The Status of the UN Secretary-General: Study in International Civil Servant

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ABSTRACT

It has become obvious that the UN have mainly universal tasks begin with the maintenance the peace to end with preparing the Development plans. In this concerning, the UN Secretary-General play principal role in achieve these tasks. So it’s necessary to clarify the position of the Secretary-General by detailed his immunities and privileges conferred on him by the UN Charter and UN Convention of Privileges and Immunities of 1946.

For good exercise to these tasks or functions and away from any political pressures exercised by different States specially the five Permanent Members in Security Council, and other actors in International scene. These functions are stipulated in the UN Charter mostly have administrative and technical nature. In the other side, there are political and diplomatic tasks not provided in the Charter but the Secretary-General still exercises it. This exercise has led to settle the International Conflicts. According to his principal role in resolve the Conflicts. Added to that the mechanism of his selection by UN Organs had raised many problems among the members of UN until now.

Key words: Secretary General- International Civil Servant- Immunities-functional protection-UN Charter- Special Representatives of the Secretary-General.

1 INTRODUCTION

Today the mass media presents the UN Secretary-General in many aspects: as the UN Spokesman, the chief administrative officer, the sole representative on the International Scene. Sometimes he is seems as a State’s President rather than an international employee, especially when talking about his role in Peace-Keeping Operations, or a mediator to settle the disputes. In addition to the roles given to him promote the Rule of Law in the Countries, or organize democratic elections made under the UN supervision in different countries of the world.

However, it is obvious that the roles specified to him in the Charter, and the reality, we find a great difference between them. Which is provide in the Charter has not modified to contain all these actual changes made in his tasks. Therefore studying these roles initially includes specifying his legal status in accordance with the respective International Conventions. Then we should explaining the tasks made to him under the Charter, and those he actually practices without a clear-cut legal text provided in the Charter the fact that leads to a juristic argument nowadays.

This fluctuation in the Secretary General tasks exists in the personality that takes charge of this job in the last sixty years. Some of them ranged from strong enough to perform the given roles, hesitant ones practicing no full powers, to negative ones subjecting to the will of specific countries where this kind of personalities was about to put an end to the whole organization.

Further, we can add the factor of the Cold War that negatively affected the activity of the UN Organs and made the Secretary General takes charge of some tasks that belongs to the UN Organs rather than him.

Therefore, this paper depends on a basic hypothesis about the practices made by the UN Secretary-General but not provided in the UN Charter. Does this practice breach many competences given by the Charter? Consequently, is this act constitute breach the Charter? Does this difference between the reality and the Charter need a true re-specification of the competences his really practices? In other words, does the favor of the International Community need to re-specify or limit the tasks of the Secretary-General or the favor need keeping the situation the same?
2 THE LEGAL NATURE OF THE SECRETARY GENERAL POSITION.

Concerning the International Civil Servant, talking about the legal status of the Secretary-General initially contains specifying its rights and the obligations given to him. Originally, the UN Convention on the Privileges and Immunities of 1946 has detailed this issue in terms of their rights, obligations, the UN Organs and the competent agencies conducted the same in specifying a position that matches where the number has reached thousands so far.

Regarding the UN Secretary-General, it is notice that the matter is different a little bit from many aspects where the Secretary-General has rights, privileges and immunities un-compared to any other international employee. Some of International Law jurisprudences see the matter logic due to the special nature of the tasks given to him[1]. This employee had been define as the greatest employee whose task is to perform all the missions given to him by the Security Council, General Assembly and Economic and Social Council or the UN other Organs[2].

Since establishing the Organization, the Secretary-General has faced crucial challenges where he is not ask to resign but also to decompose the position to be given to three people as Troika representing the Occidental, Eastern Europe and Non-Aligned Movement Countries. Later a Secretary-General lost his life as a price for basic principles pertaining to the rights of the Developing Countries peoples.

3 THE SECRETARY-GENERAL: SELECTION AND RESPONSIBILITIES

Certainly, the Secretary-General of the UN is the chief administrative officer, which is responsible for managing its administrative, technical, financial and political affairs. Therefore, he should chosen according to specific standards and procedures that stipulated in its Charter, others procedures had not stipulated in the Charter. However, carried out according to the International practices. In this Section, we will identify the mechanism of selection the UN Secretary General and how he will be selected, then clarify his assigned responsibilities that he already exercises whether stipulated in the Charter or not.

a- Nominated the Secretary General: The criteria for selection

It’s commonly in the International Organizations that the selection of the Secretary-General or the General Director, as it is called in some International Institutions, is carried out by its mainly Organs, and upon the unanimous consent of the Member States of the Organization.

As for the United Nations, the Secretary General should be a national of one of the Member States. In the UN practice, he shall not be a national of one of the five Permanent Members States in the Security Council. The Charter assigned the function of selection to the General Assembly and the Security Council.

