

The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture

*Thomas M. Franck**

I. Introduction

The Secretary-General wears many hats, most being of his own design. He heads a large, far-flung bureaucracy. He is *in loco regis* when ceremonial functions must be performed on behalf of the world. But, primarily, in practice he has become the UN's 'good officer', performing the mediating and diplomatic functions necessary to resolve conflicts. The world, increasingly, has come to rely on these 'good offices': to stop wars before they begin, end them when the belligerents are stymied, and create the confidence-building mechanisms that permit parties to turn from confrontation to cooperation.

While it may be true that only the US can mount an 'Operation Desert Storm', and that only the Security Council can authorize collective military action or trade embargoes, and that only the General Assembly can vote the funds that keep the UN's multiple operations in business, it is the Secretary-General, in fact, who has taken most of the initiatives to prevent or end the armed conflicts which threaten peace between and within nations. This is remarkable in itself. There is no nation in which the senior civil servant plays a comparable role; the nearest equivalent probably being the head of the Commission of the European Union. Even that erstwhile bureaucrat, however, does not have quite so many strings to his bow, nor does he deploy his discretionary powers so frequently. The purpose of this essay is to examine how this unique manifestation of power came about and to conjecture as to its future.

For most of the twentieth century, the international system knew of only three ways to settle a dispute: war, diplomacy and (on rare occasions), arbitration. However, the past few decades have seen the system's radical reconfiguration.

* Professor of Law and Director, Center for International Studies, New York University School of Law. Some of this article is based on research undertaken jointly with Dr. Georg Nolte. This is a draft of a chapter of a forthcoming book.

During this time, a new global process for conflict prevention and conflict resolution has developed and become an essential aspect of the system. Indeed, among the options for dispute settlement, the good offices function of the Secretary-General has emerged as the fastest growing.

The term 'good offices' has at its roots the 1899 and 1907 Hague Conventions.¹ Articles 2 and 3 of both instruments stipulate that 'before an appeal to arms' States shall 'have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers'. Moreover, 'friendly Powers' are further authorized to take the initiative 'to offer good offices or mediation even during the course of hostilities'.²

Currently, the term refers to the independent political role of the Secretary-General in preventing or mediating conflicts among, and more recently within, States.³ Yet, there is no specific authority for this in the Charter: it is a role which has developed in practice. Nevertheless, when the Secretary-General strives to bring disputing parties to the negotiating table, he now deploys the authority of the international community as a whole, a significant institutional innovation. Although this activity is only exceptionally visible to the public, it nevertheless constitutes one of the most important functions of the United Nations. As former Secretary-General Perez de Cuellar has put it:

No one will ever know how many conflicts have been prevented or limited through contacts which have taken place in the famous glass mansion which can become fairly opaque when necessary.⁴

Prospects for the good offices function of the Secretary-General are closely connected with prospects for the United Nations Organization itself. The immediate aftermath of the cold war has witnessed a remarkable expansion of UN activities. For example, in the five years after 1988, as many peace-keeping operations were authorized as in the previous forty-three years.⁵ The Security Council, finally

¹ J. Brown Scott (ed.), *The Proceedings of the Hague Peace Conference: Translation of the Official Texts for the Carnegie Endowment for International Peace, 1899* (1920) 237 and *id.* (1907) (Vol. 1) (1920) 599 .

² *Ibid.*, at Article 9 of both the 1899 and 1907 Hague Conventions.

³ The traditional meaning of the term 'good offices' is more restricted. In UN parlance and practice, however, it has come to cover not only 'mediation', see *Handbook on the Peaceful Settlement of Disputes Between States*, in Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, GAOR Suppl. No. 33 (A/46/33), at 61, but also fact-finding missions, see, e.g., UN Press Release SG/SM/4727/Rev.1, 10 April 1992, at 6 and G.A. Res. 46/59 of 17 January 1992; the word is even used in connection with an operation to oversee a troop-withdrawal, such as the United Nations Good Offices Mission to Afghanistan and Pakistan (UNGOMAP), see SC Res. 622 of 31 October 1988, para. 1; the Secretary-General has stressed that this 'is a very flexible term as it may mean very little or very much', *Handbook, id.* at 62.

⁴ UN Press Release SG/SM/4124, 20 April 1988, at 7-8.

⁵ UN Press Release SG/SM/4748, 13 May 1992, at 1-2.

unblocked, has been issuing a steady stream of mandatory 'enforcement' resolutions. In this context it is to be expected that the Secretary-General, too, would expand his functions. Such an expansion appears to have been accepted quite explicitly, in 1992, at the first meeting of the Security Council at the level of the heads of State and government. Those leaders formally invited 'greater use ... of his good offices'.⁶

This essay will trace the evolution of the good offices function with an eye toward identifying factors which may play a significant longer-range role in its future development. But, first, it is useful to look at the origins of good offices in the cold war era, when a deadlocked Security Council created a special case – and a particular space – for the Secretary-General to act on his own. Thereafter, we will assess the changed circumstances of a newly reinvigorated Security Council to weigh the effect that this has had on the good offices mission. Finally, we shall try to identify factors likely to shape the future.

II. Early Cases

In September 1946, just as the Security Council was debating alleged infiltration across Greece's northern border, Secretary-General Trygve Lie announced his intention to look into the facts on the ground. Lie treated this not merely as a useful way of dampening the conflict but, perhaps of greater importance, as a precedent establishing a legitimate and impartial role for his office.⁷ In October 1948 he again stepped forward with his own detailed solutions to the Berlin crisis,⁸ proposals which were not accepted.⁹ Undaunted, two years later, he sought to negotiate with China's emissary to start talks on a settlement of the Korean War.¹⁰

Lie's successor, Dag Hammarskjöld further expanded the good offices function in a much more successful initiative in 1955 that effected the release of an American aircrew imprisoned by Beijing since the Korean War. The General Assembly¹¹ had specifically authorized him to take this initiative, but Hammarskjöld found the Assembly's resolution too partial to the American position in the dispute. Accordingly, he invented what became known as the 'Peking formula', dissociating himself from that resolution and assuming a neutral stance. Also, by refusing to be

⁶ UN Doc. S/23500 of 31 January 1992, at 4.

⁷ SCOR, 1st year, 70th meeting, 20 September 1946, at 404.

⁸ A.W. Rovine, *The First Fifty Years: The Secretary-General in World Politics, 1920-1970* (1970) 227; E. Luard, *A History of the United Nations* (1982) 347.

⁹ *Ibid.*, at 227-28.

¹⁰ *Ibid.*, at 244-45.

¹¹ G.A. Res. 906(IX) of 10 December 1954.

tioned to the resolution, Hammarskjöld clearly asserted his office's power to intervene with or without the prior approval of a political organ.¹²

It was the institutional stasis created by the cold war, paradoxically, which gave the Secretary-General the elbow room for such bold initiatives. Acting on a firm belief that the Secretary-General's powers must expand in the interest of world peace when the political organs are unable to act, Hammarskjöld initiated private negotiations between the foreign ministers of Egypt, Britain and France after Nasser's nationalization of the Suez Canal in 1956. Two years later, after the landing of the American Marines in Lebanon, and in the face of a deadlocked Security Council, he acted on his own to augment the UN Observer Group in Lebanon (UNOGIL). This helped facilitate the withdrawal of the American forces.¹³

Inevitably, such a dynamic reading of the Charter's division of authority was (and is) not wholly uncontested. The Soviet Union ostracized Hammarskjöld during his second term for overreaching his authority. In more recent criticism, the US Government, in the fall of 1993, felt constrained to remind Secretary-General Boutros Boutros Ghali that he is only the 'servant' of the members, an acerbic view echoed by the Governments of France and the United Kingdom.¹⁴

Such occasional censure of the Secretary-General attests both to the gradual historic growth of the office's capacity to affect world events and to its independence. These characteristics have accrued incumbent by incumbent. This growth is not necessarily welcomed by the permanent members of the Security Council – Britain, China, France, Russia and the United States – which naturally may prefer to see the UN as a continuing conference of governments and not as an independent actor – the term 'loose cannon' is favoured by some diplomats – in the global system.

Censure notwithstanding, the tendency has long been towards an increasingly assertive Secretary-Generalship. In the autumn of 1959 Hammarskjöld accepted an invitation from the Government of Laos to visit in order to see what could be done about ending that nation's long civil war. This broke procedural ground in that he neither sought, nor obtained approval from the Security Council, which was deadlocked by cold war politics. When Thailand and Cambodia proposed taking a boundary dispute to the Security Council, he forcefully intervened to urge them to accept, instead, mediation of his Personal Representative, Yohan Beck-Friis of Sweden. 'You can see how much more effective and smooth working such a technique is than the regular one which involves all the meetings and debates and so on',¹⁵ he wrote.

¹² UN Doc. A/2888 of 17 December 1954; Report SG A/2954 of 9 September 1955; B. Urquhart, *Hammarskjöld* (1972) 101.

¹³ SCOR, 13th year, 837th meeting, 22 July 1958, at 4.

¹⁴ 'UN Chief Has to Direct Peace Efforts at US, Too', *N.Y. Times*, 16 October 1993, at 1.

