

THE UN SECRETARY-GENERAL'S ROLE IN PEACEFUL SETTLEMENT OF DISPUTES: OVERCOMING DILEMMAS

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*BM Genel Sekreteri'nin Uyuşmazlıkların Barışçı Çözümündeki Rolü:
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Özet

BM Genel Sekreteri, uluslararası uyuşmazlıkların barışçı yöntemlerle çözümünde vazgeçilmez bir rol üstlenmektedir. Ancak, başarılı olabilmesi için Genel Sekreter'in karşılaştığı temel ikilemi aşması gerekmektedir. Bu ikilem, BM sisteminin ilke olarak devletlerin egemenliğine dayalı işlemesine karşın; uluslararası toplumun etkin ve bütünlleştirici bir yaklaşıma gereksinim duymasından kaynaklanmaktadır. Genel Sekreter'in yetkileri yaratıcı uygulamalar geliştirmesi için yeterli olmakla birlikte, uygulamanın başarısı uyuşmazlık taraflarının ve BM Güvenlik Konseyi'nin desteğine bağlıdır. Genel Sekreter, barışçı çözüm amacıyla girişimde bulunurken yeterince esnek hareket etme gereksinimi duymasına karşın, örgütün siyasi organlarının çizmiş olduğu hukuksal çerçevenin içinde kalmak durumundadır. Barışın kalıcı kılınması dört koşulun biraraya getirilmesine bağlıdır: Tarafların barış sürecine bağlılığı, uluslararası toplumun desteği, Güvenlik Konseyi'nin desteği ve barış sürecinin her aşamasında bu üç unsur arasında eşgüdümün sağlanması. Bu şekilde, her devletin kendi çıkarı doğrultusundaki rızasının esas alınmasıyla işleyen barışçı çözüm mekanizmasının daha etkin çalışması sağlanabilecektir. Diğer bir deyişle, yasallık ile etkinlik biraraya getirilerek Genel Sekreter'in karşılaştığı ikilemleri aşması mümkün olabilecektir.

Anahtar Kelimeler: Birleşmiş Milletler, BM Genel Sekreteri, uluslararası uyuşmazlık, barışçı çözüm, BM'in barış operasyonları.

Abstract

The UN Secretary-General's role is indispensable in international dispute settlement. Yet, to function effectively, he/she must overcome the dilemmas posed by the gap between the UN system, which is mainly based on the consent of States, and the needs of the international community, which demand an efficient and integrated approach. The Secretary-General's powers are sufficient for developing creative practices, but his/her performance is closely linked to cooperative stance of the parties and of the UN Security Council. The UN practice in both entering the peace process and the implementation phase of that process demonstrates the same fact. The Secretary-General must act flexible enough to initiate UN involvement in case of a dispute but he/she has to stay within the limits outlined by the representative organs. To perform successfully during the implementation process, the Secretary-General must bring together four conditions: consent of the parties, support of the international community, backing of the Security Council and providing coordination among these three factors to help combine legitimacy with efficiency.

Keywords: United Nations, UN Secretary-General, international disputes, peaceful settlement, UN peace operations.

The UN Secretary-General's Role in Peaceful Settlement of Disputes: Overcoming Dilemmas

INTRODUCTION

International dispute settlement demonstrates two facts which reveal the indispensability of using flexible methods such as good offices and mediation which have no binding effect on disputants. First, every dispute has characteristics of its own, demanding the use of various methods which would fit its nature. Second, the decentralized character of international law makes the implementation of third-party settlement methods rather difficult. International legal system lacks a central judicial mechanism which would have compulsory jurisdiction for all disputes. Therefore, peaceful means of settlement cannot be imposed by a judicial decision. Moreover, international norms cannot be promulgated unless major actors of the international scene reach consensus. All this shows that the consent of the parties is *sine qua non* of a successful settlement. The reasons for the difficulty with implementing the methods of peaceful settlement also count for the necessity for using flexible means instead of initiating legally binding procedures.

This necessity points to the crucial role to be played by the United Nations (UN) Secretary-General. The Secretary-General holds a unique position to make use of the advantages of mediation. The latest international threats- ranging from armed conflicts to the spread of weapons of mass destruction, to environmental degradation, underdevelopment and migration- all of which require a collective response of the world community make the contribution of the Secretary-General all the more important. Whereas the UN Secretary - General's contribution to peaceful settlement is crucial more than ever, unfortunately, criticisms of UN's performance have increased for failing to act in face of the Iraq war. Therefore, it is significant to assess the effectiveness of the Secretary-General's role and propose some remedies.

In assessing the effectiveness of his / her role one must be careful to avoid certain stereotypes emanating from criticisms that are widely expressed

regarding international institutions. These criticisms are mostly based on two approaches, neither of which is appropriate. Finding functional equivalents for the international institutions in national legal systems tends to expect too much of these institutions and underrate their impact, while shifting the focus entirely from international organizations could lead to the same result, even if for opposite reason (FALK, 1970: 449-450). It seems to be the same with the UN Secretary-General. Neither comparing the Secretary-General to the executives in national legal systems nor degrading his / her efforts as useless would be sufficient for rightly considering the effectiveness of the Secretary – General. To make a reasonable assessment, the framework within which the Secretary-General functions should be taken into account. But this framework produces many dilemmas to be overcome. He/she functions within a framework shaped mainly on the basis of the sovereignty of Member States. On the other hand, he/she must face the challenge posed by the transboundary issues of security which sometimes require acting beyond the national positions in order to be effective. Thus to perform his/her duty effectively, the Secretary-General must overcome many dilemmas resulting from the gap between the consent of States and working efficiently. Consent of states is needed to reach a peaceful settlement where state parties to a dispute wish to retain their positions as intact and refrain from making concessions for that settlement. However, effectiveness demands reaching a satisfactory result for both of the parties as soon as possible and means concession for either party.