Indeed, the Article 97 of the Charter used the term appointed not the terms “Election or selection as a clear indication of the administrative capacity of the Secretary-General[3].” In related of his period in IO, it is not limited in the Charter. However, the General Assembly, upon its resolution at the first Session in 1946, determined the term by five years for the first Secretary-General. [4] This mission shall be renew once for a period of five years. As long as the Charter does not provide a specific period for him or her, the General Assembly and the Security Council have the right to modify such period for the subsequent two Secretaries-General. However, according to the reality, the next eight Secretaries-General have been served for five-years and renewed once for a similar duration to most of them, except for U-Thant three times, Boutros Boutros-Ghali, who did not renew the term.

In this context, the General Assembly shall issue a recommendation to nominate the candidate by voting the majority of ordinary members who really attend and participate in the voting in its ordinary Session starting by straw polls later by secret ballot in extraordinary session, then addressing the recommendation to the Security Council.

According to Charter, the latter shall vote the recommendation of selection. His vote on the selection is one of the substantive issues that required an approval of the Five Permanent Members States of the Council, or even its abstention from voting. In other words, such selection must not be rejected by any of them using right to reject (Veto right) that inactivate the recommendation[5].

 Actually, the question raised when the time of renewal the first Secretary-General after the expiration of his first term: Does the Security Council have the authority to reject the recommendation of the General Assembly and select another person other than that recommended by the General Assembly? Does the General Assembly have the power to issue a recommendation for renewal or even select a new person without recourse to the Security Council? Or even make attention to its view or its approval?

These questions had been expressed the juristic argument that related to the legitimacy of renewal for the first Secretary-General. After the 2nd World War, the General Assembly tended by the majority of its members to the Occidental Camp which pro-renewal. While the Socialist Camp was the opposed to the renewal. In addition, the Soviet Union demanded the Security Council for immediate

4 UN/Doc. AG/ Resolution II, 1946, Terms of appointment of the Secretary General, 24 January 1946.
resignation of the first Secretary-General. This negative position of the Soviet Union considered a result of many attitudes taken by the Secretary-General himself, which qualified such attitudes biased in favor of the Occidental Camp and directed aggressively to the Socialist Camp. The arbitrary dismissal for several of the International employees of the US citizenship worked in the Secretariat General in New York because of their communist affiliation, this done under American pressure on the Secretary-General himself.

The War in Korea, The Secretary General accused to endorse the Union’s resolution for peace that issued by the General Assembly in favor of the Western Camp. The Soviet Union considered the Secretary-General as biased to Camp and not neutral in favor of a party in the Organization in considering another party[6]. The Soviet Union has aggravated the level of crisis reaching the Organization to the edge of collapse. Finally, this crisis had been expire by the resignation of the Secretary-General, which eased the crisis but did not end. After his resignation, a Swedish diplomat, Mr. Hammarskjold, chosen by a General Assembly recommendation addressed to the Security Council, which had selected him by secret ballot in closed session[7].

Unfortunately, Mr. Hammarskjold himself had criticized by the Soviets and even the West, as accused him of sympathizing with Third World issues. The Soviets demanded to appoint Troika consisting of three Secretaries, the First representing the Western countries, the second representing the Socialist countries and the third representing the Third World countries, but this proposal refused irrevocably as deemed to dispersion the UN.

It should be noted that the mechanism of selection the second or third Secretary-General or even renew the first Secretary-General achieved in international critical situation, accompanied with different interpretations of context the article 97 of UN Charter. Inevitably, the Member States asked questions about the legality of such selection or not with each selection[8]. So, the renewal of the first Secretary-General achieved while the Security Council blocked by Soviet Union by its absence for months.

The second Secretary-General, although his selection was made clearly by a recommendation of the General Assembly and the Council’s approval, but he faced great pressure because of his attitudes, which did not satisfy some of the major member states of the Council and he lost his life in the mysterious event of the fall of his plane in Congo.

To rectify the situation caused by the absence of Hammarskjold, one of his assistants which so-called r. U Thant, Burmese Diplomatic, had chosen by the Council. Although the General Assembly had named to the Council another candidate, but the Council did not take its recommendation in consideration. This situation led the Jurists of International Law to inquiry about legitimacy of unilateral act of selection exercise by the Council, as well as the legitimacy of the Council’s rejection of the candidate nominated by the General Assembly.

Unfortunately, the provisions of the Charter did not contain any answers to these questions or even the questions that preceded them. Therefore, the UN applied internal Customs concerning the nomination the Secretary-General. Actually, since 1971, it has become a usual, that the General Assembly, before recommended the candidate, shall communicate with the Council to obtain implied consent on the name of the candidate before submitting the recommendation. Then, the General Assembly shall address the recommendation to the Council that approves on the selection of the Assembly.

