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Dag Hammarskjöld and U Thant: The Evolution of Their Office*

M. G. Kaladharan Nayar

Introduction

“THE UNITED NATIONS is but a reflection of the international community, and in effect its success or failure is the success or failure of the international community.” This has been one of the recurring themes in the various public statements and speeches¹ of U Thant in his capacity as the Secretary-General of the United Nations. On the other hand, his predecessor Dag Hammarskjöld in his Copenhagen speech² of May 2, 1959, pictured the United Nations as having “an existence and possibilities of action independent of the will of the member governments and the policy of the member states themselves.” He spoke of the United Nations’ “whole” as in certain respects “more than the sum of its parts.” He asserted that the Organization had increasingly developed “an independent position,” rooted in “the existence of an opinion independent of partisan interests and dominated by the objectives indicated in the United Nations Charter.” Arising from these two statements of the two Secretaries-General, one may ask the crucial question: is the United Nations, as an international organization, merely the instrument of national foreign policies or does it influence world politics in its own right? An important explanatory key to this ques-

* The author is indebted to Professor Frank C. Newman, School of Law, University of California, Berkeley for his encouragement and guidance in the research for this article.

¹ U Thant, *People Are Asking "Why?"* — An address delivered to the Council on Foreign Relations in Chicago on May 5, 1971, in *UN MONTHLY CHRONICLE*, June, 1971, at 82-83. See also U Thant's Press Conference in Dakar, Senegal, on Jan. 4, 1970, in *UN MONTHLY CHRONICLE*, Feb., 1970, at 35; U Thant's Press Conference at Accra, Ghana on Jan. 9, 1970, in *UN MONTHLY CHRONICLE*, Feb., 1970, at 42-43.

² Dag Hammarskjöld, *Do We Need the United Nations?* — An Affirmative Answer, An address before the Students Association, Copenhagen, Denmark, May 2, 1959, in *UNITED NATIONS REVIEW*, June, 1959, at 24-25.

tion is the executive head of the Organization — the Secretary-General himself, the focal point of this inquiry.

The question posed above has both ontological and systemic implications. The ontological implication is whether the United Nations has an existence and an essence of its own, *i.e.*, a life of its own. The systemic implication concerns how an international system based upon nation-states may become transformed in the direction of greater integration, from being a forum of multilateral diplomacy into something which is more than the sum of its inputs, capable of bringing anarchic interstate relations under a common regulatory power. The hypothesis is that the political role of the executive head of the Organization is especially important in the process of such a transformation.

Thus, it is the purpose of this article: (1) to set forth the developing political role of the Secretary-General of the United Nations; (2) to consider the factors influencing such development; (3) to explain the impact of his enlarged political role on the United Nations; and (4) to indicate its implications for the development of international law. It is proposed to consider the legacy left by Dag Hammarskjöld, and U Thant's role in building on the Office he inherited from Hammarskjöld.³

The importance of the Secretariat is emphasised by the fact that it is listed in Article 7 of the Charter as one of the "principal organs" of the United Nations, thus placing it, in this respect, in a position of equality with the General Assembly, the three Councils and the International Court of Justice rather than in a position of dependence or subservience. The acquisition of such status entails significant consequences, for it is the principal organs which are primarily responsible for the attainment of the objectives of the United Nations and for the observance of the principles of the Charter. The Secretary-General, thus, appears as one of the organizational elements shouldering and sharing the responsibility for the constitutional behavior of Member States.⁴

The Preparatory Commission of the United Nations emphasised the "key position of the Secretariat in the United Nations."⁵ The Report of the Fifth (Administrative and Budgetary) Committee to

³ It is not proposed to consider the present Secretary-General's role in this respect at this stage.

⁴ Cf. Alexandrowicz, *The Secretary-General of the United Nations*, 11 INT'L & COMPARATIVE L. Q. 1112 (1962).

⁵ Report of the Preparatory Commission of the United Nations, PC/20, Dec. 23, 1945, at 84.

the General Assembly indicates that it was guided by this consideration: "to enable a man of eminence and high attainment to accept and maintain the position" of the Secretary-General.⁶ The Preparatory Commission recognized that "his choice of staff — more particularly of higher staff — and his leadership will largely determine the character and efficiency of the Secretariat as a whole,"⁷ and that "the degree in which the objects of the Charter can be realized will be largely determined by the manner in which the Secretariat performs its task."⁸

In addition to the constitutional status of being one of the "principal organs," there are explicit provisions in the Charter to guarantee the independence of the Secretary-General and his staff. Article 100, paragraph 1, provides:

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

In Article 97 the Secretary-General is described as the "chief administrative officer of the Organization," making it a basic Charter requirement, rather than a matter left to the discretion of the other organs, that the administration of the Organization shall be left to the Secretary-General. Article 97 is of fundamental importance for the status of the Secretariat. Together with Articles 100 and 101,⁹ it creates for the Secretariat a position, administratively, of full political independence.

The principle of the independence of the Secretariat from national pressures has also been reinforced in the Charter by Article

⁶ Report of the Fifth Committee to the General Assembly, A/II, Jan. 23, 1946, at 1.

The Preparatory Commission had also recommended that "the terms of the appointment of the Secretary-General should be such as to enable a man of eminence and high attainment to accept and maintain the position." Report of the Preparatory Commission, PC/20, Dec. 23, 1945, at 81.

⁷ See Report, *supra* note 5, at 86.

⁸ *Id.* at 81; see also *id.* at 85.

⁹ Article 101 of the UN Charter reads:

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

105, which provides for granting officials of the Organization "such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization."¹⁰

Closely connected with the independent status of the UN Secretariat is its "exclusively international character." Article 100, paragraph 2, of the Charter provides:

Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.¹¹

The Preparatory Commission observed that:

If it is to enjoy the confidence of all the Members of the United Nations, the Secretariat must be truly international in character. . . .

Such a Secretariat cannot be composed, even in part, of national representatives responsible to Governments. For the duration of their appointments, the Secretary-General and the staff will not be the servants of the state of which they are nationals, but the servants only of the United Nations. . . .

Loyalty to the Organization is in no way incompatible with an official's attachment to his own country, whose higher interest he is serving in serving the United Nations. It clearly involves, however, a broad international outlook and a detachment from national prejudices and narrow national interests.¹²

Article 100 of the Charter is supplemented by Regulation 1.1 of

¹⁰ It was in fact foreseen at San Francisco that in exceptional circumstances there might be a clash between the independent position of a member of the Secretariat and the position of his country, and consequently that an immunity in respect of official acts would be necessary for the protection of the officials from pressure by individual governments and to permit them to carry out their international responsibilities without interference. 7 U.N.C.I.O. Docs. 394.

Cf. Dag Hammarskjöld, *The International Civil Servant in Law and in Fact*, A lecture delivered to congregation on May 30, 1961, at Oxford University, at 9.

¹¹ The Covenant of the League of Nations was silent on the international character of the Secretariat. It contained no provisions comparable to those of Article 100 of the UN Charter, but simply stated:

"The permanent Secretariat shall be established at the seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required" (Article VI of the Covenant of the League of Nations).

However, Article 1 of the Staff Regulations of the Secretariat of the League of Nations enjoined all officials "to discharge their functions and to regulate their conduct with the interests of the League alone in view" and prohibited them from seeking or receiving "instructions from any Government or other authority external to the Secretariat of the League of Nations." Article 100 of the UN Charter closely resembles those League regulations.

¹² Report of the Preparatory Commission of the United Nations, PC/20, December 23, 1945, at 85.

the Staff Regulations¹³ and by the oath¹⁴ taken by staff members upon appointment. Regulation 1.1 of the Staff Regulations reads:

Members of the Secretariat are international civil servants. Their responsibilities are not national but exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the United Nations alone in view.

The international character of the Secretariat is not synonymous with its multinational composition. The wide distribution of nationalities within the Secretariat may contribute to its international character, but it does not become international simply because it is composed of a wide range of nationalities. Its international character largely depends on its positive commitment to the Purposes and Principles which govern the United Nations.¹⁵ Thus, Dag Hammarskjöld rightly insisted:

The exclusively international character of the Secretariat is not tied to its composition, but to the spirit in which it works and to its insulation from outside influences as stated in Article 100.¹⁶

The Secretariat is international in the way in which it fulfils its functions, not because of its geographic composition but because of the attitudes of the members of the Secretariat and the truly international spirit in which they fulfil their tasks — if that had not been the view, the Charter would certainly have made wide geographic representation a primary consideration, instead of subordinating it to a demand for integrity.¹⁷

The Secretariat comprises the Secretary-General and "such staff

¹³ U.N. Doc. ST/SGB/Staff Rules.

¹⁴ Members of the Secretariat are required to subscribe to the following oath or declaration:

"I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization" (Regulation 1.9 of the Staff Regulations).

¹⁵ See Winchmore, *The Secretariat: Retrospect and Prospect*, 19 INT'L ORGANIZATION 626 (1965):

"The Secretariat must remain international in the sense in which science is international — not by reason of the diffusion of scientists among the many nationalities of the world but by reason of their commitment to purposes of universal validity."

¹⁶ Introduction to the Annual Report of the Secretary-General on the Work of the Organization (16 June 1960-15 June 1961), 16 U.N. GAOR, Supp. 1A, at 6, U.N. Doc. A/4800/Add. 1.

¹⁷ Art. 101(3); see also 15 U.N. GAOR, Annexes, Agenda Item No. 50, ¶ 10, U.N. Doc. A/C.5/843 (21 November 1960).

as the Organization may require.”¹⁸ The word “Secretariat” and the phrase “such staff as the Organization may require” suggest an integrated group. This impression is confirmed by the further stipulation in Article 97 of the Charter that the Secretary-General is the chief administrative officer.¹⁹

With regard to the Secretariat’s structure, two different views were advanced in the Preparatory Commission: (1) that the Secretariat should be organized as a single working body with each department serving each organ within the limits of its particular responsibilities; and (2) that each organ should have its own separate secretariat. The Commission favored a unified Secretariat and accepted the first view, for the following reasons: (1) all organs have their responsibilities in the primary common task of maintaining international peace and security; (2) duplication of work, overlapping, and confusion would be avoided; and (3) the second alternative would give rise to divided loyalties and undesirable rivalry.²⁰

The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council,²¹ and the members of the staff are appointed by the Secretary-General under regulations established by the General Assembly.²² The power of the Secretary-General to appoint staff members is unqualified. A proposal made at San Francisco that deputy secretaries-general be appointed in the same manner as the Secretary-General was rejected on the grounds that this would weaken the authority of the Secretary-General, detract from the efficiency of the Secretariat, and lead to the political domination of the Secretariat by the great powers.²³

Regulation 1.2 of the Staff Regulations provides that the staff members are subject to the authority of the Secretary-General and responsible to him in the exercise of their functions. Further, the Preparatory Commission laid emphasis on the fact that the Secretary-General “alone is responsible to the other principal organs for the Secretariat’s work,” and that “all officials of the United Nations must

¹⁸ Article 97 of the UN Charter.

¹⁹ Cf. GOODRICH, HAMBRO & SIMONS, *CHARTER OF THE UNITED NATIONS* 580 (3rd ed. 1969).

²⁰ Report of the Preparatory Commission of the United Nations, PC/20, December 23, 1945, at 88.

²¹ Article 97 of the UN Charter.

²² Article 101(1) of the UN Charter.

²³ R. RUSSEL, *A HISTORY OF THE UNITED NATIONS CHARTER 1945-60* (1958); GOODRICH, HAMBRO & SIMONS, *CHARTER OF THE UNITED NATIONS*, at 601.

recognize the exclusive authority of the Secretary-General" and submit themselves to rules of discipline laid down by him.²⁴

It is thus appropriate to regard the Secretary-General as embodying, in his person, the whole of the Secretariat. Justifiably, therefore, the Secretary-General has been referred to as a principal organ in the meaning of Article 7 of the Charter (although Article 7 refers to the Secretariat and not to the Secretary-General).²⁵ Indeed, Dag Hammarskjöld even went to the extent of describing his Office as a "one-man executive."²⁶ He fought the *troika* scheme²⁷ to maintain the integrity of his Office.

The Secretary-General is designated "the chief administrative officer," not merely of the Secretariat but of the Organization.²⁸ In the words of Hammarskjöld, "he is the only elected officer in principle representing all members."²⁹ In his view, "the rules of election aim at ensuring that the Secretary-General, as one of the main organs of the United Nations, shall have the opportunity of functioning as the spokesman of the Organization in its capacity as an independent opinion factor."³⁰

The Preparatory Commission had also held the view that:

the Secretary-General, more than any one else, will stand for the United Nations as a whole. In the eyes of the world, no less than

²⁴ Report of the Preparatory Commission of the United Nations, PC/20, December 23, 1945, at 85 (para. 5), and at 86 (para. 15).

Cf. Dag Hammarskjöld, *The International Civil Servant in Law and in Fact* (Oxford University lecture, May 30, 1961), at 8.

²⁵ Alexandrowicz, *The Secretary-General of the United Nations*, 11 INT'L & COMPARATIVE L. Q. 1112 (1962).

