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## A BRIEF REFLECTION ON PREVENTIVE DIPLOMACY AND THE GOOD OFFICES OF THE UN SECRETARY GENERAL IN THE UN CHARTER

SUMMARY: 1. Legal Basis and Background: The Provisions of the UN Charter and the Concept of Good Offices. – 2. The Golden Age of the UN Secretary General Good Offices: From the Peking Formula to the Case of Bahrain. – 3. Features of Good Offices as an Instrument of Preventive Diplomacy. – 4. Preventive Diplomacy and Good Offices in the 21<sup>st</sup> Century: Fading Practice and Call for Reform.

### 1. *Legal Basis and Background: The Provisions of the UN Charter and the Concept of Good Offices*

Chapter XV of the United Nations Charter sets out the main functions of the Secretary-General of the Organization and the prerogatives that this function may exercise within the Organization with relation to the other UN bodies<sup>1</sup>, as well as externally, in its relations with UN member States or other international organizations. Particularly, articles 98 and 99 of the Charter stipulate the actions that the Secretary-General may undertake in relation to other UN bodies and with respect to his/her capacity of being the “chief administrative officer of the Organization”. Article 99 is of particular importance as it outlines the role of the Secretary-General with reference to the Security Council and with respect to matters potentially threatening international peace and security. Nevertheless, beyond the formalities of the UN Charter provisions, some considerations about the Secretary-General appointment procedure and the interaction between its office and the Security Council are needed at this point.

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<sup>1</sup> On the UN Laws, Institutions, and policies, among the wide literature on the topic, see: S. CHESTERMAN, I. JOHNSTONE, D. MALONE, *Law and Practice of the United Nations*, Oxford, 2016; K. J. KILLE, A. J. LYON, *The United Nations: 75 years of promoting peace, Human Rights and Development*, Santa Barbara, 2020; B. SIMMA (ed), *The Charter of the United Nations: A Commentary*, Oxford, 2013; T. G. WEISS, S. DAWS, *The Oxford handbook on the United Nations*, Oxford, 2020; S. MARCHISIO, *L'ONU Il diritto delle Nazioni Unite*, Bologna, 2012; C. ZANGHÌ, *Diritto delle Organizzazioni Internazionali*, Torino, 2013; B. CONFORTI, C. FOCARELLI, *Le Nazioni Unite*, Padova, 2023.

With reference to the appointment procedure, it is the Security Council that recommends a candidate for the 193 General Assembly's member States to vote. Although formally all UN member States have a say in the appointment process, the five permanent members of the Security Council hold the most influence as any of them could veto a nominee. Furthermore, although the ten non-permanent members of the Security Council have no veto power, their votes are still crucial. This is often considered a criticism in the appointment process as few examples in past Secretary-General elections showed<sup>2</sup>. Moreover, the relationship between the Secretary-General and the Security Council members, particularly the five permanent members, resembles the one between constituencies voters and their elected representatives. This results in some criticism as Security Council's veto powers could certainly obstruct actions to respond to humanitarian crisis or prevent escalation of disputes that could potentially be prevented through good offices.

However, Chapter XV and none of the above-mentioned articles refer to or define the concept of good offices<sup>3</sup>. Nevertheless, if article 99 is read in conjunction with article 33 of the UN Charter, the latter regulating the pacific settlement of disputes, the concept of good offices could certainly be envisaged through an authentic interpretation of the two articles. Article 99 of the UN Charter specifically attributes to the UN Secretary-General the option to "bring to the attention" of the Security Council certain matters that, in the opinion of the Secretary-General, may threaten the international peace and security<sup>4</sup>. The analysis of the textual provision of article 99 leads to the conclusion that the prerogative vested in the UN Secretary-General is powerfully discretionary as it gives complete authority to the Secretary-General in deciding if, "in his opinion", a matter may potentially threaten the international peace and security and should therefore require an action by the Security Council. Such analysis of the broad nature of the prerogatives assigned to the Secretary-General under Article 99, is corroborated by the practice of the United Nations that, in repeated occasions, has admitted the existence of a discretionary option for the Secretary-General to refer matters

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<sup>2</sup> For example, China vetoed a third term for the fourth secretary-general, Austria's Waldheim, while the United States vetoed a second term for the fifth, Egypt's Boutros-Ghali. On the role and prerogatives of the UN Secretary General and its relations with the Secretary general see, *The role of the UN Secretary General*, Council on Foreign Relations, 15<sup>th</sup> August 2023, available at [www.cfr.org/](http://www.cfr.org/).