In other words, the final word in the selection belongs to the Council exclusively. Added to that, this selection subject to political consensus among the five Permanent Member States of the Council[9]. This matter is extend to the selection of the current ninth Secretary-General Antonio Guterres at the end of 2016. For example, when one Permanent Member State of the Council rejected the renewal of former – General-Secretary Boutros Boutros, did not preempt or help him the support presented by the General Assembly Members, or his great achievements in the Organization during its previous five years of service[10].

On the other hand, his successor had renewed for five years despite of his criminal accusations that proved by reports of financial and administrative corruption that dominated in the Organization especially through the Oil-for-Food program for Iraq during the period from 1996 - 2003. These accusations of corruption addressed directly to his relatives and members of his family, specifically his son, but the council, however, disregarded these accusations, despite of the reports that issued by the committees which were formed between 1998 - 2004 and did not consider the same when renewing him[11].

b- Many tasks for One Person

Historically, known about the Secretary-General of the League of Nations his pivotal role in the administration of two main bodies of LN. We mean the Council and the Assembly, as he is the one who calls for convening meetings, supervises the editing of its minutes of meetings, keeps the rule of regulation during the meetings, manages the sessions during the meetings & takes administrative and financial procedures in the emergency situations.

We pointed out that his presence is important for the meetings of the Organization bodies as well as for the international conferences that held by other international Offices and Organizations, which reflects the Organization’s

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view. This is not limited to the League but extends to other contemporary IO notably UNESCO and the International Atomic Energy Agency (IAEA), whom’s its Directors have wide administrative powers greater than the former Secretary General of the League of Nations.

1-Executive and administrative duties

Surely, the UN Charter entrusted the Secretary-General with limited (Political- Administrative- Technical) roles compared to what he should do and what he does. Some Jurists justified this approach and said that (the special nature of this Employee as International Officer and constitutes part of a major International body which is called the Secretariat-General, so he is as a natural person not one of the six bodies that mentioned in article 7 of the Charter).

Thus, the Secretary-General constitutes a part of the Secretariat-General, although it is explicitly stated in article 12/2, article 73 in respect with Secretary-General, but he remains an integral part of the Secretariat-General.[12]

Accordingly, to this Exceptional Importance to this person, the Jurists divided the functions of the Secretary-General into administrative, technical and other political responsibilities and those related to the maintenance of international peace and security.

In this regard, the article 98 of the Charter constitutes the legal basis for his administrative functions. So he is deemed to be an administrative and coordinator of all the affairs of the Organization’s bodies.

Responsible for preparing and collecting the documents related to the topics subject of discussion, which were submitted to the various bodies of the Organization as well as to the Secretariat-General except the ICJ, which has no role at all with the same.[13]

Additional to that, we may indicate that articles 100-101 of the Charter have discussed the administrative responsibilities. That assigned to the Secretary-General in the administration of staff in the Organization in respect with: Appointments, Promotions and impose the Sanctions on staff as well as the possibility of prosecuting him by Organization’s staff before the United Nations Administrative Court in his capacity as the Chief Administrative Officer.

Broadly speaking about the first Case in this regard which prosecuted by staff and the first Secretary-General has dismissed them for purely political considerations & the aforementioned Court issued the judgment for their interest.

Therefore, since the mandate of former Secretary-General Mr. Kofi Annan, many demands have raised regarding the appointment of an Assistant for Administrative Affairs. Which were accomplished where the Assistant of Secretary-General is responsible for the huge administrative burden of the Organization and its staff with keeping the Secretary-General as the exclusive jurisdiction, although the US proposal linked the establishment of this position to be limited to US citizen[14].

Such other functions that assigned to the Secretary-General refer to the financial affairs of the Organization. He is responsible for preparing the same through the Secretarial-General in cooperation with the Budget Committee of the General Assembly, as he is responsible for determining the Organization’s expenditures and income for the fiscal year and he submitted the draft budget at the annual General Assembly meetings.

On the other hand, we can notice to new function, which is neither classified in the political functions and nor stipulated in the Charter which is one of the purely technical competencies of submitting the annual report of all the activities of the Organization. This tradition had followed by the Organization since the 33rd session of the General Assembly.

Although our focus here is the administrative, political and diplomatic tasks, we should sign to a new task that has never assigned to any Secretary-General of an IO before. We mean his role as Deposit Centre of International Treaties, so when the Secretary-General receives from the Countries members of the UN, International Treaties, he registers and publishes them in cooperation with the Secretariat-General provided such Treaties conform to the Public International Law, such task is provided for him in article 102 of the Charter[15]. The fact that the UN granted this task to prevent the repetition of the results of secret diplomacy that prevailed in the past and caused the outbreak of two World Wars. The world after peaceful days woke up in the morning on the outbreak of war after that other countries declare that it has a secret agreement with one of war’s parties, which oblige it to join such country in case of attack or war[16].