²⁶ Dag Hammarskjöld, *The Development of a Constitutional Framework for International Cooperation* (Address at Chicago University Law School, May 1, 1960), in UNITED NATIONS REVIEW, June, 1960, at 28.

²⁷ The Soviet proposal in 1960 that the Office of the Secretary-General be abolished, and replaced by a "collective executive body" of three persons, representing the Western powers, the Socialist States, and the neutralist countries. *See* U.N. GAOR, 15th Session, 869th, 882nd, and 904th Plenary Meetings, 23 Sept., 3 Oct., and 13 Oct., 1960, respectively.

²⁸ Article 97 of the UN Charter.

²⁹ Dag Hammarskjöld, *The Development of a Constitutional Framework for International Cooperation* (Address at Chicago University Law School, May 1, 1960), in UNITED NATIONS REVIEW, June, 1960, at 29.

³⁰ Dag Hammarskjöld, *Do We Need the United Nations? — An Affirmative Answer* (Copenhagen speech, May 2, 1959), in UNITED NATIONS REVIEW, June, 1959, at 25.

Hammarskjöld asserted: "The Secretary-General is elected by the General Assembly, but on the recommendation of the Security Council, and this recommendation requires unanimity among the five permanent Council members. The purpose of this arrangement is to ensure that the Secretary-General shall, as far as possible, be placed outside or lifted above conflicts which may split the Assembly or the Council."

in the eyes of his own staff, he must embody the principles and ideals of the Charter to which the Organization seeks to give effect.³¹

While Article 97 of the Charter emphasizes the role of the Secretary-General as the chief administrative officer, Articles 98 and 99 give him a role that goes beyond the concept of a non-political civil servant. This unique feature of the Secretary-General's position was given expression to by Hammarskjöld thus:

. . . Article 98 entitled the General Assembly and the Security Council to entrust the Secretary-General with tasks going beyond the *verba formalia* of Article 97 — with its emphasis on the administrative functions — thus opening the door to a measure of political responsibility which is distinct from the authority explicitly accorded to the Secretary-General under Article 99 but in keeping with the spirit of that Article.

This . . . development concerning the Secretary-General, with its obvious consequences for the Secretariat as such, takes us beyond the concept of a non-political civil service into an area where the official, in the exercise of his functions, may be forced to take stands of a politically controversial nature. It does this, however, on an international basis and, thus, without departing from the basic concept of "neutrality"; in fact, Article 98, as well as Article 99, would be unthinkable without the complement of Article 100 strictly observed both in letter and spirit.³²

THE POLITICAL ROLE OF THE SECRETARY-GENERAL

Article 98 is the first of two articles setting out the political responsibilities of the Secretary-General. This is a radical departure from the non-political concept of the Secretary-Generalship to be found in the Covenant of the League of Nations. Article 98, by providing that the General Assembly and the three Councils may entrust the Secretary-General with unspecified "other functions," has brought him (and the Secretariat) into the arena of political conflict. This Article provides for the Secretary-General's being entrusted with responsibilities involving the exercise of considerable discretion and political judgment. The range of functions with which the Secretary-General has been or may be entrusted by the General Assembly and the Councils is limited only by the functions

³¹ Report of the Preparatory Commission of the United Nations, PC/20, December 23, 1945, at 87.

See also Hammarskjöld's statement in the Security Council on October 31, 1956: "(The Secretary-General must) be a servant of the principles of the Charter, and its aims must ultimately determine what for him is right and wrong." 11 U.N. SCOR, 751st Meeting, October 31, 1956, at 2.

³² Dag Hammarskjöld, *The International Civil Servant in Law and in Fact* (Oxford University lecture, May 30, 1961), at 13-14.

and powers of these organs. The General Assembly, in its second session, adopted a resolution in which it drew the attention of the Councils and their Commissions, as well as the Commissions appointed by the General Assembly, to the desirability of utilizing to the utmost the services of the Secretariat.³³ It also recommended "specifically to the respective organs of the United Nations to consider carefully, before the creation of special commissions and sub-committees, whether the task to be carried out could not usefully be entrusted to the Secretariat."³⁴

Practically, the extent to which functions are entrusted to the Secretary-General depends on the willingness of governments to allow decisions to pass from their immediate control, the confidence the particular occupant of the Office inspires, and the advantages which member governments see in having functions performed and decisions taken by a knowledgeable, experienced, and objective international official and his staff.

The assignment of functions to the Secretary-General inevitably involves vesting in him some discretion with regard to the carrying out of his task. The extent of this discretion varies with the nature and circumstances of the assignment. It may be of considerable importance and political significance in the case of tasks in the peace and security field. There were a number of such cases³⁵ involving controversial situations where the Secretary-General was confronted with mandates of a highly general character, expressing the bare minimum of agreement attainable within the representative organs. The execution of those tasks involved the exercise of political judgment by the Secretary-General.

The Secretary-General may find himself in the position where the directives provided by resolutions of the Security Council or the General Assembly do not cover a new situation or are unclear in their application to it, while at the same time the organ or organs that have assigned functions to him are unable to define or clarify their assignment. The Congo experience provided striking examples of such situations.³⁶ The Secretary-General's initial assignment from the Security Council had been:

³³ G.A. Res. 183(II), October 20, 1947, U.N. GAOR, 2nd Sess., Resolutions, at 153.

³⁴ *Id.*; Cf. GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS, at 586.

³⁵ For an illustrative list of such cases, see Dag Hammarskjöld, *The International Civil Servant in Law and in Fact* (Oxford University lecture, May 30, 1961), at 20-22.

³⁶ For a factual review of the Congo experience, see YEARBOOK U.N. 1960, at 52-108.

to take the necessary steps, in consultation with the Republic of the Congo, to provide the Government with such military assistance as may be necessary, until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks.³⁷

Disagreement arose over the Secretary-General's interpretation of his powers with respect to the introduction of United Nations forces into Katanga, the role of these forces in the civil war, and the extent to which support might be given to one or the other claimant to legitimate authority.³⁸ Hammarskjöld took the position that, in a situation where the authorizing organs were unable to clarify their directives, he was faced with the alternatives of refusing to proceed with his mission, which would mean chaos, or of undertaking to carry out his assignment on the basis of his international responsibility even though he had to deal with controversial issues. In following the latter course, he sought guidance in the purposes and principles of the Charter, the body of legal doctrine and precepts accepted by states generally, and the opinions of member states as expressed through their permanent representatives and through advisory committees.³⁹

It is Article 99 of the Charter which gives the Secretary-General explicit political responsibility in his own right. This Article provides:

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.

The political role of the Secretary-General under Article 99 was expressly recognized by the Preparatory Commission. The Commission stated:

The Secretary-General may have an important role to play as a mediator and as an informal adviser of many governments, and will undoubtedly be called upon from time to time, in the exercise of his administrative duties, to take decisions which may justly be called political. Under Article 99 of the Charter, moreover, he has been given a quite special right which goes beyond any power previously accorded to the head of an international organization,⁴⁰ viz.: to

³⁷ U.N. Doc. S/4387, July 13, 1960.

³⁸ The U.S.S.R. challenged the Secretary-General's authority to act as he did, proposed a draft resolution envisaging the dismissal of Hammarskjöld, subjected him to boycott, and proposed that his office be reorganized according to the "troika" principle. See note 27 *supra*.

³⁹ See Hammarskjöld, *supra* note 32, at 21-26.

⁴⁰ It has been observed: "This description is perhaps slightly exaggerated as it fails

bring to the attention of the Security Council any matter (not merely any dispute or situation) which, in his opinion, may threaten the maintenance of international peace and security. It is impossible to foresee how this Article will be applied; but the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgment, tact and integrity.⁴¹

This statement of the Preparatory Commission was transmitted by the General Assembly to the Secretary-General for his guidance.⁴² The Security Council has also expressly recognized the political role played by the Secretary-General. At the 1329th meeting on December 2, 1966, in a statement made by the President on behalf of the Council, it was recorded that the members of the Council "fully respect [the Secretary-General's] position and his action in bringing basic issues confronting the Organization and disturbing developments in many parts of the world to their notice . . ."⁴³

The Secretary-General's power under Article 99 is equivalent to that of a member state under Article 35, or to that of the General Assembly under Article 11(3). Significantly, however, the Secretary-General's prerogative under Article 99 extends to "any matter" and not just any "dispute" or "situation."

The initial acceptance of Article 99 at the Dumbarton Oaks Conference appears to have reflected a feeling that the League system suffered from the fact that only a member state could bring an alleged "threat to the peace" to the Council's attention.⁴⁴ Article 99 enables the Secretary-General to start the whole United Nations machinery moving on the basis of his own judgment regarding what is a threat to peace and security.

According to 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.

to take account of resolutions of the First and Second Assemblies of the League of Nations which entrusted the League Secretary-General with powers of a nature remarkably similar to those with which the United Nations Secretary-General is invested by Article 99. But the words of the Preparatory Commission aptly emphasize that, with respect to the express constitutional position of the Secretary-General of the international political organization, Article 99 represents a departure of consequence." Schwebel, *The Origins and Development of Article 99 of the Charter*, 28 THE BRITISH YEARBOOK OF INTERNATIONAL LAW 371-72 (1951); see also S. SCHWEBEL, THE SECRETARY-GENERAL OF THE UNITED NATIONS: HIS POLITICAL POWERS AND PRACTICE 231 (1952).

⁴¹ Report of the Preparatory Commission of the United Nations, PC/20, December 23, 1945, at 86-87.

⁴² General Assembly Resolution 13(I), February 13, 1946.

⁴³ U.N. SCOR, 1329th meeting, December 2, 1966, at 1.

⁴⁴ R. RUSSEL, A HISTORY OF THE UNITED NATIONS CHARTER at 432. See also note 40 *supra*.

Thus, the Secretary-General has double discretion. First, it is for him to decide whether, *in his opinion*, the matter would be eligible to be put on the agenda of the Council. Second, even if he comes to the conclusion that this is the case, he need not necessarily submit the matter to the Council. He may do so, but Article 99 makes it clear that there is no affirmative duty on him to go this far. It is still for him to decide whether he will formally invoke that Article, or take other or even no action. As to whether the exercise of the power should be made obligatory or optional was considered at the San Francisco Conference and it was decided that the right "should be exercised at the discretion of the Secretary-General and should not be imposed upon him as a duty."⁴⁵ As will be seen later, the discretionary nature of Article 99 has far-reaching consequences.

The question whether the application of Article 99 should extend to the General Assembly or be restricted to the Security Council was also considered at the San Francisco Conference. On this point it was argued that applying the provision explicitly to the General Assembly would violate the principle of the primary responsibility of the Security Council for the maintenance of international peace and security as called for by Article 24. Some delegates "discussed the difficulty in which the Secretary-General might be placed in having to decide between the General Assembly and the Security Council in presenting matters concerning peace and security."⁴⁶

Although the power under Article 99 is limited to the Security Council, the rules of procedure of the General Assembly and the other Councils empower the Secretary-General to bring matters to their attention.⁴⁷ The Secretary-General has used this right repeatedly in order to exercise influence over the work of these organs.⁴⁸

Further, the provision of Article 98 that "the Secretary-General shall make an annual report to the General Assembly on the work of the Organization" puts at the disposal of the Secretary-General another medium of bringing matters threatening international peace and security to the attention of the General Assembly. The Secretary-General has, in the past, used his annual report to the General Assembly to discuss controversial issues and to give his views on the

⁴⁵ 7 U.N.C.I.O. Docs. 392. Cf. GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS at 589.

⁴⁶ 7 U.N.C.I.O. Docs. 392. Cf. GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS, 589; S. Schwebel, *The Origins and Development of Article 99 of the Charter*, 28 THE BRITISH YEARBOOK OF INTERNATIONAL LAW 375 (1951).

⁴⁷ G.A. Rule 13; T.C. Rule 9; ECOSOC Rule 10.

⁴⁸ Cf. GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS 576.

state of international affairs along with specific suggestions as to what the Organization and its members can do to promote its purposes.⁴⁹

Another point that was considered at the San Francisco Conference related to whether, in addition to matters threatening international peace and security, the Secretary-General should be empowered to draw the Organization's attention to "any matters which constitute an infringement or violation of the principles of the Charter."⁵⁰ Such a proposal was not agreed to.⁵¹

However, Lauterpacht has drawn attention to the "considerable potentialities" which Article 99 presents for bringing before the Security Council violations of human rights so grave that they threaten the maintenance of international peace and security.⁵² He has further observed:

The clause of domestic jurisdiction of Article 2, paragraph 7, presents no impediment in the way of the exercise of this particular function of the Secretary-General. The matters referred to in Article 99 are not, by definition, essentially within the domestic jurisdiction of any state.⁵³

As already noted,⁵⁴ the matters referred to in Article 99 are matters of the Secretary-General's discretion. The determination of what is a threat to international peace and security is one susceptible of considerable variance in judgment. The Secretary-General's discretion is even broader in that he may raise matters which not only threaten, but those which "may threaten" international peace and security.

Under the Provisional Rules of Procedure of the Security Council, the President must call a meeting of the Council "if the Secre-

⁴⁹ The annual reports contain, apart from the detailed report, an introduction in which the Secretary-General gives his views on achievements of the past year, the state of international affairs, and what the UN and its members can do to promote its purposes.

