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POWERS AND ROLES OF THE UN SECRETARY-GENERAL: AN OSCILLATION BETWEEN LEGALISM AND PERSUASION

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INTRODUCTION

In the end, the only means I have is reason and persuasion. I cannot call on any airforce or an army.¹ Kofi Anna

The Secretary-General of the United Nations plays a very critical role in international relations and maintenance of a peaceful world order. Perhaps the most important of such critical roles is the use of his “good offices”² to serve as a mediator in conflict situations. The Secretary-General through the usage of his good offices takes steps publicly and in private, drawing upon his independence, impartiality and integrity, to prevent international disputes from arising, escalating or spreading. In his book on UN peace-keeping efforts, Gareth Evans observed that most of the efforts at providing preventive diplomacy through the Secretary General's good offices were ad-hoc responses to crises. The choice of personnel, he noted, has been very limited, and frequently the people involved lacked the necessary resources to back them up. They had to rely mainly on their own prestige and the weight of public opinion to be successful in their missions.³

Meanwhile, since the incidence of the World War II the UN Secretary-General has played important roles in maintaining world order. The Secretary-General and the Secretariat, no doubt, represent an impartial aspect of the UN which - unlike the deliberative organs of the UN that are necessarily political and representative of interests of different governments - is intended to be a forum where people may speak not for the interests of governments or blocs but as impartial bystanders. Although the Secretary-General works within diverse political

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1. Quoted in William Shawcross, *Deliver Us From Evil: Peacekeepers, Warlords and a World of Endless Conflict* (New York: Simon and Schuster, 2000), p. 278

2 The UN Secretary General uses what is termed his "good offices" which generally means his prestige and the weight of the world community he represents. He does this more particularly when he meets with world leaders, either publicly or privately, in an effort to prevent international disputes from developing, escalating, or spreading. For example, in 1998 Kofi Annan negotiated a settlement of the dispute between Iraq and the U.S. over arms inspections in Iraq. He used the prestige of his office and the threat of UN Security Council action if no agreement was reached to force Saddam Hussein to allow continuation of UN inspections. Earlier examples include *U Thant's* assistance during the Cuban Missile Crisis, and *Javier Perez de Cuellar's* mediation of the Soviet withdrawal from Afghanistan. See Thomas Franck and George Nolte, “The Good Offices Functions of the UN-Secretary-General,” in A. Roberts and B. Kingsbury, eds., *United Nations Divided World* (Oxford: Clarendon Press, 1993, 2nd ed.), p.23.

3 Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution, 2008), p. 186.

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medium represented by the deliberative organs of the UN, he is nevertheless expected to act as an impartial agent, who, in person or through special missions, observers, mediators, and facilitators uses his powers and influence to promote compromise and conciliation among nations. The Secretary-General may also assign senior staff members to act as his special representative, performing the same functions. For example, Brian Urquhart represented the Secretary General's office for many years, proving "good offices" in the Congo, the Middle East, Cyprus, and Namibia.⁴

But what exactly is the nature of the powers and persuasive influence of the UN Secretary-General? In answering this all important question this paper examines, firstly, the Charter of the United Nations (UN Charter)⁵ as the legal source of the authority of the office and considers the roles of the Secretary-General as an influential legal actor in international arena vis-à-vis the evolving conceptions of that office under successive secretaries-general. Indeed, The Charter describes the Secretary-General as the "chief administrative officer" of the organisation, who shall act in that capacity and performs "such other functions as are entrusted" to him by the Security Council, General Assembly, Economic and Social Council and other United Nations organs.⁶ The Charter also empowers the Secretary-General to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."⁷ Secondly, the paper examines the persuasive nature of the authority of the Secretary-General and contends that with his "little formal authority and non-material power, the Secretary-General's influence depends largely on his persuasive powers."⁸ And that such persuasive powers and the influence it exert are wielded within the institutional and normative context that he helps to shape as an influential participant in international legal discourse.⁹ It is however the guidelines contained in the UN Charter¹⁰ with respect to the office of the Secretary-General - as exemplified by the exercise of his normative roles and power of persuasion based on law- that define the powers of the office and grant it considerable scope for action. But in upholding the values and moral authority of the United Nations, the Secretary-General is expected not to lose sight of concerns of Member States even as he speaks and acts for peace.¹¹ Balancing the tension that accompanies speaking and acting neutral and taking careful account of the concerns of Member States, no doubt, underguards the impact and extent of the persuasive powers of his office. The paper concludes by arguing that both the normative legal roles and the persuasive moral authority of the Secretary-General are intertwined such that the influence of, and the

⁴ Kjell Skjelsbaek, "The UN Secretary-General and the Mediation of International Disputes," (1991) *Journal of Peace Research* Vol. 28, No. 1, Special Issue on International Mediation, pp. 99-115; Security Council Official Provisional Records (S/PV.4753), 58th year, 4753rd meeting, 13 May, 2003, pp. 3-29.

⁵ Charter of the United Nations, 1945. The Charter was established as a consequence of the United Nations Conference on International Organisation held at San Francisco and came into force on 24 October 1945. See Ian Brownlie (ed), *Basic Documents in International Law*, 6th ed. (Oxford: Oxford University Press, 2009), pp.2-33. Also available online at: <http://www.un.org/english> or www.un.org/law/

⁶ UN Charter, Articles 97 and 98.

⁷ *ibid*, Article 99

⁸ Ian Johnstone, "The Role of the UN Secretary-General: The Power of Persuasion Based on Law," in Paul F. Diehl and Brian Frederking, eds., *The Politics of Global Governance: International Organisations in An Interdependent World* (USA: Lynne Rienner Publishers, Inc., 2010, Fourth Edition), p. 72.

⁹ *ibid*, at p.72.

¹⁰ Supra notes 5 and 6 above.

¹¹ Supra note 2 above.

oscillation between these two, are dependent, to a very large extent, on his “ability to draw upon the values and principles embodied in the UN Charter”¹² as the basis of his authority.

