual members. It has become accepted that the Secretary-General can arrange to have the Council convened even without alleging that the peace is threatened. He may intervene at will in Council and Assembly debates, offer advice on questions of law and fact whether asked or not, advise and negotiate with members in private, draft resolutions and lobby openly for those he favors and solicit broad delegations of authority from the political organs.”<sup>5</sup>

This dynamic interpretation of the role of the Secretary-General bears the stamp of the author’s enthusiasm — what else could one expect from

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5. T. M. Franck, *Finding a Voice: How the Secretary-General Makes Himself Heard in the Councils of the United Nations*, in J. Makarczyk (Ed.) *Essays in International Law in Honour of Judge Manfred Lachs*. The Hague, Martinus Nijhoff, 1984, pgs. 481-491, at p. 481.

the famous matador! — but it may be overstated in part, for example, where it countenances the Secretary-General “lobbying openly” for resolutions he favors. Be that as it may, there can be no doubt of the dynamic development of the law, through practice with regard to what Elaraby has described as the right of the Secretary-General to conduct inquiries and his right to use good offices. On the former, to quote Elaraby, “the Secretary-General has consistently asserted to his office the right to conduct fact-finding on his own authority pursuant to Article 99”<sup>6</sup>. On the right to use good offices, the practice has been quite rich: “In the Secretary-General’s practice, extending his good offices usually entails a host of activities to facilitate the settlement of disputes . . . . The modalities which the Secretary-General employs are not easily defined even under general rubrics. One, however, may refer to the various methods of United Nations ‘presence’ as the main features of the methods usually used . . . .<sup>7</sup> However, Elaraby’s caution bears repeating: “all third party innovations, at the present stage in the international system, remain subject to the consent of the parties”<sup>8</sup>.

Vratislav Pechota, in his thoughtful work on the good offices of the United Nations Secretary-General, offered the following rules which he felt would help to maintain the constitutional balance between the Secretary-General and the Security Council. The Secretary-General should: (i) refrain, as a rule, from any action of his own while the Security Council is exercising, or is likely to exercise, the functions assigned to it by the Charter. (ii) Seek prior authorization by the Council, if the contemplated action relates to a situation which may require, at any stage of its development, action by the Council in accordance with Chapter VII of the Charter. (iii) Keep the Council informed, and consult its members as appropriate, about any involvement in disputes the continuance of which is likely to endanger the maintenance of international peace and security, so that the Council, if it so decides, can take appropriate steps in accordance with Article 33(2), 34, 36 and 38. (iv) Report to the Council, with or without a recommendation as to appropriate action, on the outcome of his involvement in the settlement of disputes under Chapter VI of the Charter.<sup>9</sup>

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6. N. Elaraby “The Office of the Secretary-General and the Maintenance of International Peace and Security”, in UNITAR, *The United Nations and the Maintenance of International Peace and Security*. Dordrecht, Martinus Nijhoff Publishers, 1987, pp. 177-212, at p. 194.

7. *Ibid.*, p. 205

8. *Ibid.*, p. 201

9. V. Pechota, *The Quiet Approach. The Good Offices of the United Nations Secretary-General*. UNITAR, 1972, p. 36.

The general principles that should influence the Secretary-General in the performance of his responsibilities, including those under Article 99, were well put by Secretary-General Hammarskjöld at a meeting of the Security Council on 31 October 1956. He stated that:

“The principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people. As a servant of the organization, the Secretary-General has the duty to maintain his usefulness by avoiding public stands on conflicts between Member nations unless and until such an action might help to resolve the conflict. However, the discretion and impartiality thus imposed on the Secretary-General by the character of his immediate task may not degenerate into a policy of expediency. He must also be a servant of the principles of the Charter, and its aims must ultimately determine what for him is right and wrong. For that he must stand. A Secretary-General cannot serve on any other assumption than that — within the necessary limits of human frailty and honest differences of opinion — all Member nations honour their pledge to observe all Articles of the Charter. He should also be able to assume that those organs which are charged with the task of upholding the Charter will be in a position to fulfill their task.<sup>10</sup>”