The General Assembly Rules of Procedure provide that the Secretary-General shall not only make an annual report, but also "such supplementary reports as are required" (Rule 48).

⁵⁰ 7 U.N.C.I.O. Docs. 162-163, (392) (Committee I/2, 17th meeting); Cf. S. Schwelbel, *The Origins and Development of Article 99 of the Charter*, 28 *The British Yearbook of International Law*, 375 (1951).

⁵¹ 7 U.N.C.I.O. Docs. 168-169 (Committee I/2, 18th meeting); see also *id.* at 392-93.

⁵² H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 187 (1950).

⁵³ *Id.*

⁵⁴ See p. 47.

tary-General brings to the attention of the Security Council any matter under Article 99."⁵⁵

However, the Security Council remains the master of its working agenda.⁵⁶ The Secretary-General may do no more than place the matter on the Council's provisional agenda and argue, if need be, for the Council's adoption of the item for its working agenda.⁵⁷ Since the Secretary-General's raising of a matter before the Security Council is rooted in an explicit Charter authorization to which the Security Council must pay due respect, it seems highly improbable that the Council would refuse to take up an item submitted by the Secretary-General under Article 99.⁵⁸

An initiative taken by the Secretary-General under Article 99 is to be distinguished from a request that he be allowed to make a statement in the Security Council. For instance, the Laotian crisis was brought to the Council's attention in the form of a report from the Secretary-General without invoking Article 99.⁵⁹ In that connection, Hammarskjöld explained the distinction as follows:

. . . I have based my action on a practice which has developed over the years in the Security Council. According to this practice, the Secretary-General, when he requests it, is granted the floor in the Council in order to make such statements on subjects within the range of the responsibility of the Council as he considers called for under the terms of his own responsibilities.⁶⁰ Just as the Secretary-General can ask for, and is granted the floor in the Council, I feel that he is entitled to request an opportunity to address the Council publicly on a matter which he considers necessary personally to put before the Council. In doing so within the framework to which I have just referred, the Secretary-General does not introduce formally on the agenda of the Council anything beyond his own wish to report to the Council. Naturally, the Council retains the same rights in relation to such initiative of the Secretary-General as it has regarding any request of his to address the Council.

What I said should be enough to clarify the constitutional situation when, in this case, I have asked for an opportunity to report to the Council. It should, thus, be clear that the request is not

⁵⁵ Security Council, Provisional Rules of Procedure, Doc. S/96/Rev. 5, Rule 3.

⁵⁶ *Id.* Rule 9.

⁵⁷ *Id.* Rules 6 and 22.

⁵⁸ Hammarskjöld held the view that the Security Council would be obliged to inscribe an item brought by the Secretary-General under Article 99. Cf. Lash, *Dag Hammarskjöld's Conception of His Office*, 16 INT'L ORGANIZATION 551 (1962-63); GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS at 590-591.

⁵⁹ 14 U.N. SCOR, 847th meeting (U.N. Doc. S/PV. 847, Sept. 7, 1959).

⁶⁰ Under Rule 22 of the Provisional Rules of Procedure of the Security Council (Doc. S/96/Rev. 5), "The Secretary-General, or his deputy acting on his behalf, may make either oral or written statements to the Security Council concerning any question under consideration by it."

based on the explicit rights granted to the Secretary-General under Article 99 of the Charter. If it had been so based, the Council under rule 3 of the provisional rules of procedure, would not have been free to refuse the Secretary-General to address it — as it is now free to do — and it would have meant the inscription by the Secretary-General of a substantive issue on the agenda.⁶¹ In this latter respect it would necessarily also have involved a judgment as to facts for which, in the present situation, I have not a sufficient basis.⁶²

The Secretary-General's right to bring a matter which in his opinion may threaten the maintenance of international peace and security to the attention of the Security Council has been generally recognized as carrying with it the right to take preliminary steps necessary to determine whether he should act. Thus, Article 99, by necessary implication, gives him an investigating and exploratory power. It is quite an innovation to assume that the Secretary-General should be able to form an opinion of his own before going to the Council; but otherwise Article 99 makes no sense. Speaking of the "unprecedented political responsibilities" entrusted to the Secretary-General by Article 99, the United States Representative Mr. Warren Austin stated in the General Assembly at its first session:

We need not await its [Article 99's] full implementation to recognize that the power of the Secretary-General to study conditions which in his opinion threaten the peaceful relations of the Members of the United Nations and to make recommendations based on his findings, represents a significant departure from the usual concepts of international organization and national sovereignty.⁶³

During consideration by the Security Council in 1946 of a United States proposal to establish a Commission to investigate facts relating to incidents along Greece's northern frontier, Secretary-General Trygve Lie stated:

Should the proposal of the United States representative not be carried, I hope that the Council will understand that the Secretary-

⁶¹ On this point see also pp. 48-49.

⁶² See note 59 *supra* at 2-3; see also GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS 590-591.

Hammar skjöld later remarked about his action with regard to the Laotian crisis: "I took it to the Security Council without invoking 99. The Soviets said how can you do it without invoking 99. I said if I did so you would be obliged to inscribe it and under Chapter VII. In this way you don't have to inscribe it. The Russians thought that I was rather cynical. But they had the right to ask for inscription. I can always ask for less than I am entitled to." Cf. Lash, *Dag Hammarskjöld's Conception of His Office*, 16 INT'L ORGANIZATION 551 n.30 (1962-63).

⁶³ Official Records of the Second Part of the First Session of the General Assembly, 44th Plenary Meeting, October 30, 1946, at 902-903.

General must reserve his right to make such enquiries or investigations as he may think necessary, in order to determine whether or not he should consider bringing any aspect of this matter to the attention of the Council under the provisions of the Charter.⁶⁴

The Soviet Representative (who was the President of the Council) responded:

As the representative of the Union of Soviet Socialist Republics . . . I think that Mr. Lie was right in raising the question of his rights. It seems to me that in this case, as in all other cases, the Secretary-General must act. I have no doubt that he will do so in accordance with the rights and powers of the Secretary-General as defined in the Charter of the United Nations.⁶⁵

No one challenged the Secretary-General's statement, although his affirmation of his investigatory authority was particularly far-reaching in that it claimed not merely the right to make inquiries or investigations without authorization from United Nations organs, but the right to initiate such investigations even in a case where the Security Council has decided not to look into the matter.⁶⁶

While the Security Council was considering the Tunisian complaint of French aggression in July 1961, Hammarskjöld told the Security Council that he had received an invitation from the President of Tunisia to visit the country for an exchange of views, but he went on to refer to the implications of Article 99:

Quite apart from the fact that it is naturally the duty of the Secretary-General to put himself at the disposal of the Government of a Member State, if that Government considers a personal contact necessary, my acceptance of the invitation falls within the framework of the rights and obligations of the Secretary-General, as Article

⁶⁴ 1 U.N. SCOR, 2nd Ser., No. 16, 70th meeting, Sept. 20, 1946, at 404.

⁶⁵ *Id.*

⁶⁶ On this point Professor Kelsen has stated: "It might be doubted whether this interpretation (the affirmation of the Secretary-General's authority to make an investigation under Article 99 after the Security Council has refused to investigate the matter under Article 34) corresponds to the intention of the framers of the Charter." H. KELSEN, *THE LAW OF THE UNITED NATIONS* 304 (1950).

Kelsen's viewpoint has been criticised in Schwebel, *The Origins and Development of Article 99 of the Charter*, 28 *BRITISH YEARBOOK OF INTERNATIONAL LAW* 380 n.2 (1951): "Professor Kelsen gives no citation of the source of his impression of the intention of the framers of the Charter. On the face of it, it is not unreasonable to suppose that, on the contrary, the framers foresaw that the Secretary-General would wish to take so profound a step as invoking Article 99 only upon the basis of complete and objective data gathered, if need be, through his own investigations. It is difficult to see why the Secretary-General's investigatory authority would not extend to a matter which the Security Council had declined to investigate, for the essence of Article 99 lies in its providing an agent of the Organization as a whole who will raise those matters which, though they may constitute a threat to the peace, states find it impolitic to raise or to pursue; and particularly in such delicate cases the Secretary-General may not wish to take the initiative without full and impartial data at his disposal."

99 of the Charter authorizes him to draw to the attention of the Security Council what, in his view, may represent a threat to international peace and security, and as it is obvious that the duties following from this Article cannot be fulfilled unless the Secretary-General, in case of need, is in a position to form a personal opinion about the relevant facts of the situation which may represent such a threat.⁶⁷

On a number of occasions, the Secretary-General has designated persons to represent him (with the consent of the receiving states) in situations of tension for the purpose of keeping him informed regarding developments.⁶⁸

What is known as the Secretary-General's "good offices" refers essentially to the requisite psychological assistance that a Secretary-General might offer to parties in conflict should a spur be needed to begin negotiations. Arising from "the philosophy of the Charter, as reflected in Article 99," this notion of good offices "gives the Secretary-General wide political and diplomatic possibilities of action of a less formal and less public nature."⁶⁹

One of the "common law" developments to which Hammarskjöld called attention in his introduction to the 1959 report on the work of the Organization⁷⁰ was the growing practice by the Secretary-General of dispatching "personal representatives with the task of assisting the Governments in their efforts." This was "a further development of actions of a 'good offices' nature, with which the Secretary-General is now frequently charged." Such actions were undertaken "with the consent or at the invitation of Governments concerned, but without formal decisions of other organs of the United Nations."⁷¹ There have been various kinds of situations in which the good offices of the Secretary-General have played a role.⁷²

The discretionary nature of Article 99 would mean not only the

⁶⁷ 16 U.N. SCOR, 964th meeting, July 28, 1961, para 86, at 16-17.

⁶⁸ Certain examples: Lebanon and Jordan in 1958; Laos in 1959; and Cyprus in 1964.

Referring to the Laos situation Hammarskjöld remarked: "In the case of Laos I said it may be a threat to peace and security but how can I know? If I am to take the very serious action of putting into motion Chapter VII, I must know. Therefore, in a potential case of 99 (Article 99) I can send observers." Cf. Lash, *Dag Hammarskjöld's Conception of His Office*, 16 INT'L ORGANIZATION 551 (1962-63).

⁶⁹ Cf. Dictated version of extemporaneous remarks by Secretary-General Hammarskjöld, at an official luncheon in Mexico City, April 8, 1959, quoted in Lash, *Hammarskjöld's Conception of His Office*, 16 INT'L ORGANIZATION 550 (1962-63).

⁷⁰ 14 U.N. GAOR, Supp. No.1A (A/4132/Add.1).

⁷¹ *Id.* at 3.

⁷² For an account of such instances, see U Thant, *A Quiet United Nations Road to Accord*, UN MONTHLY CHRONICLE, July, 1970, at 127-130.

evident option either to invoke or not to invoke that Article, but, what is more, the Secretary-General's right to choose the precise means of responding to a given situation. 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. In other words, Article 99 may be interpreted as providing a specific legal authorization for the extensive, informal, behind-the-scenes political activities of the Secretary-General that go by the name good offices.

Referring to the development of actions of a good offices nature, Hammarskjöld stated:

Such actions by the Secretary-General fall within the competence of his office and are, in my view, in other respects also in strict accordance with the Charter, when they serve its purpose.⁷³

It is one of the purposes of the United Nations:

to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace (Article 1(1)).

This principle is further developed in Article 33, which provides that:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.⁷⁴

As already observed,⁷⁵ Article 99 empowers the Secretary-General to engage in fact-finding or investigations or other tasks of an exploratory nature in order to form an opinion as to whether a matter may threaten the maintenance of international peace and security. If so, his action under Article 99 may coincide with the endeavor of the parties under Article 33 to settle a conflict by peaceful means, and he may take the initiative of offering them assistance or, as in several cases in the past, he may be asked by the parties to help.

⁷³ 14 U.N. GAOR, Supp. No.1A (A/4132/Add.1), at 3.

⁷⁴ Further, according to Article 36, "The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties." This rule has been understood to have reference especially to efforts on a regional basis or through regional organizations. Cf. Introduction to the Annual Report of the Secretary-General on the Work of the Organization (1959), 14 U.N. GAOR, Supp. No.1A (A/4132/Add.1, p.1).

⁷⁵ See pp. 50-52.

Thus, a combined reading of Articles 33 and 99 gives a legal basis for the Secretary-General's good offices.

Associated with the Secretary-General's good offices are three basic concepts. The first is the notion of "quiet diplomacy," essentially an appeal to the international community to utilize the structure of the United Nations for private behind-the-scenes discussion of all outstanding issues. The second is the concept of "preventive diplomacy," the idea that the United Nations' essential justification in world politics is its ability to intervene quickly in local disputes to minimize chances of violent conflict while simultaneously reducing the likelihood of super-power intervention. And the third is the accompanying notion of a "UN presence." For the United Nations to succeed in preventive diplomacy, its presence would be crucial in many cases, and this necessitates an activist role for the Organization, rather than a passive conference machinery.