<sup>3</sup> The concept of Good Offices as a mean of peaceful dispute settlements is provided in numerous international legal instruments beside the UN Charter. In the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes Good Offices are established as one of the peaceful methods of dispute resolution. However, in the mentioned legal instrument, good offices are presented as interchangeable with mediation. This is not the case in other international or regional legal instruments. For example, The American Treaty on Pacific Settlement of Disputes (Pact of Bogota) treated as two distinct methods of dispute settlement mediation and good offices. The 1982 Manila Declaration on the Peaceful Settlement of Disputes places good offices on an equal footing with the other peaceful methods enumerated in article 33, paragraph 1 of the UN Charter. Based on these international legal instruments, the concept of good offices is, therefore, not related only to the UN Secretary-General or a prerogative of UN institutions only. The conceptualization of good offices requires a third party is engaged in the dispute in order to facilitate its composition and further deterioration of the dispute. The third party could be a State, a group of States or an official of international and regional organizations. However, for successful good offices is key that the third party earns and maintains the confidence and trust of both parties. The development of this practice over time, after the establishment of the United Nations, has justified a recourse to the UN Secretary-General as a third party providing good offices over third party States and often made the UN and its Secretary-General the main third party choice by disputing parties.

<sup>4</sup> T. WITHFIELD, Good Offices and Group of Friends, in S. CHESTERMAN, *Secretary or General? The UN Secretary-General in World Politics*, Cambridge, 2007, p. 87.

that could adversely affect international peace and security. This practice has gradually built up, over the decades, a conceptualization of “good offices” as part of the functions of the UN Secretary-General in the field of the prevention and the peaceful settlement of international disputes between member States.

As the good offices have often been related to the capacity to shift the decision-making of key actors and support in preventing or resolving a potential conflict through peaceful means, its conceptualization has been included into the broader category of preventive diplomacy by the UN itself. Preventive diplomacy<sup>5</sup> could be defined as a broad range of diplomatic actions undertaken with the aim of preventing disputes between parties or to avoid the escalation of existing disputes into conflicts, or to contain the expansion of conflicts if they have occurred already.

On this basis, diplomatic interventions have been viewed not necessarily as a panacea and a definitive solution for preventing disputes or conflict escalation, but certainly as an important element of diplomatic prevention efforts<sup>6</sup>. This approach is not new in the United Nations’ practice, and the consolidation of the good offices as one of the non-explicitly stated functions of the UN Secretary-General in the UN Charter can be deduced by various cases in which the good offices have been deployed. Successfully in some cases, unsuccessfully in others, but certainly used as an option of preventive diplomacy. This practice has been often based on the initiative or request by the member States, resting the primary responsibility of prevention of violent conflict with them and being their consent to permit the UN to play a role in the dispute resolution essential. However, as a more detailed analysis of a few cases will show, there have been instances in which the UN Secretary-General has proactively offered its good offices to prevent or resolve disputes. This has happened in relatively recent times, and this instance supports our opinion of the fact that the concept of good offices certainly started with member States’ requests in the early decades after the UN establishment. However, it has then evolved, becoming a consolidated tool of the scope of work of the Secretary-General. Even though there is a general acceptance of the fact that good offices must be considered consent-based and cannot be imposed on member States, the practice shows that they can also be used with a certain degree of proactive actions by the Secretary-General. As will be discussed in the next section, the original formulation of good offices as derived from a mandate entrusted by member States has witnessed an evolution toward an independent role of the Secretary- General’s office in this realm.

## *2. The Golden Age of the UN Secretary- General Good Offices: From the Peking Formula to the Case of Bahrain*

In the early stages of the development of the good offices by the Secretary-General, the practice has shown not only that the consent of the involved member States was necessary, but also emphasized the fact that the Secretary-General’s good offices should have been necessarily enacted upon request of the member States.