The foregoing propositions of the basic law governing the political role of the Secretary-General were offered in the light of a long line of practices during the first forty years of the UN. However, the need for the good offices of the Secretary-General continues to grow. As Secretary-General Perez de Cuellar said to the fortieth anniversary session of the General Assembly in 1985:

“It would be in the interests of the Organization as a whole if the Secretary-General’s capacity to serve as an objective third party were to be further developed. There is much, of course, to be said for quiet diplomacy, but sometimes more is required. I am thinking in particular of a wider and earlier use of fact-finding and observation. I am also thinking of the need to survey more regularly and systematically the worldwide state of international peace and security — a task in which the Security Council and the Secretary-General should be jointly involved.<sup>11</sup>”

The Secretary-General not only “thought” along these lines: he acted. In the following sections of this paper we will see the impact of some of his actions on the law pertaining to the Office of the Secretary General. I will begin with the concept of good offices.

### III. *The Good Offices of the United Nations Secretary-General*

Traditionally, good offices were held to mean the action taken to bring

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10. Official Records of the Security Council, 1956.

11. Annual Report of the Secretary-General, 1985, A/40/1, p. 5.

about, or initiate, negotiations but without active participation in the discussion of the substance of a dispute. The practice of successive Secretaries-General of the United Nations has given a new, more dynamic, content to the concept of good offices in the United Nations. Good offices have come to mean, in effect, *anything that the Secretary-General can do discreetly to further the objectives of the Charter*. Thus, we now find the good offices of the Secretary-General being deployed to deal with political, humanitarian, economic, social, and other issues.

The good offices of the Secretary-General may be invoked on different legislative bases and the content of good offices could, theoretically, vary according to the applicable legal basis in each particular instance. Among the legal bases which may be detected in practice are: Article 99 of the Charter, resolutions of the Security Council or of the General Assembly, an express invitation of the parties, or the right in international customary law for any State, or even an individual, to offer good offices.

One sometimes finds the Secretary-General giving good offices its traditional meaning and, at other times, applying good offices in an eclectic manner. The basic rationale seems to come down to what was posited earlier, namely: how can the Secretary-General help the parties to resolve their differences? This interpretation is supported by the following statement of the Secretary-General in a report to the General Assembly in 1990:

“Good offices and related peace-making activities, such as special missions, constitute the fundamental means whereby the Secretary-General fulfills his political role. As such, they are intrinsic to the manner in which the Secretary-General carries out his responsibilities on a daily basis. Such activities by the Secretary-General are undertaken at the request of the Security Council or the General Assembly, at the request of States, or on the initiative of the Secretary-General within the framework of his responsibilities under Article 99 of the Charter. The fundamental objective of the Secretary-General in the discharge of his good offices is to assist States involved in disputes or conflicts to resolve their differences peacefully in accordance with the principles of the Charter of the United Nations and, wherever possible, to prevent conflicts.”<sup>12</sup>

The models of action used in the exercise of good offices have been interchangeable, irrespective of the basis of the authority of the Secretary-General in any particular instance. The Secretary-General, in recent practice, has: worked in close partnership with the Security Council; provided advance warning of impending crises and made private and public appeals to the parties concerned; established inquiries on his own authority; pursued joint initiatives with regional organizations; served on

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12. Op. cit. in note ..... above, para. ...

a regional verification organ; mediated in a dispute between two countries; visited capitals at crucial moments; coordinated assistance programmes; acted in the face of severe economic crises facing countries or regions; responded repeatedly to man-made and natural disasters; sounded the alarm about the growing menace of international trafficking in drugs; warned about unjust structures which are the root causes of conflicts in some regions; pursued his good offices for the conclusion of peace accords in particular conflicts; offered “packages”; “framework agreements”; “proposals”; “ideas”; “peace proposals”; “wide range of options”; “confidence-building measures”; designated special representatives in particular situations; and, coordinated reconstruction activities in some areas.