¹⁵ W. Foote (ed.), *Dag Hammarskjöld – Servant of Peace: A Selection of His Speeches and Statements* (1962) 264.

Secretary-General U Thant, too, expanded the scope of the good offices function with some audacity. At the end of 1962, he took steps to insert himself in the negotiations to end the Cuban missile crisis, initiatives not particularly welcomed by the principals.¹⁶ In 1963, acting entirely on his own authority, he persuaded the parties to the Yemeni civil war to request the posting of UN observers in a demilitarized zone.¹⁷ Acting on that request, he sent a team of 144 Yugoslavs, borrowed from the UN Emergency Force in the Middle East and augmented by fifty personnel from the Royal Canadian Air Force. The Security Council did not actually authorize the force until several days after it had been despatched.¹⁸

During the fighting between India and Pakistan in August 1965, he took the lead in starting negotiations and, when a truce was achieved, in creating a new observer group, the United Nations India-Pakistan Observer Mission (UNIPOM) to monitor it. On his own authority, he spent \$2 million to get that force, UNIPOM, promptly underway, drawing on an account for unforeseen peace-keeping contingencies. It was the first such use by the Secretary-General of funds, without specific budgetary authorization, to implement an agreement reached as a result of his good offices.

With great tenacity, despite rebuffs from both sides, U Thant searched for the key to a negotiated peace in Vietnam throughout 1964-65, even though that conflict had never even been put on the UN's agenda.¹⁹ His successor, Kurt Waldheim, although less innovative by nature, nevertheless tried to push the limits a bit further. He intervened, without authorization from the Security Council or General Assembly, to avert a crisis in French-Algerian relations by personally securing the release of eight French hostages being held by Algeria by the Saharawi Liberation Movement (POLISARIO).²⁰ On a much larger scale, Waldheim acted on his own authority in 1979 to convene a sixty-five-nation meeting to deal with the flood of Vietnamese 'boat people'. This initiative ended in success with agreement on an orderly exit and resettlement scheme.²¹ A similar initiative followed on behalf of Cambodian refugees.²²

¹⁶ See UN Press Release SG/1357, 26 October 1962, at 1; UN Press Release SG/1358, 26 October 1962, at 2.

¹⁷ UN Doc. S/52988 of 29 April 1963, at 1-3.

¹⁸ SC Res. 179 of 11 June 1963.

¹⁹ *N.Y. Times*, 7 August 1964, at 1; *id.* 12 April 1965, at 1.

²⁰ K. Waldheim, *The Challenge of Peace* 1-2 (1980); see *N.Y. Times*, 13 November 1977, at A3; 16 December 1977, at A7; *The Times* (London), 21 December 1977, at 5; *N.Y. Times*, 24 December 1977, at 2; UN Press Release SG/SM/2521/Rev.1, 14 December 1977, at 1.

²¹ T.T.B. Koh, 'The United Nations: Perception and Reality', Speech to a meeting of Asian mass media, sponsored by the UN Department of Public Information, Manila, 12-14 May 1983, at 14 (mimeo). *N.Y. Times*, 22 July 1979, at 1. See *memorandum of Understanding*, 30 May 1979, between the Government of the Socialist Republic of Vietnam and the United Nations High Commissioner for Refugees (UNHCR) concerning the departure of persons from the Socialist Republic of Vietnam. UN Doc. A/C.3/34/7 of 2 November 1979, Annex; the announcement on the moratorium on expulsions – two-thirds of which were ethnic Chinese – by sea was made by Waldheim in a press conference at the end of the Geneva meeting, UN Press Release SG/REF/8, 23

By the time Javier Perez de Cuellar assumed the office, his predecessors had constructed a dispute settlement role that is clearly separate from, and sometimes at variance with, the policy of one or other UN political organ, not to mention that of important Member States. There also had emerged what amounted to a 'thirty-ninth floor perspective'. It had become unremarkable for the incumbent to venture where States could not, or would not, go, guided solely by an understanding of the principles and purposes of the Charter. In effect, successive Secretaries-General had established a right to act on their own to safeguard what they perceived as minimum standards of world order. And they had become quite skilled at drawing a line between their own role and that played by the political organs. By the mid-eighties, with the Security Council still constrained by cold war politics, it was clear that the office of the Secretary-General had gained in stature in relation to other UN organs.

That was the situation up to 1988. Thereafter, with the end of cold war conflict between the superpowers, things began to change. Despite the fact that the Secretary-General, together with the rest of the UN system, undoubtedly has gained in stature since the easing of cold war tensions, his capacity for independent initiatives has nevertheless been affected – some might say diminished – by the increased activism of the newly-reinvigorated Security Council and (to a lesser degree) the General Assembly, as well as by those organs' rapidly diminishing appetite for tackling potentially costly and nettlesome tasks in places which do not directly affect the leading members' national interests.

III. Success and its Problems

Since the end of the cold war, the Secretary-General's good offices missions have achieved some notable successes. They have tackled disputes varying in substance and context – including essentially legal issues, questions of territorial sovereignty and civil wars – and have been based on various sources of authorization.

In the war between Iran and Iraq, the Secretary-General exercised his good offices to bring about a cease-fire, but he also engaged in fact-finding, which sometimes threatened his role as a neutral mediator. For example, in November 1983, Iran alleged that Iraq was using chemical weapons. The Secretary-General despatched several missions to examine evidence on the ground. A series of studies, from March 1984 onwards, confirmed that such weapons had been used, and he said so.²³ Despite this, Iraq continued to accept him as a mediator.²⁴

July 1979, at 1. In a dissonant note, officials of the UNHCR were quoted as dissociating themselves from the agreement and expressing distaste for its provisions limiting the rights of Vietnamese to flee their country (*id.*).

²² See Koh, *supra* note 21, at 1.

²³ UN Doc. S/20060 of 20 July 1988 is the latest report. It also contains references to all previous reports.

To augment his mediator's role, the Secretary-General also, increasingly, began to play a political role in shaping the decisions of the Security Council. After publicly urging Iran and Iraq to end their hostilities,²⁵ he pressed the Council,²⁶ in 1987, to enact Resolution 598 under Chapter VII of the Charter, which mandated an immediate cease-fire.²⁷ During the year it took for Iran to comply,²⁸ the Secretary-General's good offices mission was transformed into a mission to secure and monitor the parties' compliance. Meanwhile, he continued sounding out the combatants,²⁹ exerted public pressure on them to exercise military restraint³⁰ and despatched further missions to investigate more allegations of chemical warfare.³¹ Taken as a whole, the Iran/Iraq conflict demonstrated that the Secretary-General can integrate several different roles: as impartial intermediary, investigator of abuses and voice of world conscience. He also demonstrated a readiness to influence the Security Council in formulating the strategies and the resolutions that would put the Organization's political and military weight behind his peace-making initiatives.

This sort of integrated approach, in which the mediating role of the Secretary-General is carried on in conjunction with political efforts of the Security Council and leading members of the UN, is well demonstrated by the Namibia operation. In 1978, the Security Council established the United Nations Transition Assistance Group (UNTAG)³² by a resolution outlining the parameters for Namibia's transition from illegal South African control to independence. The South African Government, however, did not accede until after almost a decade of delicate negotiations about the modalities for implementing the Council's resolution. These negotiations were pursued concurrently by the Secretary-General and a five-nation 'Contact Group' which exerted considerable political leverage on South Africa.³³

Only in 1985 did this effort succeed in obtaining South African agreement to the terms for holding UN-supervised elections, leading to Namibian independence.³⁴ When, in August 1988, neighbouring Angola agreed to the withdrawal of Cuban troops stationed there,³⁵ the last obstacle to Namibia's transition to independence

24 UN Press Release SG/SM/3956, 13 January 1987, at 4.

25 UN Press Release SG/SM/4011/Rev. 1, 19 June 1987, at 5.

26 Ibid.

27 SC Res. 598 of 20 July 1987.

28 UN Press Release SG/SM/4166, 18 July 1988.

29 See UN Press Release SG/T/1452, 15 September 1987.

30 UN Press Release SG/SM/4090, 1 March 1988.

31 UN Press Release SG/SM/4127, 27 April 1988, at 4 & 9; SG/SM/4154, 28 June 1988 and SG/SM/4176, 11 August 1988.

32 SC Res. 435 of 2 September 1978, para. 3.

33 Report SG S/15776 of 19 May 1983, at 1-2.

34 Report SG S/18767 of 31 March 1987, at 2; Agreement finalized on 10 March 1989, Report SG S/20412/Add.1 of 16 March 1989.

35 Report SG S/20412 of 23 January 1989, at 3-4, 21.

was removed and the path cleared for the UN to carry out what was to become one of the Organization's largest and most successful operations.³⁶

The Namibian operation took place in the twilight of the cold war. The end of that prolonged period of stasis at the UN accelerated the Organization's evolution, in response not only to a new east-west thaw, but, more importantly, to the spread of civil conflict in Africa and East-Central Europe. It rapidly became apparent that civil conflict within a Member State could no longer be regarded as a matter solely within its domestic jurisdiction. By the end of the cold war, the major powers ceased to see civil wars as surrogate testing-grounds for promoting their self-interest and more as humanitarian disputes threatening to engulf neighbours with floods of refugees and burden them with extraordinarily expensive relief efforts. Thus, they became interested in the expansion of the Secretary-General's peace-making and conflict-preventing role into 'domestic' disputes previously off limits to the UN system.