Hammarskjöld is considered to be the originator and formulator of these basic concepts. While Trygve Lie acted on Article 99 in a statesmanlike way, mostly in the framework of UN "parliamentary" (public) diplomacy, Hammarskjöld appeared as the architect of the new conception of combined public and private diplomacy within the framework of the United Nations.⁷⁶ Thus, in a 1955 address at the University of California at Berkeley, Hammarskjöld warned of the "propaganda" and "rigidity" introduced into United Nations debates, and suggested a better balance "between conference diplomacy and quiet diplomacy."⁷⁷ Emphasizing the role of quiet diplomacy in the context of Article 99 initiatives, Hammarskjöld stated:

Even this last function of the Secretariat — and by necessity especially of the Secretary-General personally — is and should be unspectacular. The very rules of the game, and the specific position of the Secretariat inside the system, force the Secretariat in its activities as representative of the Organization as a whole to apply what is now often called quiet diplomacy. Such an activity, in fact, comes very close to that of a Foreign Office, working along classical lines as a servant of the Government and of the people — with a discretion and integrity rendered necessary by the fact that none of the interests it is there to safeguard and none of the con-

⁷⁶ Cf. A. ROVINE, *THE FIRST FIFTY YEARS — THE SECRETARY-GENERAL IN WORLD POLITICS 1920-1970* 328-330; Alexandrowicz, *The Secretary-General of the United Nations*, 11 INT'L & COMPARATIVE L. Q. 115-17 (1962).

⁷⁷ Dag Hammarskjöld, *International Cooperation within the United Nations*, Address at the University of California, Berkeley, June 25, 1955, in *SERVANT OF PEACE: A SELECTION OF THE SPEECHES AND STATEMENTS OF DAG HAMMARSKJÖLD* 95 (W. Foote ed. 1962).

fidences that it may be privileged to enjoy, is its own property but something entrusted to it by its master, the people.⁷⁸

The key to the notion of preventive diplomacy is the independent position of the United Nations and the Secretary-General. In his Copenhagen speech of May 1959, Hammarskjöld stated:

To the extent that events have led the governments to accord an independent position as spokesman of the United Nations to the Secretary-General even politically, this has also given him wider opportunities for independent diplomatic activity. . . .

[W]hat I should like to call active preventive diplomacy. . . . may be conducted by the United Nations, through the Secretary-General or in other forms, in many situations where no government or group of governments and no regional organization would be able to act in the same way. That such interventions are possible for the United Nations is explained by the fact that . . . the organization has begun to gain a certain independent position, and that this tendency has led to the acceptance of an independent political and diplomatic activity on the part of the Secretary-General as the "neutral" representative of the Organization.⁷⁹

Intervention by the Secretary-General as a "third party" (as negotiator, good offices bearer, or mediator) in a conflict and the transfer of the matter to the forum of the United Nations Secretariat would help to remove certain deficiencies of traditional methods of settling international disputes. It has been stated that traditional diplomatic negotiation is a deficient method for various reasons:⁸⁰ it may not be suitable for settling a dispute objectively; in the absence of a third party the negotiators tend to bargain; if bargaining power is unequal, the weaker state is in an unfavorable position; there is a danger of deadlock in negotiations; and if complex problems arise, they may be beyond the capacity of diplomatic negotiators. If, on the other hand, diplomatic negotiations are transferred to the United Nations forum and carried out with the assistance of the Secretary-General, it is possible to attempt an objective settlement because the negotiators will act within the framework of the UN Charter and its principles; their bargaining discretion will be reduced by a multilateral approach to problems in which all members of the Organization have a direct or indirect influence; the unfavorable position of weaker states can be improved by bargaining against the background of wider United Nations interests; the danger of a deadlock can be

⁷⁸ *Id.* at 94-95.

⁷⁹ Dag Hammarskjöld, *Do We Need the United Nations? — An Affirmative Answer* (Copenhagen speech, May 2, 1959), in *UNITED NATIONS REVIEW*, June, 1959, at 26.

⁸⁰ J. STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT* 68-69 (1959).

overcome with the help of the Secretary-General, sometimes by providing a needed face-saving device;⁸¹ and the complexity of problems can be reduced with the assistance of the Secretariat which can put its expert knowledge at the disposal of the negotiating parties.

Articles 7 and 99 of the Charter, taken together, provide sufficient justification for the Secretary-General's initiatives without instructions, and for his right and obligation to take action when a vacuum has appeared in the systems set up to safeguard peace and security. Hammarskjöld held the view that "the Secretary-General shall be the organ of the United Nations which can bring the United Nations out of deadlock."⁸²

On the occasion of his reappointment in September 1957, Hammarskjöld stated in the General Assembly that he did not believe that the Secretary-General should be asked to act "if no guidance for his action is to be found either in the Charter or in the decisions of the main organs of the United Nations." But he added:

on the other hand, I believe that it is in keeping with the philosophy of the Charter that the Secretary-General should be expected to act also without such guidance, should this appear to him necessary in order to help in filling any vacuum that may appear in the systems which the Charter and traditional diplomacy provide for the safeguarding of peace and security.⁸³

Within one year of Hammarskjöld's reappointment, his interpretation was put to test when the Security Council was deadlocked (because of a Soviet veto) over Lebanon's complaint of intervention in its internal affairs by the United Arab Republic. He then made the following statement in the Security Council conveying clearly his sense of responsibility:

⁸¹ For example, the Secretary-General's role in the dispute between the Netherlands and Indonesia over West New Guinea (West Irian) and in the Cuban Missile crisis. See ROVINE, *THE FIRST FIFTY YEARS — THE SECRETARY-GENERAL IN WORLD POLITICS 1920-1970*, 367-368, 371. See also U Thant, *The Role of the Secretary-General — Address at the annual luncheon of the Dag Hammarskjöld Memorial Scholarship Fund of the United Nations Correspondents Association*, Sept. 16, 1971, in *UN MONTHLY CHRONICLE*, October, 1971, at 186.

As regards the face-saving function of the UN and of its Secretary-General, U Thant had stated: "In certain situations the United Nations and the Office of the Secretary-General can provide a useful middle ground on which the parties may meet without any loss of face or prestige, and accommodate their differences in a civilised and dignified manner. I like to think that the United Nations played a useful role of this kind in the resolution of the Cuban crisis . . ." U Thant, *The United Nations as a Force for Peace — Message sent by the Secretary-General to the people of Sweden when he was unable to keep a speaking engagement there on May 1, 1963*, in *UNITED NATIONS REVIEW*, May, 1963, at 38-39.

⁸² Cf. Lash, *Dag Hammarskjöld's Conception of His Office*, 16 *INT'L ORGANIZATION* 551 (1962-63).

⁸³ 12 U.N. GAOR, 690th Plenary meeting, Sept. 26, 1957, paras. 72-73.

The Security Council has just failed to take additional action in the grave emergency facing us. However, the responsibility of the United Nations to make all efforts to live up to the purposes and principles of the Charter remains. . . .

I am sure that I will be acting in accordance with the wishes of the members of the Council if I . . . use all opportunities offered to the Secretary-General, within the limits set by the Charter and towards developing the United Nations effort, so as to help to prevent a further deterioration of the situation in the Middle East

First of all . . . this will mean further development of the Observation Group [in Lebanon]. The Council will excuse me for not being able to spell out at this moment what it may mean beyond that.⁸⁴

The Secretary-General has found a source of authority in his position as head of one of the principal organs of the United Nations committed to upholding the purposes and principles of the Organization. It is this concept of inherent responsibility that has been forcefully expressed in Hammarskjöld's statement, quoted above, in the General Assembly on the occasion of his re-election in September 1957.

Many actions of the Secretary-General, particularly in the field of peace and security, can only be justified with great difficulty under particular grants of authority by the provisions of the Charter or resolutions of the principal organs. Such actions are usually justified on the basis that certain powers are inherent in the office of the Secretary-General. Generally, these powers are diplomatic in nature.

When Hammarskjöld was requested by the General Assembly in December 1954 to seek the release of United States airmen in Communist China, he had to invoke his general authority under the Charter in carrying out his mission, because the Peking Government refused to recognize the validity of the General Assembly resolution.⁸⁵ He later explained the device adopted in relation to his mission to Peking as follows:

The Peking Formula meant that if an organ of the United Nations asks the Secretary-General to do something and does so without delegating its authority, he has only the authority vested in him under the Charter. The resolution is only an instruction to him to use the authority he has under the Charter, although he is, of course, guided by the resolution.⁸⁶

In April 1956, when the Security Council requested Hammar-

⁸⁴ 13 U.N. SCOR, 837th meeting, July 22, 1958, paras. 10-16.

⁸⁵ General Assembly Resolution 906(IX), December 10, 1954; *cf.* Lash, *supra* note 82, at 548.

⁸⁶ *Id.* For an account of the Secretary-General's mission to Peking, see UNITED NATIONS REVIEW, February, 1955, at 2-8.

skjöld to take steps in support of the Middle-East armistice agreements, he significantly stated that "[it] is obvious that the request neither detracts from nor adds to the authority of the Secretary-General under the Charter."⁸⁷

There are several other cases⁸⁸ of functions of a diplomatic and political character undertaken by the Secretary-General under his inherent powers. Implicit in such cases is the doctrine that the Secretary-General's authority is autonomous and coordinate with that of the other principal organs and derived from the "Charter as a whole."⁸⁹

In the history of the United Nations during the last twenty-nine years Article 99 has been specifically invoked only once by a Secretary-General — by Dag Hammarskjöld in the Congo crisis of 1960.⁹⁰ Although Article 99 gives the Secretary-General the unique right and responsibility to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security," he is subject to severe practical limitations imposed by the political realities of international life. His political position is not sufficiently strong to permit him to oppose a major power, except under circumstances which enable him to exercise effective counter-influence. In the Congo situation, the Secretary-General was on firm ground when he invoked Article 99, because there was no opposition from any quarter. "At that time, all the African States wanted the Secretary-General to in-

⁸⁷ 11 U.N. SCOR, 722nd meeting, April 4, 1956, at 11-12.

⁸⁸ Certain cases: (1) Hammarskjöld again used the Peking Formula when asked by the Security Council in April 1960 to consult with the Government of the Union of South Africa and "make such arrangements as would adequately help in upholding the purposes of the Charter" in regard to South Africa's segregation policies. South Africa invoking Article 2(7) refused to recognise the Council's competence in the matter but did agree to consultations with the Secretary-General "on the basis of the authority of the Secretary-General under the Charter." U.N. Doc. S/4305, April 19, 1960.

(2) The Secretary-General assisted in establishing normal relations between Cambodia and Thailand, first in 1958-59 and again in 1962-64.

(3) U Thant's role in the West Irian question (1962); (4) in the Cuban Missile crisis (1962); (5) in the situation of rival regimes in Yemen (1963).

⁸⁹ Cf. Lash, *supra* note 82, at 550.

⁹⁰ U.N. Doc. S/4381, July 13, 1960.

Secretary-General Trygve Lie's intervention in connection with the Korean question in June 1950 did not, strictly speaking, constitute an application of Article 99, although he later affirmed that on the Korean question "for the first time I invoked Article 99 of the Charter." (Cf. Address to the General Assembly on September 28, 1950, GAOR, 5th Session, 289th Plenary meeting, September 28, 1950, at 176). In that case it was in fact the United States rather than the Secretary-General that initially drew the crisis to the attention of the Security Council. U.N. Doc. S/1495, June 25, 1950.

voke that Article. All the big Powers, permanent members of the Security Council, wanted him to invoke that Article."⁹¹

Another factor restraining the Secretary-General would be his concern for his own prestige (and the prestige of the Organization) in a case where he has invoked Article 99, but the Security Council has failed to deal with the matter effectively.

To say that Article 99 has been invoked but once is not to say that it has not often been employed. The very possibility of its use has been an important influence. Its presence itself, without formal invocation, provides the virtually incontrovertible legal justification for a great part of the Secretary-General's political action.

Factors that have Influenced the Development of the Political Role of the Secretary-General

The foregoing account of the development of the political role of the UN Secretary-General helps to identify the various factors that have influenced such development. Among them the most basic is the Secretary-General's constitutional authority, *i.e.*, the legal authority which the UN Charter grants him.

Of equal importance to the specific provisions of the Charter in explaining the evolution of the Secretary-General's role is the manner in which these provisions have been interpreted. One of the notable features of United Nations development has been the generally accepted practice of interpreting the Charter as a constitution and not simply as a treaty. The Secretary-General, as a principal organ of the Organization, is competent to interpret the Charter within the scope of his activities. Like the other principal organs, he necessarily construes his own legal powers and applies the Charter or other rules of law to concrete situations.⁹² Hammarskjöld's achievement in the development of the political role of the Secretary-General is mainly attributable to the fact that he rejected "a restrictive literal interpretation" of the Charter and favored a "freer interpretation." Thus, he declared:

⁹¹ Cf. U Thant's statement at his Press Conference at UN Headquarters on June 11, 1970, in UN MONTHLY CHRONICLE, July, 1970, at 113.

⁹² The question as to how and by what organ or organs of the Organization should the Charter be interpreted was considered by Committee IV/2 at the San Francisco Conference. The Committee stated: "In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers." 13 U.N.C.I.O. Docs. 668 (1945).