In the Iran-Iraq conflict, the Secretary-General broke new ground in his designation of an investigatory team, on his own authority, to examine allegations of the use of chemical weapons; in his appeals and extraction of commitments from the Governments concerned with regard to the protection of civilians and the use of chemical weapons; in his designation of inspection teams to oversee those undertakings; and in his appeals concerning prisoners of war. From a doctrinal point of view, particularly touching on the law of his office, the Secretary-General made, and acted upon, the following significant assertions: (A) “Until this ruinous conflict can be stopped, I have a special responsibility to make every effort to mitigate the suffering it causes”.<sup>13</sup> (B) “I cannot remain indifferent to the alarming indications that such weapons might be used again. I therefore feel duty bound . . . to call upon the Governments . . . to declare . . . not to use chemical weapons of any kind for any reason”.<sup>14</sup>

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13. See United Nations Chronicle, vol. XXI, 1984, No. 5; See also, B.G. Ramcharan, *The Concept and Present Status of International Protection of Human Rights*. Dordrecht. Martinus Nijhoff, 1989, ch. 6.

14. S/16663. See generally, Ramcharan, *Humanitarian Good Offices in International Law. The Good Offices of the United Nations Secretary-General in the Field of Human Rights*. 1983. Martinus Nijhoff, pp. 70-71: In practice, a Secretary-General, in dealing with individual cases in the context of the exercise of good offices, may act *inter alia*, on the following principles: He uses his personal judgement as to whether an intercession on his part would be appropriate or would be helpful. He is guided mainly by the welfare of the persons concerned. He acts mainly on humanitarian grounds, mindful as a general rule of the injunction against intervention in internal affairs. He takes into account the circumstances and responsibilities of the government(s) concerned. He normally acts confidentially and discretely but on occasions he may speak out publicly when necessary. He may on occasions send a representative to consult with the government concerned. In dealing with situations of gross violations of human rights the Secretary-General may, *inter alia*, adopt the following approaches: He may establish contacts with the governments concerned. He may send a representative for discussion with the government concerned. He may personally make a visit on-the-spot. He may designate a special representative to deal with the situation. He may seek to provide international humanitarian assistance, e.g. through the office of the United Nations High Commissioner for



#### IV. *Fact-Finding, Early Warning, and Preventive Diplomacy*

The Secretary-General, Professor Franck wrote in 1986, “needs a small, highly competent crisis-management group of specialist-assessors at headquarters to receive and analyze reports from the field, to filter them for consumption by the Secretary-General and his cabinet and to set out options”.<sup>15</sup> A series of developments since 1985 has brought us close to the achievement of this goal.

On 27 December 1985, the following statement was issued by the Spokesman for Secretary-General Perez de Cuellar:

“Over the past few days, the Secretary-General has been following most carefully developments relating to the tension along the border between Burkino Faso and Mali and has been in close touch with the two Governments.

“On 24 December, he appealed to the two Heads of State to exercise maximum restraint so that a peaceful resolution might be worked out to this border dispute. In his messages, he recalled that this question had been the subject of detailed discussions when he had visited the region in February 1984.

“On 24 December, the Secretary-General also approached the President of Senegal in his capacity as Chairman of the OAU (Organization of African Unity), recalling the steps already taken by the Presidents of the two States to bring the matter before the ICJ (International Court of Justice) and urging the OAU membership to encourage the two Member States to do their utmost so that a peaceful approach to the settlement of this long-standing dispute would be pursued.”<sup>16</sup>

The activities of Secretary-General Pérez de Cuéllar, revealed in this statement, bore witness to a belief that the United Nations must develop adequate early-warning facilities. That belief was stated in his first annual report and featured prominently again in his annual report in 1987, which highlighted the establishment, on 1 March 1987, of an Office for Research and Collection of Information that now performs the following functions: (a) providing early-warning of developing situations requiring the attention of the Secretary-General; (b) collecting, consolidating and arranging timely distribution of political information from news agencies and the media and from United Nations information centres on

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Refugees. He may offer United Nations technical assistance. He may convene an international conference to consider the situation. He may establish an inquiry into the situation. He may, if he considers it necessary, comment on the situation publicly or express his concern about it.

15. T. M. Franck, “The Role and Future Prospects of the Secretary-General”, in D. Bardonnet (Ed.), *The Adaptation of Structures and Methods at the United Nations*, Dordrecht, Martinus, Mijhoff Publishers, 1986, pp. 81-90, at p. 90.