As a matter of fact, the gap between the consent of the parties and the need for efficiency is an ongoing theme of the institutionalization process of the peaceful settlement principle. Though the aim of peaceful settlement is highly desired, relevant parties do not want involvement of third parties in the settlement process. International law has not yet given a clear answer to this contradiction since the Permanent Court of International Justice delivered its still widely recalled judgment of *Eastern Carelia Case* when it stated that peaceful settlement cannot be enforced without the consent of the parties.

The UN system tries to strike a balance between the parties taking initiative on their own and involvement of the third party in the process. Article 33 of the Charter, which is an elaboration of the peaceful settlement principle enshrined in Article 2(3), lays down the obligation of the disputants to seek, first of all, a solution by peaceful means. The commitment of Member States, under the Charter, to resolve their disputes through peaceful means has priority over initiatives to be taken by the Organization. In other words, institutional responsibility of the UN for achieving a peaceful settlement is subsidiary to the obligation of the disputants to reach a settlement by themselves, as is also reflected in Articles 36(2) and 37(1) of the Charter. Article 33 defines

respective responsibilities of the parties and of the Organization with regard to reaching a settlement. The compliance of the parties with their obligation comes first. The parties should exhaust the available means to reach a settlement-whether through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, special mechanisms of regional agencies or arrangements, or other peaceful means of their own choice, as stipulated in Article 33(1). The Organization is to get involved only when the continuance of the dispute is likely to endanger the maintenance of international peace and security. In such circumstances, the Organization is authorized to call upon the parties to settle their dispute by peaceful means. But this kind of recommendation has no binding effect. Though enforcement- through the use of armed force pursuant to Chapter VII of the Charter or through judicial mechanism which is limited to cases in which the parties have accepted the ICJ's compulsory jurisdiction- is available, the UN system and general international law are far from providing for a mechanism inducing compliance comparable to those in domestic or supranational legal systems (SCHACHTER, 1995: 21). This is why peaceful settlement efforts have priority within the UN system.

The Secretary – General is confronted with the dilemma every time he / she takes action for peace and searches for a lasting settlement. However, necessity of reform is mostly felt in these areas: improving capability in order to address disputes and make the settlement lasting. Therefore, when reform proposals are made these considerations should be taken into account.

1. THE SECRETARY-GENERAL'S POSITION AS A PEACE-BROKER

The Secretary-General's position is considerably enhanced when compared to a traditional mediator. But what makes this post unique also requires cooperation with the UN organ which has the primary responsibility for maintaining international peace and security, the Security Council.

1.1. THE SECRETARY-GENERAL'S POWERS

The UN Charter had envisaged a primarily administrative role for the Secretary-General (SZASZ, 1991: 171). But to control such an organization as the UN is, alone, deemed as a source of power (ZIRING et al., 2000: 133).

According to Article 98 of the Charter, the Secretary-General performs functions entrusted to him by the General Assembly and the three Councils of the Organization. Besides using the authority granted by the representative

organs, under Article 99 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. This provision establishes the foundation of his/her peacemaking efforts. The right of political initiative also forms the legal basis to extend beyond the limits of traditional mediation. Whereas proposals put forward by any other mediator have no binding effect, the Secretary-General may activate a process at the end of which the Security Council is entitled to adopt binding resolutions. The *sui generis* position of the Secretary-General helped him shape creative practices. During the cold war, when the Organization was frequently at stalemate, it was considered more appropriate to charge the Secretary-General with mediation efforts rather than establishing an *ad hoc* organ to deal with a specific dispute. The Secretary-General's powers have expanded over the years (WHITE, 1997: 58). The practices of the Secretary-General resulted in a more comprehensive conception of mediation and good offices: every effort made by the Secretary-General toward reaching the aims of the UN Charter (RAMCHARAN, 1991: 16). Thereafter this practice has evolved so that the Secretary-General's Special Representatives are authorized under relevant Security Council resolutions to promulgate local legislation where the UN has undertaken administrative tasks, such as in Kosovo and East Timor (RUFFERT, 2002: 622). Being left with little guidance by the Security Council, which was unable to function effectively during the cold war, the Secretary-General performed various tasks he had not previously undertaken (HILLIER, 1998: 556). Back in 1973 the Secretary-General was given authority for only the day-to-day operation of the United Nations Emergency Force (UNEF) II, while the Security Council reserved to itself the right to take all decisions on political matters. Now the Secretary-General is responsible for overall administration of peace operations. This development runs parallel to the Secretary-General's political discretion to seek his/her own dimension in case of conflict. (MC WHINNEY, 1984: 146) In a way, the Secretary-General "fills in gaps that may exist in the [UN] system." (AMERASINGHE, 1996: 429). Peacekeeping operations were also developed by the practices of the Secretary-General as a *sui generis* method to be complementary to other means of peaceful settlement. The efforts aiming to establish a lasting peace, which came to be called as peace-building, have been shaped by the practices of the Secretary-General and his Special Representatives as well. These efforts, which include disarmament and reintegration of conflicting parties, providing the return of refugees, election monitoring, promotion of the respect for human rights and the rule of law, all aim at creating more open and inclusive governing institutions and help build a model of civil society (HAN, 1994: 876; JOHNSTONE, 2004: 820).