What we are seeing is an evolution on the basis of a fundamental charter of sufficient flexibility to permit a continuous adaptation of constitutional life to the needs.⁹³

Closely related to the legal bases of the Secretary-General's powers under the Charter and helping to explain the liberal way in which they have been interpreted is the newly evolved conception of the nature of the United Nations as a living organism with capacity for continuous adaptation, the limits of whose reach are determined only by the Purposes and Principles of the Charter. As pointed out by Hammarskjöld in the introduction to his 1961 report on the work of the Organization, there have been two competing views regarding the nature of the United Nations. On the one hand, it has been regarded as a "static conference machinery" for resolving conflicts, while on the other hand it has been viewed as:

a dynamic instrument of Governments through which they, jointly and for the same purpose, should seek such reconciliation but through which they should also try to develop forms of executive action, undertaken on behalf of all Members, and aiming at forestalling conflicts and resolving them, once they have arisen, by appropriate diplomatic or political means, in a spirit of objectivity and in implementation of the principles and purposes of the Charter. . . . The first concept can refer to history and to the traditions of national policies of the past. The second can point to the needs of the present and of the future in a world of ever-closer international interdependence The first one is firmly anchored in the time-honoured philosophy of sovereign national States in armed competition The second one envisages possibilities of intergovernmental action overriding such a philosophy, and opens the road towards more developed and increasingly effective forms of constructive international cooperation.⁹⁴

This new conception of the dynamic nature of the United Nations has had wide acceptance, particularly among the newer nations. Its acceptance carries with it the recognition of the General Assembly and the Councils as more than mere diplomatic conferences, as possessing some of the characteristics of parliamentary organs, and also encourages expanding the political role of the Secretary-General, both in respect of his independent initiatives and in respect of his executive role in carrying out tasks assigned to him.

An important causal factor in the development of the political role of the Secretary-General has been the political environment in which the United Nations has functioned. The Charter gives the Security Council the primary responsibility for the maintenance of

⁹³ See Hammarskjöld, *supra* note 79.

⁹⁴ 16 U.N. GAOR, Supp. No.1A (A/4800/Add.1), at 1.

international peace and security (Article 24), and the terms of the Charter leave little doubt that the original intent of the framers of that document was to make the Security Council the executive organ. However, when the Security Council became deadlocked because of the deepening divisions between the Soviet Union and the major non-communist powers, as evidenced by the mounting number of Soviet vetoes, the principal responsibility for political problems shifted from the Security Council to the General Assembly. This radical adjustment in the balance of power between the two political organs culminated in the adoption in 1950 of the "Uniting for Peace" resolution which represented a forthright assumption by the General Assembly of responsibility in the area of international peace.⁹⁵ The constitutional development based on the "Uniting for Peace" resolution has become part of the generally accepted United Nations doctrine.

The General Assembly, however, lacked the powers of the Security Council, particularly the power to make decisions binding on member states. Moreover, the Assembly, because of its very nature, its size, the variety of interests represented, and its operating procedures, was incapable of exercising executive functions directly and continuously. This resulted in the further shift in responsibility for carrying out such functions to the Secretary-General.⁹⁶

Another aspect of the political environment influencing the development of the Secretary-General's political role has been the emergence of a large number of new independent States in Asia and Africa and the consequent expansion of the membership of the United Nations after the membership breakthrough at the tenth session of the General Assembly. This resulted in a changed balance of influence in the U.N. and this shift in the balance of forces became particularly evident when crises were transferred from the Security Council to the General Assembly.

These new States were naturally anxious that outside assistance should not lead to the reinstatement of colonial control. Understandably, therefore, while they preferred UN assistance (whether in economic or social development or in establishing conditions of internal security and order and providing protection against outside

⁹⁵ General Assembly Resolution 377 A(V) of November 3, 1950.

⁹⁶ For example, the Secretary-General was entrusted with the task of dealing with the Middle-East crisis in 1956. However, entrusting the task to the Secretary-General was not the only course open to the General Assembly — it could have followed its earlier practice (as in the Greek, Palestine and Korean questions) of appointing a person outside the Secretariat or setting up a committee or commission to do the work.

intervention), they looked to the Secretary-General as the one who could most safely be trusted with the organization and direction of that assistance. This attitude not only encouraged initiatives by the Secretary-General to carry out programs approved by the General Assembly and the Councils, but it also provided him with an important political support. It is significant that Hammarskjöld, in defending himself against Soviet attacks over his conduct on the Congo operation, projected himself as the defender of the small states when he declared:

It is not the Soviet Union or, indeed, any other big Powers which need the United Nations for their protection. It is all the others. In this sense, the Organization is first of all *their* organization, and I deeply believe in the wisdom with which they will be able to use it and guide it. I shall remain in my post during the term of my office as a servant of the Organization in the interests of all those other nations, as long as *they* wish me to do so.⁹⁷

Hammarskjöld's assertion that the UN is "their organization" is meaningful not only in the sense originally intended, that is, protection of small power interests, but also in larger system terms.

Another factor which has vitally influenced the enlargement of the political role of the Secretary-General is the establishment of permanent missions of member states at United Nations Headquarters. This important institutional advance is a development which was not foreseen when the Charter was written. It is true that the Charter requires that each member of the Security Council shall be represented at all times at the seat of the Organization, in order that the Council may be able to fulfil the requirement that it "be so organised as to be able to function continuously" (Article 28 (1)). But no Charter provision made it essential for the members of the United Nations to maintain permanent delegations at its Headquarters. The permanent delegations constitute an institution which has grown up as a by-product of the General Assembly and of the continuity of conference arrangements at Headquarters.

Though the permanent delegations are collectively of the greatest importance in the functioning of the United Nations, they have, unlike the Secretariat, no corporate organization of their own. It has, therefore, become an essential function of the Secretary-General to act as a channel for communication and for consultation between delegations.

Relations between the Secretary-General and the permanent

⁹⁷ 15 U.N. GAOR, 883rd meeting, October 3, 1960, at 332 (emphasis added).

missions are largely of an informal character. Through the instrumentality of the permanent representatives, the Secretary-General is able to discuss alternative approaches to problems before the United Nations and to ensure that his own views are placed before governments. There has thus devolved on the Secretary-General a considerable share of responsibility in the formulation of any consensus of views among delegations on specific issues under consideration.⁹⁸ The importance of this continual contact, both for the Secretary-General and for the United Nations as a whole, was emphasized by Hammarskjöld in the introduction to his 1959 report on the work of the Organization:

The permanent representation at Headquarters of all Member nations, and the growing diplomatic contribution of the permanent delegations outside the public meetings — often in close contact with the Secretariat — may well come to be regarded as the most important "common law" development which has taken place so far within the constitutional framework of the Charter.⁹⁹

U Thant held this same view.¹⁰⁰

The special relationship of the Secretary-General to the delegations is clearly evidenced by the establishment of the Advisory Committees composed of the representatives of delegations for the operation in the Middle-East (UNEF) and the Congo (ONUC). He consulted with these bodies repeatedly and presided at their meetings. There were no votes, all the meetings being informal.¹⁰¹

A number of resources at the command of the Secretary-General have contributed to the development of his executive and political functions. These include: (1) the natural advantages the Secretary-General enjoys, as a permanent full-time official with a knowledgeable staff and skilled personnel, in his relations with the General Assembly and the Councils; (2) political information, primarily in the form of information on the policies and political views of

⁹⁸ Cf. Cordier, *The Role of the Secretary-General*, in R. SWIFT (ed.), *ANNUAL REVIEW OF UNITED NATIONS AFFAIRS 1960-61* (Oceana Publications), 4, 10. (Mr. Andrew W. Cordier was the Executive Assistant to the first two Secretaries-General of the UN, Trygve Lie and Hammarskjöld.)

⁹⁹ 14 U.N. GAOR, Supp. No.1A (A/4132/Add.1), at 2.

¹⁰⁰ Cf. U Thant, *The Role of the Secretary-General* — Address at the annual luncheon of the Dag Hammarskjöld Memorial Scholarship Fund of the United Nations Correspondents Association, September 16, 1971 in *UN MONTHLY CHRONICLE*, October, 1971, 185.

¹⁰¹ See Cordier, *supra* note 98, at 9. In a sense, it could be said that these Committees were anomalous bodies: composed of the representatives of delegations, external to the Secretariat, yet sitting under the chairmanship of the Secretary-General who sought to formulate the conclusions to be derived from the discussion.

member nations; (3) adequate communication facilities; (4) the Secretary-General's structural position as the focal point of the Organization and, thus, his status as one of the central figures of the international system; (5) the Secretary-General's neutrality and, thus, his acceptability to competing powers in the international arena; (6) the Secretary-General's record of success in dealing with particular cases; and (7) the prestige and respect accorded the Secretary-General, a resource largely dependent upon the success attributable to the efforts of the Secretary-General and his Office.

An important factor contributing to the development of the political role of the Secretary-General is the personality of the Secretary-General. Trygve Lie acted on the assumption that the Secretary-General had a positive role to play and he established the expectation that the office would be a diplomatically active one. He did not hesitate to express his views on controversial matters and to take initiatives on his own responsibility.¹⁰² But his actual influence on the other organs and on the decisions and conduct of member governments was not large. Unlike Hammarskjöld, he could not create for the office an image of an effective instrument of peaceful settlement of political conflicts. Hammarskjöld, on the other hand, was able, through a combination of diplomatic skill and full exploitation of the powers vested in him, to make the office of Secretary-General a major influence in the discharge of the peace-keeping responsibility of the United Nations. Undoubtedly, Hammarskjöld's personality was an important factor in explaining the expansion of the Secretary-General's influence and importance during his tenure (1953-1961). After Hammarskjöld's successes first in the UN fliers dispute of 1954¹⁰³ and later in the Middle-East conflicts of 1956, the attitude of the member states regarding the utility of the Secretary-General as a diplomatic agent underwent a marked change. Member states had come to recognize his diplomatic prowess. Hammarskjöld thus came to possess what has been described as "the subtle resources of power and prestige deriving in part from past successes in implementing UN resolutions."¹⁰⁴

As a result of the recognition of Hammarskjöld's superior diplo-

¹⁰² For a comprehensive discussion of the role of Trygve Lie and the precedents he established in the field of independent diplomatic initiatives by the Secretary-General, see S. SCHWEBEL, *THE SECRETARY-GENERAL OF THE UNITED NATIONS: HIS POLITICAL POWERS AND PRACTICE* (1952).

¹⁰³ See note 85 *supra*.

¹⁰⁴ Cf. Thompson, *The New Diplomacy and the Quest for Peace*, 19 INT'L ORGANIZATION 404 (1965).

matic skills and the confidence he inspired by his ability to achieve diplomatic successes, there developed the practice of creating peace-keeping operations under the executive direction of the Secretary-General.¹⁰⁵ This practice of the member states significantly contributed to the development of the peaceful settlement activities of the Secretary-General. Attributing the increasingly active and influential role of the Secretary-General in the mid-1950's to Hammarskjöld's abilities, one scholar has observed:

It is incontestable that recent developments and successes of the private diplomacy of the United Nations . . . owe much to the personality of "Mr. H," to his exceptional qualities that all the delegates and all the governments have recognised. It is not only as a result of his functions but also his *intuitu personarum* that he has become the fifth great power.¹⁰⁶

U Thant had endorsed the convictions and the objectives which were cherished by his predecessor.¹⁰⁷ However, coming as he does from a different background,¹⁰⁸ U Thant inevitably brought to the Office his own personality, ideas and methods.

U Thant's Conception of the Political Role of his Office

Dag Hammarskjöld, in his eight years of Secretary-Generalship, gave the Office a new meaning and a new place in international life. He died at the height of a controversy over the nature and function of the United Nations as a political organization and over the role of the Secretary-General; "a controversy," observed U Thant

¹⁰⁵ Examples: The United Nations Emergency Force (UNEF) in the Suez crisis (1956); United Nations Observation Group in Lebanon (UNOGIL) in the Middle-East crisis (1958); UN Operation in the Congo (ONUC) in the Congo crisis (1960-61).

¹⁰⁶ 4 M. VIRALLY, *ANNUAIRE FRANCAISE DE DROIT INTERNATIONAL* 396-97 (1958), quoted in Zacher, *The Secretary-General and the United Nations' Function of Peaceful Settlement*, 20 *INT'L ORGANIZATION* 732 (1966).

The description of Hammarskjöld as the "fifth great power" refers to his having been invited by Soviet Premier Nikita Khrushchev to attend a summit meeting with the four Great Powers and India in July, 1958, to discuss the Middle-East crisis. Cf. *The New York Times*, July 20, 1958, at 1.

¹⁰⁷ U Thant made a statement to this effect before the Second Hammarskjöld Forum of the Association of the Bar of the City of New York on April 30, 1962. See L. Tondel, (ed.), *THE LEGAL ASPECTS OF THE UNITED NATIONS ACTION IN THE CONGO: BACKGROUND PAPERS AND PROCEEDINGS OF THE SECOND HAMMARSKJÖLD FORUM XIV* (1963).