16. UN Press Release SG/SM/676, 27 December 1985.

developments related to peace and security for use by the Secretary-General and senior officials; (c) maintaining and further developing, as well as computerizing, a central data base system related to peace, security and emergency situations for use by the Secretary-General and senior officials; (d) assessing global trends based on publicly available information and research work and preparing, for the use of the Secretary-General, country, regional, subregional, and issue-related profiles in close consultation with officials dealing with negotiations and conflict resolution; (e) enhancing consultative and information sharing arrangements with other political departments and offices; promoting co-ordination of the long-range research, analysis and information functions of the Secretariat regarding political affairs and emergency situations; and organizing thematic interdepartmental task forces on issues of special interest to the Secretary-General and to the international community; (f) establishing and maintaining contact with organizations within the United Nations system, research institutions, non-governmental organizations and the academic community in order to keep abreast of research relating to the discharge by the Secretary-General of his responsibilities regarding the maintenance of international peace and security; (g) monitoring of information and developments relating to possible flows of refugees, in accordance with General Assembly resolutions 41/70 and 44/164.<sup>17</sup>

Glimpses of the Secretary-General's thinking were provided in his 1987 annual report: He had in mind the maintenance of a global watch through linking information from several sources; meeting emergencies; and, assuring rapid responses to impending or actual emergencies. Among the modalities for application which he thought possible were the following: (i) the Security Council could use peacekeeping forces to head off violence and facilitate the resolution of disputes before armed conflict occurs; (ii) when a potentially dangerous situation is identified, a fact-finding mission could be quickly dispatched both to gain a detailed knowledge of the problem and to signal to the parties the concern of the United Nations as a whole; (iii) efforts should be made to stimulate international study, planning and preparations for early-warning of natural disasters.<sup>18</sup>

In offering his perspectives for the 1990s, the Secretary-General gave further insights into this thinking:

“Nowhere is the saying that an ounce of prevention is worth a pound of cure more true than in the field of international security, especially since

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17. *Loc cit* in note . . . above, para. . .

18. A/42/1, p.

the cure for conflict has proven so elusive. The United Nations must, therefore, give very high priority in the 1990's to monitoring potential causes of conflict and to communicating warning signs to those in a position to alleviate the situation. First responsibility should lie with the Security Council and with the Secretary-General who will need to have the means to mount *a global watch*. Given the strong economic and social factors in regional violence, economic and social developments will have to be followed and assessed in terms of their relevance to international security.<sup>19</sup>

The Secretary-General also saw a role for early-warning action in the economic and social fields:

“There is clearly much that can be foreseen in the economic and social fields for which advance planning is increasingly essential. A crowded world of strained resources cannot be managed on an *ad hoc* basis. But, the United Nations must also be able to meet emergencies that call for collective effort, whether to contain violent political conflicts or to meet natural or man-made disasters. Both in looking ahead and in meeting new crises, information and communication are indispensable tools. In the past decades, many of the greatest shocks to the international community have been unanticipated, partly because warning signals were not communicated. A communication gap kept environmental, population and development assistance groups apart far too long. Conflicts can best be peacefully resolved before shots are fired. For such preventive action, information and communication are of the highest importance.”<sup>20</sup>

The approach of the Secretary-General to these matters has met with the approval of the Security Council as well as the General Assembly. Indeed, the General Assembly has specifically urged the Security Council to consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned. In cases where it is appropriate for promoting the prevention and removal of disputes or situations, the General Assembly urged that the Security Council “should at an early stage, consider making use of the provisions of the Charter concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question.”<sup>21</sup>

The General Assembly urged the Secretary-General, if approached by a State or States directly concerned with a dispute or situation, to respond swiftly by urging the States to seek a solution or adjustment by peaceful means of their own choice under the Charter and by offering his good

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19. A/42/512, p. 3

20. *Ibid.*, p. 8

21. General Assembly resolution . . .

offices or other means at his disposal, as he deems appropriate. It further recommended that the Secretary-General should consider approaching the States directly concerned with a dispute or situation in an effort to prevent it from becoming a threat to the maintenance of international peace and security. In addition, the Secretary-General should, where appropriate, consider making full use of fact-finding capabilities, including, with the consent of the host State, the sending of a representative or fact-finding mission to areas where a dispute or a situation exists; where necessary, the Secretary-General should also consider making the appropriate arrangements.

