

THE PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL
OF THE UNITED NATIONS: A LEGAL ANALYSIS OF
HIS FUNCTIONS IN THE UNITED NATIONS AND
GENERAL INTERNATIONAL SYSTEMS

By

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CHAPTER I

INTRODUCTION

Too often the office of Secretary-General of the United Nations is viewed solely in terms of administration. Most diagrams which chart the role of U.N. organs place him in charge of the Secretariat's vast machinery for supporting the organization's activities, but as a unit separate from the other organs. The Secretary-General is, of course, the Secretariat's principal administrator. But yet such a conception is incomplete. For not only does he occupy the 38th floor office at the top of the Secretariat's chain of command; but he is also an active participant in the policy-making process within the General Assembly chamber, the Security Council room, and the other organs of the U.N. In addition, he also interacts with governments independently of his contacts with them relative to policy-making within the organs. These functions of the Secretary-General are often oriented toward helping solve international disputes -- whether participating in the formulation of a peace-keeping policy within the Security Council or General Assembly; or whether performing some other function, such as mediating territorial disputes among states, et cetera.

In this study the peace-keeping functions of the Secretary-General will first be identified and illustrated. Then an attempt will be made to relate them to the norms that might be interpreted as governing his actions.

At this point, these concepts essential to this study should be explained: In the first place, what is meant by the "peace-keeping role" of the Secretary-General? Second, to what extent is the Secretary-General subject to norms of the United Nations legal order? And, if he is, what standards may be employed to determine the legality of his behavior?

Scope of the Peace-Keeping Role

The "peace-keeping role" of the Secretary-General refers to those of his activities whose purpose is to preserve or restore international peace. These activities fall within two categories: direct participation by the Secretary-General in the policy-making process of United Nations organs which perform peace-keeping functions, and; activities other than those related to policy-making in the U.N. in which the Secretary-General attempts to influence the interactions among states and other entities which participate in international politics. Thus, in effect, the Secretary-General becomes an actor within three systems: the two organs of the United Nations which perform peace-keeping functions, the Security Council and the General Assembly; and the general international political system.

[The two peace-keeping systems which operate within the framework of the United Nations, the Security Council and the General Assembly, are similar in that they both possess distinct spheres of competence and both constitute quasi-legislative bodies in which political bargaining occurs and formal decisions are made by vote.

However, each may be distinguished from the other in terms of the nature of its competence and the identity and authority of its actors.¹ The Security Council possesses a broad sphere of competence over the maintenance of international peace. (It may call upon parties to a dispute to settle it themselves;² it may investigate disputes;³ it may recommend measures for the settlement of disputes;⁴ it may decide that the organization will take measures not involving the use of force;⁵ or it may decide that measures involving the use of force will be employed.⁶ The principal actors within the Security Council include the five permanent members (China, France, Great Britain, the Soviet Union, and the United States) and ten non-permanent members, who serve for terms of two years.) The competence of the major actors is clearly distinguishable in that each of the permanent members possesses the power of veto over all decisions except those involving procedural matters.⁷

The sphere of competence of the General Assembly in regard to

¹Comprising each of the two United Nations peace-keeping systems are these elements: the participants in the decision-making process in the respective organs, the interactions among them, and those factors which influence these interactions. An actor within the U.N. systems will be viewed as an entity which exerts an influence upon the decision-making process and interacts with other entities which, likewise, do so.

²Charter of the United Nations, Article 33.

³Ibid., Article 34.

⁴Ibid., Articles 36, 38 and 39.

⁵Ibid., Article 41.

⁶Ibid., Article 42.

⁷Ibid., Article 23, paragraph 3.

preserving international security is more limited than that of the Security Council. The Charter provides that it may discuss any question relative to the maintenance of international peace or which falls within the scope of the Charter generally.⁸ And the Assembly may also make recommendations to the Security Council or to member-states in regard to such questions.⁹ Under the Charter all members of the United Nations are actors within the General Assembly. Formally, the competence of each is equal, although some members exercise more influence than others. For example, the United States has traditionally dominated the processes within the General Assembly, though with the increasing membership of the uncommitted bloc its position is now less commanding than in the past. Likewise, some members of the General Assembly, in an attempt to exert collective influence, group together informally in blocs, thus creating multi-state actors such as the Arab League, the "Afro-Asian" bloc, et cetera. As the Secretary-General interacts with the members of both the Security Council and General Assembly, he, too, becomes an actor within the systems, influencing their decision-making processes.

The Secretary-General also exercises his peace-keeping role in what we shall term the "general international political system." Within the scope of this system are all international political interactions other than those which occur within the decision-making processes of the Security Council and General Assembly.

By "international" we refer to those interactions which occur

⁸Ibid., Article 10 and 11.

⁹Ibid., Articles 10 and 14.

outside the nation-state. These include not only interactions between nation-states -- i. e., not only those which are "international" in the literal sense -- but also those involving other political units whose activities likewise transcend national boundaries. Thus we would include as actors those sub-state units which engage in interactions beyond the territorial limits of states, such as rebellious provinces in time of civil war (e. g. Katanga in the early 1960's). This definition would also encompass multi-state units, such as blocs (e. g. NATO, the Warsaw Pact) or international secretariats, which collectively engage in interactions beyond national boundaries. It is evident, therefore, that a variety of entities are included within the general international political system which are not members of the United Nations.

The word "political," or its noun form "politics," is usually defined in terms of power. And, while it is recognized that there is a lack of universal agreement as to this definition, we will refer to power as the "process of affecting policies of others with the help of (actual or threatened) severe deprivations for non-conformity with the policies intended."¹⁰ In references to the general international political system we will limit the application of this concept to relationships among governing units of state and non-state actors.

The general international political system therefore encompasses the following: state and non-state actors; the interactions between their governing units that cross national boundaries, whose purpose is to influence the outcome of the other's actions, and; the factors which influence the nature of these interactions. The Secretary-

¹⁰Harold D. Lasswell and Abraham Kaplan, Power and Society, (New Haven, 1950), p. 76.

General, as an actor in the general international political system, interacts with other state and non-state actors and, in doing so, seeks to influence the political relationships which exist among them.

Although in the above three systems the Secretary-General exercises a variety of functions related to settling disputes, he is still inferior to the other actors, primarily because he lacks an independent power base such as that possessed by a head of state. On occasion the Secretary-General is capable of exercising force as head of a peace-keeping operation. But his authority to do so is not independent, but contingent upon the U.N. members who vote for its creation and underwrite it (in troops, in means of transportation, in finances, et cetera). Throughout our discussion it will be evident that the essence of the Secretary-General's peace-keeping role is his capacity of persuasion. His peace-keeping functions will thus normally not involve a power relationship in which he can force state and non-state actors to interact in a peaceful manner. More often his actions will attempt to facilitate the efforts of other international actors in solving their own disputes; to activate the U.N. peace-keeping machinery so that states can discuss their differences around a conference table; to suggest solutions to disputes, which the states may accept or reject; to investigate disputes so that states may have access to an impartial assessment of the facts; and so forth.

The Secretary-General as a Subject of Law

A norm of law may be defined as an injunction prescribing or permitting certain behavior for which the application of sanctions is

permissible when obedience to it fails to occur.¹¹ A positive legal order prescribes such norms for its subjects and entrusts their execution to legal organs. However, the constitutions underlying legal orders frequently fail to prescribe any methods either for determining when these legal organs have violated norms or for applying sanctions to them in the event of norm violations. But the lack of such a specific constitutional provision does not mean that these functions are not performed. For such norm-control frequently takes the form of conventions which arise through custom. Thus, for example, in the legal order established by the United States Constitution no explicit provision was made for ensuring that the Congress perform its functions in the prescribed manner. Yet means of norm-control have evolved through custom: the practice of judicial review and the ultimate political control which rests with the electors who choose the members of Congress.

The basic document of the United Nations, the Charter, provides no means for governing the actions of its legal organs. Thus, under the Charter, there is no procedure for determining when the Secretary-General has violated a legal norm. Neither is there a means for applying sanctions to the Secretary-General in the event of norm violations. Yet, as in other legal systems, this does not mean that he is not subject to norm-control. There is nothing in the Charter to prevent the evolution of customary norms relative to the control of the Secretary-General. If he usurped power in a manner contrary to the Charter, as determined by the members of the Organization, or

¹¹Hans Kelsen, The Law of the United Nations, (New York, 1950), pp. 6-7.

failed to perform the functions required of his office, steps would undoubtedly be taken by the members to frustrate such action by the Secretary-General. Upon failure to perform duties, they might, for example, revise the Charter to create another executive position and assign to it functions which would normally be performed by the Secretary-General. Or, on the other hand, they might prevent the execution of unconstitutional action taken by the Secretary-General by means such as withholding necessary funds.

In short, therefore, if the Secretary-General were to violate the basic norms of the United Nations legal order, means would be created for determining that such violations had occurred and for invoking sanctions against him. If so, the Secretary-General must then be considered to be an organ of a legal system, subject to its prescribed norms. Thus, in this study, when an analysis is made of the "legal basis" of the Secretary-General's peace-keeping role, we will attempt to indicate the norms of law that permit him to exercise that role.

Thus far, in the experience of the United Nations, if the Secretary-General has violated the norms of the Charter, such violations have not resulted in sanctions against him. So, as a practical matter, the Secretary-General and the other organs of the United Nations have, as Kelsen notes, been "free to interpret the provisions to be applied by them according to their own discretion."¹² But even so, in practice, the Secretary-General does not act independently of injunctions in the Charter or other accepted interpretations of legal action. In the first place, he has considered himself bound by the

¹²Ibid., p. xvi.

Charter and, by and large, has acted in a manner which is at least in accordance with its spirit, if not its letter. Often the Secretary-General has made an explicit effort to justify his activities under the Charter.¹³ Thus, even though he possesses rather broad discretion in interpreting the Charter, the Secretary-General has not attempted to disregard commonly-accepted interpretations, particularly as expressed by majorities in the Security Council and General Assembly.

The effectiveness of the Secretary-General's peace-keeping role is dependent upon his acceptance by states within (and outside) the United Nations. Thus, are his attempts to mediate disputes accepted by the parties; do members confer upon him supervisory power over peace-keeping forces; do they listen to him when he brings to their attention threats to international peace, and so forth? In general, the Secretary-General may exert influence as an actor in the United Nations and general international political systems only as he is able to affect the voluntary choices of states which, in turn, are reflected in the interactions among them.

^h Normally a state will oppose external actions that it views as detrimental to its best interest.^h Thus, if the Secretary-General is engaging in activities which members believe are not in their best interests, we may expect them to oppose such roles.^x When this has

¹³ See, for example, statements by Dag Hammarskjold in these documents: General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, Document A/3302, pp. 19-23; Ibid., 11th session, annexes, agenda item 66, Document A/3512, pp. 47-50.

Similar comments by Trygve Lie are found in General Assembly Official Records, 5th session, Supplement No. 1 (A/1287), Annual Report of the Secretary-General on the Work of the Organization, 1 July 1949 -- 30 June 1950, pp. ix-xiv.

occurred,¹⁴ frequently states have attempted to justify their positions by contending that the Secretary-General's actions are not in accord with the Charter or are otherwise illegal. And they have used their influence to try to halt certain of these activities, or at least to render them ineffective.¹⁴ If a sufficient number of states are of this opinion, a common interpretation of the Charter may provide the basis for refusing to cooperate with the Secretary-General in the exercise of his peace-keeping functions or for otherwise limiting his role.

In short, if the Secretary-General considers himself bound by the Charter's principles of legal action, and if states' interpretations of legality delimit the bounds within which he may function, then these conceptions of legitimate behavior are of great significance, for they determine the role which he will play.

Standards of Legal Behavior

Although the Secretary-General and states have not always indicated the principles used in determining the "legal" role of the Secretary-General, two standards for ascertaining legality of behavior, commonly accepted in the international and most national legal systems, have frequently appeared:

- (1) whether the action is in accordance with the intent of the

¹⁴One of the more noteworthy examples occurred in 1960 when the Soviet Union was in strong opposition to the Secretary-General's policy in conducting the Congo operation. In a speech before the General Assembly Chairman Khrushchev, noting the alleged illegality of Mr. Hammarskjold's actions, proposed that the office of Secretary-General be replaced by a three-man executive, thus reducing its effective authority. (General Assembly Official Records, 15th session, 869th meeting, 23 September 1960, pp. 82-83.)

framers of the Charter;

(2) whether there is precedent for the action in past experience.

The International Court of Justice, in an advisory opinion to the General Assembly in 1950, indicated the acceptability of determining the intent of the framers in interpreting provisions of the Charter. While noting that it should first "endeavor to give effect to them [provisions] in their natural and ordinary meaning in the context in which they occur," the Court stated that when the reasonable meaning is not clear it should then "seek to ascertain what the parties really did mean when they used these words."¹⁵

Commentators also concur in employing this technique in interpreting international treaties. As Brierly states,

There are no technical rules in international law for the interpretation of treaties; its objective can only be to give effect to the intention of the parties as fully and fairly as possible.¹⁶

Assuming that determining the intent of the framers is a valid means of interpreting the Charter, how may this intent be discovered? In the first place, it may be explicitly stated: in the provisions of the Charter itself (viewing intent as corresponding literally with provisions of the Charter), and in sources other than the Charter (as evidenced, for example, in statements made at the various conferences and in constitutional drafts significant in the evolution of the Charter). In addition, the intent of the framers may also be implied. For

¹⁵ Advisory Opinion of the International Court of Justice, 3 March 1950, International Court of Justice Reports, 1950; reproduced in Louis B. Sohn, Cases on United Nations Law (Brooklyn, 1956), p. 55.

¹⁶ James L. Brierly, The Law of Nations, (6th ed., New York, 1963), p. 325.

example, it is generally conceded that persons influential in creating the organization intended that the Charter be based in large part upon past experience.¹⁷ Thus there is the implication that at least part of the experience of earlier international secretariats was intended by the framers to be included within the scope of Charter provisions relative to the Secretary-General.¹⁸

In both national and international legal systems, precedents may be looked to as evidence of the existence of norms of law. Thus, as Black observes, under the doctrine of stare decisis "when [a] court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases where [the] facts are substantially the same."¹⁹ American Jurisprudence adds: the basic principle of this doctrine is "that a court should adhere to precedents and not unsettle things which are established."²⁰

Precedents are also significant in discovering norms of international law. Kelsen notes: "In addition to custom and treaties, decisions of international agencies, especially judgments of international tribunals, are sources of international law."²¹ Furthermore, Judge

¹⁷See, for example, Leland M. Goodrich, "From League of Nations to United Nations," International Organization, volume I, 1947, pp. 3-21.

¹⁸See Schwebel, pp. 3-4; also comments by the I.L.O.'s Edward J. Phelan, *Ibid.*, pp. 210-211.

¹⁹Henry C. Black, Black's Law Dictionary, (4th ed., St. Paul, 1951), p. 1577.

²⁰American Jurisprudence (2nd ed., San Francisco, 1964), volume 20, p. 520.

²¹Hans Kelsen, Principles of International Law, (New York, 1952) p. 365.

Lauterpacht has stated that "the practice of referring to its previous decisions has become one of the most conspicuous features of the Judgments and Opinions of the [International] Court [of Justice]." ²²

It might be contended that the precedents of action of the Secretary-General are not legally valid precedents, that the original determination was not made by an organ legally charged with interpreting law. However, this criticism could not be substantiated for this reason: the body of precedents for the Secretary-General of the United Nations is based upon the experiences of Secretary-General of the League of Nations, the Director-General of the International Labor Organization, and the previous activities of the U.N. Secretary-General himself. In each case no provision was made for determining the legality of the actions of the executive organ. Thus, for the same reason that the U.N. Secretary-General alone is competent to interpret those articles of the Charter relative to his actions, these organs, likewise, are the only means of legally interpreting their roles. In short, since the interpretation which these principal administrators applied to the provisions of the basic document applicable to them was the legal interpretation, their actions form valid precedents for the U.N. Secretary-General -- as legitimate as if they were court decisions.

In addition, under international law legally binding norms may be created by mere usage when it is generally recognized by states that

²²Hersch Lauterpacht, The Development of International Law by the International Court, (London, 1958), p. 9.

a certain practice is obligatory.²³ Thus, regardless of whether actions comprising the previous experience form a valid legal precedent, if they are considered binding they acquire the force of law. If this principle of international law is applicable to state actors in the international system, it should also be applicable to other actors in this system -- including the Secretary-General. Therefore, if the Secretary-General considers himself bound to follow the precedents of the principal administrators of other international organizations or the previous experience of his own office, these precedents would constitute valid legal norms.

In subsequent chapters, in addition to identifying the peace-keeping functions of the Secretary-General, we will attempt to apply these two methods of discovering the apposite legal norms to these functions and endeavor to ascertain the extent to which they may furnish justification for his role. Though not necessarily discovering justifications which have been formally employed by the states or the Secretary-General, we are, by applying these principles to all peace-keeping activities of the Secretary-General, carrying to logical conclusion techniques of interpretation which have been used by him and the states.

Chapters two and three are devoted to a discussion of the Secretary-General's role within the two United Nations organs which perform peace-keeping functions, the Security Council and the General Assembly. The scope of these two chapters is limited to the

²³Brierly, pp. 59-62; Kelsen, Principles of International Law, p. 307.

the Secretary-General's role within the two organs per se -- to activating the Security Council system (though not the General Assembly); to performing certain functions within the organs once they have been activated: proposing subject matter for their consideration, suggesting courses of action for them to follow, and mediating disputes which arise in the course of their deliberations. The peace-keeping functions which the Secretary-General performs outside the Security Council and General Assembly, in the course of other international political interactions, are covered in chapter four in the discussion of the general international political system. Thus falling within the scope of this chapter are functions such as investigating disputes among states, mediating such disputes, and performing support functions for observation, mediation and military operations created by U.N. peace-keeping organs. Concluding remarks are included within chapter five, in which an effort is made to compare the role of the Secretary-General in the three systems.

CHAPTER II

THE PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL IN THE UNITED NATIONS PEACE-KEEPING SYSTEMS: SYSTEM ACTIVATION

Activation of the Security Council

Before the Security Council can fulfill its function as a peace-keeping system, it must be activated. That is, in order for the Council to consider disputes threatening international peace, it must be called into session. Ordinarily it is the member-states of the United Nations who request Council meetings (under the authority of Article 35 of the Charter). However, the Secretary-General at times also exercises the initiative in requesting that the President summon the Security Council into session, thereby activating the system.

In this discussion we will first consider the legal basis for the Secretary-General's performing this function in terms of the intent of the framers of the Charter and the precedent of the League of Nations and the International Labor Organization, including the evolution of relevant Charter provisions. Then we will note examples of its occurrence.

Legal Basis.

Article 99 of the Charter. Article 99 of the Charter of the United Nations states: "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. "

A prima facie analysis of this provision indicates an apparent intent by the Charter's framers that if the Security Council were not in session, a meeting would have to be called so that the Secretary-General might fulfill his role of bringing threats to the peace to its attention. For if the Council is not in session, how can he apprise it of such conditions? As mentioned, normally member-states request Council meetings, thus activating the system. However, there is no assurance that a state will necessarily do so when the Secretary-General desires to bring a threat to the peace to the attention of the Security Council. Thus, in order to ensure that the Council will always be called into session when the Secretary-General desires to perform this function, it would seem that when the framers prescribed that he fulfill this role they also necessarily intended that a meeting of the Security Council be convoked upon his request, thereby activating the Security Council peace-keeping system.

In addition to this intent, which is implied through a prima facie observation of Article 99, the evolution of this provision reveals an explicit intention that the Secretary-General be empowered to request meetings of the Council. This was true, for example, in the "Draft Constitution," the first detailed proposal for a Charter created by U. S. State Department planners. Under the provisions of this draft of July, 1943, the "General Secretary" (as the head of the Secretariat was called) was to serve as permanent chairman of the Council and of

its Executive Committee.¹ In this capacity he was to be empowered to "summon a meeting of the Council" in the event of a "breach or imminently threatened breach of the peace between nations" after "consultation with such members of the Executive Committee as may be available."² The discretionary nature of this function was underscored by the fact that one provision of the Draft Constitution stated explicitly that the General Secretary might call meetings of the Council "at his own discretion."³

The "Staff Charter," the State Department's second draft of a basic document for the postwar general international organization, also would have made the "Director General" the chairman of the Council.⁴ In this capacity he would have exercised a variety of functions, such as being able to "request the parties involved [in a dispute threatening international peace] to desist from any action which might prejudice a peaceful settlement" and to "participate in its [the Council's] deliberations."⁵ But unlike the Draft Constitution, the

¹Draft Constitution of International Organization (July 14, 1943), Article 4, paragraph 6; Article 3, paragraph 5; Postwar Foreign Policy Preparation, 1939-1945, Department of State Publication 3580, (Washington, 1950), pp. 473-474.

The Executive Committee was to consist of the United States, Great Britain, Union of Soviet Socialist Republics "and other members which may be designated by the unanimous vote of the Council."

²Ibid., Article 10, paragraph 2, p. 477.

³Ibid., Article 4, paragraph 8, p. 474.

⁴The Charter of the United Nations (as written by the Research Staff), (August 14, 1943), Article 4, paragraph 6; Postwar Foreign Policy Preparation, p. 528.

⁵Ibid., Article 8, paragraph 2; Article 4, paragraph 6; pp. 528-529.

Staff Charter would not have authorized the Director General to call meetings of the Council on his own initiative.

The next State Department draft, the outline-type "Memorandum to the President" of December, 1943, made no mention of the Secretary-General being empowered to call a meeting of the Council or having other political functions.⁶ However, the significance of the Memorandum is in the reaction of the President to it. Mr. Roosevelt stated that the powers which it accorded the Secretary-General were inadequate and suggested that, in addition to a Secretary-General to handle administrative duties, there should be a head of the entire organization who would exercise political functions.⁷

Therefore, the next draft, "The Possible Plan for a General International Organization" of April, 1944, would have created the position of President of the organization and delegated a variety of discretionary political functions to that office.⁸ For example, as chairman of the executive council, the President would have been authorized to "convene" the council "in the event that a threat to the peace or breach of the peace occurs at a time when the executive council is in recess."⁹

Sometime between April and July of 1944 this proposed office was

⁶Memorandum for the President (December 29, 1943), Postwar Foreign Policy Preparation, pp. 576-581.

⁷Ruth Russell and Jeannette E. Muther, A History of the United Nations Charter, (Washington, 1958), p. 373.

⁸Possible Plan for a General International Organization (April 29, 1944), Chapter X, Section A, paragraph 2; Postwar Foreign Policy Preparation, p. 590.

⁹*Ibid.*, Chapter VI, Section B, paragraph 2, p. 588.

dropped from subsequent U. S. State Department drafts, for no such provision was included in the "Tentative Proposals" of July, 1944.¹⁰ The authority of the chief executive or administrator to bring threats to the peace to the attention of the Council was also omitted from this plan, leaving him only administrative duties.¹¹ But, according to a source close to the State Department planners, this role was not purposefully excluded; it "had been overlooked rather than rejected."¹²

When dropping the proposed office of president, the Agenda Group [within the State Department] did not reconsider whether the Director-General should, as a result, also be made impartial chairman of the Council and authorized to bring before it any dispute that he considered a threat to the peace. At that late date other more pressing questions occupied the group, and only the method of electing the Director-General received any amount of discussion.¹³

It was these Tentative Proposals, dated July 18, which the State Department "handed in strictest confidence" to the other three major powers (Great Britain, the Soviet Union and China).¹⁴ Within four days "the British views, in the form of five memoranda on major aspects of general international organization, were received."¹⁵

At this point, a proposal was again injected into the Charter-creation process by which the Secretary-General would be empowered

¹⁰ Tentative Proposals for a General International Organization (July 18, 1944), Postwar Foreign Policy Preparation, pp. 595-606.

¹¹ Ibid., Chapter X, p. 605.

¹² Russell and Muther, p. 398.