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<sup>5</sup> See in this respect the Report of the UN Secretary- General “An agenda for Peace: Preventing diplomacy, peace-making and peace-keeping” (A/47/277 – S/24111), 17<sup>th</sup> June 1992, available at [https://www.un.org/ruleoflaw/files/A\\_47\\_277.pdf](https://www.un.org/ruleoflaw/files/A_47_277.pdf).

<sup>6</sup> A. DAY, A. PICHLER FONG, *Diplomacy and Good Offices in the prevention of Conflict*, Conflict Prevention series, UN University Centre for Policy Research No. 3, 2017, p. 2 s.

Nevertheless, the practice of member States mandating the Secretary-General for good offices is not confined to the past and has continued also in recent times. For example, when protests in Malawi menaced to lead to an increased violence in 2011, the Malawian Ambassador to the UN requested support to the UN Secretary-General. Consequently, a UN envoy was sent on the ground and facilitated an agreement with the Malawian opposition. Similarly, in 2008, in eastern Democratic Republic of Congo (DRC), the leaders of both Rwanda and DRC agreed to the involvement of a UNSG envoy to start talks.

Overall, however, explicit invitations from member States are far rarer than in the past. That is also why the practice of the Secretary-General in modelling the use of the instrument of good offices showed that the request of the member States was not an essential element in all cases. Rather, a proactive action of the Secretary General in building, along with the parties, consent to defer their dispute to his office was also a viable option. This process started as early as the second UN Secretary General Dag Hammarskjöld<sup>7</sup> took office. This is confirmed by his action of boundary-pushing diplomacy to ensure the release of some US air pilots shot down by China in 1955 and giving the raise in the practice to the so called “Peking formula”<sup>8</sup>. An approach that paved the way for a recognition of an independent role of the Secretary-General’s good offices. This role seems to be derived by the Charter rather than from an express resolution of UN bodies or a mandate entrusted to his office by the member States.

A year later, the same UN Secretary-General decided to act as a guarantor for the parties in the 1956 Canal of Suez crisis<sup>9</sup>. This early-stage practice contributed to consolidate the Secretary General good offices from a twofold perspective: as an independent prerogative derived from the UN Charter, and as a tool for proactive suasion to obtain the agreement of member States to mandate an instrument of preventive diplomacy to the same Secretary General. This interpretation, however, does not lead to the conclusion that the good offices of the UN Secretary General could represent a completely independent action without involving other UN bodies. The perimeter of his actions shall be governed by the boundaries of article 99 of the UN Charter. Therefore, the conclusion of his proactive, or mandated, good office activity should be the submission of the matter to the Security Council’s attention.

In many cases the good office activities resulted in a report submitted to the Security Council leading to a resolution. This process has also been followed in another landmark case that has witnessed the employment of the Secretary-General’s good offices, directly or through their representatives, resulting in a Security Council resolution.

The case at hand concerns the resolution affirming the independence of the Kingdom of Bahrain as a sovereign state and its admission as a member of the United Nations, following the end of the British protectorate. The case of Bahrain is also paradigmatic of two fundamental characteristics of preventive diplomacy, such as knowledge and relationship. As the analysis of other more recent cases will show, the Secretary-General envoys, special representatives, and mediators, as well as their mandates, are of fundamental importance in the use of good offices as an instrument of preventive diplomacy. The case of Bahrain is also

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<sup>7</sup> Dag Hammarskjöld served as UN Secretary General from 1953 to 1961. An interesting reading on his tenure at UN can be found in H. MELBER, *Dag Hammarskjöld: Staatssekretär, Botschafter, UNO-Generalsekretär*, in *Welt Trends: Internationale Politik Und Vergleichende Studien*, 2012, p. 42 ss.

<sup>8</sup> A. E. KLASS, *The Peking Formula: International Law, the United Nations, and Chinese Sovereignty during the Korean War*, in *The International History Review*, vol. 43, 2021, p. 1217 s.