This new era opened with a major success for the system: the conclusion of the Geneva accords of 1988 which provided for the withdrawal of Soviet troops from Afghanistan. Negotiations had been initiated in 1980, called for in a resolution of the General Assembly which authorized the Secretary-General to approach the parties to the conflict.³⁷ That resolution, however, also called for the immediate withdrawal of Soviet troops, a demand the Afghan and Soviet Governments rejected. Using a variation of the 'Peking formula',³⁸ the Secretary-General distanced himself from the Assembly's demands in making his own soundings. Tentative negotiations between Afghanistan and neighbouring Pakistan, where the mujahidin resistance was based, began in 1982, without prior conditions. In 1988, after years of negotiations, the two sides adopted a time frame for troop withdrawal and agreed to the establishment of a formal supervisory mechanism, the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP). One year later, the Secretary-General was able to report the timely completion of the Soviet forces' withdrawal.³⁹

The Geneva accords ended Soviet involvement, but it left the Afghan civil war unresolved. Accordingly, new good offices were undertaken in an effort to bring the civil war to a peaceful conclusion and to broker a broad-based government of reconciliation.⁴⁰ The new phase of Afghani good offices was assigned to the Secretary-General's Personal Representative, Benon Sevan. By early 1992, after intense negotiations, Sevan's 5-point plan⁴¹ had received sufficient support from the

³⁶ See Statement Secretary-General at Namibia's independence celebration.

³⁷ G.A. Res. ES-6/2 of 14 January 1980.

³⁸ See UN Press Release SG/SM/4124, 20 April 1988, at 8.

³⁹ UN Doc. S/20465 of 15 February 1989, at 1.

⁴⁰ UN Press Release SG/SM/4263, 16 February 1989, at 1.

⁴¹ Ibid.

principal domestic parties to allow the Secretary-General to announce an agreement to form a pre-transitional Governing Council and to convene a formal peace conference.⁴² That plan, however, was overtaken by the military collapse of the Najibullah-regime.

The procedures that ultimately failed to spare Afghanistan have proven more successful in mediating other civil conflicts: in Cambodia, Mozambique, Nicaragua and El Salvador and, at least partially, in the prolonged efforts of the Secretary-General to end fighting and provide humanitarian relief in the civil wars of the former Yugoslavia, as also in fragments of the former Soviet Union.

Mediating civil war conflicts in the manner pioneered in Afghanistan has become almost routine. Notably, the Secretary-General's good offices have played a major role in global efforts to settle the 20-year Cambodian civil conflict. As elsewhere, his role as a neutral mediator and implementer of agreements was given a supportive context by decisions made, and resolutions passed, in the political organs. Building on precedent, however, the mediator's role was carefully differentiated from the political agenda of other UN organs. The invasion of Cambodia by Vietnam to oust the Khmer Rouge, although applauded for ending that murderous episode, had also been condemned by successive General Assembly resolutions as a violation of a member's territorial integrity and independence. These had called for an immediate withdrawal of foreign troops,⁴³ even as they summoned the Secretary-General to exercise his good offices. He agreed to do so, but only on the basis of his independent authority,⁴⁴ and by distancing himself from other parts of the Assembly's resolutions.⁴⁵

On June 1988, after the Secretary-General had undertaken consultations with ASEAN-States, the push for a comprehensive political settlement began to gather momentum. France and Indonesia invited the Cambodian factions and a number of interested States to a Peace conference which opened in Paris in August 1989. In October 1991, the Peace Conference reached an Agreement⁴⁶ which provided for an unprecedentedly comprehensive supervisory and administrative role for the United Nations Transitional Authority in Cambodia (UNTAC) to be organized and directed by the Secretary-General.⁴⁷

Similarly, it was the Secretary-General who became the instrument for implementing the agreement to end the decades-long civil war between forces of the Government of Mozambique and REMAMO insurgents. The 15 October 1992

⁴² UN Press Release SG/SM/4727/Rev.1, 10 April 1992, at 1.

⁴³ G.A. Res. 44/22 of 16 November 1989, paras. 1 and 2; G.A. Res. 34/22 of 14 November 1979, para. 9.

⁴⁴ UN Press Release SG/SM/4011/Rev.1, 19 June 1987, at 7-8; UN Press Release (ST) DPI/1091, at 1.

⁴⁵ See, e.g., Report SG A/41/707 of 14 October 1986, at 1; G.A. Res. 34/22 of 14 November 1979, para. 11.

⁴⁶ UN Doc. A/46/608-S/23177 of 30 October 1990.

⁴⁷ SC Res. 745 of 28 February 1992; Report SG S/23613 of 19 February 1992.

General Peace Agreement reached in Rome called for the UN to monitor and guarantee implementation of its complex provisions, with the Secretary-General to chair the key commissions charged with securing a cease-fire, creating a new national militia and reintegrating the insurgents into the civil society. It was also left to the Secretary-General to monitor and supervise the execution of the terms of the agreement, culminating in national elections.⁴⁸ After feasibility discussions with the parties, he was able to report to the Security Council that his conditions had been met, whereupon the Council authorized an 8,000 person UN Operation (ONUMOZ) under his direction, with both military and civilian components.⁴⁹ Elections were scheduled for October 1994.

The same pattern of expanding executive authority may be seen in the Central American peace process. This involved three separate sets of negotiations, concerning Nicaragua, El Salvador and Guatemala. In late 1986 the Secretaries-General of the Organization of American States (OAS) and the UN informally agreed on a joint good offices initiative.⁵⁰ As a result, in 1987, in another important new procedural departure, the countries concerned joined in a 'framework agreement', Esquipulas II.⁵¹ A framework agreement sets objectives and institutes procedures for negotiations. In this instance, it also authorized the two Organizations to monitor the implementation of whatever commitments would emerge from the substantive negotiations.⁵² The search for such framework agreements often has become a first step when the Secretary-General's office becomes involved in conflict prevention or resolution.

Nicaragua's civil war was the first of the Central American crises to yield to negotiations under the framework formula. The Secretary-General participated actively in the talks which led, in 1989, to an agreement on demobilizing the Contra guerrillas.⁵³ He was charged with creating a United Nations Observer Group in Central America (ONUCA) to oversee this demobilization, as well as a United Nations Observer Mission (ONUVEN), to verify the fairness of elections that were to end the conflict.⁵⁴ These tasks were carried out with notable success.

In El Salvador, the Secretary-General played an even more active role. Beginning in December, 1989, he conducted negotiations to bring about a dialogue between the Government of El Salvador and the FMLN guerrillas.⁵⁵ This led in July 1990, to the San Jose Human Rights Accord in which the Government of El Salvador agreed to

48 Report SG S/24635 of 4 October 1992.

49 SC Res. 797 of 16 December 1992.

50 Report SG A/42/127-S/18686 of 12 February 1987, at 1-2.

51 Esquipulas II-Agreement, published in Report SG A/42/521-S/19085 of 31 August 1987, at 8.

52 The countries concerned, in this instance, were the five Central American republics.

53 Reports SG A/44/344-S/20699 of 9 October 1989, at 3; A/44/886-S/21029 of 21 December 1989, at 2-3; A/45/706-S/21931 of 8 November 1990, at 2-6.

54 SC Res. 637 (1989) of 27 July 1989.

55 Declaration of San Isidro, Report SG A/44/872-S/21019 of 12 December 1989, at 2.

have its compliance with the new rules monitored by yet another UN mission under the Secretary-General's control.⁵⁶ The comprehensive Peace Agreement⁵⁷ concluded on 31 December 1991 and signed 16 January 1992, provides not only for demobilization of the guerrillas and their reintegration into Salvadorean society, it also prescribes extensive changes in the constitutional and institutional framework of the country, including a complete restructuring of the armed forces. The mediation effort culminated in general elections in 1994, observed both by the UN and OAS, in which the established parties as well as the candidates of the former FMLN insurgents participated.

In 1990, negotiations were begun between the Government and insurgents in Guatemala, with the participation of the Secretary-General's representative.⁵⁸ That 30-year civil war had led to the death of at least 100,000 persons and the 'disappearance' of 40,000 others. In January 1994, the adversaries, negotiating under the Secretary-General's auspices, had concluded a framework agreement which also provided for the UN to moderate future negotiations and verify compliance.⁵⁹ By mid-1994, the government and insurgents had signed agreements regarding refugees and on establishing a 'truth commission' to investigate human rights abuses in the years since 1960, when the armed conflict began. An overall peace agreement was expected by the end of 1994.⁶⁰

The Secretary-General has also used his good offices role to find peaceful solutions to conflicts of a smaller scale. The hostage situation in Lebanon is such a case. In 1991, after a number of other intermediaries had failed, the Secretary-General despatched Special Envoy Giandomenico Picco to negotiate with the hostage-takers and the governments concerned. He helped devise a plan which ultimately led to the release of almost all western hostages by the end of the year.⁶¹

The Secretary-General has also acted as an arbitrator (in the *Rainbow Warrior* dispute between France and New Zealand)⁶² and as a mediator in the Guyana-Venezuela boundary dispute.⁶³ The object in both instances was to prevent a diplomatic dispute from degenerating into a more serious conflict. The Secretary-General (represented by Singaporean diplomat T.T.B. Koh) has also successfully mediated disputes in 1993-94 between Russia and the Baltic Republics

⁵⁶ UN Doc. A/44/971-S/21541 of 16 August 1990, Annex.

