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FACULTY OF LAW

PHD THESIS

**THE ROLE OF THE UNITED NATIONS SECRETARY-GENERAL IN THE
PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES**

- SUMMARY -

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RESEARCH TOPIC

Peace and war have always been pressing issues for the international community, but international actors perceived, defined and approached these concepts throughout time in various ways, leading to important political and legal changes at international level.

As entities with different degrees of development at political, economic and social level, with different traditions, cultures and histories, state often have contradictory interests, following different, if not antagonistic objectives. The opposition of interests may vary in object (political, economic, military, religious, ethnical, cultural, territorial etc.) and intensity. In a larger sense, the notion of international dispute may cover all these situations, being defined as a dissension, a contradiction between two or more entities, subjects of international law, which implies the expression of claims and counter-claims and introduces an element of perturbation and tension in their relations.

The international consecration of the principle of peaceful settlement of disputes marks a radical change in the approach to inter-state relations and the historical evolution of its content reflects the experience of the international community, incorporating new rules and values, as they emerge from the international environment as a result of the inter-state practice.

The peaceful resolution of disputes reunites moral, political and legal aspects.¹ Therefore only a general, interdependent evolution of these three sides of the international system could generate the profound changes of the political and juridical international structures that led to the consecration of this principle in the UN Charter and of the means of putting into practice.

The end of the First World War brought with it the desire of establishing general peace in the world, materialized in the creation of the League of Nations, the first political body with a universal, pacifying vocation. Of course, given the specific international environment of the time, the drafters of League of Nations's project did not envision the complete suppression of war, but only its avoidance and respite, if possible. In this half-made endeavor lies, perhaps, the weakness of this structure, which

¹ Martjan Niciu, *Drept internațional public*, Servosat, Arad, 1999, p. 319.

failed to meet international challenges of that era.

After the Second World War, the subsequent evolution of the international thinking is marked by an openness to the idealistic concepts of harmony, cooperation, structural peace, prohibition of war, and therefore, with the creation of the United Nations, a series of specific pacifying procedures appears, strengthening, developing and complementing the existent means of peaceful settlement of disputes.

As stated in the preamble of the Charter, the ultimate goal of the UN is to protect future generations from the scourge of war, through the unity of its members, with the noble scope of maintaining peace and security in the world, guaranteeing that force will never be used again in inter-state relations, unless this would be in the general interest of the international community and establishing interstate relations of good neighborliness and tolerance.²

To this end, UN was to become an international center whose noble undertaking was that of harmonizing states' efforts in order to maintain international peace and security, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, as well as to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all.

In order to achieve these noble objectives, the United Nations Organization proposes a system of peaceful settlement of international disputes that is complementary to the usual means of peaceful resolution, consecrated by the international law.

The peaceful settlement of conflicts in the UN system is based, according to the UN Charter, on principles of justice and international law, the organs responsible in this matter being the International Court of Justice, the Security Council and the General Assembly. In addition, the Secretary General's competencies, as well as its influential position and unique role make this institution suitable to international actions of peaceful resolution.

After the Second World War the general mentality was that the most suitable structure, in the field of maintenance of international peace and security, was the

² Dumitru Mazilu, *Dreptul păcii*, All Beck, București, 1998, p. 243.

Security Council, due to its five prominent permanent members. The General Assembly had rather limited attributions in this matter. Nevertheless, the Assembly had been endowed with a general competence that allowed it to discuss and make recommendations on any questions within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter³.

Although it may be true that, regularly, issues concerning the maintenance of international peace and security are addressed and decided upon within the deliberative organs, it is the Secretary-General who, in fact, has taken most of the initiatives to settle or prevent conflicts.

The Secretary-General is the head of the Secretariat – UN’s administrative and technical service – the chief administrative officer of the Organization, appointed by the General Assembly upon the recommendation of the Security Council, for a 5 – year mandate, with the possibility of renewal.

In addition to the technical and administrative duties of the post, the High Official has powers of representation of the organization at international level and carries out various other activities in accordance with the Charter: good offices, mediation, consultations with governments, research in various fields, organizing international conferences, information activities on the work of the UN, leading peacekeeping operations etc.⁴

The statute and the powers of the Secretary-General are unique, specific to the Organization, without any equivalent in other international or internal structures.⁵ The High Official has a strategic position as head of the only international universal organization with a multidimensional purpose. “Through the Secretary-General and its office pass all the interrelations represented by the United Nations Organization.”⁶ The question that is raised, in this point, is that of the extent to which the Secretary-General, by virtue of its central position, can influence the course of the Organization’s activities.