¹⁰⁸ U Thant, on his appointment as Acting Secretary-General, stated in the General Assembly on November 3, 1961: "Most of my colleagues present in this hall know me personally. They know that I come from a relatively small country in Asia. They know also that my country has steadfastly pursued over the years a policy of non-alignment and friendship for all other nations, whatever their ideologies. In my new role I shall continue to maintain this attitude of objectivity and pursue the ideal of universal friendship." 16 U.N. GAOR, 1046th Plenary meeting, November 3, 1961, at 551.

in September 1971, "which is still by no means resolved."¹⁰⁹ Hammarskjöld's view of the UN and the office of the Secretary-General was articulated in the introductions to his 1959 and 1961 reports on the work of the Organization.¹¹⁰ These two reports were not entirely of the "usual" character. They dealt with questions of political philosophy and theory and problems that had to do with the development of the Organization in the future. As already seen,¹¹¹ in the ultimate analysis, there are three basic concepts associated particularly with Dag Hammarskjöld: quiet diplomacy, preventive diplomacy and UN presence. The notion of a combined public and private diplomacy within the UN framework was his innovation. His successor U Thant stated after nearly ten years of Secretary-Generalship: "My own experience has confirmed in every way Dag Hammarskjöld's philosophy concerning the powers of the Organization and, in particular, the role of the Secretary-General."¹¹² He expressed his

fervent conviction that the incumbent of the Office of Secretary-General must play a political role, necessarily circumspect and judicious, if he is to be of real assistance to Member States in a dynamic and imaginative search for peace and for the realisation of the purposes and principles of the United Nations.¹¹³

U Thant's commitment to the legacy left by Hammarskjöld is also evident in the following statement:

The efforts and experiences, achievements and failures, of successive Secretaries-General are the raw-materials out of which the Office has developed over the years on the basis of the very general description which is given in the Charter. . . . Each Secretary-General must build as best he can on the Office as he inherited it. If he cannot hope to repeat all the successes of his predecessors, neither should he fear to try again where they failed.

No Secretary-General can afford to lose a sense of obligation to the human community in its broadest sense — an obligation to give his utmost to make the principles and aims of the Charter a reality Hammarskjöld never lost for a moment this sense of obligation, and I myself have regarded it, during my 10 years in

¹⁰⁹ See U Thant, *supra* note 100, at 178.

¹¹⁰ 14 U.N. GAOR, Supp. No.1A (A/4132/Add.1); and 16 U.N. GAOR supp. No.1A (A/4800/Add.1).

¹¹¹ See p. 54.

¹¹² Introduction to the Report of the Secretary-General on the Work of the Organization for the year 1970-1971, in UN MONTHLY CHRONICLE, October, 1971, at 119.

This contains a review by U Thant of the political role of the Secretary-General as he has "found it to be in law and in practice," very similar to the concepts expressed by Hammarskjöld in the introduction to his 1961 report. See *id.* at 118-122.

¹¹³ *Id.* at 122.

office, as the primary rule which nothing can be allowed to obscure.¹¹⁴

It may also be recalled that in his address to the Security Council on October 24, 1962 on the Cuban missile crisis, U Thant cited, and thereby associated himself with, Dag Hammarskjöld's famous statement¹¹⁵ to the Security Council in 1956 at the beginning of the Suez crisis:

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. . . . [T]he discretion and impartiality . . . imposed on the Secretary-General by the character of his immediate task may not degenerate into a policy of expediency 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 serve all articles of the Charter. . . .¹¹⁶

U Thant had continued his predecessor's policy of taking political and diplomatic initiatives. The Congo operation continued. In 1962, on his own responsibility, he acceded to a request from the Netherlands and Indonesia that the United Nations should establish a temporary executive authority for West New Guinea (West Irian).¹¹⁷ The following year he agreed to the dispatch of United Nations Observers to the Yemen (UNYOM), and the matter was discussed and approved by the Security Council only as a result of a request from the Soviet Government.¹¹⁸ Also in 1963, at the request of Malaya, Indonesia, and the Philippines, he agreed to "ascertain the wishes" of the people of Sabah (North Borneo) and Sarawak regarding the future status of the two territories.¹¹⁹ More recently, in 1970, at the request of Iran and the United Kingdom, he assisted in the determination of the wishes of the people of Bahrain regarding the future status of that island.¹²⁰ He had sought, through personal representatives, to resolve certain specific political differ-

¹¹⁴ See U Thant, *supra* note 100, at 179-80; see also U Thant, *supra* note 107.

¹¹⁵ 11 U.N. SCOR, 751st meeting, October 31, 1956, at 1-2.

¹¹⁶ 17 U.N. SCOR, 1024th meeting, October 24, 1962, at 22-23.

¹¹⁷ 17 U.N. GAOR, Annexes, Agenda item 89, A/5170 (August 20, 1962).

¹¹⁸ U.N. Docs. S/5298, April 29, 1963; S/5321, May 27, 1963, S/5326, June 8, 1963; S/5331, June 11, 1963.

¹¹⁹ U.N. Doc. SG/1583, September 13, 1963; YEARBOOK U.N. 1963, at 41; UNITED NATIONS REVIEW, October, 1963, at 14-15.

¹²⁰ Cf. U Thant, A Quiet United Nations Road to Accord — Address to the Royal Commonwealth Society in London, June 15, 1970, in UN MONTHLY CHRONICLE, July, 1970, at 122.

ences between particular States, such as Cambodia and Thailand in the period from 1961 to 1968, Rwanda and Burundi in 1963 and 1964, India and Pakistan in 1965 and 1966, Guinea and the Ivory Coast in 1967, Equatorial Guinea and Spain in 1969, and Ghana and the Soviet Union in 1969.¹²¹ There had also been humanitarian missions in situations such as the Nigerian civil war (1967-1970) and East Pakistan (Bangladesh) in 1971 where political elements were naturally involved.¹²²

In 1966, while indicating his unwillingness to continue in office for a second term, U Thant commented on his position:

To be candid, I feel that I have found it increasingly difficult to function as Secretary-General in the manner in which I wish to function, and secondly, I do not subscribe to the view that the Secretary-General should be just a chief administrative officer, or, in other words, that the Secretary-General should be a glorified clerk. I do not accept this concept of the Secretary-General. As I have said repeatedly on previous occasions, besides the functions of administration, the Secretary-General must take the necessary initiatives in the political and diplomatic fields. These political and diplomatic initiatives, in my view, are an essential part of the functions of the Secretary-General.¹²³

However, U Thant was not quite consistent in his pronouncements concerning an independent role of the Secretary-General. In 1964 he had asserted:

. . . the Secretary-General is very much a servant of the Organization and can act only within the mandates given to him in a particular situation by the Security Council or the General Assembly and in close and continuous consultation with the Members of the Organization and with the Governments particularly concerned in a given problem. Should this cease to be the case, the position of the Secretary-General would very rapidly become so exposed as to be untenable.¹²⁴

He sounded a substantially different note in 1965 under the impact of the rapid escalation of the Vietnam conflict:

¹²¹ Introduction to the Report of the Secretary-General on the Work of the Organization for the year 1970-1971 in UN MONTHLY CHRONICLE, October, 1971, at 120.

¹²² *Id.*; see also UN Doc.S/10512, January 17, 1972, for the report of the Secretary-General on the good offices mission of his Special Representative for humanitarian problems in East Pakistan (Bangladesh) under Security Council Resolution 307 (1971) of December 21, 1971.

¹²³ UN Press Release SG/SM/567, September 19, 1966, at 4 (Excerpts reproduced in PORTFOLIO FOR PEACE, published by the UN Office of Public Information, 1970, at 13).

¹²⁴ U Thant, Strengthening of the United Nations — Address delivered at the University of Denver, April 3, 1964, in UN MONTHLY CHRONICLE, May, 1964, at 83.

Two simple considerations are inescapable. First, the Secretary-General must always be prepared to take an initiative, no matter what the consequences to him or his office may be, if he sincerely believes that it might mean the difference between peace and war. In such a situation the personal prestige of a Secretary-General — and even the position of his office — must be considered to be expendable. The second cardinal consideration must be the maintenance of the Secretary-General's independent position, which alone can give him the freedom to act, without fear or favour in the interests of world peace. Such an independence does not imply any disrespect of the wishes or opinions of member governments. On the contrary, his independence is an insurance that the Secretary-General will be able to serve the long-term interest in peace of all the Members of the Organization in full accordance with his oath of office.¹²⁵

Asserting that "in matters relating to international peace and security, the Secretary-General's responsibility requires a continuous examination of the possibilities of effective action," U Thant made an identical statement more recently, in September 1971.¹²⁶ This was based on the view that "Article 99 leaves no doubt that any potential threat to peace and security must be of concern to [the Secretary-General], and that he has a duty to do what he can to mitigate it."¹²⁷

U Thant described the Secretary-General's activity known as the exercise of good offices as:

potentially one of the most useful, and least understood, possibilities of the United Nations. It is one way of preventing differences between States from developing into major crises, and of getting results on sensitive problems before they reach the insoluble stage. This is peace-making rather than peace-keeping, and its object is prevention rather than cure.¹²⁸

With regard to the competence of the Secretary-General to use his good offices without specific authorization from another organ of the United Nations, U Thant stated:

Under the heading of good offices, I do not include . . . the wide variety of tasks which the Secretary-General undertakes at the formal request of the General Assembly, the Security Council and of the other main organs of the United Nations. . . .¹²⁹

I have never had any doubt that the Secretary-General, with Ar-

¹²⁵ U Thant, *The Harmonizing Functions of the United Nations* — Statement read at the convocation of Queen's University at Kingston, Ontario, May 22, 1965, in *UN MONTHLY CHRONICLE*, June, 1965, at 103.

¹²⁶ See U Thant, *supra* note 100, at 186-87.

¹²⁷ *Id.* at 183.

¹²⁸ See U Thant, *supra* note 120.

¹²⁹ *Id.* at 124.

title 33 in mind, must exercise his good offices in the settlement of disputes or difficulties, even without specific authorisation from the Security Council or another organ of the United Nations, when the States concerned request it. As I was obliged to point out to the President of the Security Council over the case of Equatorial Guinea in March 1969, my informing him of my intention to send a representative to that country at the request of the Governments concerned was in no sense a consultation, and I was merely following the previously established practice of taking action and keeping the Security Council informed of what I was doing.¹³⁰

U Thant also held the view that "there are some situations so serious that the Secretary-General himself may decide that his duty requires him to offer his good offices, even if no specific request for them has been made by the parties."¹³¹ Thus, "the enormous and imminent dangers of the Cuban missile crisis" in 1962 "impelled" him to offer his good offices which helped in establishing contacts through which the United States, the Soviet Union and Cuba finally reached a solution of the crisis. Similarly, although the United Nations as such has not been involved in the Vietnam conflict,¹³² U Thant has felt obliged to offer his good offices (but with little result so far) in his "personal capacity" and to make suggestions concerning the Vietnam situation.¹³³

As already indicated,¹³⁴ U Thant has undertaken a variety of other good offices efforts, with varying degrees of success. It is of interest to recall that, in September 1971, referring to his exercise of good offices with regard to the question of Soviet citizens of the Jewish faith desiring to leave the Soviet Union, U Thant observed:

The question of human rights *vis-à-vis* the concept of the domestic jurisdiction of a Member State as prescribed in Article 2, paragraph 7, of the Charter has been a perennial preoccupation of many

¹³⁰ See U Thant, *supra* note 100, at 184; see also the Introduction to the Annual Report of the Secretary-General on the Work of the Organization, Sept. 1969, 24 U.N. GAOR, Supp. No. 1A (A/7601/Add.1), at 21-22.

¹³¹ Cf. U Thant, *supra* note 120, at 124.

¹³² Viet-Nam was technically placed on the Security Council's agenda early in 1966 at the request of the United States, but nothing ever came of this. Both the Soviet Union and France argued at the time that the Geneva conference, instead of the United Nations, was the appropriate forum, as most of the parties involved in the conflict were not United Nations Members. United Nations Press Release WS/554, May 12, 1972, at 3.

¹³³ See U Thant, *supra* note 120, at 124; Report, *supra* note 121, at 99-100.

Incidentally, the present Secretary-General Kurt Waldheim has also offered his good offices with regard to the Viet-Nam conflict. It has been reported that he has felt the time has come to use "the full machinery of the United Nations, first to achieve a cessation of hostilities and then to assist in the search for a peaceful and lasting settlement of the problem." UN Press Release WS/554, May 12, 1972, at 1.

¹³⁴ See pp. 67-68; see also note 120, *supra*, at 127-30, for a brief account of U Thant's exercise of good offices.

Member States in several deliberative organs of the United Nations. This is an area where the Secretary-General may be able to help, in spite of the legal and practical limitations, by discreet exercise of his good offices.¹³⁵

Closely connected with the Secretary-General's exercise of good offices is one of the Purposes of the United Nations that it "be a center for harmonizing the actions of nations in the attainment of . . . common ends" (Article 1(4) of the Charter). U Thant considers that "this harmonizing aspect of the United Nations . . . is the most important provision of the Charter,"¹³⁶ "a function which has still not been exploited to the full."¹³⁷ He has spoken approvingly of President Roosevelt's 1944 description of the UN's Chief Executive Officer as the "Moderator," because, in his view, the primary function of the chief executive of the UN is "to moderate, to conciliate, to find a consensus, to harmonize."¹³⁸ Thus, in September 1971, U Thant declared:

I have always felt that the most important political duty of the Secretary-General was to concentrate on the harmonizing functions of the United Nations as set out in Article 1(4) of the Charter. I have tried to use my Office, with all the discretion that the importance of the task requires, to allay unnecessary fears and suspicions, to establish communication between conflicting parties and to do whatever I could to bridge the gulf between East and West.¹³⁹

The emphasis of Article 1(4) of the Charter is on the necessity of agreement as a basis for action, a broad working consensus of the Organization's members in support of decisions taken. Apart from the cases where reference has been made to the purposes and principles of the United Nations generally, there have been few specific references to Article 1(4) in the resolutions of the United Nations organs and in the statements of government representatives. Yet, it is undeniable that there must be harmonization of the policies and actions of states if the United Nations is to achieve practical results. U Thant, thus, rightly stressed the importance of Article 1(4) of the Charter.