THE SECRETARY-GENERAL AND THE SECRETARIAT

In the final report of the Preparatory Commission¹³ that worked to create the United Nations after its Charter was adopted in 1945, it was noted that the Secretariat of the United Nations and the Secretary-General as its chief administrative officer are central to the success and realisation of the object of the Charter. While noting the importance of the Secretariat the report stated that:

While the responsibility for the framing and adoption of agreed international policies rests with the organs representative of the member...the essential tasks of preparing the ground for those decisions and executing them in cooperation with the Members will devolve upon the Secretariat. The manner in which the Secretariat performs these tasks will largely determine the degree in which the objectives of the Charter will be realised.¹⁴

Also noting the importance of the Secretary-General as the head and chief administrative officer of the Secretariat, the report went further to stress as follows:

The United Nations cannot prosper, nor can its aims be realised without the active and steadfast support of the people of the world. The aims and activities of the General Assembly, the Security Council, the Economic and Social Council will, no doubt, be represented before the public primarily by the Chairmen of these organs. But the Secretary-General, more than anyone else, will stand for the United Nations as a whole. In the eye of the world, no less than in the eyes of his own staff, he must embody the principles and ideals of the Charter to which the organisation seeks to give effect.¹⁵

¹² *ibid*

¹³ Report of the Preparatory Commission of the United Nations 1945-1946 (PC/20, 23 December 1945), chap. VIII, section 2, para., 1-16. Also available online at: https://archives.un.org/sites/archives.un.org/files/files/AG-009_PrepCommission.pdf; For further analysis on the report see also Simon Chesterman and Kofi A. Anna, “Report of the Preparatory Commission of the United Nations, 23 December 1945” in Simon Chesterman, ed., *Secretary or General? The UN Secretary-General in World Politics* (Cambridge: Cambridge University Press, 2007, 1st ed.), pp. 243-245

¹⁴ *ibid*

¹⁵ *ibid*

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The above, no doubts, captures the esteemed historical conception of the Secretariat and the Secretary-General of the United Nations. And to drive this point home more poignantly, it must be noted that the two generations of international organisations¹⁶ that preceded the United Nations had never envisaged such a role as captured above for its top official. Thus, the technical bodies that preceded the League of Nations were run by faceless functionaries whilst the League of Nations, on the other hand, had highly regarded political leadership in the person of its first Secretary-General, Eric Edmund of Britain. However, it was not the prestige of office as envisioned above for the Secretary-General under the present UN Charter that won respect for Eric Edmund. It was his personal merit and the super powers standing of his country.

As the symbolic head of the UN, the Secretary-General is equal parts diplomat and advocate, civil servant and chief executive officer. He is a symbol of United Nations ideals and spokesman for the interest of the world's people, in particular the poor and vulnerable. As the chief administrative officer of the UN, the Secretary-General is responsible for a wide range of administrative, managerial and substantive tasks. As noted above, one of the Secretary-General's most important roles is the ability to use his good offices to serve as a mediator in conflict situations. While the Security Council authorises the peacekeeping missions and the General Assembly approves fund, it is the Secretary-General who often play the essential role of engaging with and mediating between the conflicting parties. But the basic duties of the Secretary-General are comprised in attending sessions of UN bodies; consulting with world leaders, governments and others; and carrying out country visit to meet with people, stayed informed on issues and report on various conditions. He thus issues an annual report on the work of the UN which appraises its activities and outlines future priorities.

The Secretariat, on the other hand, comprises of international staff recruited from "as wide a geographical basis as possible"¹⁷ and working in several duty stations around the world. It is the Secretariat that also services the other principal organs of the United Nations and administers the programmes and policies laid down by them. The duties carried out by the Secretariat are as varied as the problems dealt with by the United Nations. These duties range from administering peacekeeping operations to mediating international disputes, from surveying economic and social trends and problems to preparing studies on human rights and sustainable development. As international civil servants, staff members and the Secretary-General answer to the United Nations alone for their activities, and take an oath not to seek or receive instructions from any Government or outside authority. Under the Charter, each Member State undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and to refrain from seeking to influence them.¹⁸ The above expositions, no doubt, have clearly demonstrated both the rich historical background and the strategic pre-eminence of the enabling vision for the conceptualisation of the Secretary-General as well as the Secretariat of the United Nations. It is now apposite to consider the role of the Secretary-General as a legal actor in the firmament of international legal order for peace and security.

¹⁶ The early technical bodies that dealt with such things as postal, telegraphic and meteorological services, and the later League of Nations.

¹⁷ Supra note 6 above, Articles 100 and 101 generally

¹⁸ *ibid*

THE SECRETARY GENERAL AS A LEGAL ACTOR

On the face of it, it would seem that the UN Charter does not clearly spell out the roles or powers of the Secretary-General of the Organisation. Thus, Article 7 simply prepares the ground for his pre-eminence by listing the Secretariat, where he presides as the chief administrative officer, among the 6 “principal organs” of the United Nations. Following this is Article 97 which merely describes him as the “chief administrative officer” of the UN. It must be pointed out however that he is not merely the chief administrative officer of the Secretariat; he is indeed the “chief administrative officer” of the UN as a whole. Article 98 goes further than that by providing that he may be entrusted with “other functions” by the main intergovernmental bodies- other deliberative organs of the UN. Article 99 however authorises him to bring to the attention of the Security Council “any matter which in his opinion may threaten the maintenance of international peace and security.” Article 100 secures his independence by shielding him from any influence that is external to the UN itself. In sum, therefore, the legal basis of the authority and/or roles of the Secretary-General can be said to lie in Articles 7, 97 and 98 through 101 of the UN Charter.¹⁹ But the provisions of both Articles 99 and 100 of the UN Charter deserve some scrutiny as, as it were, they jointly and severally represent the core of the narrow legal environment within which the Secretary-General exercises his powers and exerts his influence, even as his independence and security from external influences are guaranteed. Article 99 reads:

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.²⁰

Commenting on the above provision of the UN Charter, the UN Preparatory Council had also noted in their final report that the provision gave the Secretary-General “a quite special right which goes beyond any power previously accorded to the head of an international organisation.”²¹ And that the responsibility confers by the provision on the Secretary-General “will require the exercise of the highest quality of political judgement, tact and integrity.”²² Indeed, the discretion embodied in the provision of Article 99 to the effect that the Secretary-General “may (not must) bring any matter (not only disputes) which in his opinion may threaten peace requires the Secretary-General to exercise independent political judgement.”²³ The legal foundation of this “expansive vision” of the office of the Secretary-General as encapsulated in Article 99 is no doubt the provision of Article 7 which, as we earlier on noted, designates the Secretariat as a principal organ of the UN.²⁴ The designation of the Secretariat, and invariably the Secretary-General, as a principal organ of the UN does not however mean an equation of status with other pre-eminent organs like the Security Council and the General

¹⁹ Supra note 8 above, at p. 72.