³*Charter of the United Nations*, San Francisco, 1945, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>, accessed 08.01.2012, art. 10

⁴ Magdalena Denisa Lungu, *Rolul organizațiilor internaționale în soluționarea pașnică a diferendelor internaționale*, București: Universul Juridic, 2010, p. 268.

⁵ *Ibidem*, p. 269.

⁶ Benjamin Rivlin, „The Challenging International Political Climate and the Secretary-General” în Benjamin Rivlin și Leon Gordenker (ed.), *The Challenging Role of the UN Secretary-General. Making „The Most Impossible Job in the World” Possible*, Londra: PRAEGER, 1993, p. 5.

The Charter sets out the Secretary-General's competencies in a few articles with a rather vague wording. According to art. 97 of the Charter, the Secretary-General is "the chief administrative officer of the Organization". Art. 98 provides that "the Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council and shall perform such functions entrusted to him by the other principal organs", which, naturally, may include those in the field of the prevention and peaceful settlement of disputes. The same article establishes that the Secretary-General shall make an annual report to the General Assembly on the work of the Organization. Art. 101 states yet other responsibilities for the Secretary-General, establishing its control over the appointment of the Secretariat's staff, while art. 100 emphasizes the necessity of ensuring the independence of the Secretary-General and of the Secretariat's staff from any possible influence of the Member States. However, of all the Charter's provisions, art. 99 is the one that confers the Secretary-General the possibility to exercise its direct influence upon the activities of the Organization, enabling it to bring to the attention of the Security Council any matter which in its opinion may threaten the maintenance of international peace and security.

Given the fact that the Charter's provisions are not explicit regarding the ways in which the Secretary-General could contribute to the maintenance of international peace and security, initially, its role was rather limited in this field, but the challenges of the international environment and the distinctive ways in which the occupants of this function chose to approach them have created precedents that led to its continuous evolution.

Strictly referring to the field of peaceful resolution - based on the Charter's provisions, but also having in view the continuous evolution of the Secretary-General's role as mediator and provider of good offices (imposed by a reconfiguration of the peaceful resolution system, following various developments at international level) – the attributions of the High Official are either mandated by the Security Council or the General Assembly (according to Art. 98 of the Charter) or result from practice, based on its active independent involvement (according to an extensive interpretation of Art.

99 of the Charter).⁷ Taking into consideration exclusively the Charter's provisions, the Secretary-General seems to be an executive body acting in conformity with the instructions of deliberative organs and their decisions. The exception is Art. 99 that establishes the initiative function of the High Official, and was mostly interpreted as conferring specific legal ground for its political activity. This provision endows the Secretary-General with powers that don't have equivalent in any other international structure.

IMPORTANCE OF THE THEME

Head of the Secretariat - one of the principal organs of the UN - the Secretary-General is more than "the chief administrative officer of the Organization". He has a political authority derived from a broad interpretation of the vaguely defined provisions of the UN Charter and, at the same time, a moral authority, embodying the ideals of the Organization.

The Secretary – General's contribution to the peaceful settlement of disputes is significant, manifesting itself in a variety of ways, by virtue of the authority and prestige of its office, from preventive diplomacy to mediation or good offices missions.

Research of the role of the Secretary - General in the vast and complex field of the peaceful settlement of disputes is a useful approach in order to better understand this institution and its position in the system of peaceful resolution developed at UN level. Also, it can create the best framework to identify any gaps that may affect the efficiency of this institution and seek solutions for their coverage. Research of the evolution of the Secretary-General's role can help identify factors with a positive influence over its efficiency as a pacifying agent, as well as factors with the effect of stagnation and regression, for a better understanding of this institution and its potential development.

⁷ Magdalena Denisa Lungu, *op. cit.*, p. 270.

RESEARCH OBJECTIVES

This thesis aims at analyzing the role of the UN Secretary General in the peaceful settlement of international disputes.