¹³ Ibid., p. 377.

¹⁴ Postwar Foreign Policy Preparation, p. 282.

¹⁵ Ibid., p. 283.

The contents of the Soviet and Chinese memoranda, which followed during August, are not available. (Ibid., p. 284).

to request meetings of the Security Council. The British memoranda, representing the intent of that government regarding the Secretary-General, suggested that provision be made whereby the Director General might "bring to the attention of the Council, on his own initiative, any situation or dispute he thought likely to endanger peace and security."¹⁶ The drafts which followed, including that adopted at San Francisco, included statements which were essentially the same. Although this provision and those succeeding it did not explicitly state that the Director General was authorized to request meetings of the Council, such authority may be derived from it. For, as we have noted, in order for the Secretary-General to bring disputes endangering international peace to the attention of the Council, it is necessary that it be in session. And if no states request a meeting, the Secretary-General would have to do so himself if he were to be able to exercise his authority to bring such disputes to the Council's attention. Thus, by implication, this provision and those that followed would authorize the Secretary-General to request meetings of the Security Council.

It is clear that the British memorandum represented an opinion which was quite common among governmental policy-makers in Great Britain. For example, Viscount Cranborne, the official spokesman for the Government in the House of Lords, made this statement to the Lords:

¹⁶Russell and Muther, p. 398.

... I suggest that it will be necessary in the new organization, that the chief permanent official of the new organization ... shall be empowered to bring before its members, on his own initiative, any potentially dangerous development....¹⁷

In the same discussion, Lord Cecil, Britain's foremost participant in the creation of the League, stated:

I think the Secretariat of the new authority, whatever it may be, ought to have as one of its duties to represent this section (the peace-enforcement organ of the new organization) any threatening appearance in any part of the world, for them to consider it and deal with it as they think right.¹⁸

Further, a study group composed of six former officials of the League of Nations explicitly stated that they "fully endorsed" the previously-cited statements by Viscount Cranborne and Lord Cecil.¹⁹

It was this thinking in British Government circles that the head of the Secretariat of the new organization should have broader political powers, particularly the authority to bring threats to the peace to the attention of the peace-enforcement organ, that resulted in the re-introduction of this provision into the pre-Dumbarton Oaks drafts.²⁰ The State Department readily accepted this proposal (which, it will be recalled, was "overlooked" rather than rejected in the Tentative

¹⁷The Parliamentary Debates, 5th Series, Volume 127, House of Lords Report, April 15, 1943, p. 249.

¹⁸Ibid., April 14, p. 182.

¹⁹The Royal Institute of International Affairs, The International Secretariat of the Future, (London, 1944), p. 27.

It is noteworthy that the chairman of this group was none other than Sir Eric Drummond (Lord Perth), the first Secretary-General of the League of Nations, who in that position was little inclined to use political influence. (Ibid.).

²⁰Russell and Muther, p. 398.

Proposals).²¹

The first inter-governmental conference to formulate a draft charter for the new international organization was held in the fall of 1944 at the Dumbarton Oaks estate in Washington, D. C. Participating were representatives of the governments of Great Britain, the Soviet Union, the United States and China.²² As was foreseen from its previous correspondence to the U. S. State Department, the British Government, joined by China, proposed to the conference that the head of the Secretariat be accorded political powers, particularly the authority "to bring before the Security Council any matter he considered a threat to the peace."²³ The United States and the Soviet Union "had no objections" and, in the words of the British Government, it was agreed by the conferees that this authorization would provide "a very useful procedure when no member of the Organization wishes to take the initiative."²⁴

²¹ Ibid.

²² Postwar Foreign Policy Preparation, p. 301.
For diplomatic reasons the Soviet and Chinese delegations participated in separate discussions. The British, American and Soviet representatives met from August 21 to September 28. The British, American and Chinese representatives met from September 29 to October 7. (Ibid.).

²³ Russell and Muther, p. 432.
The Dumbarton Oaks Conference was technically a series of "informal discussions." Its decisions were not binding upon the participating governments. For these reasons and in order that the discussions might be as frank as possible, no minutes were taken of the meetings. Other sources of the proceedings must be relied upon. (Charles K. Webster, "The Making of the Charter of the United Nations," History, volume 32, March, 1947, pp. 25-26.)

²⁴ Great Britain, A Commentary on the Dumbarton Oaks Proposals for the Establishment of a General International Organization, p. II; quoted by Russell and Muther, p. 432.

This general accord among the four powers that the head of the Secretariat should have these political functions was also apparent in another way. As the Joint Formulation Committee, the body which actually drew up the Dumbarton Oaks Proposals,²⁵ produced drafts of the various provisions, the Conference followed the practice of placing brackets around those sections on which two delegations agreed, but on which the third did not.²⁶ A State Department account states:

The Joint Formulation Group worked at this time [the third stage of the "Soviet Phase" of the Conversations -- September 4-9, 1944] particularly on the chapters providing for a secretariat, an economic and social council, the process of amendment, and regional arrangements, all but the first remaining within brackets.²⁷

Since no brackets were placed around the section dealing with the Secretariat, it is clear that the American, British and Soviet governments were all in agreement that the Secretary-General should be authorized to bring threats to the peace to the attention of the Security Council. Since China was a sponsor of this provision, its assent in the second phase of the Conference can be assumed.²⁸

The proposal finally agreed to by the four governments at Dumbarton Oaks stated: "The Secretary-General should have the right to bring to the attention of the Security Council any matter which

²⁵Webster, p. 25.

²⁶Postwar Foreign Policy Preparation, pp. 318-319.
Only three of the four delegations met together at the same time.
(See footnote 22).

²⁷Postwar Foreign Policy Preparation, p. 320. (underlining added).

²⁸See footnote 23.

in his opinion may threaten international peace and security."²⁹

The provision adopted at San Francisco as Article 99 of the Charter is nearly identical to the corresponding paragraph proposed at Dumbarton Oaks and, on the whole, was "readily accepted" by the conference with a minimum of discussion.³⁰ However, three amendments were proposed and debated in Committee I/2 and its subcommittee on the Secretariat. The action of the conference in regard to two of these suggested amendments is significant in ascertaining the intent of the conference relative to the Secretary-General's role in bringing international disputes to the attention of the Security Council.

One proposal brought before the subcommittee suggested that it be the duty rather than the discretionary right of the Secretary-General to bring threats to the peace to the attention of the Security Council. This provision of the Charter would, therefore, have stated: "The Secretary-General should have the duty to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security,"³¹ while the original Dumbarton Oaks proposal provided that: "The Secretary-General should have the right to bring to the attention of the Security Council any matter which in his

²⁹The Dumbarton Oaks Proposals for the Establishment of a General International Organization (October 7, 1944), Chapter X, paragraph 3; Postwar Foreign Policy Preparation, p. 619.

³⁰Russell and Muther, pp. 659-660.

³¹Draft Report of Subcommittee I/2/D (The Secretariat), June 1, 1945, Document 720, I/2/D/1, Documents of the United Nations Conference on International Organization, (London, 1945), Volume VII, p. 556. (underlining added).

opinion may threaten international peace and security.³²

This proposed amendment was defeated in the subcommittee. According to its Draft Report:

It was agreed that the authority to bring to the attention of the Security Council any matter which in his [Secretary-General's] opinion might threaten international peace and security should be exercised at the discretion of the Secretary-General and should not be imposed upon him as a duty.³³

Reasons for the subcommittee's action were not stated in conference records.

The subcommittee's statement was approved without discussion by the full committee.³⁴ The report of the full committee was, in turn, accepted by Commission I³⁵ and then by the full Conference.³⁶ The defeat of this proposed amendment thus underscores the fact that the Secretary-General's authority under Article 99 to bring threats to the peace to the attention of the Security Council is a matter of his own discretion to be exercised if he so chooses -- not a duty which he is obligated to perform. Therefore, his derivative power to request

³²Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter X, paragraph 3; Postwar Foreign Policy Preparation, p. 619. (underlining added).

³³Draft Report of Subcommittee I/2/D (The Secretariat), Documents of the United Nations Conference on International Organization, p. 556.

³⁴Draft Report of Rapporteur (General) of Committee I/2 on Chapter X (The Secretariat), June 18, 1945, Document WD 380, I/2/74, Documents of the United Nations Conference on International Organization, pp. 353-354.

³⁵Verbatim Minutes of Fifth Meeting of Commission I, June 24, 1945, Document 1187, I/13, *Ibid.*, Volume 6, p. 212.

³⁶Verbatim Minutes of the Ninth Plenary Session, June 25, 1945, Document 1210, P/20, *Ibid.*, Volume 1, p. 617.

meetings of the Council is, likewise, exercisable as a right rather than a duty.

The Uruguayan delegation to the San Francisco Conference suggested another amendment to this provision of the Dumbarton Oaks Proposals, which provided that "the Secretary-General shall have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security or the inviolability of the provisions of this Statute."³⁷ This proposal would have broadened Article 99 to include all violations of the Charter -- even those which do not constitute breaches of the peace. Accordingly, the Secretary-General would have been empowered to request meetings of the Security Council when he believed that any violation of the Charter had occurred, not only those threatening international peace:

The Delegate of Uruguay contended that the Secretary-General should take into account matters which would not necessarily threaten international peace, but which would constitute violations of the principles of the Charter. He suggested that there should be some provision by which infringements or violations of the principles of the Charter by a member within its own country should be brought to the attention of the Organization.³⁸

Although this proposal was defeated, there was no objection when the Rapporteur of the committee stated that if fundamental "rights and freedoms were grievously outraged so as to create conditions which

³⁷Comments and Suggestions Relating to Chapter X, Document WD/2, I/2/25, May 19, 1945, Ibid., Volume 7, p. 508.

³⁸Unlike the other two proposals, this amendment suggested by the government of Uruguay was not brought up before the special subcommittee considering the provisions of the Dumbarton Oaks Proposals related to the Secretariat. Rather, it was presented to the full committee in connection with the Venezuelan proposal after the subcommittee had made its report. (Summary Report of the Seventeenth Meeting of Committee I/2, Document 732, I/2/50, June 1, 1945, Ibid., p. 162).

threaten peace, then they cease to be the sole concern of each State."³⁹ It would, therefore, be within the competence of the Secretary-General to bring such matters to the attention of the Security Council under Article 99. The clause of domestic jurisdiction (Article 2, paragraph 7) would not prevent him from exercising this function, for as Professor Lauterpacht states, "the matters referred to in Article 99 are not, by definition, essentially within the domestic jurisdiction of any State."⁴⁰

We may conclude from the defeat of this amendment that the Secretary-General possesses the authority under Article 99 to request meetings of the Security Council only when in his opinion there exists a threat to international peace. He thus may not request such meetings when violations of the Charter occur which do not so threaten international security.

In summary, throughout the evolution of the Charter it is evident, either through explicit statement or implication, that there was an intent among those governments influential in its drafting that the Secretary-General should possess the authority to request meetings of the Security Council.

Rules of Procedure. The Provisional Rules of Procedure of the Security Council reaffirm the authority delegated to the Secretary-General in Article 99 to activate the Security Council system. Under the authority of Article 30 to "adopt its own rules of procedure," the

³⁹Document 723, I/1/A/19, p. 10, Ibid.; quoted by Hersch Lauterpacht, International Law and Human Rights (New York, 1950), pp. 186-187.

⁴⁰Ibid., p. 187.

Security Council created this rule: "The President shall call a meeting of the Security Council if . . . the Secretary-General brings to the attention of the Security Council any matter under Article 99."⁴¹ Thus the Council confirmed the Secretary-General's right to activate its peace-keeping system under Article 99, indicating that the President is obligated to call a Council meeting if the Secretary-General invokes that provision. It is, of course, conceivable that the President might refuse to summon a meeting of the Council requested by the Secretary-General. Though there would be little recourse from such action, it would clearly be in opposition to the intent of the framers respecting Article 99 and the purposes of these rules of procedure.

Precedent. To what extent does the experience of the League of Nations provide a precedent for the Secretary-General's activating the Security Council peace-keeping system?

Article II, paragraph I of the Covenant provides:

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is seen that under this provision it was only on the request of a member-state that the Secretary-General was authorized to summon a meeting of the Council. The decision to call meetings was thus at the discretion of the states, not the Secretary-General. In fact, this article placed a duty upon the Secretary-General which obligated him

⁴¹Rule 3, Provisional Rules of Procedure of the Security Council, Document S/96/Rev. 4, p. 3.

to call a meeting of the Council upon the request of any member-state.

In addition to invoking this provision, a state could also bring a matter to the attention of the Council under paragraph 2 of Article 11 which stated:

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

It is noted that this non-emergency provision contained no statement requiring the Secretary-General to call a meeting upon the direct request of a member state as in paragraph 1. The Council's Rules of Procedure provided that it was the Acting President of the Council who considered the request. But suppose a request for a meeting of the Council were received which referred neither to paragraph 1 nor paragraph 2? "No procedure... [was] laid down to govern the action of the Secretary-General" in such circumstances.⁴² He was, therefore, able to exercise some measure of discretion as to whether to call a Council meeting. For if he considered the request as coming under the provisions of paragraph 2, it was necessary to obtain the approval of the Acting President of the Council; but if he treated it as being made under paragraph 1, no such approval was necessary. The first Secretary-General, Sir Eric Drummond, set forth the following guidelines which he used in interpreting such requests:

When no definite reference is made to the first paragraph of Article 11 and when, therefore, it is not claimed that such an emergency has arisen as would authorize the Secretary-General, under the terms of that paragraph, to

⁴²Sir Eric Drummond, quoted by T. P. Conwell-Evans, The League Council in Action, (London, 1929), p. 25.

take the initiative in summoning the Council, it is necessary for him to receive, before issuing a convocation, the authorization of the Acting President of the Council, and that the President will, in such circumstances, desire to consult his colleagues before taking a definite decision.

The above, however, does not apply when a serious emergency arises, in which case the Secretary-General has the right and duty of summoning the Council on his own authority, provided that he has received a request from any one Member of the League.⁴³

Even though, as this statement indicates, Sir Eric decided not to assume the initiative in calling a meeting when paragraph 1 was not explicitly cited, in practice the determination was his to make. However, even under paragraph two, in which Secretary-General Drummond believed that he could rightly bypass the Acting President, it was necessary that a member-state request a meeting of the Council before the Secretary-General could summon the members.

In addition to these provisions in Article 11, Article 15, paragraph 1, of the Covenant provided that the Secretary-General was to make "arrangements" for considering disputes:

If there should arise between members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

It is evident that, as above, the Secretary-General's power to make "all necessary arrangements" for the "consideration" of disputes did not include the authority to call a meeting of the Council on his own

⁴³Ibid., pp. 24-25.

initiative. For this article empowered him to make these arrangements only after being given notice of the existence of the dispute by one of the parties. Making "all necessary arrangements" for the "consideration" of disputes was, therefore, limited to calling a meeting of the Council only when requested to do so by a party to the dispute and furnishing necessary administrative support.

While the Covenant did not confer upon the Secretary-General the right to summon a Council meeting on his own initiative when international peace was threatened, it is little known that a resolution of an early League Assembly endowed the Secretary-General with this power. On October 4, 1921, the Second Assembly of the League of Nations adopted nineteen interpretive resolutions regarding Article XVI. One of these resolutions provided that

if a breach of the Covenant be committed, or if there arise a danger of such breach being committed, the Secretary-General shall at once give notice thereof to all members of the Council. Upon receipt... of such a notice by the Secretary-General, the Council will meet as soon as possible.⁴⁴

Thus the Secretary-General could request a meeting of the Council not only if there were a "breach" of the Covenant, but also even if there were merely a "danger" of a breach occurring -- in this respect a greater measure of authority than that accorded to the U. N. Secretary-General in Article 99 of the Charter.

In practice, the Secretaries-General kept "scrupulously, even over-scrupulously," within the constitutional limits of action and did not attempt to take advantage of those "marginal possibilities" for

⁴⁴ League of Nations, Official Journal, Special Supplement Number 6, pp. 24 et seq.; quoted by William E. Rappard, The Quest for Peace, (Cambridge, 1940), p. 239.

action which were open to them.⁴⁵ Thus in instances where they might have been able to assume some measure of political leadership through a loose interpretation of the Covenant, they did not do so. And further, even in cases where the organs of the League delegated the Secretary-General some political discretion, he was often unwillingly to accept this role. For example, not once did the Secretary-General invoke the provisions of the above Assembly resolution, even in the 1930's when the world was moving quickly toward what was to become the Second World War.⁴⁶

Perhaps the desire to assume the initiative in activating the League peace-keeping system was not lacking in the second Secretary-General, Joseph Avenol, as it apparently was in his predecessor, Sir Eric Drummond.

As M. Avenol states:

I favored an active role for the Secretary-General.... But there was the respected example of Sir Eric. He was, you know, very respected. I could not easily change this tradition... I tried to do more than Sir Eric, but I had no great success.⁴⁷

But even if M. Avenol desired that the Secretary-General assume more initiative, he was, as he stated himself, unable to achieve it.

The experience of persons who served as Director of the International Labor Office, likewise, provides no precedent for the Secretary-General's activating the dispute-settling process within

⁴⁵Egon F. Ranshofen-Wertheimer, The International Secretariat, (Washington, 1945), p. 38.

⁴⁶Stephen M. Schwebel, The Secretary-General of the United Nations, (Cambridge, 1952), p. 231.

⁴⁷Interview with Schwebel, August 3, 1951, *Ibid.*, p. 8.

that system. In both of the representative organs of the International Labor Organization (I. L. O.), the Conference and the Governing Body, meetings could be called only by the members.⁴⁸ However, the International Labor Office did play a role in settling disputes related to conventions:

Any of the Members shall have the right to file a complaint with the International Labor Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.⁴⁹

While it is the International Labor Office which received complaints, this same article goes ahead to indicate that it was the Governing Body which settled them. The International Labor Office was not empowered to summon a meeting of the Governing Body to consider such complaints, for this could be done only by the representatives: "A special meeting [of the Governing Body] shall be held if a written request to that effect is made by at least twelve of the representatives on the Governing Body."⁵⁰

In summary, we have found that the intent of the framers of the United Nations Charter was that the Secretary-General should be able to activate the Security Council system. In the early State Department drafts of the Charter it was explicitly stated that the Secretary-General should be empowered to "summon" or to "convene" meetings of the Security Council when international peace and security was

⁴⁸ Statute of the International Labor Organization, Articles 391 and 393.

⁴⁹ Ibid., Article 411.

⁵⁰ Ibid., Article 393.

threatened. In later drafts and in that approved at San Francisco the wording provided that the Secretary-General was authorized to "bring to the attention" of the Security Council threats to international peace. Clearly the intent was that, if the Council were not already in session, a meeting would be called in order for the Secretary-General to "bring" such matters "to the attention" of the Council. For how else could the Secretary-General perform that function? As we further noted, discussion at San Francisco indicated that the performance of this function was a discretionary right of the Secretary-General, not a duty. Committee discussion also clearly stated that this right was, however, to apply only in regard to threats to the maintenance of international peace and security.

As to precedent for this role, it was noted that the Covenant of the League of Nations made no provision for the Secretary-General calling meetings of the Council, although, however, the Assembly adopted a resolution which provided that the Council was to meet when the Secretary-General believed there existed a violation of the Covenant or the danger of such a violation occurring.⁵¹ Even though

⁵¹This resolution of the League of Nations appears to accord the Secretary-General more authority than does Article 99 of the U.N. Charter. For it applies to "a breach of the Covenant," while Article 99 applies only to those matters which "threaten the maintenance of international peace and security." At the San Francisco Conference such an amendment which would have applied to breaches of the Charter in general was rejected. Thus the League provision appears to be more inclusive than that of the Charter. However, the League resolutions are referred to as "interpretative resolutions regarding Article XVI." Since Article XVI applies only to breaches of international peace, perhaps we should, therefore, assume that the League resolutions were intended to apply only to breaches of international peace. (Rappard, pp. 238-239).

the Secretary-General possessed this latter authority, he never used it. As was seen, the Statute of the International Labor Organization made no provision for the Director of the International Labor Office to call meetings of the Governing Body. Thus neither the League nor the International Labor Organization provides a precedent for the U. N. Secretary-General to request a meeting of the Security Council and thereby activate the Council peace-keeping system.

Past Performance.

Only once has the Secretary-General activated the Security Council system under his authority in Article 99. That instance occurred on July 13, 1960, when the Secretary-General on his own initiative requested a meeting of the Security Council to deal with the Congo crisis, indicating the existence of a threat to international peace: "I must conclude...that the presence of these Belgian troops is a source of internal, and potentially also of international, tension."⁵²

In the case of the Korean question Secretary-General Lie stated in an address to the General Assembly that in calling the meeting of the Security Council on June 25, 1950, "for the first time I invoked Article 99 of the Charter."⁵³ Even though in that case Mr. Lie may have claimed to have exercised the authority granted him in Article 99, it is clear that it was the United States, not he, who first requested a meeting of the Security Council, thereby activating the Security Council system. For it was about midnight on the night of June 25,

⁵²Security Council Official Records, 15th year, 873rd meeting, 13/14 July 1960, p. 1.

⁵³General Assembly Official Records, 5th session, 289th meeting, 28 September 1950, p. 176.

1950, when the Secretary-General learned of the invasion of North Korean troops into the South. He immediately cabled the United Nations Commission in Korea for a report of the situation.⁵⁴ It is true that the commission recommended that the Secretary-General consider invoking Article 99.⁵⁵ But before this report ever reached Mr. Lie, United States Ambassador Ernest Gross telephoned him at 3:00 A.M. that night requesting an emergency meeting of the Security Council.⁵⁶ Thus contrary to a frequently-stated belief, in this instance the Secretary-General did not activate the peace-keeping machinery of the Security Council.

The Laotian case of 1959 provides an example of the reverse of the above situation. In this instance Secretary-General Hammarskjold requested the President of the Security Council to call a meeting to consider his report on a request by the government of Laos that a United Nations force be sent to that country. However, when the Council met, he specifically stated that he had not acted under "the explicit rights granted to the Secretary-General under Article 99 of the Charter."⁵⁷ The Secretary-General explained that to have invoked Article 99 would have involved a judgment of facts, and that he lacked

⁵⁴Security Council Official Records, 5th year, 873rd meeting, 25 June 1950, p. 3.

⁵⁵Cablegram Dated 25 June 1950 from the United Nations Commission on Korea to the Secretary-General Concerning Aggression upon the Republic of Korea, Document S/1496; cited by Schwebel, p. 90.

⁵⁶*Ibid.*, p. 104. Technically, of course, it is necessary that a member-state's request for a meeting of the Security Council be directed to the Council president.

⁵⁷Security Council Official Records, 14th year, 847th meeting, 7 September 1959, paragraph 12.

the basis for making such a determination.⁵⁸ However, regardless whether he acted under Article 99, it was a result of Mr. Hammarskjold's initial request that the Security Council machinery was activated.

While the Secretary-General has not often actually activated the Security Council system on his own initiative, he has on occasion used his right to do so as a type of pressure device to induce governments to summon the Council to consider a question he deemed important. As a high-ranking Secretariat official has stated: "A number of times the Secretary-General made it known that he was planning to employ his powers under Article 99," resulting in the governments themselves taking the initiative.⁵⁹ It is, of course, difficult to determine to what extent governments have acted as a result of their knowledge of the Secretary-General's willingness to invoke Article 99. But the extent to which it has occurred reveals the added influence which his authority to activate the system can have when used by a politically adept Secretary-General.

Inability to Activate the General Assembly

When the Security Council has failed to perform its peace-keeping function, the General Assembly, under the procedure established in the Uniting for Peace resolution, has frequently fulfilled

⁵⁸Ibid.

⁵⁹Schwebel, p. 88.

this role.⁶⁰ Thus, in this way, the Assembly has itself developed into a peace-keeping system.