⁵⁷ UN Doc. A/46/864-S/23501 of 30 January 1992.

⁵⁸ Report SG A/46/713-S/23256 of 2 December 1991, at 5-7.

⁵⁹ Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and UNRG, signed 10 January 1994, A/49/61-S/1994/53, Annex.

⁶⁰ *N.Y. Times*, 19 June 1994, at 8; *ibid.*, 24 June 1994, at A2.

⁶¹ *N.Y. Times*, 19 January 1992, at 1.

⁶² The text of the UN Secretary-General's ruling of 6 July 1986 on the *Rainbow Warrior* affair is published in 81 *AJIL* (1987) 325.

⁶³ UN Press Release SG/SM/4668, 9 December 1991.

(Lithuania, Latvia, Estonia) arising out of differences regarding the terms for withdrawal of remaining Russian military contingents and ancillary matters.⁶⁴

The Secretary-General has drawn upon his independent executive powers to initiate action in the growing civil war raging in the Abkhazia region of Georgia. That conflict broke into the open in 1992, when separatist tendencies of the Abkhazi minority⁶⁵ erupted in armed secession. Initially, the Secretary-General sent a 'goodwill mission' to the region without first seeking formal Security Council authorization. On its return, he reported to the Council, which, on 10 September 1992, agreed to 'take note' of his 'intention' to mediate.

Although a cease-fire was agreed by the parties on 14 May 1993, fighting continued. The Council then authorized the Secretary-General to begin to organize a UN Observer group, to negotiate the terms of its responsibilities and functions with the parties, and to report to the Council when he believed that conditions for its deployment had been assured.⁶⁶ When a new cease-fire came into effect at the end of July 1993 he felt able to recommend to the Council the despatch of a small contingent of observers,⁶⁷ a proposal quickly adopted by Council, which, amidst encouraging signs, later agreed to the Secretary's request for additional forces.⁶⁸ While taking a neutral mediating stance on most issues in dispute, the Secretary-General has made clear that his independence does not extend to matters as to which the UN has taken definitive policy positions. Thus, while terms and conditions for Abkhazian local autonomy are negotiable, he has warned the separatists that 'international recognition would not be given to any entity that attempted to change international boundaries by force'.⁶⁹

IV. Failure

Inevitably not all the Secretary-General's initiatives have been crowned with success. Indeed, as circumstances have drawn him into a more active posture, the risks of failure have increased. A brief survey of the failures, however, is as helpful to prognosis as is the contemplation of success.

The case of Cyprus is both the longest running good offices effort of the Secretary-General and the one which best illustrates its difficulties and frustrations. Ever since the stationing of UN peace-keeping forces (UNFICYP) on the island in

⁶⁴ *N.Y. Times*, 4 September 1993, at 5.

⁶⁵ Abkhazia's population, in 1989, was 47% Georgian, 18% Abkhazi, 18% Armenian and 13% Russian. UNYB (1992) 391.

⁶⁶ SC Res. 849 of 9 July 1993.

⁶⁷ Report SG S/26250 of 6 August 1993.

⁶⁸ SC Res. 892 of 22 December 1993.

⁶⁹ Report SG S/1994/80 of 25 January 1994.

1964,⁷⁰ the Secretary-General has been involved in the search for an agreement between Greek-Cypriot and Turkish-Cypriot authorities leading to peaceful reunification in a confederal structure of governance.⁷¹ In this instance, the Secretary-General has acted on the basis of Security Council authorization, renewed semi-annually,⁷² and in the context of a UN military commitment, currently scaled down to some 1,200 peace-keepers.⁷³

The effort has met with ample frustration. In the years following the Turkish invasion in 1974, numerous mediating efforts have been undertaken by successive Secretaries-General. To date, these have had only modest successes, in the form of two agreements, in 1977 and 1979, which established a framework for negotiation but failed to prompt any substantive agreement.⁷⁴ Although on three occasions closure seemed within reach, it has continued to elude the parties. Most recently, in May 1992, a new round of negotiations was initiated by the Secretary-General, who even proposed a map demarcating the Turkish and Greek States within a proposed Cypriot federation.⁷⁵ With no progress, these negotiations, too, were adjourned 'for reflection'.⁷⁶ Acknowledging that the UN's role in Cyprus might be contributing as much to the problem as to its solution, by inadvertently encouraging the parties to remain safely intransigent behind the UN-policed truce line, the Secretary-General noted that 'it was long past time for the parties to take the important political decisions necessary for an agreed, compromise solution' and added that 'the continuation of the status quo' was 'not a viable option'.⁷⁷

But neither is withdrawal. Were UNFICYP terminated, in the absence of a negotiated agreement between the parties, there would almost certainly be a war between Cyprus and Turkey that would be likely to draw in Greece and, perhaps, others. And if UNFICYP is to remain, there are few alternatives to continuing active diplomatic efforts by the Secretary-General, if only to demonstrate the UN system's active non-acquiescence in the island's permanent partition.

Frustration of the Secretary-General's good offices missions to Cyprus is attributable to the obduracy of the parties. In other instances, frustration has been attributed to constraints on the Secretary-General imposed by the Security Council, the General Assembly, or important Member States.

⁷⁰ SC Res. 186 (1964) of 4 March 1964.

⁷¹ SC Res. 186 of 4 March 1964, para. 7 ('mediator'); SC Res. 244 of 22 December 1967, para. 3 ('good offices').

⁷² SC Res. 723 of 12 December 1991, para. 2; SC Res. 367 of 12 March 1975, para. 6.

⁷³ Report of the Secretary-General on the Work of the Organization, A/49/1, 2 September 1994, p. 55.

⁷⁴ Reports SG S/12323 of 30 April 1977, at 2-3; S/13369 of 31 May 1979, at 13.

⁷⁵ *Ibid.*, at 4-5.

⁷⁶ UN Doc. S/24472 of 21 August 1992, Annex, at 3.

⁷⁷ *Ibid.* See also Report of the Secretary-General, 1994, *supra* note 73, at 64-66.

The Kuwait crisis may be a case in point. The Secretary-General had been a major factor in arranging the 1988 Iran-Iraq cease-fire. However, two years later, when the Gulf was again in flames set by Iraq's invasion of Kuwait, he was essentially relegated to the side-lines. The crisis was acted upon by the Security Council which, in turn, subcontracted much of its responsibility for collective security to a few powers willing to use force under US command in Operation Desert Storm.

Shortly after the Iraqi invasion, the Council did authorize the Secretary-General to meet in Jordan with Iraqi Foreign Minister Tariq Aziz. The terms of the authorizing resolution appeared to give him great latitude. He was to make his good offices available 'as he considers appropriate' and to 'undertake diplomatic efforts to reach a peaceful solution'. In practice, however, he was little more than an emissary for the Council, which had already demanded Iraq's total and immediate withdrawal⁷⁸ in its Resolution of 2 August 1990⁷⁹ and invoked sanctions under Chapter VII to enforce its demands.⁸⁰ In the circumstances, the Secretary-General could not invoke the 'Peking formula' or assume an independent mediating role, but felt constrained to negotiate within the ambit of those essentially non-negotiable terms. His impotence was underscored when the US Government asked him to delay his mission to permit Secretary of State James Baker to make his own attempt at direct negotiations in Baghdad. Both missions failed.

Another example of a post-cold war good offices mission in which the Secretary-General had little room for independent manoeuvre is his role in the 1992 crisis concerning the British-French-American demands on Libya for the extradition of suspected terrorists involved in two airline bombings.⁸¹ In this instance, the Secretary-General was asked, essentially, to be the Council's 'letter carrier'. Invited by that body 'to seek the cooperation of the Libyan Government to provide a full and effective response' to the requests by Britain, France and the United States for extradition of the suspects,⁸² the Secretary-General sent Under-Secretary-General Vasily Safronchuk to Tripoli, explaining that the purpose was not mediation, but merely to 'take note' of Libya's 'preliminary response'⁸³ to the Council. When the Libyan Government offered to negotiate a 'mechanism' to implement the resolution, the Secretary-General felt he had no option but to decline, his authority under the Council's terms being too limited.⁸⁴

The lesson of the failed Iraqi and Libyan assignments is not necessarily that the Secretary-General invariably needs broad discretion to negotiate a peaceful

78 UN Press Release SG/T/1624, 30 August 1990; SG/SM/4487, 4 September 1990; UN Press Release SG/T/1640 and 1643, 14 January 1991.