The main objectives of the research are:

1. Placing the Secretary-General's role in the evolutionary context of peaceful settlement of international disputes.
2. Identifying the role of Secretary General in peaceful settlement of disputes system provided by the United Nations.
3. Identifying and analyzing the main forms of involvement of the Secretary General in the peaceful settlement of disputes.
4. Analyzing the evolution of the role of the Secretary General in the peaceful settlement of disputes.
5. Identifying possible measures that could be taken in the context of the UN reform, in order to increase efficiency of the Secretary-General's involvement in the peaceful settlement of disputes.

RESEARCH METHODOLOGY

During the research the following methods were used: the method of logical analysis – necessary for understanding the specific aspects and issues of the peaceful settlement of disputes and the role of the UN Secretary General in this field; the systemic method - for correlation with other institutions, principles and norms of international law, absolutely necessary for the research and for an adequate understanding of the topic; as well as the comparative and historical methods used for studying the evolution of the role of the Secretary-General in the field of peaceful settlement of disputes.

The research had in view the evolution of the legal-political role of the UN Secretary General in the peaceful settlement of international disputes, revealing the contradictory aspects and the essential influence of the developments in the international environment and political thought and, hence, in the international law. For conducting

this research various sources were used: primary sources, such as treaties, conventions, reports, resolutions and decisions of various international bodies (available in libraries and on the official websites of the institutions) and secondary sources in the form of articles and papers.

CONCLUSIONS

The thesis deals with the role of Secretary-General in the peaceful settlement of disputes, firstly placing it in the context of the evolution of the peaceful settlement of disputes in the international system, then analyzing the role of the UN in this area and defining the role of the Secretary General in relation to the Security Council and the General Assembly. Subsequently, the forms of involvement of the Secretary-General in the peaceful settlement of disputes and the evolution of its role in this area are analyzed, with a brief description of the mandates of the 8 occupants of the office of Secretary General, aiming to highlight their individual contribution to the expansion of the role and powers of the High Official in the field of peaceful settlement. Finally, some reflections are made on the main limitations of the role of the Secretary General and the prospects for reform in order to make it more efficient.

1. In relation to the research objective of placing the Secretary-General's role in the evolutionary context of peaceful settlement of international disputes:

- *Chapter I* examines the evolution of the peaceful settlement of disputes in the international system, defines the main concepts specific to this area and makes some necessary terminological and conceptual delimitations. It was found that, over time, developments took place in the perceptions of peace and peaceful resolution of conflicts, in terms of political thought and international morals, which were translated into the configuration and continuous development of rules of law and political and legal structures designed, initially, to reduce atrocities and, in general, the devastating impact of war - in a world defined by "the law of force" - and, finally, to maintain international

peace, prohibiting the use and threat of force in international relations and seeing peace as a structural state of the international environment. The consecration of the peaceful settlement of disputes as a fundamental principle of international law marks a radical change in the approach to inter – state relations. This is the context in which international organizations emerge as main actors on the international scene, with an increasingly prominent role in the peaceful settlement of disputes.

- *Chapter II* describes the means of peaceful settlement that states have at their disposal in the current international system, completing the analysis of the context in which the UN Secretary General exercises its peaceful settlement attributions. It was found that the diplomatic means, as pacifying instruments, offer the advantage of flexibility and direct contacts between the parties, promoting cooperation even beyond the subject of regulation. Of these, mediation and good offices are often used by the Secretaries-General in their efforts of peaceful settlement.

2. In relation to the research objective of identifying the role of Secretary General in peaceful settlement of disputes system provided by the United Nations:

- *Chapter III* examines the Security Council and the General Assembly's role in the peaceful settlement of disputes and the position of the Secretary-General within the Organization, having in view the Charter's provisions and the High Official's relation with the deliberative bodies. It was found that, as the head of the Secretariat (one of the main bodies of the United Nations Organization), but lacking any decision-making powers, the Secretary-General is, nevertheless, able to influence UN policies. Thus, by virtue of its position, the Secretary-General finds many opportunities to influence how decisions are taken and implemented at UN level. Also, many activities, that are, nowadays, specific to this function, have developed over time, through a broad interpretation of the Charter's provisions, triggered by the need to adapt to international realities. In general, in the peaceful settlement field, the Secretary-General acts based on mandates received from the Security Council or the General Assembly (in accordance with Art. 98 of the Charter), or on its own initiative or at the request of the parties to a

dispute (based on interpretation extensive art. 99 of the Charter). In order to ensure the effectiveness of its intervention and preserve the institutional balance, the Secretary – General must coordinate its activities - whether mandated by the Security Council or the General Assembly, or undertaken on its own initiative - with the plenary and executive bodies. The Secretary General's activity in the field of peaceful settlement of disputes should be regarded as forming a whole with the activities of other UN bodies with responsibilities in this area, with the ultimate goal of maintaining international peace and security.