However, the authority of the Secretary-General to activate the Security Council peace-keeping apparatus does not also extend to activating the General Assembly's peace-keeping system. There is no legal basis for such a function either in terms of intent of the framers of the Charter or precedent of the League of Nations or the International Labor Organization.

In only one of the State Department drafts of the Charter was an individual official of the organization empowered to summon meetings of the General Assembly. The first, the "Draft Constitution," would have given the President of the "General Conference" (as the General Assembly was to have been called) the power to call meetings of the General Conference "acting at his own discretion." However, this authority would not have been extended to the head of the Secretariat, the "General Secretary."⁶¹

In none of the four following State Department drafts was there any provision for an individual official of the organization exercising this function. It will be recalled that even the last such draft before the Dumbarton Oaks conference, the "Tentative Proposals" of July, 1944, also made no provision for the principal executive of the Secretariat bringing threats to the peace to the attention of the

⁶⁰ General Assembly Official Records, 5th session, Resolutions, 19 September -- 15 December 1950, pp. 10-12, Resolution 377(V); adopted November 3, 1950.

⁶¹ Draft Constitution of International Organization, Article 5, paragraph 8; Article 7; Postwar Foreign Policy Preparation, pp. 475-477.

Council.⁶² In commenting on this draft, however, the British government suggested that he be accorded this role in regard to the Council. The U.S. State Department readily accepted the proposal. In fact, it went even further, suggesting that the head of the Secretariat be empowered to bring threats to the peace to the attention of the Assembly as well.⁶³ But at the four-power Dumbarton Oaks conference, while the head of the Secretariat was authorized to bring threats to the peace to the attention of the Council, he was granted no similar power in regard to the Assembly.⁶⁴

At San Francisco an attempt was made to amend the proposed Charter to accord the Secretary-General the right to bring threats to the peace to the attention of the General Assembly. In sponsoring this amendment, the representative of the Venezuelan government argued:

It has already been noted in this report that a better balance must be sought between the powers entrusted to the Council and the very few that are left to the Assembly, and we have combatted the possibility that this may result in a practically dead organization, without further power than that of enunciating general principles and recommendations without any real value. Accordingly, we would see with pleasure, provided that the powers of the Assembly were amplified, that the right of the Secretary General to conduct any matter which in his opinion threatened international peace and security, might be exercised before the Council or before the Assembly.⁶⁵

⁶² See footnote 11.

⁶³ Russell and Muther, p. 398.

⁶⁴ Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter X, paragraph 3; Postwar Foreign Policy Preparation, p. 619.

⁶⁵ Comments and Suggestions Relating to Chapter X, Document WD/2, I/2/25, May 19, 1945, Documents of the United Nations Conference on International Organization, Volume 7, p. 509.

The amendment was defeated in the committee by a vote of 18 to 11.⁶⁶ And the conference unanimously upheld the committee report in which this proposal had been eliminated.⁶⁷ Thus, although overriding a rather sizable minority in the subcommittee, it was the apparent intention of the majority of conferees to limit the Secretary-General's authority solely to bringing threats to the peace to the attention of the Security Council -- according him no such right in regard to the General Assembly.

In addition, there is no provision in the Rules of Procedure of the General Assembly which delegates to the Secretary-General the right to request a meeting of the Assembly (though, as we will note later, a rule does allow him to place items on the Assembly's provisional agenda once it has been called into session).

Neither is there a precedent in the experience of the League of Nations for the Secretary-General's requesting meetings of the Assembly on his own initiative. While regular sessions of the Assembly were convened by prior agreement,⁶⁸ special meetings could be called under this provision in the Rules of Procedure of the Assembly:

If a Member of the League considers a session to be desirable, it may request the Secretary-General to summon a special session of the Assembly. The Secretary-General shall thereupon inform the other Members of the

⁶⁶ Summary Report of Eighteenth Meeting of Committee I/2, Document 762, I/2/53, June 2, 1945, *Ibid.*, Volume 7, p. 169.

⁶⁷ Verbatim Minutes of the Ninth Plenary Session, June 25, 1945, Documents of the United Nations Conference on International Organization, p. 617.

⁶⁸ Covenant of the League of Nations, Article 3, paragraph 2.

League of the request, and inquire whether they concur in it. If within a period of one month from the date of the communication of the Secretary-General, a majority of the Members concur in the request, a special session of the Assembly shall be summoned.⁶⁹

Just as the Covenant made it necessary for a member-state to request a special meeting of the Council, the Assembly Rules of Procedure in like manner required that a member-state request that the Secretary-General summon a special session of the Assembly. This provision in the rules did not, therefore, accord the Secretary-General the right to call a meeting of the Assembly on his own initiative.

In regard to the International Labor Organization's General Conference, the body in that organization which most nearly corresponds with the U.N.'s General Assembly, the I.L.O. Statute states: "The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year."⁷⁰ The Director of the International Labor Office is, however, not empowered under the Statute to determine when "occasion requires" a meeting of the Conference.

⁶⁹ Rules of Procedure of the Assembly, Rule 3, paragraph 3; quoted by Ranshofen-Wertheimer, p. 450.

⁷⁰ Statute of the International Labor Organization, Article 389.

CHAPTER III

THE PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL IN THE UNITED NATIONS PEACE-KEEPING SYSTEMS: PERFORMANCE OF FUNCTIONS FOLLOWING ACTIVATION

X Not only may the Secretary-General activate the Security Council system, but he also performs functions within the Security Council and General Assembly peace-keeping systems once they have been activated.

General Legal Basis

In addition to Article 99, discussed above, there are two other provisions which provide the basis in the Charter for most of the Secretary-General's functions within these activated systems: the "delegation" and "capacity" clauses of Article 98.

X "Delegation" Clause of Article 98.

Article 98 in part states: "The Secretary-General shall... perform such other functions as are entrusted to him by these organs [the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council]."¹ In ascertaining the intent of the framers in regard to this provision we will analyze

¹Charter of the United Nations, Article 98.

relevant statements in documents which were forerunners of the Charter.

It is evident that the source of this clause in Article 98 lies in the Statute of the International Labor Organization. For in the Statute explicit provision was made whereby the Director of the International Labor Office might be delegated functions by both the Conference, which included representatives from all member-states, and the smaller Governing Body:

There shall be a Director-General of the International Labor Office, who shall be appointed by the Governing Body, and subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labor Office and for such other duties as may be assigned to him.²

Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.³

It is noted that the term "such other duties" in no way limits the functions which the Conference or the Governing Body might delegate to the Director. They could thus presumably include those of both an administrative and political nature. In practice, discretionary-type functions were frequently delegated to the Director of the Labor Office. So judging from the close similarity of these provisions with Article 98 of the Charter, it would seem that the framers of the Charter likely adopted this specific section of the I. L. O. Statute. Presumably, therefore, they intended that the organs be empowered to delegate to the Secretary-General whatever functions they might choose, including

²Statute of the International Labor Organization, Article 394. (underlining added).

³Ibid., Article 396. (underlining added).

those of a political nature as in the I. L. O.

An analysis of the drafts formulated by the State Department also reveals an intent of U.S. policy-makers that the Secretary-General be authorized to perform functions of a discretionary nature assigned to him by the organs. A general outline of the proposed organization, the "Memorandum to the President" of December, 1943, included this statement: "All administrative and budgetary arrangements should require approval of the General Assembly, except such arrangements as the General Assembly may empower agencies of the organization to make on their initiative."⁴ While it was probably intended that the Secretariat be one of the "agencies" which the General Assembly might empower to make such arrangements, it is clear that the Memorandum provides only for the delegation of administrative duties.

This purely administrative role was, however, unacceptable to President Roosevelt. When the Memorandum was presented to him, the President directed State Department planners to incorporate into the draft a position of "head of the entire organization" which possessed discretionary political powers.⁵ As a result, in the next State Department proposal, the "Possible Plan for a General International Organization" of April, 1944, the political office of President of the organization was created, while administration was assigned to a

⁴Memorandum for the President (December 29, 1943), section IV, paragraph 8; Postwar Foreign Policy Preparation, p. 580.

⁵Russell and Muther, p. 373.

Director-General.⁶ This draft explicitly stated that the organs were to be empowered to delegate political functions to the President: "He [the President] should perform other duties of a general political character as entrusted to him by the general assembly or by the executive council."⁷

Provisions for the organs delegating functions to the head of the Secretariat (or some other official such as the "President," discussed above) were not included in the "Tentative Proposals" or the draft resulting from the Dumbarton Oaks discussions.

At the San Francisco Conference, however, an amendment was introduced which provided that the organs could delegate functions to the Secretary-General. In Committee I/2 "The Delegate of Greece suggested that it would be appropriate to add a more general clause to the effect that the Secretariat should have all such other functions as the Organization might decide."⁸

Although not as extensive as that accorded to the President in the Possible Plan, Article 99 of the Charter specifically delegated political authority to the Secretary-General. The power of the organs to assign functions to this agency endowed with political as well as administrative authority perhaps indicates that it was intended that political as well as administrative functions be assigned to the

⁶Possible Plan for a General International Organization (April 29, 1944), Chapter X; Postwar Foreign Policy Preparation, pp. 590-591.

⁷Ibid., Chapter X, section A, paragraph 2, p. 590.

⁸Summary Report of the Fifteenth Meeting of Committee I/2, May 28, 1945, Document 648, I/2/46, Documents of the United Nations Conference on International Organization, Volume 7, p. 144. (underlining added).

Secretariat.

In addition, the wording of this suggested provision, as that of similar provisions in the I. L. O. Statute and the State Department drafts, was sufficiently broad to include both political and administrative functions. In fact, the Greek delegate proposed that the Secretariat "should have all such other functions as the Organization might decide."⁹ Certainly this term is all-inclusive. If the Secretariat is to have all functions so assigned to it, this would encompass not only administrative functions but those of a political nature as well.

There is no record of the discussion in the subcommittee which considered the Greek proposal. But in its report, it recommended that paragraph two of Chapter X of the Dumbarton Oaks proposals be revised to include a provision nearly identical to that suggested by the Greek delegate: that the Secretary-General "shall perform such other functions as are or may be entrusted to him by the Organization."¹⁰ Though the adjective "all" in reference to functions assignable to the Secretary-General was omitted, it appears to have been done only to prevent redundancy. For there is nothing in the record of the proceedings to indicate an intention to restrict the types of functions which could be delegated to him. And there is no language in this provision which would impose any such limitation, for indeed the term "such other functions" is of itself all-inclusive.

⁹Ibid. (underlining added).

¹⁰Draft Report of Subcommittee I/2/D (The Secretariat), June 1, 1945, Document 720, I/2/D/1, Documents of the United Nations Conference on International Organization, Volume 7, p. 556.

When Committee I/2 met in plenary session, it unanimously accepted the subcommittee proposal without discussion and included it in its recommendation to Commission I.¹¹ The provision finally adopted by the full San Francisco Conference as part of Article 98 of the Charter states that the Secretary-General "shall perform such other functions as are entrusted to him by these organs" (the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council).¹²

In short, we may conclude that this provision whereby the organs may delegate functions to the Secretary-General includes those of a political as well as administrative nature for these reasons: This clause in Article 98 is apparently based upon the virtually identical provision in the International Labor Organization Statute which was used as a basis for the organs' assigning political functions to the Director of the International Labor Office. It is probable, therefore, that those influential in drafting the Charter intended to follow the I.L.O. precedent, thereby empowering the Secretary-General to perform political functions delegated to him by the organs. In addition, a State Department draft of the Charter explicitly provided that U.N. organs should be able to delegate functions of a "general political character" to an official who possessed inherent political powers. Further, as indicated above, the amendment to allow organs to delegate functions to the Secretary-General first proposed at

¹¹Draft Report of Rapporteur (General) of Committee I/2 on Chapter X (The Secretariat), June 18, 1945, Document WD 380, I/2/74, *Ibid.*, p. 353.

¹²Charter of the United Nations, Article 98.

San Francisco stated that he should perform "all such other functions" assigned to him by the organs. Though the final draft omitted "all," it appears that this was done only to prevent redundancy. For the wording of the provision is still sufficiently broad to include all types of functions -- both political and administrative.

"That Capacity" Clause of Article 98.

According to the Charter of the United Nations, the Secretary-General or his designated subordinate is to be present at the meetings of the various organs of the Organization. Article 98 seeks to define in what role the Secretary-General shall act in these meetings: "The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council..."¹³

But to what does "that capacity" refer? Article 97, which immediately precedes this phrase, states:

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.¹⁴

An initial observation would seem to indicate that "that capacity" in which Article 98 authorizes the Secretary-General to act refers to this administrative function mentioned in Article 97. This seems plausible, since the statement that he is the Organization's principal administrative officer immediately precedes the phrase in Article 98

¹³ Ibid.

¹⁴ Ibid., Article 97.

which states that the Secretary-General "shall act in that capacity in all meetings" of the organs.

But is this the meaning which was intended by those governments participating in the creation of the Charter?

X For at least three reasons it is evident that the framers of the Charter intended that the phrase "that capacity" refer not to an administrative role mentioned in the preceding paragraph, but to the general functions associated with the office of Secretary-General -- political as well as administrative. In the first place, there is great probability that this phrase is derived from a similar provision in the Covenant of the League of Nations in which "that capacity" refers not to functions mentioned in previous sentences, but to the general functions of the office. Second, in the earliest drafts of the Charter in which this phrase was included (those by the U.S. State Department) the reference is also to the duties of the office, generally. Third, the reports of the subcommittee and committee at San Francisco which considered this phrase specifically state that it is intended to include "all functions" of the office of Secretary-General.

It is evident that the phrase in the Charter related to the capacity in which the Secretary-General is to act in meetings of the organs appears to have been drawn from the League Covenant. Note the close similarity between the two provisions:

Article 6, paragraph 4, of the Covenant of the League of Nations:
 "The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council."¹⁵

¹⁵ Covenant of the League of Nations, Article 6, paragraph 4.

Article 98 of the Charter of the United Nations: "The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council...."¹⁶

If this phrase in Article 98 of the Charter is based upon Article 6 of the Covenant, it is probable that the meaning of "that capacity" in the Covenant will be the meaning intended by the framers of the Charter in Article 98. Therefore, to what does "that capacity" in the Covenant refer?

In Article 6, the section of the Covenant which deals primarily with the Secretary-General and the Secretariat, no mention is made of any functions of the Secretary-General (with, of course, the exception of paragraph 4):

1. 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.
2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.
3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.
4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.
5. The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.¹⁷

It is evident that "that capacity" in which paragraph 4 authorizes the Secretary-General to act at meetings of the organs does not refer

¹⁶Charter of the United Nations, Article 98.

¹⁷Covenant of the League of Nations, Article 6.

to functions in those preceding paragraphs related to the Secretariat. For no functions at all are set forth in them. Only the composition and seat of the Secretariat, election of the Secretary-General and appointment of the Secretariat are discussed. If "that capacity" does not refer to duties mentioned in preceding sentences (as it obviously does not), the only remaining antecedent which it could modify is "Secretary-General" in that same sentence.∞ Thus "that capacity" would necessarily have to refer to the Secretary-General's position, generally.∞ When paragraph 4 states that "the Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council," it must mean that he shall act in the capacity of Secretary-General at the meetings of the Assembly and of the Council, thereby exercising the full authority of his office.∞

This phrase authorizing the Secretary-General to "act in that capacity" at meetings of the organs also appeared in the earliest draft of the Charter, the U.S. State Department's "Draft Constitution:"

The General Secretary, or officials designated by him, shall act in that capacity at all meetings of the General Conference, or the Council, and of the various organizations or committees falling within the framework of the International Organization.¹⁸

It is evident that State Department planners intended that "that capacity" in this draft of the Charter, as in the League Covenant, refer not to functions in the preceding sentences of the article dealing with the Secretariat. For, other than the "capacity" clause, no functions of the General Secretary were mentioned in this section:

¹⁸ Draft Constitution of International Organization (July 14, 1943), Article 7, paragraph 4; Postwar Foreign Policy Preparation, p. 477.

1. A permanent Secretariat shall be established at the seat of the International Organization. It shall comprise a General Secretary and such secretaries and staff as may be required.
2. The General Secretary shall be appointed by the Council with the approval of a majority of the General Conference. His tenure of office shall be indefinite, subject to removal for cause by a two-thirds majority of the General Conference. The secretaries and staff shall be appointed by the General Secretary with the approval of the Council. In making appointments the widest distribution among nationalities shall be made that is compatible with technical efficiency.
3. The officials of the permanent Secretariat shall be exclusively international officials, having international and not national duties. They shall on appointment make a declaration of loyalty to the International Organization agreeing to discharge their duties and regulate their conduct with the interests of the International Organization alone in view and not to seek or receive instructions from any Government or other external authority.
4. The General Secretary, or officials designated by him, shall act in that capacity at all meetings of the General Conference, of the Council, and of the various organizations or committees falling within the framework of the International Organization.¹⁹

Thus, this, the primary article which dealt with the Secretariat, provided only for establishment and composition of the Secretariat, appointment of the General Secretary and his subordinates, maintenance of the exclusive international character of the Secretariat. No mention was made of duties of the General Secretary which might be the "capacity" in which he was to act.

Therefore, as in the League Covenant, when the framers of the Draft Constitution specified the role of the General Secretary in meetings of the organs, they must have intended that "that capacity" refer to the words "General Secretary" and the functions generally

¹⁹Ibid., Article 7, pp. 476-477.

associated with the office; for there were no specific functions set forth in the preceding paragraphs to which "that capacity" could refer. This is quite significant since the duties assigned to the office of General Secretary in the Draft Constitution included discretionary political powers. For example, "in the event of a breach, or imminently threatened breach, of the peace between nations, " the General Secretary was authorized to "request the parties to desist from any action which would further aggravate the situation" and could call a meeting of the Council "at his own discretion."²⁰ It is apparent, therefore, that State Department planners intended that this role of the General Secretary include discretionary powers, not merely administrative functions.

The provision that the Secretary-General shall act in "that capacity" at all meetings of the organs does not appear again in the State Department drafts. It does, however, reappear in the Dumbarton Oaks proposals formulated by the four-power conference in August through September, 1944:

The Secretary-General should act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council and should make an annual report to the General Assembly on the work of the Organization.²¹

The paragraph immediately preceding states:

There should be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General should be the chief administrative officer of the

²⁰ Ibid., Article 10, paragraph 2; Article 4, paragraph 8, pp. 478, 474.

²¹ Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter X, paragraph 2; Postwar Foreign Policy Preparation, p. 619.

Organization. He should be elected by the General Assembly, on the recommendation of the Security Council, for such term and under such conditions as are specified in the Charter.²²

These provisions are nearly identical to those in the Charter adopted at San Francisco.²³

Not only is it evident from the League Covenant and early drafts of the Charter that the framers intended that "that capacity" refer to the general functions of the office of Secretary-General, but in addition it was explicitly stated by the conferees at the San Francisco conference that this phrase refers to "all functions" of that office. The report of Committee I/2 indicated that there was "general agreement that the language of paragraph 2 [of the Dumbarton Oaks proposals] should be kept sufficiently broad to cover all functions of the Secretariat, and that no attempt should be made to enumerate therein specific functions which are provided in other chapters of the Charter."²⁴ This section of the report was adopted by the Conference without discussion and, therefore, apparently represented the unanimous opinion of the Conference.²⁵

²²Ibid., Chapter X, paragraph 1, p. 618.

²³Separate consideration of the Dumbarton Oaks Proposals is unnecessary, since the discussion related to the provisions in the San Francisco Charter would be applicable to the pertinent section of that draft. Further, discussions at Dumbarton Oaks shed little light on the evolutionary process, since no records were kept at this "informal" conference. (Webster, p. 22).

²⁴Draft Report of Rapporteur (General) of Committee I/2 on Chapter X (The Secretariat), June 18, 1945, Document WD/380, I/2/74, Documents of the United Nations Conference on International Organization, Volume 7, p. 352.

²⁵Verbatim Minutes of the 9th Plenary Session, June 25, 1945, Document 1210, P/20, Ibid., Volume 1, p. 620.

Paragraph 2 of the Dumbarton Oaks Proposals referred to in this report included the phrase: "The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council...."²⁶ Since the above report stated that the conferees intended to keep paragraph 2 "sufficiently broad to cover all functions of the Secretariat," this would indicate that they intended to keep "that capacity" in which the Secretary-General would act in meetings "sufficiently broad to cover all functions" of the Secretary-General. The San Francisco conferees thus provided that the Secretary-General be authorized to act with the total powers of his office which would include both political and administrative functions. He was empowered to function not only as administrative officer in meetings of the organs, but was also given the authority to exercise discretionary political functions as well.

This section of the report adopted by the full Conference originated in Subcommittee I/2/D which was established by Committee I/2 to consider the articles dealing with the Secretariat. In recommending that the Secretary-General be authorized to "act in that capacity in all meetings" of the organs, the Subcommittee reported to Committee I/2 that

The Subcommittee was in general agreement that the language of paragraph 2 should be kept sufficiently broad to cover all functions of the Secretariat, political as well as administrative, and that no attempt should be made to enumerate therein specific functions which are provided in other chapters of the

²⁶ Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter X, paragraph 2; Postwar Foreign Policy Preparation, p. 619.

Charter.²⁷

This reference to "political as well as administrative" functions in the Draft Report of the Subcommittee caused some discussion when it was considered by the full committee:

The Delegate of the Netherlands pointed out that in the explanatory statement on paragraph 2, contained in the draft report, reference was made to political as well as to administrative functions of the Secretariat. He declared that the Secretariat would have only administrative functions and would not have any political functions. He suggested, therefore, that the first sentence of the second paragraph of section 1 on page 2 of the draft report should read as follows: "The Subcommittee was in general agreement that the language of paragraph 2 should be kept sufficiently broad to cover all functions of the Secretariat, and that no attempt should be made..." The Delegate of the Netherlands was supported by several other delegates.²⁸

Thus the delegate of the Netherlands wanted to delete reference to political functions when the Secretary-General acts in "that capacity" in meetings of the organs, for the reason "that the Secretariat would have only administrative functions and would not have any political functions."²⁹ But this statement was clearly erroneous, for the Secretary-General does possess political as well as administrative functions. The authority of the Secretary-General under Article 99 to "bring matters which in his opinion may threaten the peace to the attention of the Security Council" is obviously a discretionary power of political significance. As Trygve Lie, former

²⁷Draft Report of Subcommittee I/2/D (The Secretariat), June 1, 1945, Document 720, I/2/D/1, Documents of the United Nations Conference on International Organization, Volume 7, p. 555. (underlining added).

²⁸Summary Report of Seventeenth Meeting of Committee I/2, June 1, 1945, Document 732, I/2/50, *Ibid.*, pp. 161-162.

²⁹*Ibid.*, p. 161.

Secretary-General of the United Nations has stated, Article 99 "confers upon the Secretary-General of the United Nations world political responsibilities which no individual, no representative of a single nation, ever had before."³⁰ According to Stephen Schwebel of the State Department, "Article 99 is ... the prime and unmistakable affirmation of the political character of the Secretary-General."³¹

Though it is not known for certain, there is some reason to believe that the delegate of the Netherlands might not have opposed granting the Secretary-General a political role in meetings of the organs had he been aware of the political significance of certain other of his functions. In fact, as noted above, after he stated that the Secretary-General does not possess any political functions, the Netherlands delegate went on to suggest that the Draft Report be accepted to read: "The Subcommittee was in general agreement that the language of paragraph 2 should be kept sufficiently broad to cover all functions of the Secretariat"³² It is quite conceivable, therefore, that he favored the Secretary-General's exercising all functions of his office in the meetings of the organs, and that the reason he suggested deleting reference to those of a political nature was merely his belief that the Secretary-General possessed none. Now that it has been determined that the Secretary-General does possess political functions, he might likely favor their inclusion within the scope of "that

³⁰Trygve Lie, In the Cause of Peace, (New York, 1954), p. 39.

³¹Schwebel, p. 24.