²⁰ Supra note 6 above.

²¹ Supra note 13 above.

²² *ibid*

²³ Supra note 8 above, at pp.72-73; See also Javier Perez de Cuellar, “The Role of UN Secretary-General” in A. Roberts and B. Kingsbury, eds., *United Nations Divided World* (Oxford: Clarendon Press, 1993, 2nd ed.), pp. 130-131.

²⁴ Supra note 13 above, at p. 73

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Assembly among others. To remove any doubt in this regard, Article 98 clearly specifies that the Secretary-General shall take instructions from the deliberative organs such as the Security Council and the General Assembly, for example, by performing “such other functions as are entrusted to him by these organs.”²⁵ This restriction nevertheless, Article 7 implies at least at the minimum that the Secretary-General has equal responsibility to uphold the aims and purposes of the Charter.²⁶

The provision of Article 100, as we earlier hinted, basically secures the independence of the Secretary-General. But before examining the provision of this Article, it is important to stress that the empowerment offers by the combined effects of the provision of Article 99 on the “expansive vision” of roles as well as the provision of Article 100 on the security of the independence of the Secretary-General, and his staff, is a reflection of the fundamental shift in the aims of international organisation. Whereas the League of Nation had been conceived essentially as an organisation that would help preserve the balance of powers among major powers, the conception of the UN on the other hand was based on the concept of collective security- the joint use of force in the general interest of members. This therefore meant a very significant reduction, if not departure, from the traditional “rights” of sovereign States to conduct or wage war, unilaterally or otherwise. Similarly, the Covenant of the League of Nations²⁷ had obligated members “to respect and preserve against external aggression the integrity and existing political independence of all members,”²⁸ but the present UN Charter on the other hand enjoined a much broader code, applicable not just to members with existing political independence, but also to all people irrespective of their political status. Thus after including the “respect for the principle of equal rights and self-determination of people”²⁹ as part of the cardinal “Purposes” of the UN, Charter goes further to provide that “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of Any State.”³⁰

Now, in order to be able to push its core concept of collective security, the UN no doubt needs a truly independent Secretariat. This, in a way, is what the provision of Article 100 (1) and (2) seeks to achieve when it provides that:

In the performance of their duties the Secretary-General and the Staff shall not seek or receive instructions from any Government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.³¹

²⁵ *ibid*

²⁶ *ibid*

²⁷ Covenant of the League of Nations 1919. Available online at:<http://www.refworld.org/docid/3dd8b9854.html>

²⁸ *ibid*, Article 10.

²⁹ Supra note 6 above, Article 1

³⁰ *ibid*, Article 2

³¹ *Ibid*, Article 100 (1)

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Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.³²

The above provision of Article 100, just like its preceding Article 99 discussed earlier, can also be regarded both as a historical and bold departure from the past as represented under the Covenant of the League of Nations. The Article in one part says that in the performance of their duties the Secretary-General and his staff shall not seek or receive instruction from any other authority or institution external to the UN. On the other part the Article places undertaking on the States to recognise the international character of the responsibilities and hence neutrality of the Secretary-General and his staff and enjoins the States to refrain from influencing them in the discharge of their international responsibilities. In his final report the UN Preparatory Commission had also noted the significance of Article 100 and the kind of the Secretariat envisaged by it as that which:

...cannot be composed, even in part, of national representatives responsible to governments. For the duration of their appointments, the Secretary-General and the staff will not be servant of the state of which they are nationals, but the servants only of the United Nations...it is essential that the officials should be inspired by a sense of loyalty to the United Nations and devotion to the ideal of which it stands, and that they should develop an spirit de corps and a habit of daily cooperation with persons of other countries and cultures. Loyalty to the Organisation is in no way incompatible with an official's attachment to his own country, whose higher interest he is serving in serving the United Nations. It clearly involves, however, a broad international outlook and detachment from narrow prejudices and narrow national interests.³³

Without doubt the several provisions of the UN Charter discussed above with respect to the Secretariat and the Secretary-General clearly mirrors the noble ideals for which the Organisation is established. However, the history of the United Nations has been one of constant tension between the ideal of its Charter and the realities of power in a world of unequal sovereignties. Thus, the roles and/or powers of the Secretary-General in practice have gone far beyond what might be anticipated from a mere reading of the above cited terse provisions of the UN Charter for the office. This reality nevertheless, the roles and/or powers of the Secretary-General have been developed precisely through a skilful exploitation of the potentialities inherent in those provisions, particularly Article 99. But further on the constant tension between the ideals of the UN Charter and the reality of powers, Boutros Boutros-Ghali, the then Secretary-General of the UN - the number sixth in the row- had pointed out this sad reality in his report issued in 1996 and titled *An Agenda for Democratisation*. He said:

³² *Ibid*, Article 100 (2)

³³ *Supra* note 13 above.

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On one side of the global ideological confrontation were States which claimed to have peace and democracy at home, and which supported peoples' calls for self-determination and democratisation abroad. Yet these States often misappropriated the name of democracy and acted in drastically undemocratic ways. On the other side were States which endeavoured to maintain peace and democracy at home and to promote those objectives with other States. Yet this States often supported authoritarian regimes, on the grounds that those regimes opposed communism and defended market freedom, or used non-democratic means to achieve their foreign policy goals. The action of both sides seemed to suggest a belief that peace and democracy within States could be achieved by war and non-democracy among States...throughout the decades of this confrontation, many of the major decisions of international peace and security were taken outside the United Nations and managed within the context of a non-democratic system, the bipolar system. The principle of self-determination was usurped and manipulated. International law became a casualty. The bright prospects for democracy within and among States soon faded away.³⁴

Boutros Boutros-Ghali in another presentation had also noted the significance of Article 100 of the UN Charter and hence the role the Secretary-General in the following words:

If one word above all is to characterise the role of the Secretary-General, it is independence. The holder of this office must never be seen as acting out of fear of, or in an attempt to curry favour with, one state or group of states...Article 100 [no staff member of the UN should take instructions from any government] is Psalm 100 to the Secretary-General.³⁵

But beyond the above reality, and much more than the terse words of the UN Charter, is the manner in which those words have been interpreted and applied by the particular secretary-general. Thus from Trygve Lie - the very first Secretary-General under the UN Charter – on, every Secretary-General has asserted the independence of his office, with some more vigorously assertive than others.³⁶ Indeed, the right of the Secretary-General to offer unsolicited opinions which was later incorporated in the Provisional Rules of Procedure was to the credit of Lie who had helped in establishing same.³⁷ He had also helped establish the Secretary-General's right to engage in fact-finding mission prior to presentation of a matter to

³⁴ Available online at: <http://www.un.org/fr/events/democracyday/pdf/An_Agenda_for_democratisation.pdf>

³⁵ Boutros Boutros-Ghali, "Global Leadership After the Cold War," *Foreign Affairs* Vol. 75, No. 2 (1996): 98

³⁶ Supra notes 8 above, at p. 73

³⁷ *ibid*; see also Stephen Schwebel, *The Secretary-General of the UN: His Political Powers and Practice* (New York: Greenwood Press, 1952), p.94

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the Security Council under Article 99³⁸. In fact, less than three months in office in his first term, Lie took a rather bold initiative of advising the Security Council on the Secretariat's interpretation of the UN Charter. The Council was considering its first case brought by the Iranian against the USSR. Lie had delivered a legal opinion sharply different from that of the Security Council. The Council rejected his opinion but nonetheless upheld his rights, as the Secretary-General, to present his views. After setting this precedent, Lie then became emboldened to submit legal opinion on other matters.³⁹

Also in 2002, and following the impending move of the United States to wage war against Iraq, Kofi Annan, the then Secretary-General, made it explicitly clear to the US Government that the authorisation of the Security Council through appropriate resolution was necessary before any military action against Iraq could be undertaken. He had contended that respect for international law and the "unique legitimacy provided by the UN" made such specific authorisation imperative. He added, however, that should Iraq continue to defy its obligations, the Security Council "must face its responsibilities" of taking necessary action – threat or authorisation for the use of force.⁴⁰ Clearly, these two instances – Lie and Kofi Annan – demonstrate assertion of independence of office envisaged by the UN Charter. The Secretary-General will however fail if he did not take careful account of the concerns of Member States, but he must also uphold the values and moral authority of the United Nations, and speak and act for peace, even at the risk, from time to time, of challenging or disagreeing with those same Member States.

The ideals of independence and integrity enunciated above, it must be stressed, are well grounded in the UN Charter itself [Article 100 especially]. This is still so even if the scope of its assertion and hence enjoyment will vary depending on the personality cult of the particular occupant of the office at any given time. And as we have earlier hinted, the roles and/or powers of the Secretary-General have varied with the individual occupant of that prestigious office and with the time and circumstances in the world besetting his headship of the Secretariat. Thus, one of the common findings across the analysis of the secretaries-general was the deep connection felt by the different officeholders with the Charter itself. It is found that they often engage the Charter with an almost religious reverence as a sacred text and perceived themselves as the embodiment of the Charter and its ethical codes.⁴¹

As a legal actor, the Secretary-General also plays an important role in the interpretive environment of the UN Charter and the charter-based law. To be clear, it was the decision at the 1945 San Francisco conference heralding the adoption of the UN Charter that each organ of the UN should interpret those aspect of the Charter falling within its competence subject however, to the condition that where "...an interpretation made by any organ of the

³⁸ Supra note 8 above, at p. 73

³⁹ *ibid*

⁴⁰ Address by Secretary-General Kofi Annan to the General Assembly, SG/SM/873, GA/10045 (12 September 2002)

⁴¹ The swearing-in ceremony of Mr. Ban Ki-moon of the Republic of Korea – the current SG and the eight occupant of the post, clearly reinforces the view on the near-religious attachment of secretary-general to the UN Charter. For Mr. Ban had requested to take his oath of office by placing his hand on the Charter (not the Bible or any other scriptural book) which, in his words, would "illustrate my faith in the Charter." See UN Document SG/2119 and GA/10558, December 14, 2006.

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Organisation... is not generally acceptable it will be without bidding force.”⁴² Ian Johnstone however described this passage as “cryptic observation” contending that the interpretation of Article 99, for example, by successive Secretaries-General has shown that the secretaries-general are not treated as authoritative simply because they assert them but only following debate among member states and a period of accepted practice.⁴³ In other words, the above interpretive liberty granted to the secretaries-general by the tenor of that San Francisco decision is, in reality, elusive when it comes to realising the intended result envisaged by its authors. Ian Johnstone noted further on the interpretive role of the Secretary-General as follows:

The Secretary-General, though he has no formal authority as interpreter of international law, is an influential participant in that discourse. He is a key member of the interpretive community associated with the UN, and he operates in a highly developed institutional and legal settings. The charter and charter based law provide the normative framework with which questions of peace and security are debated. This framework, moreover, is constantly evolving. In recent years, for example, traditional notions of national security (security of the state) have given way to broader conception of human security (the security of the individual). Indeed, the unusual invitation⁴⁴ to the Secretary-General to refer violation of human rights and humanitarian law to the Security Council may be seen as the latest manifestation of this evolving normative climate...in interpreting the law and identifying violations, he [Secretary-General] is able to point to more precise conceptions than the general terms of the charter itself.⁴⁵

⁴² United Nations Conference on International Organisation, Report of Rapporteur of Committee IV/1, 1945. See also Jose Alvarez, “Judging The Security Council,” *American Journal of International Law* Vol.90, No.1 (1996)