1.2. RELATIONSHIP WITH THE SECURITY COUNCIL

The methods used by the Secretary-General can take many forms, including the use of special representatives, direct contact with parties to the dispute, administering field missions and, all of them are, by nature, non-coercive. But something more than mediation is required for the efforts of peacemaking to be successful. Mediation needs to be supported with the capacity to sever the link between the means of violence and the desire of the parties to resort to it (CARMENT/JAMES, 1998: 78). And it goes well beyond the powers of the Secretary-General.

It is the Security Council which is the deterrent power within the UN system. With the end of the cold war, competence within the UN system concentrated in the hands of the Security Council, a development predicted earlier (REISMAN, 1990: 862). There is reason to be cautious, though. The organizational scheme of the UN might be conceived as two opposite extremes, neither of which is appropriate: that one organ alone attends to all the affairs or that tasks are strictly distributed among relevant organs (ROSS, 1950: 49). The organization was not designed to allow for dominance by one of the organs. According to Article 7 of the Charter the Secretariat is a principal organ. But it is out of the question for the Secretary-General to rise above the representative organs and be in a somewhat paramount position (ALEXANDROWICZ, 1962: 1127). It was not the purpose of the founders to create an officer who would preside over and lead the Security Council (SCHWEBEL, 1994: 237). Indeed, the relationship between the UN organs is a compromise between the two approaches, requiring close cooperation of the Secretary-General with the Security Council¹. This cooperation should be based on a mutually reinforcing relationship, with the Council having the power to impose and the Secretary-General possessing the ability to perform efficiently when he/she has the backing of the Council.

First, the Secretary-General is the one who activates the Security Council, mostly through his/her reports. The Security Council becomes involved in a dispute "only when violence has already occurred on a large scale" (UN, 2001a: 11-12). The first appeal on the raising of a dispute has frequently been made by the Secretary-General, not by the Security Council. In fact, the Council is not to deal with every dispute but only the ones which are

¹ Some authors see a clear division of authority and therefore, support leaving the non-coercive actions to the Secretary-General only after the situation has stabilized. See, for instance (PICCO, 1994: 15; CLAUDE, Jr., 1996: 289-298). However, the efforts toward achieving a peaceful resolution should be indivisible.

likely to endanger the maintenance of international peace and security or which form a threat to peace. In the case of Angola, the Security Council confirmed the presence of a threat to peace under Article 39 of the Charter only after the Secretary-General reported that the situation had become a civil war. Again, it is the Secretary-General who keeps the attention of the Security Council alive. This is significant, since the need for the Council's continuing will to act cannot be confined to only the earliest stages of a conflict. The Secretary-General also contributes to the Security Council's taking decisions. He/she helps the Council develop a common understanding. Though peace-making process needs quick decisions due to changing conditions, the Organization's many layers of bureaucracy might easily hamper the decision-making (BERCOVITCH, 1998: 60). This can be tolerated to a certain extent, since the Organization's legitimacy derives from the universality which makes the decision-making cumbersome. Yet this cumbersome procedure could easily transcend its ordinary limits when Member States, particularly the permanent members of the Security Council, are unable to reach consensus on main points of a resolution. The lack of consensus among the Council members could obstruct the success of peace operations. The eventual failure of the United Nations Protection Force (UNPROFOR) in Bosnia-Herzegovina emanated from the inability of the Council members to develop a common understanding to address the conflict (UN, 2000a: 7). The Secretary-General, through his/her reports, provides each Council member with a common point of departure for deciding on the action to be taken (UN, 2001b: 8). His/her preparing reports and formulation of proposals were appropriately considered to be the main basis of the decision-making process (SAYRE, 1950: 24). The peacekeeping operation in Mozambique (ONUMOZ) which was established by the Security Council resolution 797 (1992) to help implement the 4 October 1992 General Peace Agreement showed how unanimity of purpose can enhance efficiency by offering flexible means to confront conflict in face of unforeseen developments (UN, 1998a: 8). Acting on the recommendation of the Secretary-General, the Security Council could, without any difficulty, add a new mandate for a civilian police component (CIVPOL) under resolution 898 (1994) of 23 February 1994 to verify the consistency of police activities with the peace agreement.

On the other hand, in order to succeed, the Secretary-General needs the backing of the Security Council at each stage of an initiative. The administration of peace operations cannot be expected to function effectively without the Security Council's strong support. This fact has been demonstrated by the UN experience as well (SUTTERLIN, 1989: 92). In the case of India-Pakistan dispute in 1971, the Secretary-General's efforts to find a peaceful settlement proved to be insufficient. Though the Secretary-General reported the

matter to the Security Council, it did not respond immediately and when it did, it left the Secretary-General unclear on how to appropriately implement the mandate. When the Secretary-General has the support of the Council, the result can be satisfactory. For instance, the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was able to accomplish its main objective of peacefully reintegrating these regions into Croatia within two years, as the Council's actions were commensurate with the Secretary-General's efforts for the final settlement (UN, 1997: 1-3).

2. TAKING ACTION FOR PEACE

It is a critical decision for the Secretary-General to initiate peacemaking efforts and he/she has to act according to certain parameters in order to achieve a peaceful settlement.