³²Summary Report of Seventeenth Meeting of Committee I/2, June 1, 1945, Document 732, I/2/50, Documents of the United Nations Conference on International Organization, Volume 7, pp. 161-162. (underlining added).

capacity," since he wanted the Secretary-General to exercise "all functions" of his office in meetings of the organs.

Committee I/2 accepted the wording of the report suggested by the Netherlands delegate which included "all functions:"

"The Committee likewise accepted the Subcommittee's recommendation that the language of paragraph 2 should be kept sufficiently broad to cover all of the functions of the Secretariat, and that no attempt should be made to enumerate therein specific functions which are provided in other chapters of the Charter.³³

And as stated above, the Committee's report was accepted by the full Conference at San Francisco.³⁴

In summary, it is evident from the Covenant of the League of Nations, the earliest State Department drafts of the Charter and from the explicit statement of the conferees at San Francisco that it was intended that "that capacity" in which the Secretary-General was to act in meetings of the organs includes not only his administrative role, but "all functions" of his office -- thus including those of a political nature. /

Functions Performed Within Activated Systems

λ There are three types of functions which the Secretary-General performs within the activated U.N. peace-keeping systems: ^① proposing subject matter to be considered by the Security Council and General Assembly, ^② suggesting courses of action for these organs to follow in

³³ Report of Rapporteur (General) of Committee I/2 on Chapter X (The Secretariat), June 18, Document 1071, I/2/74(1), Ibid., p. 369.

³⁴ Verbatim Minutes of the 9th Plenary Session, June 25, 1945, Document 1210, P/20, Ibid., Volume 1, p. 620.

considering subjects before them, and mediating with delegations on disputes relative to matters under consideration by the Security Council and General Assembly.

✕ Proposes Subject Matter for System Action.

One of the functions which the Secretary-General performs within the systems once they have been activated is the proposal of subject-matter areas within which they act. That is, the Secretary-General helps determine the topics that are considered by the Security Council and General Assembly in the performance of their peace-keeping roles. (This function is to be distinguished from that in which the Secretary-General suggests the action which the organs should take in regard to these topics, which will be considered later.)

The persons who have occupied the office of Secretary-General have employed three types of techniques in suggesting subject-matter areas for Security Council and General Assembly consideration:

- ✕ placing subjects on the provisional agendas of the two organs; suggest-
- ✕ ing proposals in his annual report to the General Assembly, and;
- making proposals to delegations and governments informally in
- ✕ behind-the-scenes activity, which are then introduced by the delegations.

✕ Provisional Agenda. The method which the Secretary-General uses probably most frequently in proposing subject-matter areas for system action is placing subjects on the provisional agendas of the Security Council and General Assembly.

It will be recalled that Article 99 of the Charter empowered the Secretary-General to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of

international peace and security."³⁵ As was discussed earlier, the intent of those drafting this provision is obvious: the Secretary-General at his discretion may bring these matters to the attention of the Security Council. In actuality the Council may, however, consider only those items which appear on its agenda. So if he is to bring an item to the Council's attention which is not already under consideration, it must be placed on the agenda. Thus, in practice, one effect of this provision is to empower the Secretary-General to place items of this nature on the provisional agenda on his own initiative. (However, as will be noted below, since the Council's Provisional Rules of Procedure require that the President approve the provisional agenda, this right of the Secretary-General may be frustrated.)

As discussed above, Article 98 authorized the Secretary-General to perform such functions as the organs might delegate to him. Under the authority in the Charter accorded to the Security Council and General Assembly to establish rules of procedure,³⁶ the Secretary-General was delegated the responsibility of drafting the provisional agendas for both organs. These provisions thus provide another basis under the Charter for the Secretary-General's placing subjects on the provisional agendas of the Security Council and General Assembly.

Rule 7 of the Security Council's Provisional Rules of Procedure states: "The Provisional Agenda for each meeting of the Security Council shall be drawn up by the Secretary-General and approved by

³⁵ Charter of the United Nations, Article 99.

³⁶ Ibid., Articles 30 and 21.

the President of the Security Council."³⁷

Rule 12 of the General Assembly's Rules of Procedure provides that:

The provisional agenda for a regular session shall be drawn up by the Secretary-General and communicated to the Members of the United Nations at least sixty days before the opening of the session.³⁸

Both rules authorize the Secretary-General to exercise the initiative in placing items on the provisional agendas of the two organs, and they place no restriction on the types of subjects he may propose. These rules, therefore, delegate to the Secretary-General a broader scope of authority in placing items on the provisional agenda than does Article 99. For Article 99 would limit his right to propose items for the agenda to those subjects which constitute threats to the peace.³⁹ This authorization by the Security Council is in direct conflict with the expressed intent of the framers. For, as we noted above, an amendment was proposed at the San Francisco conference which would have broadened the Secretary-General's authority under Article 99 to include bringing to the attention of the Council any violation of the Charter. This proposal was defeated, indicating that it was intended that the Secretary-General bring only threats to international security to the attention of the Security Council.

³⁷Rule 7, Provisional Rules of Procedure of the Security Council, p. 4.

³⁸Rule 12, Rules of Procedure of the General Assembly, Document A/520/Rev. 7, p. 3.

³⁹It will be recalled that Article 99 empowers the Secretary-General only to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

In addition, the power which the General Assembly has delegated to the Secretary-General to propose items for inclusion on its provisional agenda appears to be in direct opposition to the expressed intent of the framers of the Charter. As mentioned above, Rule 12 of the General Assembly's Rules of Procedure places no restriction whatever on the Secretary-General's authority to propose items for inclusion on the provisional agenda. Thus the Secretary-General may, quite easily, bring threats to the peace to the attention of the Assembly. However, as we have seen earlier, a proposed amendment to the Charter which would have accorded the Secretary-General this right was defeated at the San Francisco conference. Thus, as above, the express intent of the framers in regard to a specific function comes into conflict with a role derived from the intended authority of the organs to delegate functions to the Secretary-General.

Moreover, it is noticed that according to Rule 7 the provisional agenda of the Security Council must be approved by the President of the Council, while no such provision is made in regard to the General Assembly's provisional agenda.⁴⁰ Thus even though in its Provisional Rules of Procedure the Security Council has given the Secretary-General the right to take the initiative in placing any subject whatever on its provisional agenda, unlike the General Assembly it has failed to

⁴⁰The importance of the necessity for approval by the President of the Security Council should not be underestimated. As Leland Goodrich notes: "... in the last analysis the President of the Council decides what the provisional agenda of any meeting [of the Council] shall contain." This was particularly apparent in August of 1950 when the representative of the Soviet Union, as Council President, drafted the provisional agenda as he chose, laying aside the wishes of the Secretary-General. (Leland M. Goodrich and Anne P. Simons, The United Nations and the Maintenance of International Peace and Security, (Washington, 1955), p. 99.

grant him final authority in determining what items will remain on it. This would seem to be contrary to Article 99 which, as discussed, by implication permits the Secretary-General to place any matter on the provisional agenda of the Security Council which constitutes a threat to the peace. Thus in this instance the intent of the framers that the organs should formulate their own rules of procedure conflicts with their express intent that the Secretary-General have unrestricted access to the Security Council to bring threats to the peace to its attention. In short, we, therefore, have the rather curious result in which the rules of procedure of the two organs, have accorded the Secretary-General freer access to the provisional agenda of the General Assembly than that of the Security Council -- the organization's principal peace-keeping organ.

To what extent does the experience of the League of Nations form a precedent for the U. N. Secretary-General's role in proposing, on his own initiative, items for the provisional agendas of the Security Council and General Assembly?

Though, as we note below, only member-states of the League could activate the Assembly and Council peace-keeping systems, the Rules of Procedure of both organs empowered the Secretary-General to formulate their agendas.⁴¹ Thus once the systems were activated, under the authority of these two rules the Secretary-General could exert the initiative in proposing subject matter for consideration by the

⁴¹ Rules of Procedure of the Council, Article III, paragraph 1; quoted by Egon F. Ranshofen-Wertheimer, The International Secretariat, (Washington, 1945), p. 449. Also Rules of Procedure of the Assembly, Rule 4, paragraph 1, *Ibid.*, p. 450.

Assembly and Council, with no restrictions placed on the types of subjects which he might propose. This authority is similar to that granted to the U.N. Secretary-General. However, the League Rules of Procedure required that the President of the Council approve the provisional agendas for both the Assembly and Council.⁴² It will be recalled that while this procedure is followed in the U.N. Security Council, the Secretary-General is not required to obtain the approval of the President of the General Assembly for the agenda which he proposes for that organ. Thus we may conclude that the Covenant and Rules of Procedure of the League form a precedent for authorizing the Secretary-General to exercise the initiative in proposing items for the provisional agenda, and; for requiring approval of the President of the Security Council for the agenda suggested by the Secretary-General. However, in the case of the U.N. General Assembly, League precedent was not followed, in that approval of the President is not required for the agenda submitted by the Secretary-General.

Though there is this basis in the Rules of Procedure of the League Assembly and Council for the Secretary-General's exercising the initiative in proposing subjects for consideration by these organs, there is little precedent in League experience for his actually exerting this initiative.⁴³

Precedent is also found in the International Labor Organization for the Secretary-General's role in formulating the provisional agendas of

⁴²Ibid.

⁴³Felix Morley, The Society of Nations, (Washington, 1932), pp. 378-379.

U.N. organs. Article 396 of the I.L.O. Statute provided that the International Labor Office "will prepare the agenda for the meetings of the Conference."⁴⁴ Article 400 then indicates that the agenda suggested by the Labor Office "will be settled by the Governing Body."⁴⁵ Thus, as in the League and U.N. the Director of the Labor Office was permitted to exert the initiative in proposing matters for consideration by the Conference and was in no way limited as to types of subjects which he might propose. However, the failure to require approval of the Secretary-General's proposed agenda for the U.N. General Assembly is a departure from the precedent of the I.L.O., since the suggested agenda for its organ equivalent to the General Assembly (the Conference) must be "settled" by the Governing Body.

The actions of the Directors of the International Labor Office probably provide the greatest precedent for the U.N. Secretary-General proposing on his own initiative items to be considered by the organs. For it appears that in I.L.O. such action was evidently a frequent practice.⁴⁶ The requirement that the proposed agenda be "settled" by the Governing Body evidently did not inhibit the Director's initiative, for as one observer notes, "it might almost be said that the control of the International Labor Office by the Governing Body has become a study in the successful management of the

⁴⁴Statute of the International Labor Organization, Article 396.

⁴⁵Ibid., Article 400.

⁴⁶E. J. Phelan, Yes and Albert Thomas, (New York, 1949), pp. 248-251.

Governing Body by the Office."⁴⁷

Probably the most noted instance of the Secretary-General's exercising his own initiative in placing subjects on the provisional agenda of the Security Council was in July of 1960 when Mr. Hammarskjold, after asking that the Council be convened under Article 99, placed the Congolese request for military assistance on the Council's provisional agenda.⁴⁸ As we will discuss later, this initiative resulted in Council approval for the establishment of a military force in the Congo.

Also, in 1959 the Secretary-General placed on the provisional agenda of the Security Council his report on the Laotian request that a U.N. military force be sent to that country. Since he explicitly stated that this action was not taken under Article 99 and thus did not purport to bring a substantive issue to the attention of the Council, Mr. Hammarskjold, in his own words, did "not introduce formally on the agenda of the Council anything beyond his own wish to report to the Council."⁴⁹ Yet, in accordance with "a practice which has developed over the years in the Security Council" he did place this report on the provisional agenda.⁵⁰

⁴⁷ C. Howard-Ellis, The Origin, Structure and Working of the League of Nations, (Boston and New York, 1928), p. 257.

⁴⁸ Security Council Official Records, 15th year, 873rd meeting, 13/14 July 1960, p. 1.

⁴⁹ *Ibid.*, 14th year, 847 meeting, 7 September 1959, p. 3.

⁵⁰ *Ibid.*, p. 2. The Korean case of June, 1950, might be considered to be better known. But, although the Secretary-General later claimed to have invoked Article 99, it was the United States which requested that the question be placed on the provisional agenda. (General Assembly Official Records, 5th session, 289 meeting, 28 September 1950, p. 176; Security Council Official Records, 5th year, 873rd meeting, 25 June 1950, p. 1).

X The Secretary-General has also proposed subjects for inclusion on the provisional agenda of the General Assembly. } For example, after making trips to four major capitals in its support,⁵¹ and after circulating it to member governments,⁵² the Secretary-General placed on the provisional agenda of the fifth session of the General Assembly his ten-point "Memorandum of Points for Consideration in the Development of a Twenty-Year Program for Achieving Peace through the United Nations."⁵³ After debating the Secretary-General's proposal (which, among other things, suggested the admission of Communist China), the General Assembly adopted a resolution which commended Mr. Lie for "his initiative in preparing his memorandum and presenting it to the General Assembly" and requested that the appropriate organs consider its provisions.⁵⁴

In another instance the Secretary-General, on his own initiative, placed the report of the United Nations Mediator for Palestine on the provisional agenda of the third session of the General Assembly, 1948.⁵⁵

X Annual Report. The Secretary-General also proposes subject-matter areas for system action in his "Annual Report of the

⁵¹Lie, Chapter XVI.

⁵²United Nations Bulletin, Volume VIII, No. 12, June 15, 1950, p. 510.

⁵³General Assembly Official Records, 5th session, 308th meeting, 17 November 1950, p. 436.

⁵⁴General Assembly Official Records, 5th session, Resolutions, 19 September -- 15 December 1950, Supplement No. 20(A/1775), Resolution 494(V), p. 79.

⁵⁵General Assembly Official Records, 3rd session, plenary meetings, 1948, "Agenda of the General Assembly, Third Session," p. lxxi.

Secretary-General to the General Assembly on the Work of the Organization. "

As to the legal basis of this function in terms of intent and precedent, Article 98 in part states: ^X"The Secretary-General shall make an annual report to the General Assembly on the work of the Organization."⁵⁶ In practice, Secretaries-General have devoted the body of the annual report to a summary of the activities of the United Nations during the past year. But in the introductions, they frequently have offered a critique of the organization's activities.^X In doing so, the Secretaries-General have indicated approval of some activities, displeasure with others,^X and often have suggested additional questions to be considered by the organs.^X Both summaries of past activities and suggestions for future action appear to be justifiable under the above section of Article 98 as constituting reports on the "work of the organization." For such "work" may be both future and past.

There is precedent for such action in the experience of the International Labor Organization. According to Article 408 of the I. L. O. Statute, each member-state was obligated to make an annual report to the Conference "on measures which it has taken to give effect to the provisions of conventions to which it is a party."⁵⁷ Under this same provision it was then the duty of the Director of the International Labor Office to "lay a summary of these reports before the next meeting of

⁵⁶ Charter of the United Nations, Article 98.

⁵⁷ Statute of the International Labor Organization, Article 408.

the Conference."⁵⁸

Though summarizing these reports was of itself only a routine administrative function, the first Director of the Labor Office, Albert Thomas, initiated the tradition of using the occasion as an "opportunity for a thorough airing of the position and possibilities of the Organization."⁵⁹ He thus took full advantage of the annual report as a vehicle for presenting a critique of past I. L. O. action and proposing new subjects for consideration by its organs. The report was given added significance since M. Thomas presented it to the Conference in the form of a speech.⁶⁰

The Rules of Procedure of the Assembly of the League of Nations directed the Secretary-General to "report on the work of the Council since the last session of the Assembly, on the work of the Secretariat, and on the measures taken to execute the decisions of the Assembly."⁶¹ This authority granted to the League Secretary-General is comparable to that accorded the Director of the International Labor Office. If anything, it is broader; for it provides not merely for summarizing the reports drafted by member-states, but for initiating the report himself. However, as used by the League Secretaries-General, the annual report was "simply a colorless and bald printed record of facts distributed to the delegates," which made no attempt to critique the organization's activities or suggest areas for possible League

⁵⁸ Ibid.

⁵⁹ Howard-Ellis, p. 248.

⁶⁰ Ibid.

⁶¹ Rules of Procedure of the Assembly, Rule 4, paragraph 3; quoted by Howard-Ellis, p. 134.

action.⁶² Thus the experience of the League Secretaries-General, unlike that of the Directors of the International Labor Office, provides no precedent for proposing in the annual report subject areas for consideration by U.N. organs.

In instances such as these the Secretary-General has in the Annual Report to the General Assembly proposed subject matter for consideration by U.N. organs. In his Annual Report of 1958-1959 Secretary-General Hammarskjold proposed a change in the Security Council peace-keeping machinery, suggesting that, in view of the "constant talks and negotiations among, and with, members of the Security Council" which had been conducted informally in the intervals between its public meetings, the Council should consider whether to give formal expression to this fact by the organization of regular meetings of the Council in executive session.⁶³ In 1964 Secretary-General U Thant proposed that "a competent United Nations organ" consider the possibility of ascertaining ways to improve the efficiency of U.N. peace-keeping operations.⁶⁴

Furthermore, as we will note later, the Secretary-General, in suggesting that a particular policy be adopted, has by implication proposed that the organs consider certain subjects (as, for example, the

⁶²Howard-Ellis, p. 248.

⁶³General Assembly Official Records, 14th session, Supplement No. 1A(A/4132/Add. 1), Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1958 -- 15 June 1959, p. 3.

⁶⁴General Assembly Official Records, 19th session, Supplement No. 1A(A/5801/Add. 1), Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1963 -- 15 June 1964, p. 9.

admission of Communist China).

⌘ Informal Behind-the-Scenes Activity. A third -- though perhaps not too significant -- means by which the Secretary-General proposes subject-matter areas for system action is through informal behind-the-scenes contacts with delegations, resulting in their introducing to the organs his suggestions for topics to be considered. At times the Secretary-General exerts pressure upon states to take the initiative in this regard.⌘ For example, according to two high-ranking Secretariat officials, he ⌘ has had in his pockets several times speeches which would have taken a strong political line and invoked Article 99,⌘ thereby setting before the Council subjects for its consideration.⁶⁵ "There is no doubt that this intention, which the Secretary-General discussed with the principal members of the Security Council, was a stimulus to the raising of the issues in question by governments."⁶⁶

There is nothing to indicate that this function is within the scope of the intent of the framers or that there is precedent for it in the experience of the League of Nations or International Labor Organization.

⌘ Suggests Courses of Action for the Organs.

Once the system has been activated, not only does the Secretary-General propose subjects for consideration by the General Assembly and Security Council, but he also suggests the action which should be taken by these organs in regard to such subjects.

⁶⁵Schwebel, pp. 87-88.

⁶⁶Ibid.

General Legal Basis. There is evidently no precedent in the League of Nations for the Secretary-General's proposing action to be taken by the organs. Not only is there no basis for such a function in the League Covenant, but also the persons who held the office of Secretary-General failed to take the initiative in proposing ways to deal with subjects. As the first Secretary-General, Sir Eric Drummond, stated in regard to disputes coming before the organs: "... the duties of the Secretary-General are confined to making the necessary arrangements for a full investigation of the dispute and consideration thereof. It is not for him to propose measures to settle it."⁶⁷ A publication by the League Secretariat also reflects the Secretary-General's opinion: "The Secretariat is not the depository of League 'policy' and has no competence to advocate views ... it cannot be the expression of any particular aims."⁶⁸

The precedent of the International Labor Organization is quite different, reflecting the active political role advocated by the first Director of the Labor Office, Albert Thomas. As the Labor Office's Deputy Director, C. Wilfred Jenks, noted: "The Director of the I. L. O. and his representatives ... make detailed proposals upon every question which comes before the Governing Body or the Conference, and explain and defend their proposals during the discussions."⁶⁹ As in

⁶⁷League of Nations, Official Journal, March 1932, pp. 343-344; quoted by Morley, p. 486.

⁶⁸Secretariat of the League of Nations, Ten Years of World Cooperation, (London, 1930), p. 402.

⁶⁹C. Wilfred Jenks, "Some Problems of an International Civil Service," Public Administration Review, Volume 3, Spring, 1943, p. 94.

the League Covenant, however, there is no provision in the Statute of the I. L. O. which explicitly indicates that the Director of the Labor Office may make proposals for I. L. O. action.

It is doubtful whether this function can be justified in terms of the intent of the framers of the Charter under Article 99. For an intention that the Secretary-General "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security" does not denote an intention that he propose courses of action which the Security Council should adopt in coping with such threats. The authority to propose subject matter for consideration by an organ does not authorize the Secretary-General to suggest the action which the organ should take in regard to it.⁷⁰

These methods have been employed by Secretaries-General in suggesting action to be taken by the Security Council and General Assembly: making oral and written statements to the organs; including proposals in the Annual Report to the General Assembly; placing items on the provisional agenda; and, drafting and introducing resolutions.

⁷⁰This question arose in the Committee of Experts of the Security Council held in May of 1946. Dr. Alexander Rudzinski of Poland stated that "when the Secretary-General considered that there was a threat to international peace and security, Article 99 of the Charter conferred special powers upon him which put him in the same position as a sovereign state... Furthermore, under Article 99... the Secretary-General had the power to submit proposals and draft resolutions [to the Security Council]." However, the American delegate, Joseph E. Johnson, doubted "whether the Secretary-General had the right to draft specific resolutions and proposals under Article 99." The results of the committee discussion were inconclusive. (Summary Record of the 48th meeting of the Committee of Experts, Document S/Procedure/103; quoted by Schwebel, p. 22. Mr. Schwebel used these restricted records with the special permission of the Secretary-General.)

X Oral and Written Statements in Organs. One of the principal means by which the Secretary-General suggests to the organs courses of action which they should follow is by making oral and written statements in their meetings.

The legal basis for this function, in terms of the intent of the framers of the Charter, lies primarily in the "delegation" clause of Article 98. It will be recalled that this provision states that "The Secretary-General... shall perform such other functions as are entrusted to him by these organs [of the U.N.]."⁷¹ Under the authority in the Charter accorded to the Security Council and General Assembly to establish rules of procedure,⁷² the Secretary-General was delegated the right to make oral and written statements in the meetings of both organs.

X Rule 22 of the Security Council's Provisional Rules of Procedure provides that: "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."⁷³

X Rule 72 of the Rules of Procedure of the General Assembly states: "The Secretary-General, or a member of the Secretariat designated by him as his representative, may, at any time, make either oral or written statements to the General Assembly concerning any question

⁷¹ Charter of the United Nations, Article 98.

⁷² Ibid., Articles 30 and 21.

⁷³ Rule 22, Provisional Rules of Procedure of the Security Council, p. 7.

under consideration by it."⁷⁴

These rules allow the Secretary-General free access to the organs. For he can make statements to them, regardless of whether state delegations or presiding officials of the organs desire that he do so.

In the Security Council, however, it was only later that he obtained this right. The Provisional Rules of Procedure for the Security Council drafted by the Preparatory Commission contained no provision authorizing the Secretary-General to make statements in Council meetings.⁷⁵ The rules stated only that "The Security Council may invite members of the Secretariat or any person, whom it considers competent for the purpose, to supply it with information or to give their assistance in examining matters within its competence."⁷⁶

Thus for nearly a half year after the Security Council had begun functioning, the Secretary-General was unable to state his opinion in Council meetings. Then in May of 1946 the Committee of Experts of the Security Council met to consider drafting a provision in the rules which would allow him to do so. In the committee meetings there was a great deal of discussion as to whether the Secretary-General should be able to make statements only at the invitation of the Council President; or whether he should possess the unrestricted right of

⁷⁴Rule 72, Rules of Procedure of the General Assembly, p. 14.

⁷⁵Repertory of Practice of United Nations Organs, (New York, 1955), Volume V, p. 159, note 190.