79 SC Res. 660 of 2 August 1990.

80 SC Res. 661 of 6 August 1990.

81 UN Press Release SG/SM/4727/Rev. 1, 10 April 1992, at 5.

82 SC Res. 731, para. 4 of 21 January 1992.

83 Report SG S/23574 of 11 February 1992, at 1.

84 Ibid., at 2.

settlement. Rather, it may be that when the Council intends to resolve a dispute through force, the Secretary-General should not be used as its messenger. There are others available, such as the Council's president; the Secretary-General's credibility as an independent negotiator is a valuable resource of the UN system which should be expended wisely.

Failure teaches a related lesson about squandering capital: it is important that the Secretary-General not be saddled with good offices assignments which are hopeless, due to the obduracy of the parties or the unwillingness of UN members to commit adequate funds and personnel, or where the international community does not really desire a settlement. UNAVEM, the original UN election verification mission to Angola, was woefully understaffed and its failure became palpable when hostilities resumed after the elections of September 1992. Since then, there has been some progress. The Government of Angola and the UNITA insurgents agreed to request a UN peace-keeping force of 7,000 troops and additional civilian personnel to enforce a new power-sharing agreement that was completed on 17 October 1994, negotiated under the auspices of the Secretary-General's representative and governments of the region. There is reason, however, to question whether the State members feel a sufficiently 'high degree of international commitment to assist Angola in achieving a negotiated settlement'.⁸⁵ The remarkable thing about UNAVEM's relative success in pacifying Angola after the 1992 debacle, and preventing famine and mass exodus, is that so much has been achieved with such limited means. However, one of the possible consequences of sending the Secretary-General to mediate a threatening dispute is that, against all odds, he may succeed: in which case the Organization's members, to keep faith, should feel morally compelled to provide adequate resources to carry the accord to a successful result on the ground.

Similar lack of political will has also characterized the membership's parsimonious response, early in 1994, to escalating tribal war and genocide in Burundi and Rwanda. In his 1994 Report on the work of the UN, the Secretary-General details his calls for authorization of an international force to stabilize Burundi, which have not been heeded by the political organs.⁸⁶ Although humanitarian efforts by UN agencies and the diplomatic skills of the Secretary-General's special representative may alleviate the worst excesses of such civil wars, their capacity to effect genuine reconciliation is hampered by the reluctance of UN members to shoulder additional policing burdens.

If it is unfortunate to fail to back up the Secretary-General's diplomatic efforts at peace-keeping with adequate resources to implement painstakingly-negotiated agreements, it is far worse to send him on what are essentially 'fools' errands'. The

⁸⁵ Report of the Secretary-General, 1994, *supra* note 73, at 61. The agreement is reported in *N.Y. Times*, 18 October 1994, at A10.

⁸⁶ *Ibid.*, at 63-64.

UN mission in the Western Sahara may be one example.⁸⁷ It seems quite unlikely that the self-determination referendum it was to supervise by January 1992, will ever occur. Meanwhile, MINURSO, the mission created by Security Council Resolution 690 of 29 April 1991, has been stymied in the field, with 330 personnel deployed, incurring annual costs of some 80 million dollars. If the political will to compel Morocco and its POLISARIO opponents to cooperate cannot be mustered by the current target-date for the plebiscite (14 February 1995), it may be appropriate to conclude that the UN system has been beguiled into an exercise the real purpose of which is to maintain the status quo.⁸⁸

Something similar may be said of the Secretary-General's mission of mediation regarding East Timor.⁸⁹ Indonesia had invaded that former Portuguese territory in 1975, at the moment of its decolonization. Both the Security Council and General Assembly have reiterated the inhabitants' right to self-determination, and the Assembly requested the Secretary-General to initiate consultations.⁹⁰ As of August 1994, Indonesia has not indicated any interest in negotiating questions of status, and is tacitly supported in that posture by some important UN members.

The Secretary-General should never be used as a 'black hole' down which to drop issues some members wish to forget and as to which, in any event, there is sharp disagreement not only among the parties to the dispute but also among their influential supporters in the UN. The Secretary-General, at times, may wish to expend some of his capital in trying to salvage a situation as to which the political organs are deadlocked – he did so frequently during the cold war – but any such choice should be dictated solely by his sense that the risk/benefit ratio favours such an attempt. In East Timor, that ratio is quite unfavourable; nevertheless, the Secretary-General has done what he could. By issuing annual 'progress reports' he has at least kept the Timor issue from becoming moot: but at a price. When the Secretary-General is assigned diplomatic functions by the political organs primarily as a way of shifting responsibility for failure, or to create the illusion of action, the effectiveness of his office suffers.

Indeed, the Secretary-General is aware of the dangers to his credibility. A recent effort to resolve through diplomacy and 'confidence-building measures' the civil insurgency in Tajikistan ended abruptly when he reported failure to the Security Council, on 28 July 1994.⁹¹ He noted

with regret that subsequent political developments and, in particular, the results of the nineteenth session of the Supreme Soviet of Tajikistan, held at Dushanbe on 20 and 21

87 See Reports of the Secretary-General: S/1994/283 of 10 March 1994 and S/1994/819 of 12 July 1994.

88 Report of the Secretary-General, 1994, *supra* note 73, at 78-79.

89 *Ibid.*, at 66.

90 G.A. Res. 37/30 of 23 November 1982.

91 S/1994/893 of 28 July 1994.

July, revealed the Government's lack of political will either to implement, or seriously to contemplate implementation of, the necessary confidence-building measures.⁹²

Strong words for the UN's top bureaucrat to a member-government! There are several private and public ways in which a Secretary-General may decline a task he knows is ill-conceived, ill-prepared, or for which there is insufficient commitment within the Organization. Perhaps more recourse to these will be warranted in the future.

V. Joint Ventures

The Secretary-General has publicly called for more sharing of responsibility, in such matters as preventive diplomacy, peace-keeping, peace-making, and peace enforcement, between his office and the regional organizations.⁹³ This is at best a double-edged sword, if it is a sword at all. There are likely to be conflicts, particularly those involving secession and civil war, where the regional organization may be unsuitable as a partner in the good offices function because the States in the region may be suspected of having involvements or agendas of their own that tend to favour one or another of the disputants.⁹⁴

Nevertheless, with the burdens of peace-keeping beginning to exhaust the UN, the search for partners is understandable, perhaps even prudent. Moreover, in some instances, regional organizations indeed may be better able to mediate disputes between local actors than is the UN. Being in close proximity to the conflict, regional groups may have a particular insight into the motivations of the parties to a dispute, may also have a more direct interest in preventing the outbreak and spread of violence in their neighbourhood, with its attendant dislocations and floods of refugees, and be less suspect of neo-imperialist aspirations. Some regional groupings (NATO, for one) may be more effective at enforcement than are *ad hoc* UN contingents, although there are legal questions about NATO's authority under its constituent treaty to engage its forces in action outside its members' territory. Additionally, the Western European Union has been revived for peace enforcement and the Economic Community of West African States (ECOWAS) has invented a military peace enforcement wing (ECOMOG) for service in the Liberian civil war. Other regional organizations such as the OAS may be useful in supervising civil reconstruction and human rights where a civil war or a dictatorship has yielded to UN diplomacy or force. The OAS, however, has shown little appetite for peace enforcement or forceful collective security measures in its region, leaving the Haiti

⁹² Report of the Secretary-General, 1994, *supra* note 73, at 78.

⁹³ UN Press Release SG/SM/4752, 18 May 1992, at 5; SG/SM/4748, 13 May 1992, at 5-7; SG/SM/4727/Rev. 1, 10 April 1992, at 6-7; SC Res. 749 of 7 April 1992, para. 6; Res. 746 of 17 March 1992, para. 9.

⁹⁴ See, e.g., Report SG S/23900 of 12 May 1992, at 4 (concerning Bosnia-Herzegovina).

deployment to be 'franchised' out to the US and a few Caribbean nations. There is also the problem of resources, which are particularly limited in the regions most prone to trouble: Eastern Europe, Latin America and Africa. Although the OAU did provide some peace-keepers for a 1993 observer mission in Burundi, its Secretary-General was forced to pay the transportation of a Tunisian contingent with his personal credit card!

Most important is the fact that the close proximity of the members of regional organizations to a conflict within its ranks, may make it difficult for the organizations to be perceived as truly disinterested and impartial.

There has been enough experience with joint UN/regional ventures to permit some case-analysis. A salient example is the lengthy joint effort of the UN and European regional organizations (NATO, EU, CSCE) to restore peace in various parts of the former Yugoslavia. In September 1991, after a request by the European Community (now the European Union),⁹⁵ the Security Council invited the Secretary-General 'to offer his assistance' to the parties in the Croatian aspect of the conflict.⁹⁶ Accepting the Security Council's invitation, the Secretary-General appointed former US Secretary of State Cyrus Vance as his Personal Envoy. In mid-February, the Secretary-General, on the basis of his representatives' *in situ* assessments and negotiations with the parties to the conflict, was finally able to recommend the establishment of a United Nations Protection Force (UNPROFOR) to be deployed for twelve months in parts of Croatia which had been occupied by the remnants of the Yugoslav National Army and by Serbian irregulars.⁹⁷

The role played by Vance was significantly abetted by close cooperation with the Member States of the European Community, operating through a Commission headed by Lord Carrington, which had been charged with negotiating a political solution to the crisis. In effect Carrington's mission was to work out a political settlement and Vance's was to secure a viable cease-fire and implement a UN humanitarian relief operation.⁹⁸ In practice, as one might expect, such a division of labour proved hard to maintain.