2- Essential Diplomatic Role

As for his political and diplomatic role of international disputes and in warning risks that threaten the International Peace and Security. With regard to that, it is noted that because of the Cold War between the Soviet and USA, the Security Council suffered a kind of weakness as the opposition of attitudes on major international issues prevented access to firm and decisive attitudes in many attitudes especially in the case related to one of the Five Permanent Member of the Council.

Therefore, the Council found that it is necessary to have someone who can play important roles in managing the file of settlement disputes between the States or sometimes within States, therefore such role which is been assigned to the Secretary-General. His practice of this diplomacy is not always carried out directly by himself but he appoints

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other individuals who are called the Special Representatives of the Secretary-General "and they are subject to his direct instructions. There are now more than 60 special representatives around the world who are divided into areas of conflict and tension[17]."

Some of them who formed eminent political personality with reference to political figures such as: Prince Aga Khan, Mario Ihtsary, Former President of Finland, Sérgio de Mello, and even former UN SG Mr. Kofi Annan, who was appointed later as special representative of former Secretary General Ban Ki-Moon, or other former foreign Ministers. Therefore, he assigned to him the roles relating to the functions of good offices as a means of resolving and settlement the international disputes.

Exercise the Secretary General the mediation under the request of UN organs or upon his own initiative. Article 98 allowed him to exercise mediation and reconciliation upon the request of the Security Council or the General Assembly. This mean was provide in article 33 of the Charter as one of means for peaceful settlement of international disputes[18]. Added to that, the article 33/2 of the Charter, consider that the Council should call upon the parties to identify any means to resolve their dispute.

The Secretary-General has used this mean in many occasions especially in Grand crises, as following: the Cuban missile crisis in 1962, intervention to resolve the Cyprus crisis between Turkey and Greece before the intervention of Turkish military in 1974, the Cambodia Civil War 1975-1990, Iraq-Iran War 1980-1988. In addition to the above, he played a role in mediating the release of hostages in Lebanon during the civil war from 1975-1990, as in the Yugoslav crisis in 1990s, he played a role, although some Jurists were described as a negative role, but it remains important role despite the lack of tangible results[19].

We return to his role in the maintenance of International Peace and Security as one of the main objectives of the IO. It be clear, that article 99 has assigned to him the Competence for maintenance the International Peace and Security. However, the use the article 99 by Security Council still limited until now, for example, the Second Secretary-General used this article to justify the UN intervention in Congo crisis at the beginning of 1960s, later by Kurt Waldheim during the hostage Crisis of US diplomats held in Iran in 1979[20]. Moreover, it used for a third time by Javier Pérez de Cuéllar during the Lebanese civil war 1975-1990[21]. On the other hand, the International Jurists stressed that this article does not give the Secretary-General the powers to take repressive measures to impose international peace and security as stipulated in Chapter VII of the Charter but limit the same to that Council.

Indeed, in these previous examples, the Secretary-General shall convene an urgent meeting of the Council to discuss the situation or attitude for maintenance of international peace and security such is being as preventive measure that exercised by UN, under the Chapter VI named pacific settlement of disputes.

4 CONCLUSIONS
The tasks of the Secretary-General of the UN have developed in the 50 years ago. He carries out multiple tasks, some of which is stipulate in the Charter of the Organization and another is not provide. The last tasks have a great importance as it relates to his political and diplomatic roles as an intermediary for the resolution of International Disputes. Therefore, the Secretary-General has provided many initiatives and solutions to various political and military conflicts among the Members States of the UN especially in Asia, Africa, and MENA. It is true, that the Charter of the UN does not include these tasks; it is preferable for the interest of the International Community to continue and expand these roles, to maintenance the International Peace and Security as one of the UN aim. But, the selection of the Secretary General related with many factors: first the consent of the five Great Powers of the Security Council which allow him to exercise his role as mediator or diplomat to resolve international disputes, sometimes these five Great Powers reject his diplomatic role. Despite these complicated circumstances, some of the Secretaries General had succeeded in mediating some disputes and failing others because of factors related to his personality on the one hand, and because of different international circumstances on the other hand.

5 BIOGRAPHY
I-Books.

20 Karns,Margaret, ibid, p.136
21 Franck, Thomas, ibid, p.361.
The Status of the UN Secretary-General: Study in International Civil Servant


II-Articles.

III-Conventions.
- The Carter of UN 1945.
- Vienna Convention of Diplomatic Relations in 1961
- Convention on the Privileges and Immunities of the United Nations 1946

IV - Internationale Jurisprudence.
- Advisory Opinion of ICJ for the reparation for injuries suffered in the service of the United Nations in April 11-1949.