⁷⁶Rule 17, Provisional Rules of Procedure of the Security Council (unamended), Report of the Preparatory Commission of the United Nations, 1945, Document PC/20, p. 26.

intervention.⁷⁷ It was finally unanimously decided to delete the "invitation of the President" clause, giving the Secretary-General freedom to make statements in meetings of the Council as he chose. This proposal of the Committee of Experts was adopted by the Security Council as Rule 22.⁷⁸

While the Preparatory Commission failed to make any provision for the Secretary-General's making statements in the Security Council, it provided that he might make comments in the General Assembly "upon invitation of the President."⁷⁹ In practice, the President of the Assembly frequently failed to make such invitations. On several occasions the first Assembly President, Paul-Henri Spaak, failed to extend an invitation to the Secretary-General which he expressly sought.⁸⁰ Thus, as in the Security Council, the Secretary-General made a determined effort to obtain the right of unrestricted oral and written intervention in meetings of the General Assembly. Again, as in the Security Council, he was successful in acquiring it for both plenary and committee meetings of the Assembly.⁸¹

Though the Secretary-General has acquired the right to make oral

⁷⁷Summary Records of the 47th through 51st meetings of the Committee of Experts, Documents S/Procedure/100 through S/Procedure/106; quoted by Schwebel, pp. 85-86.

⁷⁸Repertory of Practice of United Nations Organs, Volume V, p. 160, paragraph 119.

⁷⁹Rule 48, Provisional Rules of Procedure for the General Assembly, Report of the Preparatory Commission of the United Nations, p. 13.

⁸⁰Schwebel, p. 70.

⁸¹Repertory of Practice of United Nations Organs, Volume V, pp. 159-160.

and written statements on his own initiative in meetings of the Security Council, the General Assembly and their committees, the rules provide that such comments must be relevant to the questions which are "under consideration" by the organs.⁸²

With this exception, the wording of the rules in no way limits the content of the statements which the Secretary-General may make in meetings of these organs. Thus it is within the scope of authority delegated to the Secretary-General to suggest courses of action which the Security Council and General Assembly should follow in regard to subjects which are being considered.

Another clause of Article 98 provides that: "The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, [and the other principal organs of the organization]...."⁸³ In a previous discussion, we contended that the term "that capacity" refers to all the powers and functions associated with the office of Secretary-General. Since the Secretary-General possesses political powers -- particularly through Article 99 and those functions which the organs have delegated to him under Article 98 -- this provision would authorize him to exercise functions of a political nature "in all meetings of the General Assembly, [and] of the Security Council...." It may be argued, therefore, that when making statements to the organs under the authority of the Rules of Procedure, the Secretary-General is empowered to include comments

⁸²Rule 22, Provisional Rules of Procedure of the Security Council, p. 7; Rule 72, Rules of Procedure of the General Assembly, p. 14.

⁸³Charter of the United Nations, Article 98.

of a political nature. Such statements then might well include proposals as to action which the organs should take in dealing with particular subjects under consideration.

As we discussed earlier, Article 99 entitles the Secretary-General to make statements to the organs in regard to threats to the peace which he desires to bring to the attention of the Security Council. However, an intent to allow the Secretary-General to explain such matters which he places on the provisional agenda does not imply an intent to permit him to propose the course of action which the Council should take in meeting such threats or in resolving any other question under consideration. [^] Though delegates sometimes contend that it is unconstitutional for the Secretary-General to propose courses of action to the Security Council and General Assembly, ⁸⁴ in practice, neither organ has limited his right to do so. ⁸⁵ Thus we may conclude that the organs have given at least tacit consent to the Secretary-General's exercising this function.

The Secretary-General of the League of Nations was authorized to make statements to the organs, though his use of this power forms no precedent for proposing courses of action to be taken by them in dealing with questions under consideration.

Rule 9 of the Rules of Procedure of the Assembly stated:

⁸⁴ General Assembly Official Records, 10th session, 3rd committee, 635th meeting, 13 October 1955, p. 55, paragraph 28.

⁸⁵ Repertory of Practice of United Nations Organs, Supplement No. 2, (New York, 1963), Volume III, p. 484.

The Secretary-General, or one of his deputies, may at any time, on the invitation of the President, bring before the Assembly reports concerning any question which is being considered by the Assembly, and may be invited by the President to make verbal communications concerning any question under consideration.⁸⁶

Yet, for the most part, the Secretary-General failed to use this authority to make statements to the Assembly. As the Committee on Experience in International Administration reported, the League Secretary-General "never addressed an Assembly of the League at all...."⁸⁷

In regard to the League Council, the Secretary-General "had a right to speak in the Council."⁸⁸ And occasionally he did make comments in Council meetings.⁸⁹ However, when he did so "he tended to speak... as a Secretary of a committee and not more than that."⁹⁰

Thus it is clear that the persons occupying the office of League Secretary-General never took anything approaching a political position in meetings of the Assembly or Council -- much less suggesting a course of action for the organs relative to matters under consideration.

The experience of the Director of the International Labor Office in this regard is quite different. C. Wilfred Jenks, Deputy Director of the Labor Office, states:

⁸⁶ Rule 9, Rules of Procedure of the Assembly, Revised Edition, April, 1937, League of Nations Document C.144, M. 92.1937.

⁸⁷ Proceedings of the Conference on Experience in International Administration, p. II; quoted in Schwebel, p. 6.

⁸⁸ Ibid.

⁸⁹ Egon F. Ranshofen-Wertheimer, The International Secretariat, (Washington, 1945), pp. 38-39.

⁹⁰ Proceedings of the Conference on Experience in International Administration, p. II; quoted in Schwebel, p. 6.

The Director of the I. L. O. and his representatives ... make detailed proposals upon every question which comes before the Governing Body or the Conference, and explain and defend their proposals during the discussions.... on every question submitted for decision there is available for consideration a concrete proposal, based on the disinterested expert knowledge of an international staff... which represents an attempt to interpret the requirements of the general interest.⁹¹

It may be contended that Article 396, paragraph 1, of the Statute of the International Labor Organization authorized the Director to make these "detailed proposals" as to action which the organs should take on matters under deliberation. This provision states: "The functions of the International Labor Office shall include ... the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions...."⁹² The authority to "examine" subjects related to proposed conventions implies the authority to draw certain conclusions from such examinations. And certainly the framers of the Statute did not intend that the Labor Office keep such conclusions to itself, but rather, that it should make them available to the appropriate organs of the organization for their use. Thus it may be argued that when member-states drafted proposed conventions, this provision authorized the Labor Office to examine the drafts and present its opinion as to the action which should be taken relative to them.

There are a variety of examples of the Secretary-General's making oral and written statements to the Security Council and General

⁹¹Jenks, p. 94.

⁹²Statute of the International Labor Organization, Article 396, paragraph 1.

Assembly in which he proposes that they take certain actions in dealing with matters under consideration.

For example, when the Security Council met in 1950 to consider the North Korean invasion of the South, the Secretary-General made an address to the Council in which he pinpointed guilt on North Korea and proposed in no uncertain terms that the Council "take steps necessary to re-establish peace in that area;"

[Reports] make it plain that military actions have been undertaken by North Korean forces. These actions are a direct violation of the resolution of the General Assembly ... as well as a violation of the principles of the Charter. The present situation is a serious one and is a threat to international peace. The Security Council is, in my opinion, the competent organ to deal with it. I consider it the clear duty of the Security Council to take steps necessary to re-establish peace in that area. ⁹³

During the Security Council's consideration of the Palestine question in July of 1948, Dr. Victor Hoo, Assistant Secretary-General for Trusteeship Affairs, suggested two amendments to the resolution under consideration and then circulated copies to the Council representatives. These proposals for Council action, made by oral and written statement, provided that:

... the Secretary-General [be requested] to provide the Mediator with the necessary staff and facilities to assist in carrying out the functions assigned to him under the resolution of the General Assembly of 14 May, and under this resolution; and

Requests that the Secretary-General make appropriate arrangements to provide necessary funds to meet the obligations arising from this resolution. ⁹⁴

⁹³ Security Council Official Records, 5th year, 473rd meeting, 25 June 1950, p. 3.

⁹⁴ Security Council Official Records, 3rd year, 338th meeting, 15 July 1948, pp. 31-32.

In the Security Council meeting considering the Congo question in July of 1960, Secretary-General Hammarskjold addressed the Council, proposing that it "authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance."⁹⁵

In August of 1958 the third emergency session of the General Assembly met to consider the Middle East question, particularly in light of the then-recent landing of American and British troops in Lebanon and Jordan. In addressing the Assembly, Secretary-General Hammarskjold prefaced his remarks by stating: "In these circumstances, Members of the General Assembly may find it useful if, at this early stage of the deliberations, I outline some of the basic needs for action in the region, which, in view of the experience of the Secretariat, require urgent attention."⁹⁶ Mr. Hammarskjold then proceeded to set forth a comprehensive plan by which the General Assembly might deal with the dispute.

Many of the Secretary-General's written interventions in meetings of U.N. organs, in which he proposes that certain action be taken, have been in the form of legal memoranda. For example, in April of 1946 the Security Council had been considering the question of the presence of Soviet troops within Iranian territory. Iran suddenly dropped her charges of Soviet aggression, indicating that negotiations with the Soviets were underway. A debate ensued as to whether the

⁹⁵Security Council Official Records, 15th year, 873rd meeting, 13-14 July 1960, p. 5.

⁹⁶General Assembly Official Records, 3rd Emergency Special Session, 732nd meeting, 8 August 1958, p. 4.

question still remained on the Council's agenda. At this point,
 (Secretary-General Lie on his own initiative presented a memorandum
 setting forth his "views with respect to the legal aspects of the ques-
 tion."⁹⁷ It stated that from a legal point of view the Council could no
 longer consider the matter, an opposing view from that taken by the
 X majority on the Council.⁹⁸

In 1947 the Security Council was involved in a dispute over its
 competence to accept the Trieste Statute. Assistant Secretary-
 General Sobolev then entered the discussion: "In view of the impor-
 tance of the issue raised, the Secretary-General has felt bound to
 make a statement which may throw light on the constitutional questions
 presented."⁹⁹ He then set forth a legal opinion that the Council was
 competent to deal with the situation, a position favored by the
 majority.¹⁰⁰ X Thus in effect the Secretary-General proposed that the
 action suggested by the majority be adopted.

^ Annual Report. As we noted was sometimes the case in placing
 items on the provisional agenda, similarly, when in his Annual Report
 to the General Assembly the Secretary-General proposes that an organ
 of the U.N. consider a subject, (he often suggests a particular course
 of action to be taken in regard to it.

For example in his 1949 Annual Report to the General Assembly,
 Trygve Lie re-entered the controversy over the admission to the

⁹⁷United Nations Document S/39; quoted by Schwebel, p. 93.

⁹⁸Ibid.

⁹⁹Security Council Official Records, 2nd year, 91st meeting,
 10 January 1947, p. 44.

¹⁰⁰Ibid.

United Nations of states with Communist governments. Again he proposed that all independent states be granted membership, regardless of the form of government which they possess:

Whatever may be said regarding the Governments of the countries concerned, their peoples, and the world as a whole, would certainly benefit if all the applicants were to be admitted to the Organization at the next session of the General Assembly.¹⁰¹

This proposal was echoed by his successor, Mr. Hammarskjold, in a later Annual Report when he suggested the admission of states "who do not yet have the representation in the United Nations to which their role in world affairs entitles them... I firmly believe that even a modest step in the direction of such true universality ... is implicit in the logic of the Charter...."¹⁰²

In addition, Secretary-General Hammarskjold in the Introduction to the Annual Report of 1958-1959 noted that "Constant talks and negotiations among, and with, members of the Security Council" have been conducted on an informal basis in the intervals between its public meetings. He then proposed that "formal expression [be given] to this fact by the organization of regular meetings of the Council in executive session."¹⁰³

In the Introduction to the Annual Report of 1963-1964,

¹⁰¹ General Assembly Official Records, 4th session, Supplement No. 1 (A/930), Annual Report of the Secretary-General on the Work of the Organization, 1 July 1948 -- 30 June 1949, p. xiii.

¹⁰² General Assembly Official Records, 9th session, Supplement No. 1 (A/2663), Annual Report of the Secretary-General on the Work of the Organization, 1 July 1953 -- 30 June 1954, p. xii.

¹⁰³ General Assembly Official Records, 14th session, Supplement No. 1A (A/4132/Add.1), Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1958 -- 15 June 1959, p. 3.

Secretary-General U Thant stated:

There is much that could be done and needs to be done in the way of advance selection, training and other preparations which would make the offered contingents more effective and which would in general ensure better, more efficient and more economical peace-keeping operations in the future.¹⁰⁴

He then proposed that "appropriate action by a competent United Nations organ [be taken] which would authorize the undertaking of such a study [of this subject]."¹⁰⁵

Article 98 of the Charter provides that "The Secretary-General shall make an annual report to the General Assembly on the work of the Organization."¹⁰⁶ As previously noted, the authority to report on the "work" of the Organization presumably empowers the Secretary-General to suggest future work, thus to propose courses of action for the Organization.^X

Precedent for the Secretary-General's using the Annual Report for suggesting action to be taken by U.N. organs is found in the experience of the International Labor Organization. As we noted in an earlier discussion of the Annual Report, the Director of the International Labor Office was authorized under Article 408 of the I.L.O. Statute to "lay a summary of these reports [by member states] before the next meeting of the Conference."¹⁰⁷ This rather limited authority was used as a vehicle for making a critique of previous I.L.O. activities, and,

¹⁰⁴ General Assembly Official Records, 19th session, Supplement No. 1A (A/5801/Add. 1), Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1963 -- 15 June 1964, p. 9.

¹⁰⁵ Ibid.

¹⁰⁶ Charter of the United Nations, Article 98.

¹⁰⁷ Statute of the International Labor Organization, Article 408.

further, for proposing specific actions to be taken by the organization in the future.¹⁰⁸

Also as we have discussed before, the experience of the League of Nations provides no precedent for the Secretary-General's performing this role. The Annual Reports of the League Secretaries-General were "simply a colorless and bald printed record of facts."¹⁰⁹

Provisional Agenda. As we have noted earlier, the Secretary-General proposes topics to be considered by the Security Council and General Assembly by placing items on the provisional agendas of these organs. Sometimes the agenda items also suggest action which the organs should take in dealing with these subjects. For example, the Secretary-General placed his "Memorandum of Points for Consideration in the Development of a Twenty-Year Program for Achieving Peace Through the United Nations" on the provisional agenda of the fifth General Assembly.¹¹⁰ He thereby proposed that the Assembly consider subjects such as the criteria for membership in the United Nations, means of establishing international control of atomic energy, and so forth. However, in this memorandum which he placed on the Assembly's provisional agenda, the Secretary-General not only suggested subject matter for its consideration, but also indicated the action which the Assembly should take in regard to it. That is, Mr. Lie proposed that the General Assembly adopt a policy of admitting all states which had attained independence (whether Communist or not);

¹⁰⁸Howard-Ellis, p. 248.

¹⁰⁹Ibid.

¹¹⁰General Assembly Official Records, 5th session, 308th meeting, 17 November 1950, p. 436.

of attempting to form an "interim control agreement" "which would at least be some improvement upon the present unlimited arms race, even though it did not afford full security," and so on.¹¹¹

Furthermore, in its fourth session the Secretary-General placed on the provisional agenda of the General Assembly his proposal that a standing United Nations guard be created.¹¹² After a rather heated debate in committee and in plenary session, a compromise was reached in which the Assembly agreed that "the Secretary-General has authority to establish the United Nations Field Service."¹¹³

As was mentioned above, the Secretary-General's role in proposing courses of action for U.N. organs cannot be justified in terms of the intent of the framers under Article 99. However, as we also discussed in an earlier section, under the Rules of Procedure of the General Assembly and Security Council the Secretary-General was delegated the responsibility of "drawing up" the provisional agendas for both organs¹¹⁴ -- a responsibility which he is obligated to perform under Article 98. There is no wording in either of these rules which in any way restricts the type of items which the Secretary-General may include on the agenda. Thus under this authority of "drawing up" the

¹¹¹Memorandum of Points for Consideration in the Development of a Twenty-Year Program for Achieving Peace Through the United Nations (text); reproduced in Lie, pp. 278-282.

¹¹²Schwebel, p. 75.

¹¹³General Assembly Official Records, 4th session, Resolutions, 20 September -- 10 December 1949, Resolution 297(IV), p. 21; adopted 22 November 1949.

¹¹⁴Rule 7, Provisional Rules of Procedure of the Security Council, p. 4; Rule 12, Rules of Procedure of the General Assembly, p. 3.

provisional agendas, not only can he propose subject matter for consideration by the organs, but also may suggest ways of dealing with these questions.¹¹⁵ This function, therefore, may be justified under the intent of the Charter framers, as expressed in Article 98, that the Secretary-General perform such functions as the organs delegate to him.

In an earlier discussion we noted that the Secretary-General of the League of Nations was authorized to draft the provisional agendas for both the League Council and Assembly (though approval of the respective presidents was required). However, the Secretary-General failed to exert the initiative in using the agenda as a means of suggesting subjects for organ consideration, much less for proposing courses of action.¹¹⁶

In the International Labor Organization the Director of the Labor Office and his staff were authorized under Article 396 of the Statute to "prepare the agenda for the meetings of the Conference."¹¹⁷ Though the agenda proposed by the Director had to be "settled by the Governing Body,"¹¹⁸ he was able to exert considerable initiative and frequently placed conventions on the agenda, suggesting their adoption.¹¹⁹

✓ Draft Resolutions. It is evident that the Secretary-General has on occasion proposed on his own initiative courses of action to various

¹¹⁵ As we noted earlier, under Rule 7 the provisional agenda of the Security Council must be approved by the President of the Council.

¹¹⁶ Morley, pp. 378-379.

¹¹⁷ Statute of the International Labor Organization, Article 396.

¹¹⁸ Ibid., Article 400.

¹¹⁹ Howard-Ellis, p. 257.

organs through the introduction in their meetings of resolutions which have been drafted by the Secretariat.

For example, the Security Council resolution of July 7, 1950, which established a Unified Command for the U.N. operation in Korea under an American commander, was drafted by the Secretary-General. As Mr. Lie states: "My advisers and I prepared a draft resolution and circulated it on July 3... the Security Council met on July 7 and adopted the essence of the draft...."¹²⁰ Also, items have appeared upon committee agendas with designations such as: "Draft Resolution Submitted by the Secretary-General (A/1404) and Amendments Thereto."¹²¹ And in debate, resolutions have been commonly accepted as being the Secretary-General's with delegates terming them as: "the Secretary-General's draft resolution," "the draft resolution submitted by the Secretary-General," and so forth.¹²²

In addition, in various cases the Secretary-General has made statements to the organs which have been lifted verbatim into resolutions. For example, in his initial statement to the Security Council in regard to the Congo crisis, the Secretary-General stated:

... I strongly recommend to the Council to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass before, through the efforts of the

¹²⁰Lie, pp. 333-334.

¹²¹General Assembly Official Records, 5th session, 2nd committee, 136th meeting, 10 November 1950, p. 121

¹²²General Assembly Official Records, 5th session, 3rd committee, 287th meeting, 18 October 1950, pp. 100-101.

Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks.¹²³

The resolution adopted by the Security Council is virtually identical:

... the Secretary-General [is authorized] to take the necessary steps, in consultation with the Government of 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.¹²⁴

In addition, the General Assembly resolution establishing UNEF also was clearly based upon a report made by the Secretary-General.

For example, in his report Mr. Hammarskjöld stated:

I submit that the General Assembly... should now decide that a United Nations Command for 'an emergency international United Nations Force to secure and supervise the cessation of hostilities in accordance with all the terms' of its resolution 997 (ES-I) of 2 November 1956....¹²⁵

The resolution provided that the General Assembly

establishes a United Nations Command for an emergency international Force to secure and supervise the cessation of hostilities in accordance with all the terms of the General Assembly resolution 997 (ES-I) of 2 November 1956.¹²⁶

¹²³ Security Council Official Records, 15th year, 873rd meeting, 13-14 July 1960, p. 5.

¹²⁴ Security Council Official Records, 15th year, Supplement for July, August and September 1960, Document S/4387, p. 16.

¹²⁵ General Assembly Official Records, First Emergency Special Session, agenda item 5, annexes, Document A/3289, First report of the Secretary-General on the plan for an emergency international United Nations Force, p. 14, 4 November 1956.

¹²⁶ *Ibid.*, Document A/3290 (subsequently became resolution 1000(ES-I), p. 14.

The Secretary-General's report further stated

that General Burns, in that capacity [as Chief of Command], should be authorized immediately to organize a small staff by recruitment from the observer corps of the Truce Supervision Organization of a limited number of officers, drawn from countries which are not permanent members of the Security Council; that, further, General Burns should be authorized, in consultation with the Secretary-General, to recruit directly from various Member States, with the same limitation, the additional number of officers of which he may be in need... ¹²⁷

The corresponding provision of the General Assembly resolution

authorize[d] the Chief of the Command immediately to recruit, from the observer corps of the Truce Supervision Organization, a limited number of officers who shall be nationals of countries other than those having permanent membership in the Security Council; and further authorizes him, in consultation with the Secretary-General, to undertake the recruitment directly, from various Member States other than the permanent members of the Security Council, of the additional number of officers needed. ¹²⁸

Thus it is evident that in this way the Secretary-General has in effect provided the wording for these resolutions adopted by the Security Council and General Assembly.

In terms of the intent of the framers of the Charter, there seems to be little legal basis for the Secretary-General's proposing courses of action for the organs by introducing actual draft resolutions on his own initiative (though, however, these latter statements were made under the authority of Article 99 and Article 98, respectively). The experience of the Director of the International Labor Office, however, provided precedent for the Secretary-General's performing this function. In short, one of the major functions of the Director and staff of

¹²⁷ Ibid., Document A/3289, p. 14.

¹²⁸ Ibid., Document A/3290, p. 14.

the Labor Office was "the drafting of international labor conventions."¹²⁹

X Mediates with Delegations.

In addition to bringing subjects before the Security Council and General Assembly for consideration, and suggesting courses for these organs to follow in dealing with them, the Secretary-General performs a third type of function within the activated Security Council and General Assembly systems: He makes his good offices available to the state delegations in mediating disputes which arise relative to matters under consideration in the organs.

In the first place, Rule 23 of the Provisional Rules of Procedure of the Security Council provides that the Council may appoint the Secretary-General as "rapporteur for a specified question."¹³⁰ In the meetings of the Security Council's Committee of Experts in May of 1946 in which this rule was proposed, it was stressed that it should apply to the "political task of reconciling two divergent views rather than to the technical function of drafting a report."¹³¹ Thus under the authority of Article 98 the Security Council, through this means, delegated a mediation function to the Secretary-General. This rule, however, is yet to be used.¹³²

¹²⁹Howard-Ellis, p. 225.

¹³⁰Rule 23, Provisional Rules of Procedure of the Security Council, p. 7.

¹³¹Repertory of Practice of United Nations Organs, Volume V, p. 157, paragraph 119.

¹³²Ibid.

Rather than being assigned this role (as above), can the Secretary-General on his own initiative mediate disputes arising from matters under consideration by the organs? Strictly speaking, it would seem that an intent that the Secretary-General "bring to the attention" of the Security Council any matter which threatens international peace does not imply an intent that he perform a mediation function among the delegations. Mediating disputes is a wholly different function than informing the Council of the existence of disputes.

However, setting aside the intent of the Charter's framers, attempts have been made to rationalize the mediation role of the Secretary-General under Article 99. For example, Stephen M. Schwebel argues that mediation is justifiable under that article to the extent that its use may prevent the Secretary-General from having to invoke its explicit provisions:

There can be said to flow from the discretionary nature of the Secretary-General's power under Article 99 his right to choose the most appropriate means of implementing the article. As a matter of strategy, he may exert his influence so that it will not be necessary for him formally to bring the matter in question to the attention of the Security Council. Article 99, in other words, may be interpreted as providing a specific legal justification for that extensive, informal, behind-the-scenes political activity of the Secretary-General. . . .¹³³

Also Secretary-General Hammarskjold states that "Article 99... carries with it, by necessary implication, a broad discretion to ... engage in informal diplomatic activity in regard to matters which 'may threaten the maintenance of international peace and security.'¹³⁴

¹³³Schwebel, p. 25.