The General Assembly specifically encouraged the Secretary-General to consider using at as early a stage as he deems appropriate, the right that is accorded to him under Article 99 of the Charter. The General Assembly further recommended that the Secretary-General should, where appropriate, encourage efforts undertaken at the regional level to prevent or remove a dispute or situation in the region concerned.<sup>22</sup>

#### V. *The Observance of Elections*

One area of development in the law on the Office of the Secretary-General has concerned the observance of elections. Prior to 1988, there were only two recorded instances of the involvement of the Secretary-General in elections in independent countries. The first was in 1957 when the Secretary-General arranged for the services of experts to be provided to Haiti to advise on electoral laws. The experts were provided within the framework of the programme of advisory services in the field of human rights.<sup>23</sup> The other recorded instance concerned Costa Rica. In 1958, at the request of the President of Costa Rica, the Secretary-General provided a list of international personalities from whom the President chose three to observe elections in Costa Rica that year. The team drew up a report which they submitted to the President of Costa Rica. Subsequently, the United Nations also arranged for one of the experts to provide advice to the Government of Costa Rica.<sup>24</sup>

Beyond the provision of advisory services and technical assistance and the indication of a list of international personalities, the Secretary-General of the United Nations, up to 1988, had had no other involvement in the international observance of elections in independent countries. As recently as 6 January 1988, when the Spokesman of the

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22. See Sir Crispin Tickell, "The Role of the Security Council in World Affairs", 18 *Georgia Journal of International and Comparative Law* (1988), No. 3, pp. 307-317.

23. E/3006, 24 May 1957.

24. E/CN.4/798, 25 January 1960.

Secretary-General was asked whether anyone had requested the Secretary-General to mobilize international observation of the Haitian elections, the reply was given, on the following day, that “there was no provision for the United Nations to send observers to the forthcoming elections in Haiti. What provisions there were for observer missions related to the holding of referenda on the subject of self-determination. That was not the case in Haiti.”<sup>25</sup> A dramatic turn around occurred on 19 June 1990, when the Spokesman for the Secretary-General made the following announcement: “After consulting with the Haitian Government, the Secretary-General has decided to appoint Joao Augusto de Medicis, a national of Brazil, as his Personal Representative to Haiti, to advise him on the assistance which could be provided to the Haitian authorities during the electoral process in their country”<sup>26</sup>.

In the interval between 7 January 1988 and 19 June 1990, of course, the Secretary-General had been mandated by the Security Council and by the General Assembly to mount operations for the monitoring of elections in Namibia and in Nicaragua. One could say, however, that the competence of the Secretary-General rested, in those instances, in express mandates entrusted to him by the competent organs of the United Nations. In the case of Haiti, however, there had, up to the time the Secretary-General appointed his Personal Representative, been no such mandate and the Secretary-General was therefore acting on his own initiative.

What, one may ask, are the criteria applied by the Secretary-General in deciding whether to play a role in the monitoring of elections? The Secretary-General’s attitude in the case of the Romanian elections provides some guidance on this point. On 28 April 1990, a Press Release was issued by the Secretariat dealing with a request from the Government of Romania for two United Nations experts on the technical and legal aspects of democratic elections to go to Romania from 30 April to May 1990, under the United Nations programme of advisory services and technical assistance in the field of human rights. Pursuant to that request, the Secretary-General had designated two experts to discuss the general principles and means of application of the legal and technical aspects of democratic elections with officials of the Government of Romania, with the commission charged with the organization of the coming elections, and with representatives of political parties and others interested in the procedure of democratic elections. The United Nations experts, it was

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25. DPI Daily Press Briefing, 7 January 1988

26. DPI Daily Press Briefing, 19 June 1990

emphasized, would not observe or comment on the actual preparations for the elections, nor on the elections themselves.