2.1. ENTERING THE PEACE PROCESS: WHETHER TO INITIATE UN INVOLVEMENT

To determine in case of a particular dispute whether or not the UN involvement is necessary and if so, when to initiate peacemaking efforts poses a dilemma for the Secretary-General. The conditions for entering the peace process are mostly shaped by the Secretary – General.

One of the various conditions is related to the nature of mediation. It is a well-known fact that good offices and mediation enter where the impasse emerges and only to help the parties break the impasse (BILDER, 1998: 198). Yet third party intervention can sometimes hinder, rather than facilitate, peacemaking process, especially when the parties are trying to reach agreement by themselves (DRUCKMAN, 1997: 93). The UN experience in election monitoring also demonstrated that ill-timed elections conducted in volatile situations can exacerbate existing tensions, as witnessed in Angola, Burundi and Bosnia - Herzegovina (NEWMAN/RICH, 2004: 2). One of the parties may perceive the third party as ally of the other party or of its own. The situation is not different for the Secretary-General. Even his/her confirmed impartiality can be challenged, just as the parties to the Western Sahara dispute reacted to the settlement plan proposed by the Secretary-General over voter eligibility for a referendum to be held to determine the future of the territory. The Secretary-General may decide to intervene anytime peacemaking process tends to become stalled, even when the process was initiated by the parties themselves. In the case of the dispute over the Bakassi peninsula which had been taken to the International Court of Justice (ICJ), the Secretary-General called on the parties,

Cameroon and Nigeria, to continue their efforts with a view to achieving a peaceful settlement and he hosted negotiations both before and after the Court delivered its judgment in September 2002, so as to smooth out difficulties in the implementation of the ruling.

It is also significant to judge by whom the initiative should be taken first. In the case of the dispute between Eritrea and Yemen over the Hanish archipelago, the Secretary-General chose to recommend mediation by a Member State, since the parties had the will for a peaceful settlement which resulted in the signing of the 21 May 1996 Arbitration Agreement. Sometimes a representative organ's formal involvement may result in rigid positions that may handicap the process from the beginning (CORDOVEZ, 1987: 166). Sometimes a Security Council decision is not taken until the Secretary-General makes progress with the parties. For instance, the Secretary-General did not wait for a formal authorization when he initiated efforts in 1991 to secure the release of Western hostages in Lebanon (FRANCK/NOLTE, 1994: 159). But it is equally important to avoid the political organs' being involved too late at critical times. For instance, the United Nations Preventive Deployment Force in Macedonia (UNPREDEP), established under Council resolution 795 (1992) of 11 December 1992, served as an early warning source until it was ended in 1999 (UN, 2001b: 5-6). It is also important to avoid overlapping in mediation efforts. To this end, the Secretary-General may, instead of establishing a new framework, choose to support regional efforts, such as the appointment of a joint Special Representative with the African Union for the Great Lakes region in 1997 (UN, 1998a: 6).

2.2. DEFINING PARAMETERS FOR THE SCOPE OF ACTIVITY: LEGITIMACY AND FLEXIBILITY

Efficiency in peacemaking efforts can be achieved through impartiality and the use of leverage to move the parties toward a peaceful settlement (SMITH, 1994: 446). Peacemakers are often required to do more than sharing information and to change the way the parties think (BERCOVITCH, 1997: 146). The UN Secretary-General brings together these two in his/her personality. The Secretary-General's impartiality, which requires serving only the interests of the Organization but not the interests of any government or other external authority, is an assurance of the Charter for the parties and for the international community. His/her leverage is based on the rules of the Charter and of international law in general. The Secretary-General's function is a combination of law and diplomacy, since "the [mere] existence of legal rules may not prevent a crisis occurring" (MERRILLS, 1976: 79). However, it leaves

the Secretary-General with a dilemma as to how to strike a balance between flexibility and legitimacy. This was termed as "conflicting responsibilities" of the Secretary-General, namely the ability to act independently not to lose impartiality and being, at the same time, confined to the limits outlined by the representative organs (RIVLIN, 1993: 17).

When one of the parties considers the activity of the other to be in contradiction with internationally accepted standards, the mediator's impartiality is particularly significant (HAFNER, 1998: 37). The Secretary-General's *locus standi* overcomes these objections. It is because the Secretary-General's "*locus standi* rests on the rules to which that state [party] has formally committed itself" (SCHACHTER, 1962: 6). Yet his/her post is not comparable to a supranational organization's executive, for instance the Commission of the European Union (EU), in that the Commission is given the duty to initiate the procedure to sideline violations of the organizational law by the member states. Unlike the EU executive, it is out of the question for the Secretary-General to apply to the primary judicial organ of the Organization, the International Court of Justice. Even requesting an advisory opinion is seen as a power limited to the intergovernmental organs of the UN (SZASZ, 1976: 513; ROSENNE, 1961: 673-675).