⁴³ Supra note 8 above, at pp. 74-75

⁴⁴In August 2001, the Security Council adopted a resolution on conflict resolution whereupon it, quite unusually, invited the Secretary-General to refer “cases of serious violations of international law” to it [Security Council]. See S/RES/1366 (30th August 2001), para.10. This invitation of the Security Council must not however be confused with or seen as deriving from the wide latitude provided by the obligation of the Secretary-General under Article 99. Whereas Article 99 merely directs that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, the invitation by the Security Council in its Resolution 1366 of 30th August 2001 specifically empowered the Secretary-General to refer “cases of serious violations of international law” and hence making him, as it were, guardian of international law. Indeed, an attempt to include such mandate in the provision of Article 1999 was actually defeated at the 1945 Conference by a vote of 16-13. Thus, the unusual Resolution clearly flew in the face of a decision taken in 1945 to the effect that the Secretary-General should not be empowered to bring to the attention of the Security Council violations of the legal instrument that bears most directly on the works of the UN Charter itself. See generally, United Nations Conference on International Organisation VII, p.163. Cited in Bruno Simma, ed., *The Charter of the United Nations: A Commentary* (Oxford: Oxford University Press, 1995), p.1046

⁴⁵ Supra note 8 above, at p.77

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On the interpretive role of the Secretary-General, Perez de Cuellar, the then Secretary-General of the UN however sounded the following note of caution at the Oxford University where he had been invited to deliver the Cyril Foster Lecture. He had suggested that a secretary-general of the UN must avoid two extremes:

On one side is the *Scylla*⁴⁶ of trying to inflate the role through too liberal a reading of the text [of the Charter]: of succumbing, that is, to vanity and wishful thinking. On the other hand is the *Charybdis*⁴⁷ of trying to limit the role to only those responsibilities which are explicitly conferred by the Charter and are impossible to escape: that is, succumbing to modesty, to the instinct of self-effacement, and to the desire to avoid controversy. Both are equally damaging to the vitality of the institution. I submit that no secretary-general should give way to either of them.⁴⁸

In closing his lecture, Perez de Cuellar set forth his own essential requirements for a secretary-general. It is worth reproducing at length:

The Secretary-General is constantly subjected to many and diverse pressures. But in the last analysis, his office is a lonely one. He cannot stand idle. Yet helplessness is often his lot. The idealism and hope of which the Charter is a luminous expression have to confront the narrow dictates of national policies. The Secretary-General's efforts must be based on reason but, behind many a government's allegedly logical position, there are myths and silent fears. The voice of the Charter is often drowned by clashes and conflicts between states. If the Secretary-General is to rise above these contradictions in international life, two qualities are essential. One is faith that humanity can move – and indeed is moving – towards a less irrational, less violent, more compassionate, and more generous international order... the other essential quality is to feel that he is a citizen of the world. This sounds [like] a cliché, but the Secretary-General would not deserve his mandate if he did not develop a sense of belonging to every nation or culture, reaching

⁴⁶ In Greek mythology, Scylla was a monster that lived on one side of a narrow channel of water, opposite its counterpart Charybdis. The two sides of the strait were within an arrow's range of each other—so close that sailors attempting to avoid Charybdis would pass too close to Scylla and vice versa. Traditionally the strait has been associated with the Strait of Messina between Italy and Sicily. The idiom "between Scylla and Charybdis" has come to mean being between two dangers, choosing either of which brings harm. See Wikipedia, the free encyclopaedia available online at: <http://en.wikipedia.org/wiki/Scylla>.

⁴⁷ *ibid.*

⁴⁸ The Role of the UN Secretary-General (Internet). In *Encyclopaedia of the Nations*. Retrieved on June 26, 2014, available online at: www.nationsencyclopaedia.com/United-Nations/The-Secretary-General-THE-ROLE-OF-THE-UN-SECRETARY-GENERAL-html; Marrack Goulding, "The UN Secretary-General," in David M. Malone, ed., *The UN Security Council: From the Cold War to the 21st Century* (USA: Lynne Rienner Publishers, Inc., 2004, 1st Edition), pp. 268 -280.

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out as best he can to the impulse for peace and good that exist in all of them. He is a world citizen because all world problems are his problems; the Charter is his home and his ideology, and its principles are his moral creed.⁴⁹

It is clear from the foregoing that, in the exercise of his interpretive role as a legal actor, the Secretary-General must be temperate in order to avoid the kind of pitfalls warned against by Perez de Cuellar. In other words, the Secretary-General should not be parochial in world view, “self-aggrandising” or “unrealistically ambitious” or “overcautious” in the performance of his political functions as envisaged under Article 99.⁵⁰ Thus, he must be able to strike a balance between the assertion of his independence and the assumption of the mantle of “guardian of the Charter” within the interpretive environment. Since both the Security Council and the General Assembly too play interpretive roles in the same interpretive environment with him, a more modest approach for the Secretary-General might then be to constantly seek guidance from these deliberative bodies, and not from the Charter principles as he unilaterally interprets them.⁵¹ But in seeking such guidance from the deliberative bodies, the Secretary-General, it must be cautioned, must also avoid the pitfall of a wholesale shifting of the interpretive task to those bodies lest he loses or compromises both his independence and neutrality as an international civil servant who represents the interests of all, as against the parochial interests of individual governments. He must however interpret any directive from the deliberative bodies “in the light of the objectives, and in accordance with the evolving conception of charter principles.”⁵²

THE SECRETARY-GENERAL AS A POLITICAL AND MORAL ACTOR

The roles of the Secretary-General have varied with the individual occupant of that prestigious office⁵³ and the time and circumstances in the world besetting his headship of the Secretariat. In this segment, the paper gives brief outline account of some of the initiatives taken by selected secretaries-general of the UN in various international crisis and arrears of conflict. Doing this will help to highlight, in line with the thematic preoccupation of this paper, the oscillation between adherence to legalism and the use of moral authority, *albeit* based also on law, to advance and achieve the ideals of the UN Charter. As we have noted earlier, the political influence that the Secretary-General exerts both within and without the interpretive environment, depends, to a very large extent, not on any material power from the Charter but on the authority he is able to command using the instrument of persuasion and the

⁴⁹ *ibid*

⁵⁰ Marrack Goulding, “The UN Secretary-General,” in David M. Malone, ed., *The UN Security Council: From the Cold War to the 21st Century* (USA: Lynne Rienner Publishers, Inc., 2004, 1st Edition), pp. 268 -280.