¹³⁴Dag Hammarskjold, "The International Civil Servant," (speech at Oxford University, May 30, 1961) in Wilder Foote, ed., Servant of Peace, (New York, 1962), p. 335.

In spite of the lack of a provision in the Charter which evidences a prima facie intent that the Secretary-General perform a mediation function, statements made at the Preparatory Commission seem to indicate that it was intended that the Secretary-General fulfill such a role. This Commission, which met prior to the first meetings of the United Nations and was composed mostly of governmental representatives who were present at the San Francisco conference, stated: "The Secretary-General may have an important role to play as a mediator and as an informal adviser of many governments...."¹³⁵

In addition, a study made by a group of British experts which included such eminent persons as former League Secretary-General Sir Eric Drummond (later the Earl of Perth) stressed the importance of the U.N. Secretary-General knowing "when, on a middle course, to be a moderator impartially smoothing over difficulties, a catalytic agent in negotiation."¹³⁶ Perhaps this statement indicates the position of the British government which was, of course, one of the major powers participating in drafting the U.N. Charter.

Many of the same persons, representing the same governmental policies, who participated at the San Francisco conference were also present at the first session of the General Assembly. The Assembly anticipated the Secretary-General's mediating role when it established the terms of his appointment, referring to him as a "confidant of many

¹³⁵ Report of the Preparatory Commission of the United Nations, p. 86.

¹³⁶ The Royal Institute of International Affairs, The International Secretariat of the Future, (London, 1944), p. 31.

governments."¹³⁷ Thus perhaps this, too, represents the intent of the framers of the Charter.

Precedent for the U.N. Secretary-General's exercising a mediation role is found in the experience of both the League of Nations and the International Labor Office. In the League, though there was evidently no basis for such a function in the Covenant, the Secretary-General performed "an unwritten but most important role as intermediary and go-between in the proceedings of League meetings."¹³⁸ As a former personal assistant to Secretary-General Eric Drummond states, Sir Eric was a "gifted mediator," an "impartial negotiator," and a "trusted and well-informed political confessor."¹³⁹ Martin Hill, another League official close to Sir Eric, sees his diplomatic activity as "fully comparable" to that of the United Nations' politically active first Secretary-General, Trygve Lie.¹⁴⁰

In the International Labor Organization there was also no constitutional basis for the Director of the Labor Office performing a mediation function. However, he was quite active politically and, accordingly, played an important role in mediating disputes:

¹³⁷ Resolutions Adopted by the General Assembly, 10 January -- 14 February 1946, XII (I.), p. 14.

¹³⁸ Howard-Ellis, p. 481.

¹³⁹ J. V. Wilson, "Problems of an International Secretariat," International Affairs, Volume XX, 1944, p. 547.

¹⁴⁰ Martin Hill, interview with Stephen M. Schwebel, January 3, 1950; Schwebel, p. 7.

[Director of the International Labor Office Albert] Thomas was little in evidence at the Conference until the conflict arose and then he was in the middle, negotiating between the customary belligerents, the employers and the workers, and pointing out one compromise after another until one was found which united the Conference.¹⁴¹

Though normally it is difficult to uncover concrete examples of the U.N. Secretary-General's mediating disputes among delegations relative to matters under consideration by the organs, sometimes reports of such activity are made in their meetings. For example, in October of 1956, while the Security Council was considering the Suez question, several exploratory conversations on the matter were held with the Foreign Ministers of Egypt, France and Great Britain "in the presence of and, indeed, under the roof [of] the Secretary-General."¹⁴² At the closed Council meeting on October 12, 1956, the Secretary-General and the three representatives gave oral reports of these discussions to the Council. These statements indicate that the Secretary-General had proposed six principles concerning the settlement of the Suez dispute, though only one was subsequently adopted.¹⁴³

X Often, however, it is considered essential to keep such behind-the-scenes activities from public view. As one Secretary-General has noted: "If what I do is published, I lose my influence... It isn't the

¹⁴¹ Francis G. Wilson, Labor in the League System, (Stanford, 1934), p. 111.

¹⁴² Security Council Official Records, 11th year, 742nd meeting, 13 October 1956; p. 3, paragraph 13; p. 6, paragraph 32.

¹⁴³ Repertory of Practice of United Nations Organs, Supplement No. 2, Volume III, p. 476, paragraph 286.

Secretary-General's job to make headlines.¹⁴⁴ Such mediating activities are, nevertheless, a frequent occurrence. Former Secretary-General Lie has stated:

Hundreds of such cases [of disputes among delegations] have been brought to my attention... I see the parties at lunch, or give a small dinner party. I can bring them together, or sometimes I mediate without bringing them together. Then I ask one something with the knowledge of the other and back again. It is my daily work -- the most important part of the daily work of the Secretary-General...¹⁴⁵ It is very much like the processes of settling labor disputes.

¹⁴⁴Trygve Lie; quoted by Schwebel, p. 138.

¹⁴⁵Ibid., p. 139.

CHAPTER IV

THE PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL IN THE GENERAL INTERNATIONAL POLITICAL SYSTEM

Not only does the Secretary-General perform the above functions within the two United Nations peace-keeping systems, the Security Council and General Assembly; but he also fulfills a peace-keeping role within the general international political system. As noted, his activities in the former systems are directly related to the decision-making processes within the Security Council and General Assembly -- proposing subject matter for their consideration, suggesting courses of action in dealing with these subjects, and mediating disputes among delegations relative to matters under discussion in the organs.

However, the Secretary-General also performs peace-keeping functions in the course of relations between international actors (both state and non-state) which occur outside the framework of the Security Council or General Assembly. At times these functions in the general international political system are undertaken at his own initiative. Also, they are frequently performed at the request of U.N. organs. Thus either on his own initiative or at the direction of the Security Council or the General Assembly the Secretary-General investigates disputes among states; mediates such disputes; and supports or leads observation, mediation and military operations created by these organs to cope with disputes.

A Investigation of Disputes

One of the functions which the Secretary-General performs in the general international political system is making investigations of disputes which arise among the system's various state and non-state actors. These are usually undertaken so that an impartial assessment of the facts can be ascertained upon which action by one of the two United Nations peace-keeping systems may be based.

Requested by United Nations Organs.

Investigations of disputes by the Secretary-General are normally the result of a request by either the Security Council or the General Assembly. For example, in 1956, after a similar resolution had been defeated in the Security Council, the General Assembly requested

the Secretary-General to investigate the situation, to observe directly through representatives named by him the situation in Hungary, and to report to the General Assembly at the earliest moment, and as soon as possible suggest methods to bring an end to the existing situation in Hungary in accordance with the principles of the Charter of the United Nations.¹

Due to the lack of cooperation of the Hungarian government, Mr. Hammarskjöld was, however, unable to carry out the mandate of the Assembly.²

The Secretary-General was also delegated investigative functions in regard to the Suez dispute of 1956. The Security Council stated that it desired

¹General Assembly Official Records, Second Emergency Special Session, Supplement No. 1 (A/3355), Resolution 1004(ES-II), November 4, 1956, p. 2.

²General Assembly Official Records, 11th session, annexes, Volume II, agenda item 67; Document A/3493, p. 44; Document A/3435, p. 24.

the Secretary-General to undertake, as a matter of urgent concern, a survey of the various aspects of enforcement of and compliance with the four general armistice agreements and the Council's resolutions under reference.³

In contrast with the Hungarian experience, he was in this instance able to conduct the inquiry.⁴

Though not explicitly asking him to undertake an investigation of the Middle Eastern situation, in August of 1958 the General Assembly requested

the Secretary-General to make forthwith... such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances, and thereby facilitate the early withdrawal of the foreign troops from the two countries.⁵

In seeking to determine the "practical arrangements" which would be appropriate, the Secretary-General visited "the capitals of the nations most directly concerned with the problem for personal talks."⁶ As a result of his investigation, he reported to the General Assembly that the United Nations Observer Group in Lebanon constituted a sufficient "practical arrangement."⁷

The legal basis for this function, in terms of the intent of the framers of the Charter, lies in the "delegation" clause of Article 98,

³Security Council Official Records, 11th year, Supplement for April, May and June 1956, p. 1, Document S/3575, April 4, 1956.

⁴Repertory of Practice of United Nations Organs, Supplement No. 1, (New York, 1958), Volume II, pp. 374-376, paragraph 51.

⁵General Assembly Official Records, 3rd Emergency Special Session, agenda item 5, annexes, p. 3, Resolution 1237(ES-III); adopted 21 August 1958.

⁶Repertory of Practice of United Nations Organs, Supplement No. 2, p. 466, paragraph 240.

⁷*Ibid.*, p. 247, paragraph 468.

which states that "The Secretary-General... shall perform such other functions as are entrusted to him by these organs [of the U.N.]." ⁸

As we have noted, it was intended that this provision empower the Secretary-General to perform whatever duties the organs assign to him. Thus, though there is little to indicate that the framers specifically intended that the Secretary-General investigate disputes, the investigative functions which the organs have delegated to him would be within the scope of Article 98.

There appears to be little precedent in the experience of the League of Nations and the International Labor Organization for the organs requesting the Secretary-General to investigate disputes arising in the general international system. In the League this function was delegated to commissions of inquiry composed of eminent individuals from member (and sometimes non-member) states, ⁹ though, as we will note, the Secretariat often performed support functions for such groups. Article 396 of the I.L.O. Statute stated: "The functions of the International Labor Office shall include... the conduct of such investigations as may be ordered by the Conference." ¹⁰ In practice it appears that such investigations took the form of inquiries into technical subjects preparatory to drafting conventions, rather than into disputes arising outside the organs.

At the Initiative of the Secretary-General.

It has been contended that the Secretary-General may conduct

⁸ Charter of the United Nations, Article 98.

⁹ Conwell-Evans, pp. 133-163.

¹⁰ Statute of the International Labor Organization, Article 396.

investigations on his own initiative without being delegated this authority by one of the organs. For example, when the Greek case was being considered by the Security Council in 1946, the United States representative proposed a resolution under which a commission would have been established to investigate the situation. However, before the Council voted on the proposal, Secretary-General Trygve Lie made this statement:

Just a few words to make clear my own position as Secretary-General and the rights of this office under the Charter. Should the proposal of the United States not be carried, I hope that the Council will understand that the Secretary-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.¹¹

Mr. Lie thus contended that, under the authority granted to him in Article 99, he possessed an independent right to make investigations of disputes which threaten international peace. The members of the Security Council did not contest this assertion, which might be interpreted as tacit consent. In fact, none other than Soviet representative

Andrei A. Gromyko defended Mr. Lie's action:

As the representative of the Union of Soviet Socialist Republics, I would like to say the following in connexion [sic] with the statement made by the Secretary-General. 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.¹²

Secretary-General Dag Hammarskjöld also associated himself with

¹¹ Security Council Official Records, 1st year, 70th meeting, 20 September 1946, p. 404.

¹² Ibid.

those who contend that the Secretary-General's right to make investigations on his own initiative may be derived from Article 99:

Legal scholars have observed that Article 99 not only confers upon the Secretary-General a right to bring matters to the attention of the Security Council but that this right carries with it, by necessary implication, a broad discretion to conduct inquiries... in regard to matters which "may threaten the maintenance of international peace and security."¹³

Hans Kelsen is probably one of the "legal scholars" to which Hammarskjold refers, for Kelsen states:

In exercising his power under Article 99 the Secretary-General must first determine that the matter which he intends to bring to the attention of the Security Council threatens the maintenance of international peace and security. Is this possible without a previous investigation, and has the Secretary-General the power of investigating the matter?¹⁴

Kelsen goes ahead to answer his question in the negative. Stephen Schwebel, likewise, notes:

Evidently, the Secretary-General would choose to exercise his powers under Article 99 only upon the basis of full and impartial data concerning the matter in point. From this assumption it reasonably follows that the Secretary-General has the right to make such inquiries and investigations as he may think necessary in order to determine whether or not to invoke his powers.¹⁵

However, as Kelsen indicates, "It might be doubted whether this interpretation [of Article 99] corresponds to the intention of the framers of the Charter."¹⁶ For the function of bringing threats to the

¹³Hammarskjold, p. 335.

¹⁴Hans Kelsen, The Law of the United Nations, pp. 303-304.

¹⁵Schwebel, pp. 24-25.

¹⁶Hans Kelsen, The Law of the United Nations, p. 304.

peace to the attention of the Security Council is clearly distinguishable from investigating such threats. When the framers intended that the Secretary-General be empowered to bring matters threatening the peace to the Council's attention, this does not necessarily imply an intention that he conduct prior investigations of them. Furthermore, there is no evidence from other sources to indicate such an intent.

In the opinion of some observers the experience of the League of Nations provides a precedent for the U.N. Secretary-General to conduct investigations of disputes on his own initiative. Thus Morley has stated unequivocally that

Article 15(1) authorize[d] the Secretary-General to set international investigations underway in disputes between League members 'likely to lead a rupture' and not otherwise submitted by the disputants to arbitration or judicial settlement.¹⁷

In support of this contention, he cited the Secretary-General's action following the Chinese invocation of Article 15 in 1932 when Japan occupied Shanghai. At that time Drummond "on his own initiative" formed a commission of inquiry composed of diplomatic representatives stationed there from six states which were members of the Council.¹⁸ This action was taken during a time when the Council was in session and it was immediately approved.

Article 15(1) of the Covenant to which Morley refers states:

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who

¹⁷ Morley, p. 309.

¹⁸ Ibid., p. 310.

will make all necessary arrangements for a full investigation and consideration thereof.¹⁹

It appears that Morley's example fails to provide adequate precedent for making independent investigations. In the first place, it would seem that the authority to "make... arrangements for a full investigation" of disputes is to be distinguished from an authorization to make such investigations. To make "arrangements for" implies a role in supporting the group which investigates the dispute rather than actually making the investigation. In addition, it is clear that a member of the League must first have "submit[ted] the matter to the Council" in order for the Secretary-General to take such action, which would distinguish this experience from the U.N. Secretary-General's right of initiative under Article 99. Furthermore, the fact that Mr. Drummond requested approval of the Council would seem to indicate his belief that sanction by the Council was necessary. If so, he probably did not view this action as being taken independently from the Council; but rather to meet the necessities of these emergency circumstances he merely acted in its behalf.

^ Mediation of Disputes

In addition to conducting investigations of disputes, the Secretary-General also performs a mediation function within the general international system whereby, as an impartial third party, he engages in discussions with disputant states (or non-state actors) in attempting to find a basis for settlement. ^ Therefore, he fulfills a mediation role not only in regard to disputes on matters under consideration by the U.N.

¹⁹Covenant of the League of Nations, Article 15, paragraph 1.

peace-keeping organs (as discussed earlier), but also performs this function among states relative to conflicts other than those arising within U.N. organs. Secretaries-General have mediated in this way at the request of the Security Council and General Assembly, as well as on their own initiative.

X Requested by United Nations Organs.

On occasion, under the authority of Article 98 the peace-keeping organs have specifically requested that the Secretary-General serve as mediator for the parties to an international dispute. For example, at its sixth session the General Assembly formally delegated to him the responsibility of assisting the governments of South Africa and India in settling their differences related to the treatment of persons of Indian origin in South Africa.^X In the Assembly resolution the Secretary-General was requested

to lend his assistance to the Governments of India, Pakistan and the Union of South Africa, provided such assistance is deemed necessary and helpful by him, with a view to facilitating appropriate negotiations between them; and further, in his discretion and after consulting the Governments concerned, to appoint an individual who would render such additional assistance for the purpose of facilitating the conduct of said negotiations.²⁰

The governments involved, however, did not accept the Secretary-General's offer of assistance.²¹

Also, in 1954 the General Assembly directed the Secretary-General to take measures to seek the release of United States flyers

²⁰ General Assembly Official Records, 6th session, Supplement No. 20 (A/2119), p. 11, Resolution 511(VI); adopted 12 January 1952.

²¹ General Assembly Official Records, 7th session, Supplement No. 1 (A/2141), Annual Report of the Secretary-General on the Work of the Organization, pp. 20-21.

who had been captured while attached to the United Nations Command in Korea. The Assembly's resolution in part requested

the Secretary-General, in the name of the United Nations, to seek the release, in accordance with the Korean Armistice Agreement, of these eleven United Nations Command personnel, and all other captured personnel of the United Nations Command still detained... [and] to make, by the means most appropriate in his judgment, continuing and unremitting efforts of this end...²²

Shortly after the General Assembly took this action, arrangements were made for the Secretary-General to visit Peking "in order to establish a direct contact with the Central People's Government."²³

After returning from Peking Mr. Hammarskjold maintained communication with the Chinese government through the Swedish embassy there, resulting in the release of the flyers in August, 1955.²⁴

X In April of 1956 the Security Council delegated to the Secretary-General mediation functions in regard to the Suez dispute. The relevant portion of the Council's resolution requested

the Secretary-General to arrange with the parties for the adoption of any measures which, after discussion with the parties and with the Chief of Staff, he considers would reduce existing tensions along the armistice demarcation lines....²⁵

Two days following the adoption of this resolution Mr. Hammarskjold went to the Middle East for consultations with the governments

²² General Assembly Official Records, 9th session, Resolutions, Supplement No. 21 (A/2890), p. 56, Resolution 906(IX); adopted 10 December 1954.

²³ Repertory of Practice of United Nations Organs, Supplement No. 1, p. 374.

²⁴ Ibid.

²⁵ Security Council Official Records, 11th year, Supplement for April, May and June 1956, pp. 1-2, Document S/3575.

involved, which eventually led to a cease-fire.²⁶

At the Initiative of the Secretary-General.

The Secretary-General also performs mediation functions within the general international system on his own initiative, without being requested to do so by the peace-keeping organs.

These mediation activities, taken independently of the organs, are most frequently performed at the U.N. headquarters among the delegations representing member governments.²⁷ For example, when in the fall of 1948 after it was clear that the Security Council would be unable to cope with the problems surrounding the Berlin blockade,

Secretary-General Lie on his own initiative sought to find a basis for negotiations among the Four Powers. He attempted to effect an agreement whereby the introduction of Soviet currency would occur simultaneously with a lift of the blockade.²⁸ Though Mr. Lie's proposals were not accepted by the parties to the dispute, he does appear to have been instrumental in bringing American representative Philip Jessup and his Soviet counterpart Jacob Malik together for discussions in his home, which served as a preliminary ice-breaker prior to the negotiations which actually led to the end of the blockade.²⁹

Also, at a press conference in March of 1956 Secretary-General

²⁶Repertory of Practice of United Nations Organs, Supplement No. 1, p. 376, paragraph 52.

²⁷This mediation role is to be distinguished from that occurring within the General Assembly and Security Council systems relative to disputes arising on matters being considered by these organs.

²⁸New York Times, November 9, 1948, p. 1:6; and November 10, 1948, p. 14.

²⁹Schwebel, p. 143.

Hammaraskjold revealed that he was endeavoring to mediate with the major powers regarding the stalemate over the question of disarmament. In answering an inquiry as to whether he could "take a direct action to break the present deadlock," the Secretary-General stated:

... if you mean continuing direct discussions with the delegations most deeply involved in order to try to find certain paths and to try to influence them in a direction which may give some promise of more tangible results, I think such contacts are most useful and certainly, on my side, they will be continued to whatever extent I find a basis for continuing them.³⁰

In addition to actually mediating questions, the Secretary-General has proposed to parties to disputes, through their representatives at the United Nations, that they begin negotiations -- a prelude to any mediation which might later occur. For example, in regard to the Cuban missile crisis, it is reported that in October of 1962 Secretary-General U Thant proposed "that the Soviet Union suspend its arms shipments and the U.S. its quarantine to allow an interlude for negotiations."³¹ This suggestion, however, was not accepted by the parties.

Though also perhaps strictly speaking not a mediation function, the Secretary-General frequently serves as a channel of communication among governments, such appeals usually coming through the delegations stationed at U.N. headquarters. As Mr. Hammaraskjold noted:

³⁰ Press Conference, 7 March 1956, Note No. 1248 (mimeographed), p. 14; quoted in Repertory of Practice of United Nations Organs, Supplement No. 2, p. 472, paragraph 270.

³¹ Arthur Schlesinger, Jr. "A Thousand Days," Life, November 12, 1965, p. 120.

... every time a demarche is made to me touching problems which also concern another country... It is a matter of routine from one angle, and a matter of courtesy from another angle, to inform the other party concerned about the appeal and what has taken place.³²

For example, the Secretary-General fulfilled this role in 1955 when "a demarche [was] made by the Albanian delegation with a view to restoring diplomatic relations between Albania and Greece."³³ In this regard Mr. Hammarskjold stated:

In cases of this kind, it is not a question of being a mediator; it is not even a question of good offices; it is a question of being a letterbox. The presentation of the Albanian desire is forwarded by the Secretary-General to the other party concerned... The Secretariat in this respect functions very much like any third Government functions when there are no direct relations between two countries -- that is, as a kind of purely formal go-between.³⁴

Not only does the Secretary-General, on his own initiative, perform mediation functions among states relative to disputes occurring within the general international system through discussions with delegations accredited to the U.N. headquarters; but he also fulfills this role through conversations with governmental officials at the various seats of government. (In doing this the Secretaries-General have on a variety of occasions exercised the initiative in making trips abroad in an attempt to mediate disputes among states. (

For example, in the spring of 1956 Secretary-General

³²Press Conference, 25 August 1955, Note No. 1158 (mimeographed), p. 10; quoted in Repertory of Practice of United Nations Organs, Supplement No. 2, p. 472, paragraph 266.

³³Ibid., paragraph 265.

³⁴Press Conference, 8 July 1955, Note No. 1131 (mimeographed), pp. 16-17; quoted in Repertory of Practice of United Nations Organs, Supplement No. 2, p. 472, paragraph 266.

Hammarskjold visited Middle Eastern capitals in an effort to mediate a conflict between Israel and the Arab states. The significance of this visit was noted by the representative of Lebanon in the Security Council:

We recently had the pleasure of welcoming Mr. Hammarskjold... when he made a flying visit to some States Members of the United Nations on his own initiative. On that occasion we discussed with him the very problems with which we are now concerned.³⁵

In addition, an agreement reached between the Arab and Israeli forces in the spring of 1957 providing for the demilitarization of the Mount Scopus area had by the following November not yet been implemented. The Secretary-General then undertook a trip to the Middle East in which he discussed the matter with the governments of Israel and Jordan. During this visit the two states then "stated to the Secretary-General that they... [were] willing, on a basis of reciprocity, to give full implementation to this agreement."³⁶

(At the end of 1958 the governments of Cambodia and Thailand became involved in a border dispute which resulted in suspension of diplomatic relations between the countries. Rather than submit the problem to the Security Council, the two governments requested that the Secretary-General appoint a representative to help them reach a settlement. Mr Hammarskjold did so and, through the mediation

³⁵Security Council Official Records, 11th year, 719th meeting, April 3, 1956, p. 5, paragraph 21.

³⁶Press Release SG/635 (mimeographed); quoted in Repertory of Practice of United Nations Organs, Supplement No. 2, p. 476, paragraph 284.

efforts of his on-the-scene representative, diplomatic relations were restored.³⁷

✓ The authority for the Secretary-General's mediation functions delegated to him by the Security Council and General Assembly lies in Article 98 of the Charter, which states that "The Secretary-General shall... perform such other functions as are entrusted to him by these organs."³⁸ As we have previously noted, it was intended by the framers of the Charter that this article should empower the organs to delegate any function, political or administrative, to the Secretary-General. Thus the performance of a mediation role assigned by the organs would be included within the scope of this article.

In an earlier discussion, we presented information indicating an intention of the framers that the Secretary-General perform mediation functions on his own initiative, deriving from it a presumed intent that he mediate disputes regarding matters being considered by the peace-keeping organs. Since this data encompasses the Secretary-General's mediation role generally, we assume that it applies to mediating in the general international system as well. Therefore, this material, found on pages 94 - 97, also presumably reveals an intent of the framers that the Secretary-General perform a mediation function in the general international system on his own initiative.