In due course, the European and UN negotiating efforts were combined into an International Conference on Yugoslavia (Owen-Stoltenberg). This conference has sought a negotiated end to both the Croat and Bosnian wars. In Croatia this effort met with some success. UNPROFOR has been deployed in three UN Protected Areas (UNPAs): in Eastern Slavonia, Western Slavonia and Krajina, where the Serbs sought to oust Croatian control. UNPROFOR was also to supervise the withdrawal of irregular Croat forces and of the Yugoslav National Army from the contested areas, to patrol the external borders of Croatia in the UNPAs, and monitor the

⁹⁵ UN Doc. S/23060 of 23 September 1991, at 3.

⁹⁶ SC Res. 713 of 25 September 1991, para. 3.

⁹⁷ Report SG S/23592 of 15 February 1992, at 6-7; SC Res. 743 of 21 February 1992, para. 2 and SC Res. 749 of 7 April 1992, para. 2.

⁹⁸ See UN Press Release SG/SM/4718, 19 March 1992, at 1,4.

demilitarization of the Prevlaka peninsula near Dubrovnik.⁹⁹ Some, but not all, of these objectives have been achieved. UNPROF, in September 1994, had 38,000 military personnel on the ground in Croatia and Bosnia.¹⁰⁰

The restoration of a modicum of peace in Croatia, unhappily, was shortly followed by the outbreak of ethnic conflict between Serbs, Muslims and Croats in the neighbouring Republic of Bosnia and Herzegovina where the political problems have proven much more intractable.¹⁰¹ Although negotiations between the parties have continued, under the auspices of the Owen-Stoltenberg UN/EU Commission, the experience has been frustrating and demonstrates the limits of good offices when there is no desire by the parties to reach a settlement, or by the international community to impose one. One significant innovation to emerge, however, has been the joint venture in Bosnia between the UN and NATO, with the former providing on-the-ground military support, in a neutral mode, for peace-keeping and humanitarian relief operations, and NATO supplying offensive military muscle, where needed, against violators of the protected areas established under Chapter VII by the Security Council. It has been agreed between the UN and NATO that decisions to use force require joint decisions by NATO command and the Secretary-General.¹⁰² Inevitably, cooperation in such a joint venture has been strained at times, given the differing perspectives on the ground (UNPROFOR) and in the air (NATO).

Something similar evolved in Somalia. Early in 1992, the Security Council asked the Secretary-General, together with the Secretaries-General of the OAU and the League of Arab States (LAS), to mediate that internal political dispute.¹⁰³ Civil war had broken out in 1991, after the ouster of the 21-year-long dictatorship of President Mohammed Siad Barre. Within a year, 300,000 persons had died, 700,000 had fled to neighbouring countries and up to six million were threatened with starvation.¹⁰⁴ In February 1992, the Secretary-General met with leaders of the Somali factions and representatives of the regional organizations in New York. Thereafter, James Jonah, his Personal Representative, engaged in negotiations *in situ* for a cease-fire allowing humanitarian relief deliveries to begin. The joint good offices of the Secretaries-General of the OAU, LAS and the Organization of Islamic States managed to secure such an agreement in March.¹⁰⁵

⁹⁹ SC Res. 743 of 21 February 1992; SC Res. 762 of 30 June 1992; SC Res. 769 of 7 August 1992; SC Res. 779 of 6 October 1992.

¹⁰⁰ Report of the Secretary-General, 1994, *supra* note 73, at 89.

¹⁰¹ SC Res. 908 of 31 March 1994 and SC Res. 913 of 22 April 1994.

¹⁰² For an overview of this co-direction of some, but not all, potential military engagements see 'The United Nations and the Situation in the Former Yugoslavia', UN Reference Paper, 15 March 1994, at 21-25.

¹⁰³ SC Res. 733 of 23 January 1992, para. 3.

¹⁰⁴ UNYB (1992) 199.

¹⁰⁵ Report SG S/23693 of 11 March 1992, at 6-7.

After further negotiations, this cease-fire agreement took hold and the Secretary-General was then able to recommend to the Council the creation of a multinational, military force: the United Nations Operation in Somalia (UNOSOM I).¹⁰⁶ At the same time, together with the regional organizations, he continued efforts to convene a conference of national reconciliation.

These have continued, throughout the phases and vagaries of the military efforts to enforce peace.

In January and March 1993 the Secretary-General and his regional counterparts organized a national reconciliation conference in Addis Ababa among the Somali factions. Little progress resulted. A year later a meeting was convened in Nairobi in which all significant factions participated,¹⁰⁷ and which led to the signing of a 'declaration' on national reconciliation, which contained a loose blueprint for recreating a national government, judiciary and civil service and for holding national elections. Its implementation has continued to be delayed by factional fighting and bickering. Once UNOSOM II was created in May 1993, the military tasks assigned to that operation became the direct responsibility of the Secretary-General, commanding a large multinational force. These *ad hoc* arrangements were not implemented without difficulties. In one especially egregious encounter with local forces, the Italian contingent refused to carry out the instructions of the UN Force Commander, General Bir.

Obviously, it has proven difficult, both in Bosnia and in Somalia, to juggle essentially contradictory missions to (1) facilitate peace and reconciliation through brokered negotiations, and (2) to use force against one or several of the parties in an effort to disarm them and compel adherence to a cease-fire. In Somalia, the Secretary-General has also been instructed by the Security Council to try to affect national reconciliation, the creation of a national government, the re-establishing of a national polity, judiciary and penal system.¹⁰⁸ UNOSOM II has made some progress in these directions under the aegis of the Secretary-General's special representative in conjunction with various regional and non-governmental organizations.

In February 1994, the Security Council adopted a new, somewhat scaled-down version of UNOSOM's mandate in which inter-factional mediation, aid in the reconstruction of a civil society, and humanitarian assistance are re-authorized and the UN force is made responsible for keeping open the key links of communication such as the airport and port of Mogadishu.¹⁰⁹ In May-June, 1994, the Secretary-General's representative, with the support of regional organizations and governments, sponsored the Kisumayo Conference at which some progress was made

¹⁰⁶ Report SG S/238299 of 21 April 1992, at 7 and 13; SC Res. 751 of 24 April 1992, paras. 2,7,10.

¹⁰⁷ SG S/1994/614 of 24 May 1994, paras. 4-10.

¹⁰⁸ SC Res. 865 of 22 September 1993.

¹⁰⁹ SC Res. 897 of 4 February 1994.

towards a general cease-fire and reconstitution of a national system of government.¹¹⁰

If the good offices engagement has been less than an unalloyed success, the military effort to enforce peace has fared worse. After the death of 18 US Rangers in Somalia in October 1993, the US announced that all its troops would be withdrawn by the end of the following March. Eleven other States followed suit, leaving UNOSOM II much weakened. Increased troop support from Pakistan and India, which regard themselves as regionally superior military powers, and twenty other States has allowed UNOSOM II to remain at a complement of approximately 19,000 troops at the end of 1994, enough to give the good offices and humanitarian effort some credibility. The Somali operation has tended to confirm, however, what had already become apparent in Bosnia. When parties to a military conflict are unready to negotiate a *modus vivendi*, the good offices of the Secretary-General are unlikely to succeed. While an overpowering UN military presence in theory might make the parties more willing to accept mediation, the opposite effect tends to be achieved when the military deployment, being less than compelling, seeks to force the parties to modify their aims and conduct.

The Secretary-General has also been invited to mediate a crisis in Liberia, where a regional organization had already taken the lead. After the overthrow of the dictatorship of President Samuel Doe in 1990, and the spread of civil war, the Economic Community of West African States (ECOWAS) organized a 1,200-man Military Observer Group (ECOMOG). It has sought to supervise implementation of the July 1993 Cotonou Agreement¹¹¹ which was negotiated between the warring factions. The UN system has cooperated with this venture. In response to an ECOWAS request, the UN Security Council, on 19 November 1992, imposed a mandatory embargo on all delivery of weapons or military equipment to Liberia.¹¹² After a further ECOWAS initiative, the Secretary-General despatched a special representative to work with the West African regional operation in securing implementation of the Cotonou Agreement. In September 1993, the United Nations Mission in Liberia (UNOMIL) was despatched to assist ECOWAS and monitor the peace process. By that time, the ECOMOG forces had begun to sustain high casualties and Nigeria's dominant role in the force was beginning to be criticized. The support role of UNOMIL, therefore, may be seen as an effort to monitor the regional monitors, thereby giving them greater legitimacy as well as logistical support. UNOMIL has also been associated with ECOWAS and the OAU in promoting the formation of a Liberian National Transitional Government.