The Secretary-General should act flexible enough to address the specific conditions of each conflict. However, the limits envisaged by the Charter and the resolutions of the representative organs should not be overridden. The ability to act flexible enough should not bring about a contradiction with Security Council resolutions, since any contradiction would undoubtedly produce negative impacts on the work of the Organization. There is no concern for the Secretary-General when the Council shapes a comprehensive framework. For instance, the Secretary-General's good offices mission pursuant to the Security Council resolution 562 (1985) was only based on a request that the Council be kept informed of any related developments. Yet he was involved in all stages of the Central American peace process and all the Council did in the end, under resolution 637 (1989), was to endorse the agreement reached on the establishment of a UN mission charged with verifying the electoral process in Nicaragua (ONUVEN). In the case of Namibia, a Council resolution was not even required for the establishment of the Transitional Executive Council (TEC) which functioned to monitor the negotiations on the electoral process. However, the Secretary-General's taking initiative without the authorization of a representative organ should not be extended too far. After all, the Secretary-General is not furnished with the decision-making authority. Therefore, the Secretary-General's initiative should not result in leaving the Council ineffective. Whenever it comes to maintain the respect for the principles of the

Charter and international law, the Secretary-General's framework to act has already been shaped by relevant resolutions. For instance, Security Council resolution 674 (1990) of 29 October 1990 requested the Secretary-General to use his good offices but only towards achieving the aim of Iraq's total and immediate withdrawal from Kuwait. In the case of the damage caused by the Lockerbie incident, the Secretary-General's role was confined to exchanging messages and reporting to the Council towards reaching a peaceful settlement on surrendering the two suspects by Libya. Both instances indicate that confinement to the Secretary-General's role aims to provide for the respect for international law.

3. SEARCHING FOR A LASTING SETTLEMENT

Dispute settlement is not a single-phased effort. During the implementation phase the Secretary-General faces obstructions emanating from the lack of will on the part of Member States and the decision-making organs alike. Adoption of resolutions by the representative organs is not an end in itself, since resolutions of the Security Council or the General Assembly do not automatically provide for a settlement. Implementation of those resolutions needs to be monitored by the UN executive. The Security Council's recommendations under Chapter VI of the Charter are not binding. It is for the Secretary-General to convince the parties to consider accepting those recommendations. Moreover, the obligation of the disputants under the Charter to exert efforts towards a peaceful settlement does not include reaching a specific result. Even if the Council resolutions are adopted under Chapter VII and therefore, have a legally binding character, the Secretary-General has a role to play in ensuring compliance through holding negotiations with the parties. However, the Secretary-General lacks the necessary resources and managerial powers to enhance chances for waging an effective action and is certainly posed with another dilemma². There is no such implementation mechanism within the UN framework that compares to the executive within a supranational organization. The EU executive has implementing powers of its own. However, it is not appropriate to expect the same kind of authorization being granted to the UN Secretary-General. Whereas the European Commission operates under

2 Indeed, the failure to follow up early warning with effective action is a traditional gap within international organizations and chief executives function to bridge this gap. In the case of the Organization for Security and Cooperation in Europe (OSCE), the increased authority of the Chairman-in-Office facilitated taking action (OSCE, 1996: 6).

a system that is based on a comprehensive delegation of powers by member states, the UN Secretary-General is performing under the Charter system, which foresees no authorization for the Organization to utilize the powers possessed by Member States except when the Security Council adopts enforcement measures³.

3.1. ESTABLISHING PEACE OPERATIONS

The frequently used method in assisting the parties with the implementation of peace agreements is establishment of UN peace operations. Though deployment of peace operations requires a Security Council resolution, the Secretary-General plays a crucial role.

The conditions of a possible deployment are considered by the Secretary-General, since the establishment of peace operations is based on the factors that are emphasized by the mediator (GROOM, 1986: 507). For instance, the Security Council, through its resolution 724 (1991) of 15 December 1991, endorsed the Secretary-General's recommendation that the preparations should be made to assess the conditions of a possible deployment in Croatia. This is a critical decision for the Secretary-General, as deployments might sometimes be counterproductive and sideline other efforts which could be more constructive if applied. Sometimes regional initiatives take the lead. In the Central African Republic, for example, the UN deployment was advanced by regional mediation efforts and a local security force, the Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB) (UN, 1998b: 9). When the mandate of a peace operation is to be proposed, the Secretary-General makes an assessment as to whether the mandate fits the nature of the conflict. In the case of the United Nations Mission in Burundi (MINUB), a human rights component was envisaged to be the core element of a multi-disciplinary operation in order to address the issue of genocide (UN, 2004a: 18). Some conflicts demand a regional approach. Then, the Secretary-General needs to assess the situation by taking different conflicts in a given region as the basis for his / her decision. For instance, the missions in Côte d'Ivoire, Liberia and Sierra Leone were envisaged as mutually reinforcing operations. The mandate of the United Nations Mission in Liberia (UNMIL) was formulated, *inter alia*, to support the protection of Ivorian and Sierra Leonean refugees in accordance with the Comprehensive Peace Agreement

3 ICJ has stated and reiterated that the UN is not a 'super-state', although it possesses rights and obligations and has international personality to operate upon international plane (ICJ, 1949 : 179; ICJ, 1980 : 89).

(UN, 2003: 13). Similarly, the United Nations Operation in Côte d'Ivoire (UNOCI) was designed to monitor the border with Liberia and to ensure the security of Liberian refugees (UN, 2004b: 15) to alter the climate of political instability which was fueled when military installations in the capital Abidjan were allegedly attacked with the support of some nationals of neighboring countries.

The timing of a deployment, too, mostly depends on the Secretary-General's choice. For instance, the Security Council resolution 1135 (1997) of 29 October 1997 postponed the withdrawal of UN military units from Angola, on the recommendation of the Secretary-General. But, in the final analysis, it is up to the Security Council to share the Secretary-General's view or not. The Security Council may not endorse the Secretary-General's recommendations as a whole. In the case of the United Nations Organization Mission in the Democratic Republic of Congo (MONUC), the Council endorsed his recommendation that priority should be given to the holding of elections but authorized only less than half of the proposed increase in troop strength, posing a real challenge at a time when the security situation in neighbouring countries was still volatile (UN, 2004c: 7).