The experience of the League of Nations may be viewed as precedent for these mediation activities of the U.N. Secretary-General.

³⁷ General Assembly Official Records, 14th session, Supplement No. 1A (A/4132/Add.1), Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1958 -- 15 June 1959, p. 4.

³⁸ Charter of the United Nations, Article 98, p. 1132.

For it is evident that the Secretary-General of the League also mediated disputes other than those arising in regard to matters under consideration by the organs. Rather than resulting from specific requests of the organs, this role was performed primarily on the Secretary-General's own initiative, even though there was no provision in the Covenant which authorized it. For example, when China failed in her bid for re-election as a non-permanent member of the Council, she threatened to withdraw from the League. In an attempt to mediate what was in essence a dispute between China and the states leading the opposition to her selection, the Secretary-General and his staff held a series of conferences with the Chinese delegates at League headquarters in Geneva. These efforts, followed by personal visits to Nanking by League officials, eventually led to renewed cooperation between the League and China, and even an enlargement of the Chinese delegation to Geneva.³⁹

In addition to performing such functions at League headquarters, the League Secretaries-General also frequently attempted to mediate disputes on their occasional trips abroad. Secretary-General Drummond relates this example in which his efforts led to an improvement of relations between two disputant states:

A further instance was the time when there was tension between Italy and Yugoslavia, and the latter Government was fearful of an Italian attack and was taking military precautions. I was due to make an official visit to Yugoslavia, so I took the opportunity of first going to Italy to see Mussolini and discuss the matter with him. I saw him at Forli and obtained from him a definite assurance that he had not the slightest intention of attacking Yugoslavia. I passed this information to the

³⁹Morley, pp. 319-320.

Yugoslav Government when I went to Belgrade, and they were greatly relieved.⁴⁰

In addition, Drummond's successor as Secretary-General Joseph Avenol attempted to perform an intermediary function between Italy, which had withdrawn from the League, and the members of the organization. In doing so, he sought to facilitate Italy's return to the League.

I had known Mussolini for years... I could make an attempt with Mussolini... I took the occasion of the appointment of an Italian Under Secretary-General to go to Rome. I saw Mussolini and Ciano... They were much interested... He [Mussolini] wanted to return to the League. I took this initiative -- my own initiative. Mussolini agreed. But when I explained my plans to the Council, there was not a word of encouragement.⁴¹

Support of United Nations Operations

Not only does the Secretary-General investigate and mediate disputes among states; he also performs another type of function within the general international system: that of supporting operations which have been established by the peace-keeping organs to deal with matters endangering international peace. Thus once the Security Council or General Assembly peace-keeping system considers a problem and reaches a decision that the situation should be dealt with through the establishment of an observation, mediation, or military operation, the Secretary-General is normally assigned functions in support of such an operation. In addition, he frequently assumes duties which are not specifically delegated to him.

⁴⁰ Eric Drummond, quoted by Schwebel, p. 8.

⁴¹ Joseph Avenol, quoted by Schwebel, p. 9.

Observation and Mediation Operations.

↳ Requested by United Nations Organs. The functions which the organs have delegated to the Secretary-General in support of observation and mediation operations fall into six general categories, ranging X from the routine administrative role of providing necessary staff and assistance to the authority to "take all necessary steps to that end [of supporting the operation] X"⁴²

In the first place, when establishing an observation or mediation operation, the Security Council and General Assembly normally include a clause within the resolution requesting that the Secretary-General furnish necessary staff and assistance to the officials administering the operation. For example, one of the first observation operations established by the Security Council was the "Commission of Investigation" created in December of 1946 to "ascertain facts relating to the alleged border violations along the frontier between Greece on one hand and Albania, Bulgaria and Yugoslavia on the other."⁴³ In this resolution the "Security Council request[ed] the Secretary-General to provide such staff and assistance to the Commission as it deems necessary for the prompt and effective fulfillment of its task."⁴⁴ Similarly, the resolution which created the United Nations Commission on Korea in December of 1948 provided that "the Secretary-General shall provide the Commission with adequate staff

⁴² Security Council Official Records, 13th year, 824th meeting, June 10, 1958, p. 23, document S/4022.

⁴³ Security Council Official Records, 1st year, 87th meeting, 19 December 1946, p. 700.

⁴⁴ Ibid.

and facilities, including technical advisers as required."⁴⁵ And when the United Nations Commission on Indonesia was created in January of 1949, the Security Council "request[ed] the Secretary-General to make available to the Commission such staff, funds and other facilities as are required by the Commission for the discharge of its functions."⁴⁶

∧ The Secretary-General is also frequently requested to make the necessary arrangements with host countries to facilitate the mission's activities. Thus when the "Special Committee on Palestine" was created in May, 1947, for investigatory purposes, the General Assembly "request[ed] the Secretary-General to enter into suitable arrangements with the proper authorities of any state in whose territory the Special Committee may wish to sit or to travel."⁴⁷ Also, the resolution which "invite[d] each Member State to designate from one to five persons... to serve as members of commissions of inquiry or of conciliation," which might be used in solving future disputes, directed the Secretary-General to

enter into suitable arrangements with the proper authorities of States in order to assure the commission, so far as it may find it necessary to exercise its functions within their territories, full freedom of movement and all facilities

⁴⁵ General Assembly Official Records, 3rd session, Resolutions, 21 September -- 12 December 1948, pp. 26-27, Resolution 195(III); adopted 12 December 1948.

⁴⁶ Security Council Official Records, 4th year, 406th meeting, 28 January 1949, p. 32.

⁴⁷ General Assembly Official Records, First Special Session, 67th meeting, 15 May 1947, p. 176.

necessary for the performance of its functions.⁴⁸

In addition, the Secretary-General may be delegated the function of convening the observation or mediation mission. For example, when the "Committee of Good Offices" was established in August of 1947 to mediate the Indonesian dispute, the Security Council requested the Secretary-General "to act as convenor of the Committee of Three and arrange for the organization of its work."⁴⁹ In June of 1958 the Secretary-General was authorized by the Security Council to dispatch an observation group to Lebanon "to ensure that there is no illegal infiltration of personnel or supply of arms or other materiel across the Lebanese borders."⁵⁰ An account by the Secretariat indicated that it was the Secretary-General who convened the group:

Shortly after their appointment, the three members of the United Nations Observation Group in Lebanon (UNOGIL) travelled to Beirut, where they held a meeting on 19 June 1958, with the Secretary-General presiding.⁵¹

In a number of instances the Secretary-General has been empowered to appoint members of observation and mediation missions. Thus in the Kashmir dispute a resolution of the Security Council provided that "a nominee of the Secretary-General of the United Nations will be

⁴⁸ General Assembly Official Records, 3rd session, Resolution, 5 April -- 18 May 1949, p. 16, Resolution 267(III), annex to the resolution, Article 10; adopted 14 April 1949.

⁴⁹ Security Council Official Records, 2nd year, 207th meeting, 3 October 1947, p. 2503; resolution S/574.

⁵⁰ Security Council Official Records, 13th year, 824th meeting, 10 June 1958, p. 23, document S/4022.

⁵¹ Press Release, 14 June 1958, SG/687 (mimeographed); quoted in Repertory of Practice of United Nations Organs, Supplement No. 2, p. 457, paragraph 204.

appointed to be Plebiscite Administrator."⁵² In 1949 when the General Assembly proposed that states involved in international disputes formulate special conciliation commissions, it was suggested that the Secretary-General appoint such a commission on the request of the parties. The resolution stated:

Whenever the parties to a controversy jointly request the Secretary-General . . . to appoint under these articles a member or members of a commission to perform tasks of inquiry or conciliation in respect of the controversy . . . [the Secretary-General] shall appoint from the panel the number of commissioners required.⁵³

During the South African controversy with India and Pakistan in 1951 the General Assembly requested the Secretary-General "in his discretion and after consulting the Governments concerned, to appoint an individual who would render such additional assistance for the purpose of facilitating the conduct of the said negotiation."⁵⁴ Further, in 1954 the General Assembly adopted a resolution recommending that "should direct negotiations fail"⁵⁵ between Italy and Ethiopia in regard to the dispute over Somaliland, the two governments should agree "to a procedure of mediation by a United Nations mediator to be

⁵²Security Council Official Records, 3rd year, 286th meeting, 21 April 1948, pp. 28-29.

⁵³General Assembly Official Records, 3rd session, Resolutions, 5 April -- 18 May 1949, p. 13, Resolution 267(III), article 5; adopted 28 April 1949.

⁵⁴General Assembly Official Records, 6th session, Resolutions, 6 November -- 5 February 1952, Supplement No. 20 (A/2119), p. 11, Resolution 511(VI); adopted 12 January 1952.

⁵⁵General Assembly Official Records, 9th session, Resolutions, 21 September -- 17 December 1954, Supplement No. 21 (A/2890), p. 30, Resolution 854(IX); adopted 14 December 1954.

appointed by the Secretary-General."⁵⁶

Not only have the Security Council and General Assembly requested the Secretary-General to perform these previously-mentioned specific functions, but on occasion they have also accorded him virtually unlimited authority to do whatever he deems necessary in providing support for observation and mediation missions. The most noted such instance is that in which the Security Council established an observation group for Lebanon in 1958. After stating its decision "to dispatch urgently an observation group to proceed to Lebanon so as to ensure that there is no illegal infiltration of personnel or supply of arms or other materiel across the Lebanese borders" the Security Council then "authorize[d] the Secretary-General to take the necessary steps to that end" -- a blank check for Mr. Hammarskjold.⁵⁷

At the Initiative of the Secretary-General. The Secretary-General not only fulfills the above roles at the request of the organs; but he also performs functions relative to observation and mediation missions on his own initiative without specific authorization from the organs. In the first place, as noted above, the organs may or may not include a clause within the resolution requesting the Secretary-General to furnish necessary staff and administrative assistance to the mission. In instances where no such provision is included he, nevertheless,

⁵⁶General Assembly Official Records, 5th session, Resolutions, 19 September -- 15 December 1950, Supplement No. 20 (A/1775), p. 22, Resolution 392(V); adopted 15 December 1950.

⁵⁷Security Council Official Records, 13th year, 824th meeting, 10 June 1958, p. 23; document S/4022.

normally provides such support.⁵⁸

In addition to mere administrative duties, the Secretary-General also on his own initiative performs functions relative to the missions which are of a policy-making nature. For example, on occasion he has enlarged missions without any specific authorization from the Security Council or General Assembly. ↑ Thus in 1948 upon the request of the Mediator in Palestine the Secretary-General sent 50 U.N. guards to assist the mission in "checking shipments over the Jerusalem-Tel Aviv road and to exercise other control functions in connection with the Palestine truce."⁵⁹ In the Security Council Soviet representative Gromyko complained that this action of the Secretary-General had not been authorized by the Council and was, therefore, illegal. √ Assistant Secretary-General Hoo argued that the Mediator was authorized to check such shipments under the original Council resolution creating the operation, and that the Secretary-General was empowered to "provide the Mediator with the necessary staff to assist in carrying out the functions assigned to the Mediator by the General Assembly."⁶⁰ Thus he contended that the purpose for which the guards were to be used was legitimate and that the Secretary-General possessed the authority to send them. In short, though an increase in the size of the Palestine contingent appears to have been within the scope of the Secretary-General's authorization to provide

⁵⁸Security Council Official Records, 1st year, 12 June 1946, pp. 723-724.

⁵⁹Security Council Official Records, 3rd year, 331st meeting, 7 July 1948, p. 32.

⁶⁰*Ibid.*, pp. 32, 34.

administrative support, this action had definite political overtones.

Also, in July of 1958 the Lebanese crisis which had resulted in the landing of United States forces in that country came before the Security Council. After all proposals considered by the Council were defeated, the Secretary-General then stated his belief that

X it is in keeping with the philosophy of the Charter that the Secretary-General also should be expected to act without any guidance from the Assembly or the Security Council should this appear to him necessary towards helping to fill any vacuum that may appear in the systems which the Charter and traditional diplomacy provide for the safeguarding of peace and security.⁶¹ X

In applying this principle to the Lebanese case, Mr. Hammarskjold stated his intention to enlarge the observation group in that country:

First of all -- the continued operation of the United Nations Observation Group in Lebanon being acceptable to all members of the Council -- this will mean the further development of the Observation Group so as to give it all the significance it can have, consistent with its basic character as determined by the Security Council....⁶²

Y Not only does the Secretary-General enlarge observation and mediation missions on his own initiative; but he often also exerts informal influence upon those charged with selecting members of these missions. For example, in regard to the appointment of the Mediator for Palestine, Y though the Secretary-General was not formally authorized to make the selection, "It is well known that Mr. Lie was instrumental in the selection of Count Bernadotte."⁶³ As Lie himself stated:

⁶¹ Security Council Official Records, 13th year, 837th meeting, 22 July 1958, paragraph 15.

⁶² Ibid.

⁶³ Schwebel, p. 267, paragraph 45.

"With Bernadotte it was a special situation. I had known him for years. He was my suggestion as Mediator."⁶⁴

Furthermore, on occasion the Secretary-General has actually appointed a person to fill a mediator position created by the organs, even though the resolution establishing the position provided that it should be filled by another selection process. Thus when Palestinian mediator Count Bernadotte was assassinated, Secretary-General Lie appointed the principal Secretariat official assigned to the operation, Ralph Bunche, as Acting Mediator without authorization from the Security Council, though he did consult with the President of the Council before taking the action. Lie's cable to Bunche stated: "In light of tragic news concerning Count Bernadotte I empower you to assume full authority Palestine mission until further notice."⁶⁵ In the meeting of the Security Council following Lie's action, the President, Sir Alexander Cadogan of Great Britain, stated that the "cablegrams have already been sent, and I trust that I can assume they have the endorsement of all the members of the Security Council."⁶⁶ No comment of objection followed, presumably indicating the Council's tacit consent of the Secretary-General's action in that emergency situation.

✓ In terms of the legal basis for this role, the functions performed by the Secretary-General in support of observation and mediation operations would be within the scope of the intent of the delegation

⁶⁴ Ibid., p. 116.

⁶⁵ Security Council Official Records, 3rd year, 358th meeting, 18 September 1948, p. 2.

⁶⁶ Ibid., p. 3.

clause of Article 98, when they are requested by the organs. There is, however, no apparent basis for the Secretary-General performing such functions on his own initiative.

The experience of the Secretary-General of the League supporting the various Commissions of Inquiry established by the Council provides a precedent for the Secretary-General of the U.N. performing similar roles. These support functions appear to have been undertaken at the request of either the Council or the particular commission. For example, in October of 1921 when it established an observation commission in regard to the Albanian border question, the Council stated: "In order to provide for the carrying out of the above decision, the Secretary-General is instructed to include the sum of 100,000 gold francs in the budget of the League for the fourth fiscal period. . . ."⁶⁷ Also, in the case of two commissions, typical of the Commissions of Inquiry created by the Council, "Two or three secretaries (not nationals of the disputant countries) were attached to each Commission to give valuable help in drafting Reports as well as in the task of actual investigation."⁶⁸ The League Secretary-General's support role, however, does not appear to have included functions such as appointing members of the commissions, convening commissions, or troubleshooting with host governments. That is, his functions were evidently of a routine administrative nature -- i. e., facilitating the payment of commission expenses or furnishing support staff -- rather than involving discretion of a policy-making nature.

⁶⁷ League of Nations, Official Journal, S.S. No. 6, October, 1921, pp. 35-36; quoted by Morley, p. 426.

⁶⁸ Conwell-Evans, p. 147.

R Military Operations.

In addition to supporting the above observation and mediation activities, the Secretary-General also performs functions relative to military operations undertaken by the United Nations. There are three instances in which the organization has taken action of this type.

In these, the role of the Secretary-General has varied from virtual side-line observation in the Korean case to complete responsibility for conducting the Suez and Congo operations.

Korea. Two Security Council resolutions formed the basis for the United Nations action in Korea: The resolution of June 27, 1950, "recommended[ed] that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."⁶⁹ And on July 7, 1950, the Council recommended that the members making armed forces available for use by the United Nations do so to a Unified Command under the United States, and then requested that the United States designate a supreme commander for the force.⁷⁰

Though Mr. Lie had played a significant role in drafting the resolutions,⁷¹ neither so much as mentioned the Secretary-General, much less the role which he was to play in the operation. He was, however,

⁶⁹ Security Council Official Records, 5th year, 474th meeting, 27 June 1950, p. 4, Document S/1508/Rev. 1; recorded as Document S/1511.

⁷⁰ General Assembly Official Records, 5th session, Supplement No. 2 (A/1361), Report of the Security Council to the General Assembly, Document S/1577; recorded as Document S/1588.

⁷¹ Lie, p. 334.

active in helping raise the force. After passage of the Council resolution requesting member-states to contribute contingents for use in Korea, the Secretary-General sent cables to the members asking them to inform him of the type of assistance which they could furnish.⁷²

When the resolution establishing the Unified Command was adopted, a conference was held on July 10 at Mr. Lie's initiative with representatives of the United States and South Korea and the President of the Security Council to consider the role of participating states in the operation. Shortly afterward, "acting with the full agreement of... the United States," Mr. Lie sent cables which had been drafted by the American delegation to the 53 states that had approved the resolutions.⁷³ These messages, dated July 14, noted the "urgent need of additional effective assistance" and requested the states to "consider the possibility of such assistance, including combat forces, particularly ground forces."⁷⁴

Virtual exclusive authority for the conduct of the Korean operation was vested in the United States. Thus the American-designated supreme commander, General Douglas MacArthur, reported directly to his superiors in Washington: "His instructions were prepared by the Joint Chiefs of Staff, in consultation with the Department of State and subject to the approval by the President."⁷⁵ Other than a

⁷²Schwebel, p. 105

⁷³Lie, pp. 336, 337.

⁷⁴Security Council Official Records, 5th year, Supplement for June, July and August, 1950, p. 99, Document S/1619.

⁷⁵Leland M. Goodrich, Korea: A Study of U.S. Policy in the United Nations, (New York, 1956), p.121.

request for reports from the United States, the Security Council resolution made no provision for any continuing United Nations supervision over actions undertaken in its name.⁷⁶ The Secretary-General was thereby completely omitted from the chain of command.

Not only was this true of the Secretary-General. For during the first six months of the operation there was no procedure whereby the other governments contributing forces to the Korean operation were even consulted by the United States.⁷⁷ However, in November of 1950, following the Chinese intervention,⁷⁸ a procedure was established whereby United States officials regularly met with representatives from participating governments on an informal basis in Washington "to consider matters of common interest."⁷⁹ Apparently the Secretary-General did not participate in these discussions which later were termed the "Committee of Sixteen."⁸⁰

The Secretary-General seems, however, to have maintained communications with the operation primarily through direct contacts with General MacArthur. In addition to personal exchanges between them,⁸¹

⁷⁶Ibid., p. 120.

⁷⁷The United States had rejected as a provision of the July 7 resolution a proposal of Secretary-General Lie for the establishment of a "Committee on Coordination of Assistance for Korea" to be composed of representatives from these governments. (Lie, p. 333-334).

⁷⁸Goodrich, p. 146.

⁷⁹General Assembly Official Records, 6th session, Supplement No. 13 (A/1891), Report of the Collective Measures Committee (1951), p. 46.

⁸⁰Goodrich, p. 146.

⁸¹Lie, pp. 347-348, 350-351.

Mr. Lie appointed an on-the-scene personal representative:

I felt the need for closer contact with General MacArthur and with the situation in Korea, and accordingly appointed a personal representative to the United Nations Commission, the Unified Command, and the Republic of Korea: Colonel Alfred G. Katzin of the Union of South Africa... a liaison officer of capacity and imagination. His relations with General MacArthur were excellent....⁸²

Liaison between the United Nations Commission on Korea and the Unified Command was less than adequate. As the Commission reported, "No formal machinery was at first established by the United Nations Command to maintain contact with the Commission."⁸³ Thus, even though the Secretary-General had appointed a personal representative to the Commission, it functioned as a poor communications link from the Unified Command to the Secretary-General. It was not until May of 1951 that the commander of the Unified Command appointed Lieutenant General John B. Coulter to be his "liaison officer and personal representative to the Commission, in order to facilitate the accomplishment of the Commission's work in Korea."⁸⁴ Therefore, with the improvement of liaison between the Unified Command and the Commission, presumably the personal representative of the Secretary-General was better able to use the Commission as a link between Mr. Lie and the Unified Command.

At U.N. headquarters the Secretary-General kept close personal control over coordination of the organization's relations with the

⁸²Ibid., pp. 334-335.

⁸³General Assembly Official Records, 6th session, Supplement No. 12 (A/1881), Report of the United Nations Commission for the Unification and Rehabilitation of Korea (1951), p. 6.

⁸⁴Ibid.

operation. While normally such matters would likely fall within the competence of the Department of Security Council Affairs, this function was handled by an informal committee of high-ranking Secretariat officials.⁸⁵ Mr. Lie indicates that the primary reason for this procedure was that the Assistant Secretary-General in charge of this department, Mr. Zinchenko, was a Soviet national. "I therefore placed Korean affairs in the hands of a specially constituted unit attached directly to my own office."⁸⁶

In summary, it is clear that the Secretary-General exercised no authority over the conduct of the Korean operation. He did, however, possess communication links with the operation primarily through the field command, rather than Washington.

Suez. In marked contrast to the insignificant role of the Secretary-General in Korea was the broad scope of authority accorded him in the conduct of the Suez operation. In fact, not only did the Secretary-General possess this power, but he also played a significant role in the negotiations in which it was decided to grant him this authority.

On November 2, 1956, the General Assembly adopted a resolution urging a cease-fire in the Gaza area and a withdrawal of forces behind armistice lines.⁸⁷ That night, Canadian Ambassador Lester Pearson met with Secretary-General Dag Hammarskjold and suggested the

⁸⁵Schwebel, p. 106.

⁸⁶Lie, p. 343.

⁸⁷General Assembly Official Records, First Emergency Special Session, agenda item 5, annexes, pp. 2-3, Document A/3256 (subsequently became resolution 997(ES-I); adopted 1 November 1956.

X creation of an emergency force to supervise a cease-fire and troop withdrawal. Though at first he had reservations, "Hammarskjold, who had been depressed, was persuaded of its workability and discussion turned to how it could be gotten under way."⁸⁸ As Rosner reports,

At a luncheon in the Secretary-General's thirty-eighth-floor apartment, attended by Lester Pearson, Andrew Cordier, and the Secretary-General, it was agreed that Pearson should present the idea of the Force to the Assembly, along with a number of guidelines that had also been agreed upon.⁸⁹

On the next day, therefore, Mr. Pearson introduced and the General Assembly adopted a resolution requesting the Secretary-General to submit a plan within 48 hours for creating an emergency international force "to secure and supervise the cessation of hostilities."⁹⁰ The plan submitted by Hammarskjold "became the basis upon which UNEF was built." In short, we may conclude that the initial suggestion to the General Assembly for an emergency force was a result of discussions involving the Secretary-General; and that the outlines for creating and operating the force were suggested by him. Thus "Dag Hammarskjold... was decisively one of the coauthors of the Force."⁹¹

In addition to formulating the plan by which a force should be created, the Secretary-General played an "extremely significant"

⁸⁸Joseph P. Lash, Dag Hammarskjold, (Garden City, 1961), p. 85.

⁸⁹Gabriella Rosner, The United Nations Emergency Force, (New York, 1963), p. 130.

⁹⁰General Assembly Official Records, First Emergency Special Session, agenda item 5, annexes, p. 8, Document A/3276 (subsequently became resolution 998(ES-I); adopted 3 November 1956.