3. In relation to the research objective of identifying and analyzing the main forms of involvement of the Secretary General in the peaceful settlement of disputes:

- *Chapter IV* examines the main forms of involvement of the Secretary General in the peaceful settlement of disputes. The main forms of involvement in this area are: the use of diplomatic means of peaceful settlement; involvement in the creation and development of peacekeeping operations; and the normative activity in the service of peace and security. The Secretary-General may use in its peaceful settlement demarches traditional diplomatic means, such as good offices, mediation and international enquiry, either based on the deliberative bodies' mandates, or voluntarily or at the request of the parties, under Art. 99 of the UN Charter. Sometimes, though, this traditional diplomatic approach needs to be completed by the use of unofficial, discrete diplomatic processes, that can provide superior information and new directions of action. In fact, the Secretary-General's involvement in the process of peaceful settlement of disputes is often discreet, its services inspiring, therefore, an increasing confidence to states. In time, this discreet intervention of the Secretary-General, especially when it involves the use of political and diplomatic means of peaceful settlement, has become a prerequisite to exercising its role in this field, and a guarantee of the effectiveness of the activities undertaken. In this regard, Perez de Cuellar declared that "no one will ever know how many conflicts were prevented or limited through contacts that took place in the famous UN location, whose

huge glass surfaces can become if necessary, extremely opaque”⁸.

In reference to the peacekeeping operations, it was found that they are largely the innovation of the second UN Secretary General, Dag Hammarskjöld, who outlined their organization and established the principles underlying their implementation. Peacekeeping operations have evolved over time as a result of initiatives undertaken by the Secretaries-General, in their efforts to adapt them to the new challenges of the international environment.

Regarding the normative activity of the Secretary-General with implications in the field of peace and security (activity that depends on its position impartial within the Organization and its power to influence decision-making), it was found that a significant contribution of the Secretary-General has been the promotion and legitimization of the responsibility to protect concept.

4. In relation to the research objective of analyzing the evolution of the role of the Secretary General in the peaceful settlement of disputes:

- *Chapter V* contains a brief description of the mandates of the 8 occupants of the office of Secretary-General, aiming to highlight their individual contribution to the expansion of the role and powers of the High Official in the field of peaceful settlement. It was found that the position of Secretary-General, as it is currently configured, is largely the result of a long process that, ultimately, provided the occupant of this function with a repertoire of practices that define a strong and influential role in the field of peaceful settlement. This role implies a specific approach to international problems, which can be influenced both by objective factors - related to developments in the international context - and by subjective factors - related to the occupants' personal profiles.

⁸ Mădălina Denisa Lungu, *op. cit.*, p. 272

5. In relation to the research objective of identifying possible measures that could be taken in the context of the UN reform, in order to increase efficiency of the Secretary-General's involvement in the peaceful settlement of disputes:

• *Chapter VI* reveals the main limitations of the Secretary-General's role, identified by the research, and the prospects for reform. It was found that the main limits to the Secretary-General's activities in the field of peace derive from its relation with the Member States and the deliberative bodies, which restricts its independence and its initiatives. A real reform would have to consider more than changes in the structure and management of the Secretariat, addressing primarily the way Member States relate to the Secretary-General and the Secretariat. Other necessary measures in order to increase effectiveness of the Secretary-General's and the Secretariat's activities would be:

- A clearer determination of the Secretariat's functions in order to make possible, to a large extent, the adequate recruitment of staff endowed with the necessary skills;
- A real assessment of the functions and performance of the Secretariat and of the Secretary General, in order to avoid discrediting the function and the office, to cover shortfalls or satisfy interests of the Member States.

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