3.2. MOBILIZING SUPPORT FOR PEACEFUL SETTLEMENT

The UN experience in peace operations makes it clear that the most significant element is the consent and cooperation of the parties. Where there have been stalemates it is mainly because of the stance of the parties themselves (BRATT, 1997: 74). The Secretary-General acts to win the confidence of the parties for reaching a peaceful settlement and to convince the international actors in order to shore up their support for that settlement. That must be why the Secretary-General was stated to combine the UN's actor status with its framework status (FORSYTHE, 1969: 123-124).

Even in situations where agreements providing for a settlement have been signed, the parties may not stay loyal to their commitments. This may stall the whole process or at least cause delays, as recently witnessed in Côte d'Ivoire (UN, 2005a: 1-21) where Linas – Marcoussis Agreement of 23 January 2003 set out a program for resolving the root causes of the dispute including the status of foreign nationals and eligibility to run for presidency. Indeed, getting the parties accept the UN's efforts, let alone its resolutions, has been carried out with difficulty since the first years of the Organization (GOODRICH / SIMONS, 1957: 318). The Secretary-General, then, faces another gap between the commitments made under peace agreements and the intransigent stances in

the aftermath. The parties' stance may easily change after an agreement has been made. Even if the UN initiates peace enforcement, lack of agreement among the parties might lead to failure or withdrawal of the operation, just as the United Nations Operation in Somalia (UNOSOM) I came to an end. In the case of UNPROFOR the Secretary-General pointed out that even a minimal UN troop presence could have contributed to the prevention of violations of the safe areas, provided that the parties themselves had been committed for the settlement (UN, 1995: 16). The Secretary-General may help prevent these difficulties to a certain extent, through getting assurances from the parties, administrating UN missions to investigate alleged ceasefire violations, to observe disengagement, demilitarization and withdrawal of combatants and to enhance delivering humanitarian assistance, or through appointing Special Representatives to work either on a particular dispute or on a regional scale, such as the United Nations Mission for West Africa (UNOWA).

The Secretary-General must also encourage the international community to remain engaged. He / she acts on behalf of the international community. There is no difference, in terms of access to the Security Council, between Member States acting on their own motion under Article 35 (1) of the Charter and the action of the Secretary-General (STONE, 1959: 187) in bringing a dispute to its attention. The Secretary-General functions as an impartial observer when Member States refrain from acting. Thus, the Secretary-General's function is complementary, making the suggested link between the rare usage of Article 99 by the Secretary-General in practice and the frequent calling of attention to the obvious threats by Member States (SZASZ, 1991: 187) sound reasonable. In fact, the comprehensive mandates given to the UN missions to run the territories with full legislative and executive powers, as in Kosovo and East Timor, are based on the support of the international community. The international support given to the Secretary-General represents legitimacy. The legitimacy derives from the opportunity provided to the international community to live safe from negative impacts of the conflict and according to the rules of international law, in return for fulfilling their obligations under the Charter. In Kosovo, where the Organization was able to undertake administrative tasks to serve as an interim structure, the mandate of the UN mission (UNMIK) had wide support of the international community. Though its mandate is derived from the Security Council resolution 1244 (1999), it was established taking full account of the international efforts, including the negotiation process of the Rambouillet accords which had not come into force. In this way, UNMIK, headed by the Secretary-General's Special Representative, easily utilized legislative powers so that Regulation No. 1999/1 adopted by UNMIK established the principle that the local legislative acts

which had been in force before the formation of the UN mission could only be valid so long as they did not contradict with UNMIK regulations that cover a wide range of matters including customs, taxes, finance, communications and administration of justice. The extensive international support lent to UNMIK is also reflected in its components led by regional organizations, such as the OSCE and the EU. Whereas the OSCE was responsible for building capabilities in protection of human rights, the rule of law, media development and, regulation and monitoring democratic elections, the EU was held responsible for rebuilding infrastructure for a compatible free market economy and a secure environment.

The Secretary-General may summon the necessary international support through establishing contact groups or organizing an international conference. But this is not sufficient, as demonstrated by the failure of the UN mission in Rwanda (UNAMIR) II. According to Security Council resolution 872 (1993) of 5 October 1993 UNAMIR was mandated, *inter alia*, with monitoring the security situation during the transitional period (of the implementation of the 1993 Arusha Peace Agreement), including investigating and reporting incidents. However, the presence of UNAMIR could not prevent the events from taking a sharp turn for the worse. Independent Inquiry held later made it clear that it was the lack of political will of the international community that led to the weak response of the Secretariat (UN, 1999: 3).

To provide for active engagement of the parties, the Secretary-General should lead quickly delivered projects within UN missions. Local people who observe positive impacts of the mission's presence would contribute to realization of such an engagement. To ensure active participation of the international community, the Secretary-General should give a sound assessment that the international actors have interest in supporting the process.

3.3. BRIDGING OPERATIONAL GAPS

Beyond convincing the parties, the UN is seriously in need of a strong implementation mechanism. Yet the lack of a sound implementation mechanism to translate the support for peaceful settlement into operational terms forms another dilemma. The main reason for this difficulty is that the UN has to assemble military units from member countries. The Organization lacks an army ready for field operations. The UN neither has reserve personnel for mission leadership. As a result, the Secretary-General lacks the necessary means to provide an effective deployment once the decision is made. In fact, the lack of means and resources also makes it difficult for the Council to

determine the operation's mandate, the overall result being that most of the operations are volatile from the beginning of their establishment.