<sup>9</sup> A. DAY, A. PICHLER FONG, *Diplomacy and Good Offices*, cit, p. 7 s.

a valid example of the practice that combines both the States' initiative in seeking UN Secretary-General good offices and its role in building States' consent in entrusting a mandate. The historical Iranian claims over Bahrain were finally relinquished according to a resolution that United Nations Security Council passed unanimously on May 11, 1970. The resolution, amounting to a United Nations endorsement of Bahrain's independence, endorsed a fact-finding report submitted by the then Secretary General U-Thant 's personal representative, Ambassador Vittorio Winspear Guicciardi. In this case, the elements of knowledge and relationship, at the basis of the concept of good offices as an instrument of preventive diplomacy were both present. These elements are substantially related to the presence on the ground, the credibility of the envoy, the ability to speak truth to power and the capacity to speak to all parties<sup>10</sup>. Winspear Guicciardi was vested with credibility being, at the time, UN deputy Secretary General. He travelled and stayed in Bahrain as much as it was necessary to conduct meetings not only with the leadership but with the most varied parts of the society, without external pressure or influence.

The instrument of the fact-finding mission to orient the use of good offices of the Secretary General proved to be effective and timely. It was later defined a "textbook example of settling a dispute by quiet diplomacy before it degenerated into conflict"<sup>11</sup>. In the case at hand, several preparatory meetings took place, and the office of the Secretary-General played a key role in supporting the parties to reach their consent to entrust a mandate to the Secretary-General good offices. In fact, the initial request from the Iranian side was to refer the matter to the Security Council under articles 34 and 35 of the Charter or treat the matter as a colonial issue and refer it to the General Assembly's Special Committee. A decision of the ICJ was also suggested. However, from the Bahraini side it was made clear that being the former British presence on the island of a protectoral nature, the colonial character wouldn't have been applicable as Bahrain always enjoyed an independent status from both Britain and Iran. This was a valid legal point that neutralized Iranian claims. It was then reached an agreement to defer the dispute to mediation through the good offices of the UN Secretary-General. The latter promoted a meeting between the two parties, for them to agree on the extent of the terms of reference of the Secretary-General's mission to resolve the problem. Problem is the word used in the final version of the terms of reference as the word "dispute" would have involved the fact that the Bahraini territorial integrity would have been disputed, which was not the case<sup>12</sup>.

Another remarkable legal technicality that helped to frame the case in the right way.

The Winspear Guicciardi fact-finding mission and his consequent report<sup>13</sup> ascertained and confirmed that the overwhelming majority of the people of Bahrain wished to gain recognition of their identity in a fully independent and sovereign State, free to decide for itself its relations with other States<sup>14</sup>. More importantly, the report included remarks on the fact that, as per the great majority of people' opinion, an unequivocal Arab State character should have been assigned to Bahrain since, as observed by the Secretary-General personal representative, «the majority of Bahrainis are of Arab stock and many descendants of non-Arab transients (Iranians, Indians, Pakistanis, Africans) who choose to settle in Bahrain have

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<sup>10</sup> A. DAY, A. PICHLER FONG, *Diplomacy and Good Offices*, cit, p. 10 s.

<sup>11</sup> B. URQUHART, *Ralph Bunche: An American Odyssey*, New York, 1998.

<sup>12</sup> H. AL BAHARNA, *The fact-finding mission of the United Nations Secretary General and the settlement of the Bahrain – Iran dispute*, in *The International and Comparative Law Quarterly*, 1973, p. 541 s.

<sup>13</sup> For the Winspear Guicciardi Report on Bahrain see *Note by the Secretary-General* UN S/9772 of April 30, 1970.

<sup>14</sup> *Ivi*.

been assimilated»<sup>15</sup>. The report was sent by the Secretary- General to the Security Council and a Resolution<sup>16</sup> was unanimously approved by all the 15 member States on May 11, 1970, welcoming the findings and the conclusions of the Winspear Guicciardi Report.