## VI. *The Secretary-General and Internal Conflicts*

Has there been any movement in the law that would allow the Secretary-General more freedom of movement in situations of internal conflicts? At first glance one might be tempted to think not. Thus, on 28 November 1989, responding to an earlier query which concerned talks between the Government of Ethiopia and the Eritrea Liberation Front, the Spokesman of the Secretary-General said that the Secretary-General had indicated to former United States President James Carter, who had approached him on the matter, that, "technically, for the Secretary-General to become involved in the process, he would need either a request from the Ethiopian Government or a mandate from the General Assembly or the Security Council. Mr. Giuliani reminded correspondents of precedents in that regard: the Secretary-General's mandate from the General Assembly concerning Afghanistan and the Security Council's mandates to the Secretary-General concerning Central America and Cyprus."<sup>27</sup>

But a few months later, on 13 March 1990, the Spokesman of the Secretary-General issued a statement disclosing that the Secretary-General had been engaged in an effort to bring about talks between the Government of El Salvador and the Frente Farabundo Marti para la Liberación Nacional (FMLN). Subsequently, on 30 March 1990, the Secretary-General's Spokesman announced that, "Following a meeting in Mexico City with the Secretary-General's Personal Representative on 29 and 30 March, the Government of El Salvador and the Frente Farabundo Marti para la Liberación Nacional (FMLN) have agreed to meet with the Secretary-General in Geneva on Wednesday, 4 April."<sup>28</sup> Fielding questions about the talks, the Spokesman said he assumed that the two sides would first meet separately with the Secretary-General, followed by a joint meeting.<sup>29</sup> It was the first time that such a United Nations-sponsored meeting was held between the two sides in Geneva.

The substantive agenda of the talks, as announced in a communique issued on 21 May 1990, was far-reaching, as may be seen from the following extracts:

- I. The initial objective shall be to achieve political agreements for a halt to armed confrontation and any acts that infringe the rights of the civilian

27. DPI Daily Press Briefing, 28 November 1989, p. 2.

28. UN Press Release, SG/SM/4419, GA/14, 13 March 1990.

29. DPI Daily Press Briefing, 30 March 1990.

population, “which will have to be verified by the United Nations, subject to the approval of the Security Council.”

(a) First: *Political Agreements*: 1. Armed forces; 2. Human rights; 3. Judicial system; 4. Electoral system; 5. Constitutional reform; 6. Economic and social issues; 7. Verification by the United Nations.

(b) Second: Agreement on a halt to the armed confrontation and any acts that infringe the rights of the civilian population

II. Establishment of the necessary guarantees and conditions for reintegrating the members of FMLN, within a framework of full legality, into the civilian, institutional and political life of the country.

1. Armed forces; 2. Human rights; 3. Judicial system; 4. Electoral system; 5. Constitutional reform; 6. Economic and social issues; 7. Reintegration of FMLN members, 8. Verification by the United Nations.

III. Final agreements for the consolidation of the objectives of the Geneva Agreement, and verification by the United Nations, as appropriate.”<sup>30</sup>

## VII. *Leadership*

From the outset, it has been “a root concept of the United Nations . . . that the Secretary-General is an international statesman” who is expected to perform political and leadership functions.<sup>31</sup> Hitherto, leadership has been provided mainly through the good offices of the Secretary-General in addressing political disputes or conflicts. However, there are growing demands for the Secretary-General to provide leadership on a broader range of issues. A study published by the United Nations Association of the United States in 1986, entitled “Leadership at the United Nations”, argued that to cope effectively with the challenges to the world body the responsibilities of the office of the Secretary-General would have to be stretched well beyond what has, through tradition and practice, come to be accepted as the normal sphere. Areas suggested to attract the leadership of the Secretary-General included: “*Programmatic leadership*. To develop the momentum and a sense of direction the world body now lacks, a Secretary-General should act as a forceful and inspiring programmatic leader with a clear conception not only of the UN of today, but also of where he or she would like it to go. *Vigorous management*. No single trait is more effective when asserted, or leaves a greater void when it is not, than the will to manage. *Intellectual guidance*. The Secretary-General and his or her deputies should help define realistic and imaginative tasks for the UN, especially regarding international economic co-operation. *Presenting the UN to the world*. In an era of mass

30. UN Press Release CA/24, 21, May 1990.

31. Schwebel, note 4, above, p. 17.

media and global communications, the Secretary-General should be both the UN's most powerful image maker and the world's most prominent spokesperson for multilateral approaches to global problem-solving."