⁵¹ *Supra* note 8 above, at p. 75

⁵² *ibid*

⁵³ The prestige of the office, it must be noted, is also tempered by its difficulties. Once described by Trygve Lie, the first Secretary-General of the UN, as the “most impossible job in the world,” the position of UN Secretary-General is as frustratingly constrained as it is prestigious. Trygve Lie was reported to have made this remarks when he met his designated successor, Dag Hammarskjöld (1953- 1961) at the airport in New York on 9 April, 1953. The narration of the encounter is available online at: www.un.org/Dept/dhl/dag/time1953.htm. The phrase has also been used in the subtitle of a major study of the office: Benjamin Rivlin and Leon Gordenker, eds., *The Challenging Role of the UN Secretary-General: Making “The Most Impossible Job in the World” Possible* (Wesport CT: Praeger, 1993).

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cult of his personality. Indeed, The Secretary-General's ability to influence global affairs often depends on how the international community regards his moral authority. In relation to such moral authority, past secretaries-general have drawn on their own ethics and religious backgrounds—as diverse as Lutheranism, Catholicism, Buddhism, and Coptic Christianity—to guide the role that they played in addressing the UN's goals in the international arena, such as the maintenance of international peace and security and the promotion of human rights.⁵⁴

The Secretary-General's ability to persuade and hence influence global affairs also depends, no less, on the formal authority of the office and in part on the normative acceptability of positions he pushes or takes.⁵⁵ His political and moral authority is therefore not exclusive from his legal role. As we have earlier noted of Trygve Lie, successive Secretaries-General from his time have cultivated the habit of venturing legal opinions, *albeit* cautiously. The Secretary-General plays this role cautiously because, members of the Security Council, particularly the powerful ones, do not typically subscribe to the idea of the Secretary-General weighing in on interpretive disputes among them.⁵⁶ Yet, “legal positions taken by the Secretary-General are in no way determinative, but they do lend political comfort to those on whose side the Secretary-General comes down and can complicate the efforts of those he goes against.”⁵⁷ And as Edward Newman puts it, the fundamental issue underlying the political role of the Secretary-General always has been and remains whether the Secretary-General “is more an adjunct of the intergovernmental system or part of a wider process of global governance that transcends state structures.”⁵⁸ But because of the nature of the responsibilities and burdens placed on the shoulders of the Secretary-General – he is required to be a politician, diplomat and international civil servant all rolled into one, he is bound to attract, as we shall presently see from outline accounts of selected past Secretaries-General, critical scrutiny and harsh judgement from one quarter or another.

During Trygve Lie's first term as the first Secretary-General of the UN (1946- 1953), the East-West tension was the major source of worry charging the UN atmosphere. As the world situation arising from the charged atmosphere became increasingly threatening, the political role of the Secretary-General as envisaged under Article 99 also got expanded. Apparently to douse the tension of the time, Lie took definite stands on three issues, each of which earned him the dislike of some permanent members of the Security Council.⁵⁹ The stands also turned out to be the defining moment of his first term. The issues were Chinese representation, a plan for the general settlement of the cold war, and UN military action in the Korean War. On the Chinese representation, a number of states, including the USSR and the United Kingdom that

⁵⁴ Kent J. Kille, *The UN Secretary-General and Moral Authority: Ethics and Religion in International Leadership*, (Georgetown: Georgetown University Press, 2007)

⁵⁵ *Supra* note 8 above, at p. 82.

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Edward Newman, “The Post-Cold War Secretary-General: Opportunities and Constrains,” *Global Dialogue* 2:2 (Spring 2000), pp. 96 – 108, at p. 107

⁵⁹ The Secretary-General- Developments under Trygve Lie, 1946-1952 (Internet). In *Encyclopaedia of the Nations*. Retrieved on June 26, 2014, available online at: www.nationsencyclopaedia.com/United-Nations/The-Secretary-General-Development-Under-Trygve-Lie-1946-1952.html For a general study of the various secretaries-general of the UN see also Edward Newman, *The UN Secretary-General from the Cold War to the New Era: A Global Peace and Security Mandate?* (London: Macmillan, 1998).

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were permanent members of the Security Council had, by the end of 1949, recognised the mainland government, the People's Republic of China. However, in January 1950, the USSR representatives having earlier failed to obtain the private seating of the representatives of the People's Republic of China, then started to boycott UN meetings at which China was represented by delegates of the Republic of China, based on Taiwan. In private meetings with delegations, Lie tried to solve the impasse. He adduced various reasons, including a ruling of the International Court of Justice, for the thesis that non recognition of a government by other governments should not determine its representation in the UN. Armed with several proposals⁶⁰ and other memoranda, including the one on China representation, Lie travelled first to Washington, then to London, to Paris, and finally to Moscow. He held conversations not only with foreign ministers and high-ranking diplomats but also with US President, Harry S Truman; British Prime Minister, Clement Attlee; French President, Vincent Auriol; and Soviet Premier, Joseph Stalin. Lie's reception was cordial in Moscow, warm in Paris, and friendly in London, but cool in Washington.⁶¹ The international picture changed abruptly, however, with the outbreak of the Korean War. And the attitude of a number of governments toward Lie also changed dramatically.⁶²

At the outbreak of the Korean War, Lie however took a stand that has since come to be accepted as an outstanding example of a general-secretary's taking of a stand on an issue. His stand was an intervention in the emergency meeting of the Security Council of 24 June 1950. He unequivocally labelled the North Korean forces aggressors because they had crossed the 38th parallel.⁶³ He went ahead to declare that the ensuing conflicts constituted a threat to international peace and security, and then urged that the Security Council had a "clear duty" to act. After the Security Council had set in motion, in the absence of the Soviet Delegates, military sanctions against North Korea, Lie minced no words endorsing the course of action even as he also rallied support from member governments in support of the UN military action in Korea. These moves, no doubt, brought Lie into sharp conflict with the USSR, which accused him of "slavish obedience to Western imperialism".⁶⁴ And as the Korean conflict grew more ominous with the intervention of the People's Republic of China, Lie still played active roles in getting cease-fire negotiations underway in the field. At the same time, his full identification with the UN military intervention in Korea did not waver.

Unarguably, the political activities of the Secretary-Generalship of Dag Hammarskjöld as the second secretary-general of the UN (1953-1961) were numerous and far reaching than Lie, his

⁶⁰ For example, Trygve Lie's *Twenty-Year Peace Plan* which was an extra-ordinary initiative during the first half of 1950. In his *Twenty-Year Programme for Achieving Peace through the United Nations*, Lie proposed new international machinery to control atomic energy and check the competitive production of armaments and also proposed the establishment of a UN force to prevent or stop localised outbreaks of violence.