⁹¹Rosner, p. 130.

role in actually forming the force.⁹² The General Assembly authorized him to "take such administrative measures as may be necessary for the prompt execution of the actions envisaged in the present resolution [which established a United Nations Command for an emergency international force]."⁹³ And clauses which preceded this provision authorized the Chief of Command "in consultation with the Secretary-General, to undertake the recruitment directly, from various Member States other than the permanent members of the Security Council, of the additional number of officers needed."⁹⁴ On November 7, the General Assembly adopted a resolution endorsing the Secretary-General's report relative to recruiting the force and requested him "to continue discussion with Governments of Member States concerning offers of participation in the Force."⁹⁵

The Secretary-General not only played a significant role in raising the emergency force, but also was virtually given complete authority over its operation. In its resolution of November 7 the General Assembly

authorize[d] the Secretary-General to issue all regulations and instructions which may be essential to the effective functioning of the Force, following consultation with the Advisory Committee aforementioned; and to take all other necessary administrative and executive actions.⁹⁶

⁹²Ibid., p. 129.

⁹³General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, p. 15, Document A/3290 (subsequently became resolution 1000(ES-I); adopted 5 November 1956.

⁹⁴Ibid.

⁹⁵General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, pp. 28-29, Document A/3308 (subsequently became resolution 1001(ES-I); adopted 7 November 1956.

⁹⁶Ibid.

Functioning under the Secretary-General and ultimately responsible to the General Assembly⁹⁷ was the Chief of Command of UNEF, who was appointed by the Assembly⁹⁸ upon the recommendation of the Secretary-General.⁹⁹ The Chief of Command was delegated "full command authority" in regard to the operation of the force.¹⁰⁰ Thus it was he who handled matters such as designating the chain of command within the force¹⁰¹ and arranging for the provision of "premises and food," equipment, and supporting services.¹⁰² However, from the beginning the Commander acted within the limits of his post, as the principal agent of the Secretary-General in the area of operation.¹⁰³

⁹⁷General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, p. 20, Document A/3302, Second and final report of the Secretary-General on the plan for an emergency international United Nations Force..., 6 November 1956.

⁹⁸General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, Document A/3290, p. 15.

⁹⁹General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, p. 14, Document A/3289, First report of the Secretary-General on the plan for an emergency international United Nations Force..., 4 November 1956.

¹⁰⁰Regulations for the United Nations Emergency Force, Document ST/SGB/UNEF/1, 10 February 1957, p. 3; quoted by Rosner, p. 134.

¹⁰¹Leland M. Goodrich and Gabriella E. Rosner, "The United Nations Emergency Force," International Organization, Volume 11, 1957, p. 424.

¹⁰²General Assembly Official Records, 11th session, annexes, agenda item 66, Document A/3383, pp. 13-14, Report of the Secretary-General on Administrative and Financial Arrangements for the United Nations Emergency Force, 21 November 1956.

¹⁰³Rosner, p. 135.

The Secretariat official responsible for the direct supervision of the operation and accompanying administrative functions was the Under-Secretary for Special Political Affairs.¹⁰⁴ Overall coordination was handled by Mr. Hammarskjold himself and his two closest assistants, Andrew Cordier and Ralph Bunche.¹⁰⁵ Thus the Secretary-General maintained close personal control over UNEF operations.

Mr. Hammarskjold and his associates were assisted by two advisory groups: the UNEF Military Staff and the Advisory Committee. But the role of both groups was strictly advisory. The Military Staff, composed of the military representatives of states contributing forces to the operation, advised on technical questions of logistics, supply and transportation.¹⁰⁶ The latter group, the Advisory Committee, was also composed of representatives of states participating in the operation.¹⁰⁷ It had been created by the General Assembly to offer policy advice to the Secretary-General and "to undertake the development of those aspects of the planning for the Force and its operation not already dealt with by the General Assembly and which do not fall within the area of direct responsibility of the Chief of Command."¹⁰⁸ The Assembly resolution thus makes it clear that this group was not to exert any control over the operation. And with the Secretary-General

¹⁰⁴United Nations Document A/AC.89/R.1; cited in *Ibid.*, p. 129.

¹⁰⁵Walter R. Sharp, "Trends in United Nations Administration," International Organization, Volume 15, 1961, pp. 401-402. Also see Rosner, p. 35.

¹⁰⁶Goodrich and Rosner, p. 425.

¹⁰⁷Rosner, p. 133.

¹⁰⁸General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, pp. 28-29.

as chairman of the committee it fulfilled only those functions which he desired.¹⁰⁹ At first, "Mr. Hammarskjold had not employed the Advisory Committee to any serious extent," though later it "became a more significant instrument, very likely because the Secretary-General needed support for situations that had not been foreseen."¹¹⁰

Congo. The role of the Secretary-General in the Congo operation was quite similar to his experience with UNEF both in terms of the scope of authority granted to him by the Security Council and his part in suggesting the guidelines for such Council action.

It is evident that the plan of action suggested to the Security Council by the Secretary-General formed the basis for the Council's resolution which outlined the role which he was to play in the Congo operation. For the language in this resolution was nearly identical with Mr. Hammarskjold's recommendation. In his initial statement before the Council on the night of July 13, 1960, he stated:

^ ... I strongly recommend to the Council to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass before, through the efforts of the Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks.¹¹¹
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The resolution adopted by the Security Council the next day, in a virtual verbatim reproduction of the Secretary-General's

¹⁰⁹Rosner, p. 134.

¹¹⁰Maxwell Cohen, "The United Nations Emergency Force: A Preliminary View," International Journal, Volume 12, 1957, pp. 120-121.

¹¹¹Security Council Official Records, 15th year, 873rd meeting, 13-14 July 1960, p. 5.

recommendation,

authorize[d] the Secretary-General to take the necessary steps, in consultation with the Government of 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. ¹¹²

After making the above recommendation, Mr. Hammarskjold stated that if the Council were to adopt this course of action, he would establish a United Nations Force based upon the principles under which the UNEF operated in Suez. ¹¹³ Thus even though the Council resolution makes no explicit mention of creating a U.N. force, it is clear that this was the action intended; and that the principles guiding its operation should be those used in Suez. As has been discussed, the Secretary-General was delegated complete authority in the execution of the UNEF operation. Similarly, it is apparent that the Security Council intended to follow this precedent, according him total responsibility for the United Nations Force in the Congo.

It will be noted that while the General Assembly appointed the commander of UNEF in the resolution creating the force, in the case of the Congo operation the Security Council left this function to the Secretary-General. ¹¹⁴

¹¹² Security Council Official Records, 15th year, Supplement for July, August and September 1960, p. 16, Document S/4387.

¹¹³ Security Council Official Records, 15th year, 873rd meeting, 13-14 July 1960, pp. 4-5.

¹¹⁴ General Assembly Official Records, First Emergency Special Session, annexes, agenda item 5, p. 15, Document A/3290; and, Security Council Official Records, 15th year, Supplement for July, August and September 1960, p. 16, Document S/4387.

Not only was the Secretary-General delegated sole responsibility for the Congo operation; but also, as in UNEF, the organizational structure which was established for its administration left ultimate control with him. At U.N. headquarters, as in Suez, the Under-Secretary for Special Political Affairs was responsible for direct supervision of the operation and accompanying administrative functions. Likewise, overall coordination rested with the Secretary-General himself and a special committee which he formed to assist him, composed of the Under-Secretary for Special Political Affairs, the principal military adviser and the Chief of the Field Services Section.¹¹⁵

Advising the Secretary-General and his aides in regard to technical matters related to military aspects of the operation was an Office of the Military Adviser, comprised of four military experts.¹¹⁶ In addition, an Advisory Committee, composed of representatives of the governments most closely concerned with the operation, advised the Secretary-General on policy underlying the operation. Though, in terms of the conduct of the operation, like its UNEF counterpart this group could function only in an advisory capacity, Mr. Hammarskjold used it as a means for developing consensus for his actions.¹¹⁷ A special unit was also created at headquarters to help facilitate the civilian operations in the Congo. It arranged for dispatching personnel

¹¹⁵Eric Stein, "Mr. Hammarskjold, the Charter Law and the Future Role of the United Nations Secretary-General," American Journal of International Law, Volume 56, 1962, p. 20.

¹¹⁶Georges Langrod, The International Civil Service, (Dobbs Ferry, 1963), p. 275.

¹¹⁷Stein, p. 20.

and equipment for the civilian assistance effort and maintained contact with the specialized agencies and other participating organs.¹¹⁸

In the Congo itself, the whole operation was under the control of the Special Representative of the Secretary-General. Directly responsible for the military phase of the operation was the force commander who functioned under the Special Representative, though on important questions of military policy he reported to the Secretary-General himself. The Chief of Civilian Operations was responsible for the civilian assistance furnished by United Nations agencies to the Congo government.¹¹⁹ This, likewise, functioned under the supervision of the Secretary-General's Special Representative.¹²⁰

The Security Council gave the Secretary-General little guidance for the conduct of the Congo operation. Preliminary Council resolutions were of a general nature, requesting that he "take the necessary steps... to provide the [Congolese] government with such military assistance, as may be necessary," "take all necessary action to this effect [of implementing withdrawal of Belgian troops]," and determine "speedy modalities" for withdrawing such forces.¹²¹ In August of 1960 when the Secretary-General asked the Security Council for specific guidance as to using force for the conquest of Katanga, the Council

¹¹⁸Langrod, p. 275.

¹¹⁹Ibid., p. 276.

¹²⁰Lincoln P. Bloomfield, "Headquarter-Field Relations: Some Notes on the Beginning and End of ONUC," International Organization, Volume 17, 1963, p. 381.

¹²¹Security Council Official Records, 15th year, Supplement for July, August and September 1960, p. 16, Document S/4387, July 14, 1960; Ibid., p. 34, Document S/4405, July 22, 1960; Ibid., p. 92, Document S/4426, August 9, 1960.

was unable to act. Mr. Hammarskjold stated: "I have the right to expect guidance. That guidance can be given in many forms. But it should be obvious that if the Security Council says nothing I have no other choice than to follow my conviction."¹²² One week after the Secretary-General's statement to the Council the U.N. forces launched a full-scale operation in Elizabethville, the capital of Katanga.¹²³ When the General Assembly met in special session the following September, it adopted a resolution which

request[ed] the Secretary-General to continue to take vigorous action... and to assist the Central Government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity.¹²⁴

Thus only after making the decision himself was the Secretary-General able to receive advice on a question of major political significance.¹²⁵

✓ Functions relative to military operations which were performed by the Secretary-General at the request of the organs would be within the intent of the delegation clause of Article 98. In resolutions relative to Suez and the Congo the organs accorded the Secretary-General

¹²² Security Council Official Records, 15th year, 888th meeting, 21 August 1960, p. 21.

¹²³ Thomas M. Franck and John Carey, The Legal Aspects of the United Nations Action in the Congo, (Dobbs Ferry, 1963), p. 35.

¹²⁴ General Assembly Official Records, Fourth Emergency Special Session, Supplement No. 1, p. 1, Document A/4510, September 20, 1960.

¹²⁵ Later, however, the Security Council made rather explicit requests for action by the United Nations Force. (See, for example, Security Council Official Records, Document S/5002, 24 November 1961.)

grants of authority sufficiently broad to encompass the variety of functions performed by him in these operations, thereby coming within the scope of Article 98. However, there is nothing to indicate that a coordination role undertaken at his own initiative, such as that in the Korean operation, is within the intent of the framers of the Charter.

There is precedent in the experience of the League of Nations for the establishment of armed international forces. However, in the instances in which the League employed armed forces the Secretary-General played little or no role.

For example, in December of 1934 the League Council voted to form an international police force to oversee the Saar plebiscite. The force, composed of 3300 men from four participating governments, was commanded by a British general who was appointed by the "Committee of Three" Council members selected to supervise arrangements for the plebiscite.¹²⁶ The chairman of the Saar Governing Commission, together with a committee of representatives of each of the states furnishing troops, formulated the principles under which the force was to operate. Also, it was the chairman of the Governing Commission who issued orders to the commander of the force.¹²⁷

It will be recalled that in the U.N.'s Suez and Congo military operations it was the Secretary-General who appointed the commander (or at least recommended the general who was appointed); it was the Secretary-General who formulated the principles under which the force operated; it was the Secretary-General who issued directives to the

¹²⁶ Sarah Wambaugh, The Saar Plebiscite, (Cambridge, 1940), pp. 283, 168-169.

¹²⁷ Ibid., pp. 282, 283.

commander of the force. The role of the League Secretary-General in the Saar operation included none of these functions.

In another lesser known instance an international force was created to enforce the directives of a League Commission selected to govern the city of Leticia and direct negotiations between Columbia and Peru, who both claimed territorial jurisdiction over it. When the Commission began operations in June of 1933 it chose 50 Columbian troops for service. Later this number was increased to 75, and by the time the dispute was settled in June of 1934, it had risen to 150.¹²⁸ These troops were attached directly to the Commission and followed only its directives. There is no evidence that the Secretary-General of the League played any role whatever in the selection or operation of the force.

When the dispute arose between Poland and Lithuania as to jurisdiction over the city of Vilna, the League Council decided to sponsor a plebiscite to settle the question. In October of 1920 a "Civil Commission," composed of representatives of Belgium, France, Great Britain, Italy and Spain was appointed to supervise the Vilna plebiscite.¹²⁹ In order to ensure free elections a force of 1500 men was also ordered, to be made up of contingents from states which were not members of the Council.¹³⁰ However, as troops from the

¹²⁸Gordon Ireland, Boundaries, Possessions, and Conflicts in South America, (Cambridge, 1938), pp. 202, 203.

¹²⁹John S. Bassett, The League of Nations, (New York, 1928), pp. 79-80.

¹³⁰Ibid., p. 79.

participating states were about to depart for Vilna, Lithuania refused to permit their entry. Thus the force never materialized. There is no evidence that the Secretary-General participated in this abortive attempt to create an international force.

In short, it is evident that the experience of the League of Nations provides no precedent for the Secretary-General's role in conducting or supporting United Nations military operations.

CHAPTER V

CONCLUSION

Comparison of the Peace-Keeping Role in the Security Council-General Assembly Systems and the General International System

The results of the analysis conducted in the previous chapters are summarized in the following tables. The first identifies the Secretary-General's peace-keeping functions in the Security Council and General Assembly systems, while the second shows this role in the general international political system. Also indicated is the legal basis for each function, viewed in terms of the intentions of the framers of the Charter and the precedents of the League of Nations and the International Labor Organization.

A comparison of the Secretary-General's role in these two types of systems reveals that his functions in one are, for the most part, of a different nature than in the other. His role in the Security Council and General Assembly systems falls into four general categories: activating the system (in the Security Council only), proposing subject matter for system action, suggesting courses of action for it to follow, and mediating with delegations on matters under its consideration. Most of these functions are not also performed in the general international political system. He does not activate that system, for it is, of course, continuously functioning. And he normally does not propose

TABLE I
 PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL
 IN THE SECURITY COUNCIL AND GENERAL
 ASSEMBLY SYSTEMS

Function	Legal Basis	
	Intent of Framers	Precedent
activates system (Security Council only)	yes	no
proposes subject matter for system action		
through drafting the provisional agenda	conflict	yes (ILO)
through the Annual Report	yes	yes (ILO)
through informal contacts with delegations	no	no
suggests courses of action for the systems		
through oral and written statements	yes	yes (ILO)
through the Annual Report	yes	yes (ILO)
through drafting provisional agenda	yes	yes (ILO)
through drafting resolutions	no	yes (ILO)
mediates with delegations on matter under consideration by organs	yes	yes (ILO and League)

TABLE II
 PEACE-KEEPING ROLE OF THE SECRETARY-GENERAL
 IN THE GENERAL INTERNATIONAL
 POLITICAL SYSTEM

Function	Legal Basis	
	Intent of Framers	Precedent
investigates disputes threatening international peace		
at request of organs	yes	no
own initiative	no	no
mediates disputes between actors		
at request of organs	yes	no
own initiative	no	yes (League)
supports U.N. operations		
observation and mediation operations		
at request of organs	yes	yes (League)
own initiative	no	no
military operations		
at request of organs	yes	no
own initiative	no	no

subject matter for consideration by the system's actors (though he may suggest courses of action for the disposition of subjects). For this is evolved in the course of relations between states. In addition, most of the peace-keeping functions of the Secretary-General in the general international political system are, by their very nature, inappropriate within the Security Council and General Assembly systems -- functions such as performing support roles for United Nations observation, mediation and military operations, and; investigating disputes threatening international peace.

There are, however, two exceptions to this tendency for the Secretary-General's functions in one type of system to be unrelated to his functions in the other. In the first place, he performs mediation functions in both. And, too, his role as mediator in the general international political system leads to another function which he also performs in the Security Council and General Assembly systems. For, in the course of mediating disputes within the former, the Secretary-General may suggest courses of action to be taken by the states (though, of course, he does not possess the variety of procedural means for doing so as in the Security Council and General Assembly). However, these appear to be the only exceptions to the general tendency for the functions of the Secretary-General in the two types of systems to be of a different nature.

Yet it should be recalled that the Secretary-General's mediation efforts comprise what is probably the most significant function that he performs. For it is in mediating disputes in the general international political system and in the United Nations peace-keeping organs that the Secretary-General exercises probably the greatest influence upon

the interactions of actors in those systems. It is, therefore, the Secretary-General's most influential function -- that which most influences system processes -- which is duplicated in both types of systems.

Much has been written about the expanding role of the Secretary-General. Frequently it has been stated that he has assumed added functions to cope with current needs, with the implication that the scope of these functions has gone beyond what is legally justifiable. At Oxford Secretary-General Hammarskjold even spoke of his role as filling "any vacuum" that may appear in the United Nations peace-keeping system -- indicating an apparent intention to assume prerogative power even though it may not be justifiable under the Charter.

Yet, the functions which have been performed by Hammarskjold, Lie and Thant can (with a few exceptions) be justified from a legal standpoint. While it is true that about half of the Secretary-General's functions are not within the original intentions of the framers of the Charter, legal precedent can be discovered for most of those remaining. Thus, adequate legal basis for the Secretary-General's peace-keeping role can be found if we look not only to the intentions of the Charter's framers, but to the relevant precedents derived from the experiences of the Secretary-General of the League of Nations and of the Director of the International Labor Office.

It is interesting to note that (with one exception) in the Security Council and General Assembly systems it is the experience of the I. L. O. Director, rather than that of the League Secretary-General, which forms the supporting precedent for the U. N. Secretary-General's peace-keeping role. On the other hand, the experience of

the Secretary-General of the League, rather than that of the I.L.O. Director, constitutes the precedent for his functions in the general international political system. It would seem that the reason for the former can be traced to the Director's deep involvement in the I.L.O. policy-making process, as compared with the League Secretary-General who, in general, attempted to be neutral in regard to such matters within the League. The latter seems to result from the League's role as the sole near-universal organization which was concerned with preserving international peace through collective security, thereby being a more significant participant in the general international political system than any other organization at that time.

A further comparison of the Secretary-General's roles in these two types of systems reveals that apparently in many instances the functions performed in them result from different types of initiatives. Frequently the Secretary-General's activities in the general international political system are undertaken at the request of the Security Council or General Assembly. Thus the initiative in these cases results from the decision-making processes in these organs. So the interactions in one type of system serve as instigators of certain of the Secretary-General's functions in another system. In contrast, the Secretary-General seldom performs functions in the Security Council and General Assembly at the request of these organs. Rather it is on his own initiative that he activates the system, proposes subject matter for its consideration, suggests courses of action, or mediates with delegations on matters under consideration.

However, as we have previously noted, even in those instances in which the Secretary-General has performed functions within the general

international political system at the request of U.N. organs, he has, by suggesting courses of action for their consideration, frequently provided the initiative for such action by the organs. This was, for example, particularly evident in the creation of U.N. military operations. In short, therefore, though appearing to be from different sources, in many instances the stimulus for the initiative relative to the Secretary-General's role in these two types of systems is the same, for it rests with the Secretary-General himself.

The functions of the Secretary-General may also be compared in terms of the degree of power which accompanies his role in each type of system. ¹It will be recalled that we have defined power as the "process of affecting policies of others with the help of (actual or threatened) severe deprivations for non-conformity with the policies intended." ¹In only the general international political system does the Secretary-General ever possess such power. ¹And that has happened only when the Security Council or General Assembly has conferred upon him ultimate authority for conducting a U.N. military operation, as when in the Congo, with little direction from the Security Council, he employed military force against contingents of the rebellious Katanga province, a subnational actor in the general international political system. ¹Of course, the Secretary-General's fulfilling such a role in this system is not a normal occurrence. But at least it has occurred, while in the Security Council and General Assembly systems in none of his functions is the Secretary-General able to exercise this power, for he is not capable of inflicting any "severe deprivation" for

¹Lasswell and Kaplan, p. 76.

failure to support actions which he undertakes or policies which he favors.

We may conclude that whatever the significance of the Secretary-General's peace-keeping role in the two types of systems, it normally does not result from an ability to coerce. In general, rather than forcing states to interact in a peaceful manner, at best he may only facilitate their efforts in solving their own disputes:

- ✓ He may activate the U.N. peace-keeping machinery so that states can discuss their differences around a conference table.
- X He may suggest solutions to disputes, which the states may accept or reject.
- X He may investigate disputes so that states may have access to an impartial assessment of the facts.
- ^ He may lead U.N. military operations which attempt to prevent major power involvement in minor disputes; and so forth.

But regardless of the intensity of these efforts, they will lead to peaceful settlement only if the states involved desire to resolve their disputes peaceably.

However, even though the Secretary-General may be inferior to the states as an actor in these systems, his role is, nevertheless, not an insignificant one. For, as we have seen, the custodians of competing national interests have usually viewed as proper the peace-keeping efforts of this spokesman of a higher "world interest," with the result that his role has thereby come to be an accepted element of these systems.

Prospects for Future Development of the Peace-Keeping Role

The extent to which the Secretary-General's peace-keeping role will be further expanded is dependent upon: (1) the degree to which world conditions will require further action by an impartial servant of the international interest, (2) the willingness and ability of the Secretary-General to seize the initiative in meeting these needs, and (3) the acceptance of such functions by the principal actors in the respective systems, the states.

Certainly in the foreseeable future the distinguishing characteristic of the general international political system and the Security Council-General Assembly systems will continue to be the competition between the Eastern and Western blocs. In two instances United Nations forces, under the ultimate command of the Secretary-General, have been employed to help prevent major-power confrontation from arising out of lesser disputes. In view of past experience it would seem that such measures of "preventive diplomacy" (to use Hammarskjold's term), in which potentially explosive disputes are isolated, might usefully be employed in the future. In fact, even a permanent peace-keeping force, functioning under the Secretary-General's direction, might be created. In this way the organizational problems which in previous operations were apparent in the field could be solved before the force was to be dispatched. And with standing units ready to function on short notice, such a force could likely be employed in peace-keeping operations more frequently than in the past.

But it would seem that the chances for a permanent United Nations peace-keeping force being created are rather slim. While it might be beneficial in helping to solve international disputes, and while the

Secretary-General is likely to be capable and willing to assume ultimate responsibility for its operation, it is doubtful that the United Nations members would agree to its establishment. Some states would undoubtedly fear that a permanent peace-keeping force might be used in ways which would be detrimental to their national interests (as evident in discussions at the disarmament conference and in Soviet statements in regard to the U.N. Force in the Congo), and would constitute the prototype of a militia of a world government that might threaten their sovereignty. Furthermore, even if member-states agreed to the creation of such a force in principle, it is doubtful that adequate arrangements could be made for financing it.

In the final analysis it would seem that the expansion of the Secretary-General's peace-keeping role into other functional areas is quite unlikely. For, regardless of the extent to which such activities might facilitate more peaceful relations between states, and regardless of the willingness and ability of the Secretary-General to assume such functions, there would likely be lack of sufficient agreement among the states that more significant types of political functions should be included within his role. Thus, it would seem that the Secretary-General's peace-keeping role will continue to be confined to the functional categories which have been enumerated in this study. If so, any expansion of this role would have to occur within these functional categories through increased influence of the present types of activities upon system processes. Of course, such role expansion even within established categories may occur only to the extent that the states accept it.

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