A report published in September 1990 by the Ford Foundation and the Dag Hammarskjold Foundation, entitled, "A World in Need of Leadership: Tomorrow's United Nations", argued that the revitalization of the UN system and the quality of its leadership are closely related. It continued: "In the United Nations, leadership comes, or can come, from a number of possible sources. Member states, either singly or in groups, are one such source. Imaginative political leaders are another. Non-governmental organizations and other means of reflecting people's opinions and concerns are yet another. The UN system also has its appointed leaders — the Secretary-General and the heads of the various specialized agencies and programmes. The caliber and teamwork of these leaders, led by the Secretary-General, are essential to the future effectiveness of the system."

James MacGregor Burns, in his classic work on leadership, classifies the concept into: (a) *Transactional leadership*, which approaches its followers with an eye to exchanging one thing for another: jobs for votes, or subsidies for campaign contributions. (b) *Transforming leadership*, which looks for potential motives in followers, seeks to satisfy higher needs, and engages the full person of the follower. (c) *Moral leadership*, in which leaders and led have a relationship not only of power, but of mutual needs, aspirations, and values. Moral leadership is not mere preaching or the uttering of pieties. It emerges from, and always returns to, the fundamental wants, needs, aspirations, and values of the followers. Leadership in the United Nations Secretariat probably partakes of all three types but should, ideally, be nearer to the transforming and moral leadership. I would suggest the following general propositions about the leadership of the United Nations Secretary-General.

1. The *purpose* of leadership in the United Nations Secretariat is to *help in the realization of the purposes of the Organization* as stated in Article 1 of the Charter. Leadership is, therefore, required in the political, economic, social, humanitarian, environmental and administrative sectors.
2. The Secretary-General of the United Nations should *interpret and communicate the relevance of the Charter to his or her times*. In this sense, the Secretary-General is the flag bearer for the United Nations.
3. The Secretary-General should exercise leadership in developing *policies* as well as leadership in the conduct of *diplomacy*. On matters of policy, the Secretary-General should participate in the process of *identifying the main challenges* before the international community, sifting approaches and strategies for meeting those challenges, and



helping in the *determination of policy options to be pursued by the United Nations*.

4. Leadership in diplomacy requires efforts by the Secretary-General to *help build consensus around issues*. Consensus-building should increasingly characterize the diplomacy of the Secretary-General of the United Nations.
5. The Secretary-General has important leadership functions with regard to *early-warning, peace-making and peace-keeping* (Article 99 and other provisions of the Charter).
6. The Secretary-General has a responsibility to lead the Secretariat as an *intellectual organ*, as a *servicing organ*, and as a *group of people who need to be motivated*. *Challenge and motivation* are critical elements in the Secretariat.
7. The Secretary-General should help *co-ordinate and integrate* the activities of the United Nations system.
8. The Secretary-General should organize his Executive Office and make other arrangements designed to promote a sense of policy orientation in the Secretariat, a sense of *direction* in the activities of the Secretariat and a feeling that all parts of the Secretariat are working together.

### VIII. *Conclusions*

The conclusions reached in this essay may be recapitulated as follows:

1. The legal competences of the Secretary-General, under Article 99 of the Charter, give him broad scope to undertake fact-finding, good offices, or other forms of diplomatic activity for the maintenance of international peace and security.
2. The Secretary-General has evolved a broad range of optional procedures for influencing the political organs and individual members. He may intervene in Council and General Assembly debates, offer advice on questions of law and fact, advise and negotiate with members in private.
3. As it is evolving currently, the efforts of the Secretary-General are transcending good offices to the broader category of peace-making.
4. The practice of the Secretary-General has given to his good offices a meaning going far beyond the classical concept of good offices. Traditionally, the function of good offices was to bring disputing parties together but not to participate in the discussions. The Secretary-General has evidently become immersed in the details of the discussion for the resolution of quite a few disputes or conflicts.
5. A law on early-warning is in the process of evolution at the United Nations.
6. The means and methods of fact-finding being developed by the Secretary-General now extend to interstate as well as intrastate developments having a bearing on the maintenance of international peace and security.
7. The Secretary-General has become involved nowadays in efforts to settle international as well as internal conflicts.
8. The Secretary-General is developing a practice on the observance of elections in Member States.
9. The Secretary-General has provided significant leadership initiatives on issues of international concern and can do even more in the future.