Towards the end of his ten-year tenure of Secretary-General-

¹³⁵ Statement by the Secretary-General at the Annual Dinner of "UN We Believe," at New York, N.Y., September 24, 1971, UN Press Release SG/SM/1539 at 3.

¹³⁶ Speech at a seminar on 'Peaceful Change,' organised by the Institute of Man and Science, at State University of New York, Albany, Sept. 8, 1966, UN Press Release SG/SM/562 (Excerpts reproduced in Portfolio for Peace, published by the UN Office of Public Information, 1970, at 12).

¹³⁷ See U Thant, *supra* note 125, at 104.

¹³⁸ See note 136 *supra* (Excerpts reproduced in Portfolio for Peace, 1970, at 13).

¹³⁹ See U Thant, *supra* note 100, at 183.

ship, U Thant remarked that it was "the most challenging political job on earth," although not "the most impossible job in the world."¹⁴⁰ He described the challenging nature of the Office in the following terms:

The United Nations, lacking any attributes of sovereignty, must work by persuasion, argument, negotiation and a persistent search for consensus. For all the high ideals in the Charter, it is a very down-to-earth and pragmatic organization, which for the most part deals with hard political realities rather than with sweet reason or ideal aspirations. . . . The Secretary-General must usually operate within these highly realistic limits if he is to achieve any useful results at all. . . . He is, and must be, at the same time a realist and a man of idealism and hope . . .¹⁴¹

While it is debatable whether the Secretary-General is — or should try to be — the conscience of mankind, he must certainly never lose a strong personal sense of justice, of humanity, and of the importance of human dignity.

The other quality which a Secretary-General can never afford to lose is an urgent sense of political realism. The Secretary-General operates under the Charter in a world of independent sovereign States, where national interests remain dominant

These are the two poles of the Secretary-General's world — at one extreme the idealism and the global objectives of the Charter; at the other the pragmatic, and on occasion downright selfish, nature of national sovereignty. Working between these two poles, the Secretary-General cannot afford to lose touch with either. . . .

While he has a general obligation to act in accordance with the principles of the Charter, to act effectively he must also work with and through sovereign Governments. . . . National sovereignty and national interest, humanitarian considerations, governmental susceptibilities and the principles of the Charter form the elements of an insoluble equation, which nonetheless the Secretary-General must continually, and in all sorts of situations, attempt to solve.¹⁴²

U Thant has held the view that when a specific mandate is given to the Secretary-General by the Security Council or the General Assembly, he must necessarily act in accordance with the terms of that mandate. Emphasizing this position, he stated:

I feel strongly that the Secretary-General, irrespective of his personal views on any issue, is obliged to stand by every resolution or decision of the main deliberative organs of the United Nations. . . . The Secretary-General has no option whatsoever in this regard, whatever may be the temporary effect on his relations with individual Member States. Nor can he seek an escape from a resolution of an organ of the United Nations because it may appear to be unpractical or even unfair.¹⁴³

¹⁴⁰ *Id.* at 187.

¹⁴¹ *Id.* at 186-87.

¹⁴² *Id.* at 180-81.

¹⁴³ *Id.* at 182.

With regard to the extent of discretion when acting under a specific mandate, U Thant has stated:

Some element of discretion may remain in interpreting such a mandate, which is often laid down in the broadest terms, or in dealing with unexpected situations which may subsequently arise, but this discretion has to be exercised in the light of an honest and impartial appreciation by the Secretary-General of what he considers to be the wishes of the organ concerned.¹⁴⁴

The limitations on the Secretary-General's power to take political initiative have been set forth by U Thant as follows:

When the Secretary-General considers exercising a political role on his own initiative, or at the request of the parties, he must necessarily arrive at his decision taking into account specific legal limitations, such as Article 2, paragraph 7, of the Charter, and practical limitations such as a determination whether action on his part would be likely to produce useful results. The Secretary-General has no means of enforcement, no economic power at his disposal If a move by the Secretary-General were to give rise to the impression that he was intervening in a matter essentially within the domestic jurisdiction of a Member State, or taking a particular side in a conflict, or that he was abandoning his impartiality, his usefulness would be at an end, as any measure of success is in turn a measure of the confidence which he enjoys with the Governments concerned.¹⁴⁵

Despite the limitations of the Secretary-General's powers in political matters, the Secretary-Generals of both Hammarskjöld and U Thant have demonstrated that Governments generally appreciate the availability of an institution such as the Office of the Secretary-General as a possible means of seeking a solution to particular international differences.¹⁴⁶

U Thant has been a very influential diplomatic figure and highly respected by observers. Although he may not be regarded as possessing the rather unusual diplomatic finesse of Hammarskjöld, he has been able to carry on all the different kinds of activity which were originated by his predecessor. Hammarskjöld was the brilliant and innovative Secretary-General whose activities significantly

¹⁴⁴ See Report, *supra* note 121, at 121.

¹⁴⁵ *Id.*

It is true that the Secretary-General's prerogatives include no right to interfere in the domestic affairs of states. However, see U Thant's statement regarding the question of human rights *vis-a-vis* the concept of the domestic jurisdiction of a Member State quoted on pp. 70-71: "This is an area where the Secretary-General may be able to help, in spite of the legal and practical limitations, by discreet exercise of his good offices." Also see the reference to Lauterpacht's argument on page 48: "The matters referred to in Article 99 are not, by definition, essentially within the domestic jurisdiction of any state."

¹⁴⁶ *Id.*

molded the expectations regarding the office that he held, and his successor greatly benefited from his work. It was Hammarskjöld, responding to the opportunities thrown up by world events following his appointment, who gave effective political content to the Office of the Secretary-General. U Thant filled an office that his predecessor's practice had enlarged.

It must, however, be appreciated that Hammarskjöld died at a time when his Office was facing serious setbacks because of Soviet resistance to his later work in the Congo. Indeed, in late 1960 and throughout 1961, the Office was in danger of destruction. The continued Soviet opposition to further development of the Office placed Secretary-General U Thant in a difficult position.

U Thant supported Hammarskjöld's concepts and tried to emulate his approach, but he formulated no theory of his own concerning the structure and processes of the Office as did Hammarskjöld. While Hammarskjöld's writings and statements were marked by their intellectual complexity and doctrinal content, U Thant's Secretary-Generalship was marked by an absence of abstract pronouncements and a concentration on pragmatism.

As for the development of the political role of the Office, U Thant's tenure of Secretary-Generalship has essentially been a period of consolidation, rather than one of expansion beyond the point at which Hammarskjöld left it. He was able to consolidate some, if not all, of the gains made by Hammarskjöld. He maintained, if not strengthened, an office that was in danger of destruction. And that may be regarded as his greatest accomplishment. Cautious and circumspect, Secretary-General U Thant succeeded in reducing enormously the controversy over the Office of the Secretary-General. He survived the Congo crisis with heightened prestige and a mandate to continue as Secretary-General.

U Thant's political and diplomatic successes with regard to settlement of particular conflicts include the ending of the Congo crisis, the peaceful settlement of the Cuban missile crisis, the transfer of West New Guinea (West Irian) to Indonesia without extensive conflict, his role of arbitrator in the Malaysian Federation issue, and the settlement of the Bahrain question. These successful efforts are, however, overshadowed by continuing problems such as those of the Middle-East, Kashmir, Cyprus, apartheid in South Africa, Namibia, and the Vietnam conflict.

It was important that U Thant had been able to maintain good relationships with both the United States and the Soviet Union, but

his trump card was Afro-Asian backing. As already noted,¹⁴⁷ the emergence of a large number of new independent states in Asia and Africa resulted in a shift in the balance of influence in the United Nations. U Thant was a perfect reflection of the new forces that dominated the UN. As a spokesman for Afro-Asian interests, he was able to build a "political constituency" upon which he relied for support, particularly in situations where he could not please all the great powers at the same time. He helped to move the Organization to a neutral posture in East-West conflicts. When UN action suited the majority of the neutralist or non-aligned states, it was difficult for either the Soviet Union or the United States to press a strong attack. This development of a "political constituency" for Secretary-General U Thant and his position as spokesman for the Afro-Asian group of nations at the United Nations assisted him substantially. This was an advantage that the other Secretaries-General did not have.

Conclusion

The development of the political role of the Secretary-General raises questions affecting not only the future of the Secretariat but also of the Organization itself. One consequence of this development is that it places such a heavy demand on the Secretary-General's time and energy that he may be forced to neglect other important responsibilities resting upon him. Thus, U Thant had complained:

Article 97 establishes the Secretary-General as the Chief Administrative Officer of the Organization. This in itself is more than a full-time job. . . . Like my predecessors, I have constantly had cause to regret that other pressures leave the Secretary-General far too little time for a task which in the long run will have a decisive effect on the successful development and performance of the Organization.¹⁴⁸

As the political role of the Secretary-General and his staff increases, the demands for balanced geographical distribution within the Secretariat are bound to be increasingly urgent and more difficult to resist. Member states "under-represented" in the Secretariat would understandably insist that their nationals be appointed to Secretariat posts in larger numbers and particularly to the more important political positions.

The emergence of the Secretary-General as an active diplomatic

¹⁴⁷ See pp. 61-62.

¹⁴⁸ See U Thant, *supra* note 100, at 181.

agent has greatly improved the ability of the Security Council and the General Assembly to influence conflicts along desired lines. It has enabled them to dispense with unwieldy and often divided committees, which were seldom able to carry out mediatory functions effectively, and to entrust such function to a single skillful diplomat, the Secretary-General or his personal representative, who has often been able to negotiate settlements of disputes more effectively. As Hammarskjöld stated:

The main significance of the evolution of the Office of the Secretary-General . . . lies in the fact that it has provided means for smooth and fast action, which might otherwise not have been open to the Organization. This is of special value in situations in which prior public debate on a proposed course of action might increase the difficulties that such an action would encounter, or in which a vacuum might be feared because Members may prove hesitant, without fuller knowledge of the facts or for other reasons, to give explicit prior support in detail to an action which, however, they approve in general terms or are willing should be tried without formal commitment.¹⁴⁹

The recognition by member states that the person of the Secretary-General provides an effective instrument of conciliation and that they can privately seek his assistance whenever they need it has had the effect of making the United Nations a more active center for the resolution of international disputes.

The increased political role of the Secretary-General raises the question of compatibility of such a role with the conception of an independent international civil servant. As already observed,¹⁵⁰ Articles 98 and 99 of the Charter taken together open the door to the problem of neutrality by giving the Secretary-General functions and responsibilities that go beyond the administrative role described in Article 97. This was the issue raised in the Soviet Union's criticism against Hammarskjöld and his Office for the manner in which he conducted the UN Operation in the Congo. Premier Khrushchev stated that "while there are neutral countries, there are no neutral men."¹⁵¹

In a strong response to the Soviet challenge, Secretary-General Hammarskjöld stated in the General Assembly:

¹⁴⁹ Introduction to the Annual Report of the Secretary-General on the Work of the Organization for the year 1958-1959, 141 U.N. GAOR, Supp. No.1A (A/4132/Add.1) at 3.

¹⁵⁰ See p. 43.

¹⁵¹ Cf. Dag Hammarskjöld, *The International Civil Servant in Law and in Fact* — Oxford University lecture, May 30, 1961, at 3.

. . . this is a question not of a man but of an institution. Use whatever words you like, independence, impartiality, objectivity — they all describe essential aspects of what, without exception, must be the attitude of the Secretary-General. . . . [I]f the office of the Secretary-General becomes a stumbling block for anyone, be it an individual, a group or a government, because the incumbent stands by the basic principle which must guide his whole activity, and if, for that reason, he comes under criticism, such criticism strikes at the very office and the concepts on which it is based. I would rather see that office break on strict adherence to the principle of independence, impartiality and objectivity than drift on the basis of compromise. . . .¹⁵²

Hammar skjöld made a distinction with regard to the notion of neutrality:

If a demand for neutrality is made . . . with the intent that the international civil servant should not be permitted to take a stand on political issues, in response to requests of the General Assembly or the Security Council, then the demand is in conflict with the Charter itself. If, however, "neutrality" means that the international civil servant, also in executive tasks with political implications, must remain wholly uninfluenced by national or group interests or ideologies, then the obligation to observe such neutrality is . . . basic to the Charter concept of the international civil service. . . .¹⁵³

Thus, while the Secretary-General has to be impartial in carrying out his political duties, he cannot be neutral, if neutrality implies political abstinence.