The Secretary-General has also been authorized by the Security Council to work with the Conference on Security and Cooperation in Europe (CSCE) and the Russian Federation to secure a peaceful settlement of the Azerbaijan-Armenia dispute

¹¹⁰ Report of the Secretary-General, 1994, *supra* note 73, at 87.

¹¹¹ UN Doc. S/26272, Annex.

¹¹² SC Res. 788 of 19 November 1992, para. 9.

concerning Nagorny-Karabakh.¹¹³ In connection with the United Nations Observer Group in Georgia, discussed in part 3, above, the Secretary-General has cooperated with armed forces of the Russian Federation and the Commonwealth of Independent States (CIS), which have been deployed at the request of the parties to monitor a cease-fire. The UN presence here, too, may be seen as a way to legitimate the role of a regionally superior power in its peace-keeping role.¹¹⁴ As has become customary, the actual designing of the role to be played by the UN was left by the Council to the Secretary-General, subject to its ultimate approval.¹¹⁵ The Council's Resolution of 21 July 1994 specifically authorizes deployment of 136 UNOMIG personnel with a mandate to verify and monitor the parties' cease-fire compliance and to 'observe the operation of the CIS peace-keeping forces within the framework of the implementation of the Agreement'.¹¹⁶

What of future prospects of UN joint ventures with regional organizations? The Secretary-General has worked cooperatively with the OAU in monitoring elections, plebiscites and similar activities: in South Africa, the Western Sahara, Liberia, Burundi, Somalia and elsewhere. So, too, with joint diplomatic efforts to negotiate the end of several civil wars on the African continent. African military forces have joined with UN operations in Liberia, Somalia and Rwanda. The prospects for systematic reliance on regional military forces, however, are not especially encouraging. In practice, the deployment of African contingents to trouble spots on the continent has tended to demonstrate their severe logistical limitations and the suspicion with which they are regarded by the people of the countries to which they are despatched. So, too, the notable failure of the OAS to become actively engaged in the military effort to restore civilian rule in Haiti does not encourage faith in the potential of that regional grouping to contribute significantly to peace-making or enforcement. On the other hand, the OAS, and also ASEAN, have been quite helpful partners of the UN Secretary-General in several good offices ventures in Central America and Cambodia (as noted in part 3, above).

VI. Differences in Style and Content

As the foregoing examples show, the various exercises of the Secretary-General's conflict-resolving function differ significantly in style and content. Indeed, since the UN Charter does not expressly authorize any such activities, the authority for them has grown out of specific needs and contexts.

¹¹³ Report of the Secretary-General, 1994, *supra* note 73, at 62.

¹¹⁴ *Ibid.*, at 68.

¹¹⁵ SC Res. 937 of 21 July 1994.

¹¹⁶ Report of the Secretary-General, 1994, *supra* note 73, at 68.

In legal terms, the Secretary-General's diplomatic and peace-making functions may derive from at least four different kinds of authorization: (1) the agreement of disputatious parties, (2) the penumbra of the Secretary-General's inherent powers, (3) authorization by resolutions of the Security Council, or (4) authorization by the General Assembly.

The Secretary-General has undertaken good offices missions in response to requests from parties to a conflict and/or formal or informal invitations from regional groupings. This is how he entered the Guyana-Venezuela boundary mediation, the *Rainbow Warrior* Case and the Liberian and Yugoslav crises. In the Mozambique case, the Secretary-General's role was initiated at the invitation of the parties to an agreement ending a civil war negotiated outside the UN by the Government and its RENAMO adversaries. The Secretary-General has acted on his own authority, at least initially, in respect of civil wars in Greece, Yemen, Afghanistan, Burundi, Rwanda, Tajikistan, in the Iran-Iraq conflict and regarding hostages in Lebanon. He has undertaken roles in Cyprus, East Timor, Libya, the Middle East, Namibia, Somalia and Yugoslavia on the basis of mandates in resolutions of the Security Council. Some of his activities in connection with Afghanistan and the Western Sahara were authorized by resolution of the General Assembly.

The last two instances, however, also demonstrate the difficulty in drawing bright lines regarding authorization. Prior to the Assembly's resolutions, the Secretary-General had already begun to exercise his good offices on his own authority. Similarly, in Cambodia, the Falkland Islands, Iran/Iraq, Iraq/Kuwait, Burundi and Somalia he became active on his own just before the political organs, usually at his suggestion, gave his efforts formal approval. In other instances, such as those involving his good offices missions in Abkhazia and Central America he proceeded entirely on his own and received approval from the Security Council only many months later. His efforts to resolve the Lebanon hostage crisis occurred without any involvement of the political organs.

Aside from these explicit or implicit authorizations it is obvious that the Secretary-General, in order to perform his good offices functions, must retain the confidence of the principle organs and the major nations and regional groupings which constitute the Organization. Thus, the Secretary-General is constantly involved in informal consultations with the Security Council and individual States. As a result, his discretion as to how to proceed in a given dispute may, in fact, be narrower than it appears on paper. Once a political organ – or a powerful Member State – begins to involve itself in a situation, the Secretary-General's inherent powers, especially in the post cold war era, usually need to be exercised in compliance with the limits, directions and parameters established by those actors.

In contemporary practice, however, the Secretary-General frequently insists upon, and gets, the authority to operate within a wide margin of discretion. Indeed, most resolutions authorizing the Secretary-General to engage in good offices have accorded him broad leeway as to how to conduct his soundings. If, however, a UN

political organ has taken a stridently adversarial position against the activities of the very State with which the Secretary-General is trying to negotiate – as the Security Council did with respect to Afghanistan, Cambodia and South West Africa – he must use all his diplomatic skill to retain the margin of discretion he needs to act as a credible intermediary.

On the other hand, the Secretary-General is aware that there are circumstances when it is actually helpful to have hands tied by the Charter or the UN political organs. A narrow margin of discretion may sometimes help him resist unacceptable pressures from either side to a conflict. In the Cyprus negotiations, he has had occasion to remind the Turkish-Cypriot authorities that the ‘essence of his mandate’ was called into question by their insistence on a unilateral right of secession, which would violate the parameters for a constitutional settlement set out in the Security Council resolution authorizing his mediation.¹¹⁷ He has taken the same position in negotiations with the Abkhazi insurgents and the Bosnian Serbs, holding himself bound by the Security Council’s insistence on the principles of territorial integrity, the repatriation of ‘ethnically cleansed’ populations, the ratification of negotiated changes by referendum, and the rejection of territorial changes effected by force. As mediator, he has tried to use these constraints on his discretion to gain negotiating leverage.

VII. Recent Trends and the Future

As shown in the above discussion, the Secretary-General has had some remarkable successes in the exercise of his conflict-prevention-and-resolution function: both during, and since the end of, the cold war. Nevertheless, there is some reason to believe that his role’s expansion may not continue, or that it may evolve into something qualitatively different, or that it may turn to quite a different set of issues, in response to a changing institutional and political context. As we have indicated, the Security Council now seems more ready and able to perform its Charter-envisaged political functions. That has ended the stasis which, paradoxically, gave the Secretary-General his first occasions – and the interstitial space – to manoeuvre as an ‘honest broker’. The Council, now more readily able to make decisions, tends to ask the Secretary-General to go to Tripoli and to Baghdad not to exercise an independent political role but more as a messenger to deliver its own plan of action.

This may not last. If the principal threat to peace, in the foreseeable future, comes from essentially civil strife in places like Afghanistan, Cambodia, Georgia, Honduras, Liberia, Rwanda, Tajikistan, the former Yugoslavia and Somalia, it is far from clear that the Security Council’s new found consensus will prevail. Russia and the United States are already in fundamental disagreement over the rights of the

¹¹⁷ Report, SG S/21183 of 8 March 1990, p. 12 (Annex II).

parties in the former Yugoslavia. China will be increasingly concerned about spreading UN interventionism on behalf of what it perceives as 'domestic' political or human rights disputes. Many States are concerned about UN involvement in wars of secession, seeing them as inherently internal affairs. They feel that all UN military operations in such instances, even if primarily humanitarian, have the effect of giving a degree of international recognition to secessionist forces. Finally, there is growing unrest on the part of States at the cost of burgeoning UN field operations, and at the dominant role played by militarily and fiscally powerful participants.

In the light of these considerations, it is significant that the least intrusive, least expensive and frequently most successful form of UN peace-making has proven to be the diplomatic role of the Secretary-General, especially when supported by the authority of the Security Council and its permanent members. His mediation is least threatening to States concerned about the prerogatives of their sovereignty. A certain continuity in the practice of the Secretary-General's good offices often avoids the missteps of *ad hoc* operations designed by political organs or by individual States.