⁶¹ Supra note 59 above.

⁶² *ibid*

⁶³ The 38th parallel north is a circle of latitude that is 38 degrees north of Earth's equatorial plane. It crosses Europe, the Mediterranean Sea, Asia, the Pacific Ocean, North America, and the Atlantic Ocean. The 38th parallel north has been especially important in the recent history of Korea.

⁶⁴ Supra note 59 above.

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immediate predecessor, had been.⁶⁵ It was to his credit as Secretary-General that both the General Assembly and the Security Council had to repeatedly rely on his initiatives and advice and entrusted important assignments to him.⁶⁶ Thus in 1954, the General Assembly set a precedent when it asked Hammarskjöld to seek the release of 11 US fliers held prisoners by mainland China. The Assembly resolution left the course of action entirely to the secretary-general's judgement. Hammarskjöld quickly rose to the challenge and subsequently flew to Peking (now Beijing) for personal negotiation with the government of mainland China. He succeeded in persuading the government and the 11 fliers were released. It was in these circumstances that he invented the so-called Perking Formula distancing himself from a condemnatory resolution adopted by the General Assembly in order to help secure release of a U.S. aircrew captured by China during the Korean War.⁶⁷ Buoyed by this success, the Assembly's readiness to subsequently rely on him as a trouble-shooter greatly increased. Hammarskjöld yet another outstanding exploit as Secretary-General can also be illustrated with his first report on the 1960 Congo crisis. In the report, he asserted that the breakdown of Congo's institutions "represented a threat to peace and security."⁶⁸ And following the cables he had received on 12 and 13 July 1960, respectively from President Joseph Kasavubu and Premier Patrice Lumumba of the newly independent Congo, asking for UN military assistance to put off the arriving Belgian troops and the impending secession of Katanga, Hammarskjöld went ahead and requested for a meeting of the Security Council for the consideration of the Congo crisis. The Council met on the night of 13 July 1960 whereupon he gave his full support to the Congo's appeal and recommended that the Council authorise him to "take necessary steps" to set up a UN military assistance for Congo. Although the Security Council only decided the threat some nine months later, 11,000 UN troops were already on ground for the task at the time.⁶⁹ Indeed, reports on peace operations are critical contributions that the secretaries-general make to the work of the Security Council and only few of the secretaries-general "have been more influential than Hammarskjöld's first report on the 1960 Congo crisis."⁷⁰

Also in 1958, Hammarskjöld took an active hand in the Jordan-Lebanon crisis. Thus, after a resolution for stronger UN action failed to carry in the Security Council, he announced that he would nevertheless strengthen the UN action in Lebanon and "accept the consequences" if members of the Security Council were to disapprove; none did. It was also during this period that he said to the Security Council "in a strikingly self-conscious statement of the evolutionary process of charter interpretation", 'were you to disapprove, I would of course accept the consequences of your judgement'.⁷¹ Similarly, in the fall of 1959, the USSR made

⁶⁵ The Secretary-General- Developments under Dag Hammarskjöld, 1953-1961 (Internet). In *Encyclopaedia of the Nations*. Retrieved on June 26, 2014, available online at: www.nationsencyclopaedia.com/United-Nations/The-Secretary-General-Developments-under-Dag-Hammarskjöld-1953-1961.html For a general study of the various secretaries-general of the UN see also Edward Newman, *The UN Secretary-General from the Cold War to the New Era: A Global Peace and Security Mandate?* (London: Macmillan, 1998).

⁶⁶ *ibid*

⁶⁷ Thomas Boudreau, *Sheathing the Sword* (New York: Greenwood Press, 1991), p.42

⁶⁸ UN Doc S/4389 (18 July 1960).

⁶⁹ *Supra* note 8 above, at pp.77-78

⁷⁰ *ibid*

⁷¹ *ibid*, at p.73; see also Security Council Official Records (SCOR), 13th year, 837th Meeting, 22 July 1958, p.4.

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it known that it did not favour a visit by the Secretary-General to Laos and, in particular, the assignment of a special temporary “UN ambassador” there. Yet Hammarskjöld did go to Laos to orient himself on the situation in that corner of Southeast Asia, and he assigned a high UN official as the head of a special mission to Laos. In March 1959, Hammarskjöld on his own initiative also sent a special representative to help Thailand and Cambodia settle a border dispute. He acted at their invitation without specific authorisation by the Security Council or the General Assembly. The dispute was successfully settled.⁷²

Secretary-General Perez de Cuellar, the fifth in that row (1982 – 1991), also helped, rather ingeniously, to incorporate human rights concerns into peace keeping. Indeed, this has been ranked as one of the greatest innovations of his time as Secretary-General.⁷³ Thus, his efforts at “fore-fronting human rights” in the El Salvador greatly helped to reinforce the notion that that the promotion and protection of human rights is properly within the Security Council’s competence by demonstrating that peace and justice could be compatible.⁷⁴ In 1992, Boutros Boutros-Ghali, an Egyptian, took office as the sixth Secretary-General (1992-1996) of the United Nations in an air of general euphoria over the accomplishment of the UN in the post-Cold War era.⁷⁵ However, his first two years in office witnessed the proliferation of intractable and appalling regional conflicts in the former Yugoslavia, Haiti, Rwanda and Somalia among others. The multiplicity and savagery of these conflicts “cast a pall on the much hoped-for” “new world order” which the end of the Cold War had signalled.⁷⁶ Soon after the inauguration of Boutros-Ghali as the new Secretary-General, the Security Council met in January 1992 for its first-ever summit session in New York, where heads of states of all members of Council had appeared in persons. On 31st January 1992, the Security Council requested the Secretary-General to submit to it “an analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and peacekeeping.”⁷⁷ In response, Boutros-Ghali presented An Agenda for Peace wherein he set forth an analysis of the world organisation’s new situation at a time of global transition with respect to international peace and security. Similarly, in May 1994, Boutros-Ghali responded to a 1992 request of the General Assembly to submit report on development under the agenda item “Development and International Economic Cooperation.” He declared that development was not only a fundamental human right, but also the most secure basis for peace.⁷⁸

In 1997, Kofi Annan succeeded Boutros-Ghali as the seventh Secretary-General (1997-2006) of the United Nations. He came into power at a time of the differences between the UN and the U.S governments concerning financial matters. At the end of 1996, the US was \$376.8

⁷² Supra note 65 above.