To bridge the gap between the Security Council resolutions and operational instructions in the field, there are two things to be done. First, the mandates should make it precise whether use of force is authorized or not. It is significant, since it often proved impossible to implement peace agreements because operational considerations had not been assessed adequately during decision-making of the Council (CHOPRA, 1994: 305). The authorization to deploy a force incapable of solidifying a fragile peace would rather drag an operation to failure (UN, 2000a: 10). Sometimes a peacekeeping operation could be deployed even though no final solution was forthcoming, such as the establishment of the United Nations Disengagement Observer Force (UNDOF). The Security Council's using vague terms in its decisions only makes it harder for the Secretary-General to implement them (RIVLIN, 1996: 98). Moreover, terms resulting from a negotiated settlement between the parties generally tend to be vague (CHOPRA, 1994: 306). This further complicates the problem. It is suggested that it would be most appropriate to formulate the mandate first (CHESTERMAN, 2002: 39). However, this seems rather difficult due to the UN's lack of a military force of its own. Pooling necessary resources for a peace operation is often as difficult as determining its mandate. For the mandates to be clear enough, the Secretary-General should provide the Security Council members with timely and accurate information. Any change of mandate should take place after holding consultations with the parties and troop contributing countries, as well as major donors. Indeed, referring to the UN involvement in Somalia and Bosnia- Herzegovina, both of which were obvious failures, the then Secretary-General later wrote that it had been wrong to change the mandate of the operation without changing its composition and capabilities (EKWALL – UEBELHART / RAEVSKY, 1996: 69). What the Secretary – General should do next is to facilitate the implementation process. He / she should provide the UN mission's leadership with necessary strategic guidance to help the leadership implement the mandate in face of unforeseen challenges. This could prevent the mission's components from determining on their own the way to implement the Council's mandate. Second, the Secretary – General should be granted the authority and resources to thoroughly discuss with the participating states their preparedness with a view to assuring that the contributors meet threshold conditions prior to the deployment and remain engaged during the whole process. Otherwise, national contingents of troop contributing countries may individually remain oriented toward their national command authorities (CONETTA / KNIGHT, 1995 : 16). Besides, national

troops may be underequipped. Thus, this authority is a necessity to provide for the full orientation of the contributors and final success of operations.

3.4. ENSURING AN INTEGRATED RESPONSE: COULD A PEACE-BUILDING COMMISSION HELP?

Peace-building demands linking diplomatic and military efforts to other means used to enhance sustainable development and respect for the rule of law. In fact, the aim of peaceful settlement can only be achieved through a comprehensive framework, including international economic development (JENKS, 1964: 112). It is an imperative for preventing war-torn countries from lapsing back into violence. This certainly brings about a requirement for an integrated and well-coordinated approach by the Secretary-General. However, the Organization is not capable of delivering coordination services effectively. Moreover, the Secretariat's work has become overloaded in recent years. In spite of efforts to solve the coordination problems, the UN seems incapable of shaking its reputation as an organization too large to function efficiently (SMITH, 2003: 1).

First, there is the need to bridge the gap between the political and military components of a peace operation⁴. In the case of the United Nations Assistance Mission for Rwanda (UNAMIR), the lack of communication between the Special Representatives and the force commanders resulted in the failure to respond to warnings from the field (MINEAR, 1997: 13). To meet this challenge, the Secretary-General grants overall authority to his Special Representatives. With regard to the United Nations Mission in Ethiopia and Eritrea (UNMEE) which was established to end the border dispute that led to fighting in 1998 and to contribute to the bilateral efforts concerning the delimitation and demarcation of the colonial treaty border, the Secretary-General chose to achieve this end by envisaging a coordination mechanism to be headed by a Special Representative who, at the same time, held observer status at the proximity talks in order to keep the Organization informed of any developments that could change the implementation process (UN, 2000b: 3). Within the United Nations Assistance Mission in Afghanistan (UNAMA), for instance, the responsibility for coordination was granted to the Deputy Special Representative. Secondly, the Secretary-General ensures coordination within

⁴ Coordination might also be required to take place between the two UN operations, such as the missions in Burundi (ONUB) and the Democratic Republic of Congo (MONUC), as stipulated under Security Council resolution 1545 (2004).

the UN system as a whole. Though not explicitly stated in the Charter, the assistance the Secretary-General lends to the General Assembly and the Economic and Social Council in coordinating the policies and activities of the specialized agencies under Articles 57, 58 and 63 (1) is a clear indication of his/her coordinative function. It also covers the activities of the Bretton Woods institutions, which have a role to play in supporting the efforts for a stable financial sector. To ensure operational coordination of development activities, the Secretary-General installed the Resident Coordinator system, the first of which started functioning in Sierra Leone. Thirdly, coordination must be ensured between the UN and the relevant regional organizations which work together with the Organization whether in the form of holding regular consultations, providing diplomatic and operational support to each other or initiating co-deployment or joint operations. The recent practice of establishing Peace-building Support Offices under the Secretariat framework aims to enhance coordination with regional organizations⁵. The United Nations Support Office in Guinea-Bissau (UNOGBIS) was established under Security Council resolution 1233 (1999), with the Secretary-General's initiative, to strengthen the efforts of the Economic Community of West African States (ECOWAS) in the implementation of the 1 November 1998 Abuja Agreement to support the holding of orderly presidential elections in the aftermath of the fighting that erupted over the forcibly removal of the president from office.