The Council's failure to invoke Chapter VII to intervene on behalf of the Kurds in Iraq, to tame the clan-armies of Mogadishu, and its slowness to become embroiled in the political and security dimensions of the Yugoslav crisis all suggest that it may be precisely in these sorts of domestically-generated threats to international peace that the office of the Secretary-General, with its greater experience, flexibility and lower profile, might fill a growing void and fruitfully bring diplomacy back to centre stage. The Secretary-General's comprehensive, yet low key approach to the civil war in El Salvador – arranging a cease-fire, developing modalities for mutually disarming the combatants with their consent, reforming and integrating their armed forces, supervising human rights and negotiating constitutional guarantees – may be an augury of the future, when his good offices become the Organization's instrument not only of peace-making but primarily of peace-building.¹¹⁸

A. Determinants of Success and Failure

The extent to which peace-making and peace-keeping functions of the Secretary-General will adapt and grow is dependent largely on two variables: personal and institutional.

1. Independence, Influence, Outreach

The personal variable has to do with the Secretary-General's ability to project a persona un beholden to, uninstructed by, and resistant to pressure of the parties to a dispute, or to their allies. This depends on vision, the ability to communicate personal

¹¹⁸ This shift of emphasis to 'peace building' was recently explicated by the Secretary-General in the 1992 David Abshire Lecture. UN Press Release SG/SM/4748, 13 May 1992.

probity, the respect accumulated from previous successes, and the support the Secretary-General receives from members of the Security Council and General Assembly. It also has to do with the quality of the Secretary-General's information and diplomatic creativity.

As a direct result of the creativity of past Secretaries-General and their designated subalterns, the present Secretary-General has available a repertory of practices that aid the perception of his power to pull disputants toward negotiated compromise. The invention of the 'Peking formula' by Hammarskjöld is a prime example of this creativity. Other examples include the recent practice of issuing very detailed interim reports to the Security Council on progress in negotiations. These enable the Secretary-General, when progress is blocked, to allocate blame and bring additional pressures to bear.¹¹⁹ Then there are the innovative 'little steps' that make up his diplomatic minuet. Framework agreements, proximity talks, truth commissions, human rights and election monitoring, 'confidence building' measures: these have all become established parts of the Secretary-General's diplomatic repertory.

Providing the newly-invigorated Security Council allows him to use these innovative tools, and to supplement them as the occasion demands, the Secretary-General's diplomatic role will continue to have potential for expansion. But much of the potential is still under-utilized. For example, no Secretary-General except Hammarskjöld has ever really used his 'bully pulpit' effectively. None has ever succeeded in creating a directorate of public information that utilizes modern marketing skills. A dramatic example of this failure is the September/October 1994 issue of *Foreign Affairs*, where one article, by Giandomenico Picco argues passionately that the Secretary-General's office is unsuitable to any deployment of military force, which should be subcontracted to individual States, while the other, by Saadia Touval, argues that, for similar reasons, all mediating functions should no longer be performed by the UN, but, rather, by powerful States. Together, the two articles argue for the total dismantling of the new dimensions of the Secretary-General's office. In the same issue an article by the Secretary-General, instead of defending his functions, addresses the – admittedly important – need to remove landmines at the sites of former wars. The effect of this juxtaposition is to make the Secretary-General appear ineffective and preoccupied with peripheral matters.

If there is painful evidence of the unresolved communications problem, it is not a new dilemma. No Secretary-General has really succeeded in reaching the 'peoples' invoked by the Charter's preamble. Perhaps the problem is inherent. The qualities which make for a good bureaucrat or diplomat may be incompatible with those of a charismatic political leader or statesman. Nevertheless, a Secretary-General has three *potential* sources of power to support him in his quests: the important Member States

¹¹⁹ See, e.g., Reports SG S/21183 of 8 March 1990, at 12 (Cyprus); S/23693 of 11 March 1992, at 17 (Somalia); S/23900 of 12 May 1992, at 2 (Yugoslavia); see also the detailed reports on the missions to Central America, Namibia and Western Sahara, above.

and blocs of States, the world's 'invisible college' of opinion-shapers – the media, universities, churches and captains of industry – and 'the peoples'. The latter two constituencies have barely been touched by any incumbent.

Even in his dealings with the representatives of States, it would be of immeasurable help if the Secretary-General could occasionally take his case, over the heads of the foreign offices, directly to 'the peoples'. Of course, no Secretary-General has real power, in the sense in which the major Member States have it. He has few means to affect outcomes except to the extent he makes himself indispensable to governments. Yet successive Secretaries-General have proven themselves quite adept at parlaying the perception of their indispensability into genuine influence: quietly, but adamantly pressing for, or opposing, a course of action, the means to an end, or the wording of a draft resolution.

In these interactions, the representatives of governments would be far more vulnerable to the Secretary-General's influence if he were known to speak not only for himself but for a credible global constituency sharing his perspective. Paradoxically, his independence, which is his weakness, is also his strength: his indispensability vanishes if he is seen to be 'in the pocket' of one State, or a group of nations. Towards the ends of their careers, Trygve Lie was perceived as a captive of NATO and U Thant of the non-aligned. Article 100 of the Charter insists that the Secretary-General be independent of 'any government or ... any authority external to the Organization'. But to be independent of States does not require the Secretary-General to be unconnected to 'the peoples'. In maintaining both the essence and perception of total independence, every Secretary-General needs to build a constituency that is, in a significant sense, transnational and non-governmental.

2. Staffing and Control

The institutional variable has to do with the Secretary-General's ability to use the full potential of the UN and its related family of organizations and agencies to carry out his mission of conflict resolution. For this he needs, above all, a staff recruited on the basis of competence and answerable exclusively to him and his principal advisors. This the Charter has recognized. Article 101 manifestly seeks to give him a staff selected and retained with a view to 'securing the highest standards of efficiency, competence, and integrity' while allowing for 'recruiting the staff on as wide a geographical basis as possible'.

In practice, however, staffing rules imposed by the General Assembly and the practice of Member States have not permitted the Secretary-General to choose the key members even of his own inner core of Secretariat advisers but, rather, made their appointments subject to claims by the major powers and even some influential middling States. Inevitably, top advisers who owe their posts to the lobbying of home governments look there first in discharging their ostensibly independent functions under the aegis of the Secretary-General.

Even at mid-levels, staff promotion and tenure still tends to reflect pressure by States and regions rather than expert qualifications and experience. This affects both the reality and, more important, the perception of UN diplomacy. If the Secretary-General's staff is skilful and shares a global vision as enunciated by its chief executive, the prospects are good; when they are not, failure of a mission or operation, not infrequently, is at least in part attributable to such deficiencies. Realizing this, Secretary-General Boutros Ghali has made more strenuous efforts than his predecessors to wrest his inner bureaucracy from the control of individual Member States and the whim of the principal political organs.

He has, however, been less successful in getting the large and diffuse UN 'family' to march in lock step with his efforts. This is no small task, yet no Secretary-General can optimize his chances at peace-making without being able to deploy all the UN's resources. The Organization can be described as having three parts: the UN proper, the quasi-autonomous subsidiaries (QASs) and the specialized and related agencies which are fully independent global intergovernmental organizations (IGOs).¹²⁰ As to the IGOs, the Secretary-General controls neither their policies nor their personnel although, in trying to perform his conflict-resolving tasks, these bodies – the fiscal institutions, World Food Programme, Food and Agriculture Organization, World Health Organization, etc. – often hold the key to those inducements actually capable of moving disputants towards accommodation.

The same is true of the QASs – the UN Development Programme, High Commissioner for Refugees, etc. – which, although theoretically under the control of a principal political organ of the UN, are structured to give them wide autonomy. The Secretary-General does not control even their top appointments, nor are they funded significantly by the central budget of the Organization, as opposed to direct governmental contributions. Thus, he has little influence over their programmatic decisions. It has been suggested to the author by one Assistant Secretary-General that the divergent and mutually contradictory prescriptions of the World Bank and the UN in seeking to resolve the crisis in El Salvador reminded him of two doctors operating on different sides of a single patient with a curtain separating their efforts.

B. Prescriptions

What is needed? The prescription follows from the diagnosis, but its outlines can only be sketched, here. The Secretary-General is at the beck and call of the Security Council and that is as it should be, but he needs a longer leash. For example, he should have at his disposal a trust fund sufficient to embark on credible mediating missions at his own initiative, subject to a requirement that, after six months, authority would have to be extended by the Security Council and renewed funding voted by the General Assembly. He needs a small, all-volunteer multinational force

¹²⁰ See Szasz, 'The Role of the Secretary-General: Some Legal Aspects', 24 *J. Int'l L. and Pol.* (1991) 161.

under his command that could similarly be deployed – but only with the full consent of the parties concerned – for a six-month period. Its mandate should be subject to renewal by subsequent action of the Council or, perhaps, the Assembly. He should be able to put together larger military and civilian operations in short order, after they are authorized by the appropriate political organ, by drawing on a global inventory of stand-by contingents and logistical support earmarked for such contingencies by Member States. He should be able to draw on a pool of trained conflict managers of his own choosing, owing their posts exclusively to him. He should be able to mobilize QASs and IGOs, by exercising his influence on the treasuries of Member States at the time they earmark their contributions to these agencies.

There is every reason to believe that the Secretary-General's role will continue to expand because it is invaluable and there are no evident alternatives. This makes it essential that the role should be performed in an institutional and political context which maximizes its disposition for success.