⁷³ Supra note 8 above, at p.78

⁷⁴ *ibid*

⁷⁵ The Secretary-General- Developments under Boutros Boutros-Ghali, 1992-1996 (Internet). In *Encyclopaedia of the Nations*. Retrieved on June 26, 2014, available online at: www.nationsencyclopaedia.com/United-Nations/The-Secretary-General-Developments-under-Boutros-Boutros-Ghali-1992-1996.html For a general study of the various secretaries-general of the UN sees also Edward Newman, *The UN Secretary-General from the Cold War to the New Era: A Global Peace and Security Mandate?* (London: Macmillan, 1998).

⁷⁶ *ibid*

⁷⁷ *ibid*

⁷⁸ *ibid*

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million in arrears of its dues to the UN and the government was reluctant to pay the debt claiming that the UN had not been thrifty with its budget.⁷⁹ The US was of the view that the UN should be reduced in size, but Annan took a strong stand against further budget and staff cuts. Nevertheless, Annan took steps to reform the Organisation. Thus in 1998, the UN announced that it stood “poised, finally, to undertake sweeping structural change.”⁸⁰ The then 185 member gave strong backing to the reform in order, according to them, to overhaul the UN and make it more efficient and responsive to the world scene in the post-Cold War era. Annan’s “sweeping” reform efforts eventually helped straighten and strengthen the relations between the US. President Clinton praised the reforms and issued strong statements of support for the Secretary-General. He also promised to work out a plan with the Congress to pay the nation’s debt, which had already exceeded \$1 billion at the time, to the UN. By the end of 1999 and faced with the challenge of losing its vote and influence in the Organisation, the US made good its promise to pay its debt and thereby easing the long-standing financial crisis of the Organisation. The payment was however accompanied with a guarantee of initiatives, on the part of the UN, to ensure zero-growth budget.⁸¹

But Kofi Annan’s most important legal intervention have been said to be in two arrears. That is: the exercise of his good offices and his statement on human rights.⁸² An example of the first has been given as his support of Nigeria’s peaceful transition from military rule under General Abdulsalam Abubakar to a democratic government in 1999. He had achieved this success following an invitation to him in July 1998 by the military junta to come to Abuja, Nigeria’s capital, in order to help bring Nigeria out of its pariah status and international isolation acquired under the late General Sani Abacha, whom General Abdulsalam Abubakar had succeeded upon the mysterious death in office of the former. As Kofi Annan departed Nigeria, he spoke of the importance of a speedy “return to democracy.”⁸³ And not long after, General Abdulsalam Abubakar announced a transition programme. Elections were subsequently held in Nigeria and power was handed over to President Olusegun Obasanjo in 29 May 1999. Also using his good offices, Kofi Annan had succeeded in securing the withdrawal of Israel from Southern Lebanon in April 2000. This move alone, it must be stressed, had important legal consequences and all these were to the credit of the Secretary-General’s good offices.⁸⁴ The Secretary-General had ensured that the requirements of the Security Council’s resolutions 425 and 426 were duly complied with by Israel. He had also insisted on official written notification by Israeli to alleviate suspicion that the pull-out would not be complete.⁸⁵

⁷⁹ The Secretary-General- Developments under Kofi Annan, 1996- 2006 (Internet). In *Encyclopaedia of the Nations*. Retrieved on June 26, 2014, available online at: www.nationsencyclopaedia.com/United-Nations/The-Secretary-General-Developments-under-Kofi-Annan-1996-2006--html For a general study of the various secretaries-general of the UN sees also Edward Newman, *The UN Secretary-General from the Cold War to the New Era: A Global Peace and Security Mandate?* (London: Macmillan, 1998).

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² Supra note 8 above, at p.79

⁸³ *ibid*

⁸⁴ *ibid*

⁸⁵ *ibid*

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Clearly, the highlights in the foregoing paragraphs on how different secretaries-general have acted in different circumstances have illustrated the point that the role and political influence exerts by the Secretary-General, both within and without the interpretive environment, depends, to a very large extent, not on any material power from the Charter but on the authority he is able to command using the instrument of persuasion (his good offices) and the cult of his personality.

CONCLUSION

As we have noted earlier, the political influence that the Secretary-General exerts, both within and without the interpretive environment, depends, to a very large extent, not on any material power from the Charter but on the authority he is able to command using the instrument of persuasion and the cult of his personality. And this is why we have said that, the legal role the Secretary-General plays and the exercise of his political powers of persuasion - steeped in well-coordinated diplomacy - have always been an oscillation between his normative legal standing and persuasive moral influence (using his good offices). Moreover, the Secretary-General's ability to influence global affairs often depends on how the international community regards his moral authority. In relation to such moral authority, however, past secretaries-general have drawn on their own ethics and religious backgrounds, amongst others, to straddle the murky waters of national and international politics undergirding the operation of the Organisation. In sum, the Secretary-General's ability to persuade, and hence influence, global affairs also depends, no less, on the formal authority of the office as well as the normative acceptability of positions he pushes or takes.⁸⁶ His political and moral authority is therefore not exclusive from his legal role. They are intertwined.

Finally, it must also be pointed out, that the exercise of international leadership by the Secretary-General of the UN is still hugely under the influence of the systemic and structural constraints of a unipolar world order whose bedrock is the principle of state sovereignty.⁸⁷ Thus, the Secretary-General does not have the luxury to act in isolation from the shifting power structures of world politics. Therefore, while he can "unquestionably" use his good offices to shape policy and shift norms, the latitude and impact of such efforts will always depend as much on the "exogenous forces" beyond his control.⁸⁸

⁸⁶ Supra note 8 above, at p. 82.

⁸⁷ Ramesh Thakur, "The Political Role of the United Nations Secretary-General." Available online at http://www.ligi.ubc.ca/sites/liu/files/Publications/1Dec2003_PoliticalRoleUNSG.pdf

⁸⁸ *ibid*