The Secretary-General, as the chief coordinator of a unique organization with a global mandate, is also expected to ensure cohesion among other international actors. In the case of Afghanistan, the central role played by the UN in organizing international efforts has been confirmed, although the mandate of UNAMA is limited, under Security Council resolution 1536 (2004) of 26 March 2004, to coordination and assistance to the Transitional Administration in institution-building and reconstruction in accordance with the 5 December 2001 Bonn Agreement. The United Nations Mission for Iraq (UNAMI) also functions as a key component to coordinate the international community's humanitarian efforts during the transition process in the aftermath of the formal restoration of Iraqi sovereignty (UN, 2004d: 12).

A 'Peace-building Commission', as proposed by Secretary-General Kofi Annan, could provide a forum within the UN to bridge the larger coordination gap. Such an intergovernmental organ, capable of improving coordination of

5 For instance, Peace-building Support Office in the Central African Republic (BONUCA) participated in several missions, including the joint Central African Republic – Sudan verification mission on the Chadian border (UN, 2001c : 1-7).

financing peace operations, is to include representatives from the Security Council, troop contributors and major donors, as well as the parties themselves and the regional actors (UN, 2005b: 31; UN, 2005c : 69). The Commission is proposed to function in order to provide periodic review on progress, ensure financing and improve coordination of funds and agencies. Its members can share information about their respective strategies. In other words, gaining support of the parties and the international community within the same forum can be considered as a tool to bridge the coordination gap. It could also be useful in compensating for the failure of the parties to demonstrate the will required to implement the terms of settlement, through establishing more involvement on the part of Member States. However, such a commission, designed as a subsidiary organ of the Security Council under Article 29 of the Charter, should not preside over the coordinative role of the Secretary-General but it should work in close cooperation with him/her. Perhaps, a similar mechanism formerly proposed by the Secretary-General, which would bring together his Special Representatives and a special committee consisting of the representatives of the parties and the major contributors (UN, 1998b: 8), could be more useful in ensuring the Secretariat's coordinative function. It should be recalled that, within UNMIK the mandates of all components headed by the regional organizations were subordinate to the overall authority of the Secretary-General's Special Representative and this subordination improved the level of coordination (STEINER, 2003: 89). Thus, if such a Commission is formed it is imperative to keep the leading authority of the Secretary – General.

A Peace-building Support Office, proposed as an additional structure to be established in the Secretariat to lend support to the Peace-building Commission, could be instrumental in ensuring the Secretary-General's ability to integrate system-wide policies and strategies. The Peace-building Support Office – through collecting inputs for meetings for the proposed Peace-building Commission, contributing to the planning process of UN operations, conducting analysis and developing policy guidance – could integrate the Secretary-General's work with the Commission's (UN, 2005b: 32; UN, 2005c: 70). If the proposal of establishing a Peace-building Commission is endorsed, it should not lead to a practice which had been expected of several suggestions made in the past in order to establish a major role for the Security Council in every aspect of UN peace operations (SKJELBAEK, 1991: 107). In other words, the future practice should not result in the Secretary-General keeping a low profile in dispute settlement. It would be most useful if this structure can be considered as part of a larger reform process to be initiated in order to increase the democratic and accountable nature of the Security Council. Wider participation by the relevant states in the planning and decision-making phases should be the basis

of an expected reform process. The institutionalization of a peace-building forum in the form of such a commission could also lessen the coordination gap suffered by the Economic and Social Council which is the UN organ authorized to coordinate the work of the specialized agencies. On the other hand, formation of a Peace-building Commission could be instrumental if it is completed with an extra support to be lent to the institutionalization at the local level. Therefore, strengthening the Resident Coordinator system already established could contribute to ensuring an integrated response by a UN mission.

CONCLUSION

The UN Secretary-General, either taking initiative on his/her own or authorized by the political organs, functions within a comprehensive framework as a peace-broker. But for these efforts to bear result, the Secretary-General is mostly dependent upon the Security Council support. The Chief Officer initiates the peace process and on taking action he/she uses the Charter and international law principles as leverage to find common ground between the parties. But reaching agreement on a settlement is not the end of a peace process. The implementation period suffers from the lack of any imposing powers to be used by the Secretary-General. The chief executive has to rely on the continuing political will of the parties and support of the Security Council and the international community to keep the peace process on track. It is the common will of the parties and the international community, rather than the gap between the Council resolutions and operational instructions, which determines the fate of peace operations.

The efforts for a peaceful settlement can only succeed if four conditions are brought together: consent of the parties, backing of the UN Security Council – if necessary in the form of enforcement, support of the international community and ensuring cohesion among these three factors. But the UN system, including the Secretary-General, cannot deliver such an outcome effectively with regard to each dispute.

As proposed by the Secretary-General Kofi Annan, a Peace-building Commission which would bring together representatives of the Security Council, regional organizations, troop contributing countries and major donors with the parties within a permanent institutional framework could be instrumental in promoting a more cohesive response by the UN. Such an organ would also give the Secretariat an integrated stimulus for working more effectively. Strengthening the role of Resident Coordinators, too, could enhance coordination services. In this way, the Secretary-General could combine

legitimacy with efficiency in order to overcome the dilemma posed by the gap between getting the consent of States and functioning effectively. However, the UN reforms can only be translated into practical terms with the consent of Member States. So once again, the Secretary-General's performing effectively shall be dependent on Member States' will.

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