Elucidating further the notion of neutrality vis-à-vis the concept of an international civil servant, Hammar skjöld stated:

. . . the international civil servant cannot be accused of lack of neutrality simply for taking a stand on a controversial issue when this is his duty and cannot be avoided. . . . If the international civil servant knows himself to be free from . . . personal influences in his actions and guided solely by the common aims and rules laid down for, and by the Organization he serves and by recognised legal principles, then he has done his duty, and then he can face the criticism which, even so, will be unavoidable. . . . [A]t the final test, this is a question of integrity, and if integrity in the sense of respect for law and respect for truth were to drive him into positions of conflict with this or that interest, then that conflict is a sign of his neutrality — and not of his failure to observe neutrality — then it is in line, not in conflict, with his duties as an international civil servant.¹⁵⁴

In this respect Hammar skjöld likened the role of the Secretary-Gen-

¹⁵² 15 U.N. GAOR, 871st meeting, September 26, 1960, at 95.

¹⁵³ See Hammar skjöld, *supra* note 151, at 14.

¹⁵⁴ *Id.* at 27.

eral to that of a judge,¹⁵⁵ a comparison which, it has been observed,¹⁵⁶ is not altogether valid.

The development of the Secretary-General's political role has given the Organization a certain nascent autonomy from its Members. To the extent that the "constitutional" position of the Secretary-General permits him to take a stand in the political questions falling within the competence of the Organization, he represents what has been called "the independent judgment of the Organization."¹⁵⁷ With regard to this impact of the Secretary-General's political role on the United Nations, Hammarskjöld stated in 1959:

If the Secretary-General represents an independent but positive evaluation, free of partisan influences and determined by the purposes of the Charter, this means not only that he reinforces the weight that independent opinion may come to carry in the negotiations. Step by step, he thereby also builds up a practice which may open the door to a more generally recognised independent influence for the Organization as such in the political evolution.¹⁵⁸

. . . [T]he wider functions which in specific cases have been exercised by the Secretary-General fully maintain the character of the United Nations as an organization whose activities are wholly dependent on decisions of the Governments. On the other hand, the development reflects an incipient growth of possibilities for the Organization to operate in specific cases within a latitude of independence in practice given to it by its Member Governments for such cases.¹⁵⁹

One observer noted that in the late 1950's there emerged:

the growth of the notion of the United Nations not merely as a center for the harmonization of conflicting interests but as an international *persona* with authority over and above that accorded to it by its Members

and he attributed this development both to the creation of the United

¹⁵⁵ *Id.*

¹⁵⁶ See Goodrich, *The Political Role of the Secretary-General*, 16 INT'L ORGANIZATION 733 (1962-63): "To liken the decision taken in such a situation to that of a judge, as Hammarskjöld did in his Oxford University address, is somewhat misleading, as, first of all, the judge customarily has clearer guidance from written law and precedents; and secondly, when he ventures into the realm of policy, he does so on the basis of being part of a government with effective power, which is not the position of the Secretary-General."

¹⁵⁷ Dag Hammarskjöld, *Do We Need the United Nations? — An Affirmative Answer* (Copenhagen speech, May 2, 1959), in UNITED NATIONS REVIEW, June, 1959, at 25.

¹⁵⁸ *Id.* at 25-26.

¹⁵⁹ See Report, *supra* note 149.

Nations Emergency Force and to "the growing stature in the public as well as the official eye of Mr. Hammarskjöld."¹⁶⁰

U Thant has also envisaged a growing role for the United Nations with a developing stature as an independent force possessing a will and interests of its own. He even went to the extent of declaring that:

the United Nations must ultimately develop in the same way as sovereign States have done, and . . . if it is to have a future, it must eventually assume some of the attributes of a State. It must have the right, the power and the means to keep the peace. We are only in the beginning and the process will surely take several generations. But the peace-keeping operations already conducted by the United Nations provide the hope that we are on the road to these essential developments.¹⁶¹

It has been said that ". . . the development of function alters the content of law."¹⁶² If the development of functions of the Secretary-General has contributed to a growing autonomy for the United Nations, the growing autonomy of the Organization is an indicator of the process of political integration in the international system.

The traditional and still prevailing system of international law was built around the concepts of national sovereignty and independence. Understandably, national sovereignty continues to be a jealously guarded possession. But the movement of states from independence to interdependence and greater integration poses the question whether the concept of absolute sovereignty of a state has not become rather outmoded and unrealistic.¹⁶³

¹⁶⁰ Goodwin, *The Political Role of the United Nations: Some British Views*, 15 INT'L ORGANIZATION 591 (1961).

¹⁶¹ U Thant, *The United Nations as a Force for Peace* (Message sent by Secretary-General U Thant to the people of Sweden when he was unable to keep a speaking engagement there on May 1, 1963), in UNITED NATIONS REVIEW, May, 1963, at 39.

In this connection, it may be relevant to recall that in October 1958, speaking in the General Debate of the General Assembly, Krishna Menon of India had raised "philosophic" questions about the executive developments of the previous few years: "It is all very well in an emergency to produce some sort of machinery and say 'deliver the goods,' but I think we must think hard and see that we do not get a situation where the United Nations as at present composed, becomes a kind of superior authority, a kind of super-state with its representatives directing governments, which is not provided for in the Charter, and where the Secretary-General will be pushed away from his Charter functions into other matters. . . . We have to see that we do not exceed the cautious balances that have been introduced into this Charter for the preservation of national sovereignty and for the preservation of small nations. If this rather superior power should be at the disposal of a snap vote of a two-thirds majority, the position of small states and of minorities would be far from enviable." 13 U.N. GAOR, General Debate, 774th Plenary meeting, October 7, 1958, at 366.

¹⁶² Menon, *The Modern State and International Law*, 1 INDIAN J. INT'L L. 118 (1960-61).

¹⁶³ For U Thant's views on national sovereignty, see U Thant, *The League of Nations*

The growing interdependence of states necessarily accelerates the further development of international law. Indeed, as U Thant has observed, "there is already a fast-growing body of international norms which is beginning to be referred to as the 'law of integration.'" ¹⁶⁴

The concepts developed by Secretary-General Hammarskjöld and their practical application by him and his successor U Thant constitute a challenge to those who deny the practical significance of the legal process in an intensely political atmosphere such as that of the United Nations. Their conceptions and practices affirmed the importance of law in the United Nations while acknowledging the reality of political power and pressures. Those precepts and practices bring fresh perspectives to the relation of law and politics in contemporary international society. This is demonstrable by discerning their fundamental features:

Departing from the traditional positivist approach, Hammarskjöld viewed the body of law not merely as a technical set of rules and procedures, but as the authoritative expression of principles that determine the goals and direction of collective action. He recognized that, in international society as in national sphere, legal norms constitute one class of several factors that enter into the process of decision-making, but he emphasized the binding character of the legal element. Thus, he asserted:

Of primary importance . . . are the principles and purposes of the Charter which are the fundamental law accepted by and binding on all States. Necessarily general and comprehensive, these principles and purposes still are specific enough to have practical significance in concrete cases.¹⁶⁵

He viewed the purpose and principles embodied in the Charter:

as a projection into the international arena and the international community of purposes and principles already accepted as being of national validity. In this sense, the Charter takes a first step in the direction of an organised international community . . . ¹⁶⁶

This was the premise on which Hammarskjöld constructed his con-

and the United Nations — Address at the University of California, Berkeley, April 2, 1964, in UN MONTHLY CHRONICLE, May, 1964, at 72.

¹⁶⁴ U Thant, International Law and the United Nations — Address at a meeting of the International Bar Association in Dublin, Ireland, July 12, 1968, in UN MONTHLY CHRONICLE, August-September, 1968, at 119.

¹⁶⁵ See Hammarskjöld, *supra* note 151, at 25.

¹⁶⁶ Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 1960-1961, 16 U.N. GAOR, Supp. No. 1A (A/4800/Add.1), at 1.

cepts and this was the guiding principle for his actions and those of his successor.

The activities of the two Secretaries-General have clearly demonstrated that legal norms can be applied to novel situations without rigidity or blind conformity to precedent. Apart from their ability to adopt an approach that was congenial to the interplay between principles and contingent fact, this is attributable to two factors. Firstly, while the exclusively international responsibility of the Secretary-General required a firm adherence to the principles of the Charter and other standards accepted as binding by member states, the nature of those general rules permitted a flexible approach. They were mainly principles derived from Articles 1 and 2 of the Charter. They were flexible in that they did not impose specific procedural patterns or detailed machinery for action, and left room for adaptation to the particular needs and the resources available for a given undertaking. Secondly, the problems that the Secretaries-General had to deal with arose frequently in situations of crisis. The element of crisis meant that there was strong pressure to meet the necessities of the particular problem and at the same time cautioned against a mechanical repetition of a formula that might have unforeseen implications in future cases. In other words, this second factor called for an ad hoc solution and a flexible application of principles.

This flexible approach and the technique of fusing opposing elements into workable solutions should be of special interest to the international lawyer. He is often confronted with problems involving basic principles in dialectical opposition. For instance, a principle such as that of observance of human rights is balanced by the concept of non-intervention in internal affairs; or, the notion of equality of states has to be considered in a context which included the special responsibilities of the Great Powers. The contradictory implications of such principles make it obvious that they cannot provide automatic answers to particular problems, but rather that they serve as criteria which have to be weighed and balanced in order to achieve a rational solution to the particular problem.¹⁶⁷ This is a task which requires, what Hammar skjöld called, "that

¹⁶⁷ Paul Freund has given eloquent expression to this idea in regard to the abstractions in American constitutional law: "These abstractions, arrayed in intransigent hostility like robot sentinels facing each other across a border, can become useful guardians on either hand in the climb to truth if they can be made to march together. Somehow the life blood of the concrete problem tempers the mechanical arrogance of abstractions." 69 HARV. L. REV. 803 (1956).

combination of steadfastness of purpose and flexibility of approach which alone can guarantee that the possibilities which we are exploring will have been tested to the full."¹⁶⁸

As already noted,¹⁶⁹ an important aspect of the enlargement of the political role of the Secretary-General was the development of new concepts such as the exercise of good offices, quiet diplomacy and preventive diplomacy. Both Hammarskjöld and U Thant conceived of their Office primarily in terms of diplomacy. Their practices have demonstrated the oversimplification of the traditional view of diplomacy as being separate from, or opposed to, the processes of law. Their experience indicates that a properly balanced combination of law and diplomacy is not only an advantage, but even a necessity.

The advantage of a legal basis is quite evident in any conciliation or good offices effort of the Secretary-General. His *locus standi* as a third-party intermediary would be acceptable to the parties directly concerned when it rests on firm legal authority. The two Secretaries-General, therefore, attached considerable importance to the legal authority enabling them to enter into private discussions for the settlement of disputes.¹⁷⁰

There is another aspect of the relation between law and diplomacy which the Secretaries-General could use with advantage in their conciliation efforts. An essential element of the process of establishing a common ground of principles to which both sides could adhere was to suggest general standards which had a legal quality, whether as an accepted norm of international law or as a rule which was implied by or closely related to a principle of law. The legal aspect could facilitate agreement between the parties concerned. It would also offer an assurance of objectivity and impartiality in carrying out the conciliation effort.

While Hammarskjöld's theories concerning his Office were based on his belief in the imperative quality of legal norms, he had at the same time a tough-minded awareness of the impact of power relations on the normative structure of international society. Indeed, as

¹⁶⁸ Dag Hammarskjöld, *The Development of a Constitutional Framework for International Cooperation* — Address at the University of Chicago Law School, in *UNITED NATIONS REVIEW*, June, 1960, at 30.

¹⁶⁹ See pp. 52-56.

¹⁷⁰ See pp. 52-54 and pp. 69-70. See also p. 57, where a reference has been made to the "Peking Formula" devised by Hammarskjöld in connection with his mission to Peking to seek the release of U.S. airmen in Communist China.

already noted,¹⁷¹ at the time of his sudden and tragic death in September 1961, his Office was almost at the verge of being destroyed on account of the Soviet resistance. And the continued Soviet opposition to further development of the Office of the Secretary-General imposed severe restraint on his successor U Thant. Thus, although both the Secretaries-General believed in the binding nature of legal norms in international relations, that could not and did not mean that they regarded law as an autonomous force which develops and is applied independently of political and social factors. Hammarskjöld viewed law not as a "construction of ideal patterns to be imposed upon society," but in an "organic sense,"¹⁷² as an institution which grows in response to felt needs and within the limits set by historical conditions and human attitudes. He did not attempt to set law against power, but sought to find within the limits of power the elements of common interest on the basis of which joint action and agreed standards could be established. But it was characteristic of him to regard the reality of power politics not merely as imposing limits on the use of law, but in a positive sense as a challenge which called for creative attempts to find new norms and procedures "with faith in the ultimate result of the creative evolution in which it is our privilege to cooperate."¹⁷³

¹⁷¹ See p. 74.

¹⁷² See Hammarskjöld, *supra* note 168, at 27.

¹⁷³ *Id.* at 30.

Also generally see Hammarskjöld's address at the University of Chicago Law School on The Development of a Constitutional Framework for International Cooperation, and his answers to Press questions on that speech, in UNITED NATIONS REVIEW, June, 1960, at 26-32.