The methods employed by the Secretary-General in the case at hand were considered by some member States at the time a unique divergence from the United Nations practice. The then Secretary- General, in submitting the draft resolution to the Security Council, stated that he agreed to provide his good offices on the problem related to Bahrain upon request of two member States, Iran and the United Kingdom, and that such actions had become «customary in the United Nations practice»<sup>17</sup>. He then added that his intervention proved to be very helpful in relieving and preventing tensions that would have the potential to escalate. However, his approach was not considered immune from criticism. Some member States, in fact, questioned the conformity to the Charter of Secretary-General good offices without first bringing the issue to the attention of the Security Council. It was questioned, particularly, the validity of the Secretary-General role related to instruments of preventive diplomacy without an involvement *ex ante* of the Security Council. In particular, Soviet Union, Spain and France, although each of them under different perspectives, had raised doubts on the existence of a customary practice. It is worth to mention that these points were merely addressing the procedural aspects of the process as all the Security Council member States voted unanimously in favor of the resolution and only brought the issue to discussion following the adoption of the resolution. The response of the Secretary-General in the debate that followed the adoption of the resolution<sup>18</sup> led to an interpretation of the UN Charter that seems to be, in our opinion, absolutely in line with the role assigned to him by the Charter. The Security Council was involved anyway and tasked with the resolution under the terms of article 99 of the Charter. The same article would give the Secretary- General the discretion to evaluate if, “in his opinion”, a specific situation potentially harming international peace and security could be brought to the attention of the Security Council. Even in the presence of a few dissenting opinions on the practice, not the merits, several delegates supported the success of the fact-finding mission, endorsing the compliance with the Charter in terms of good offices. In this sense, the success of the mission undoubtedly afforded a clear example of how the good offices would represent a useful tool for peaceful settlement of international disputes<sup>19</sup>.

### 3. Features of Good Offices as an Instrument of Preventive Diplomacy

If the Secretary-General’s good offices succeeded in the Bahrain case, as well as in other cases during the course of history, it did not work in all circumstances. However, from the very first use of the good offices as an instrument of preventive diplomacy, its deployment and use by different Secretary Generals varied and, somehow, progressively

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<sup>15</sup> *Ivi*, pp. 6-7.

<sup>16</sup> United Nations Doc. S/ RES/ 278 of May 11, 1970.

<sup>17</sup> H. AL BAHARNA, *The fact finding mission*, cit., p. 549.

<sup>18</sup> Verbatim Record of the 1536<sup>th</sup> Meeting of the Security Council, UN Doc. S/ PV 1536, May 11, 1970, pp. 38-40.

<sup>19</sup> E. GORDON, *Resolution of the Bahrain Dispute*, in *The American Journal of International Law*, vol. 65, 1971, pp. 560-568.

attributed to this instrument some features that evolved into a sort of “theory” of the good offices as an instrument of preventive diplomacy. This involves that, over the course of the 20<sup>th</sup> century, some characteristic features<sup>20</sup> emerged because of the practice of several UN Secretary Generals in exercising the prerogatives conferred to them by the UN Charter.

One feature that clearly emerges is the *consent* of the member States in the exercise of good offices by the Secretary-General. As consent is a direct emanation of the state’s sovereignty and since States are conceived as “*primus inter pares*”, this first feature tends to be considered a pre-condition to the exercise of good offices. In absence of it, any action could determine an unworried external interference and jeopardize the state’s sovereignty. In the event of a potential dispute, consent of the parties is, therefore, essential to allow the good offices to step in and play a role trying to resolve it. However, if on the one hand is clear that good offices cannot be imposed, on the other hand it could really depend on the degree of pro-activity of the UN or its Secretary-General in testing terrain and prepare the field for its engagement. Clearly, the Secretary-General good offices must operate within the sphere of acceptance of its role by the involved States, however the proactive involvement of the Secretary-General could ease the process of States agreeing to its involvement. This would also undoubtedly involve the capacity to anticipate potential disputes and build parties’ trust to offer consensus-based good offices in case the dispute erupts. Which is the ultimate essence of preventive diplomacy: prevent disputes and escalation.

This leads our analysis to the second feature in the theory of good offices: *presence*.

One of the main challenges faced by different Secretary-Generals, and by the UN in general, has often been the capacity to be field-oriented and increase its presence on increasing potentially conflictual territories. This trend changed at the outset of the 21<sup>st</sup> century when more missions and offices were established, particularly in West Africa (UNOWA/ UNOWAS 2002), Central Asia (UNRCCA, 2007) and Central Africa (UNOCA, 2011). The UN reform that led to the establishment, in 2019, under the Secretariat General offices of the Department of Political and Peace Building Affairs (DPPA) that merged the former Department of Political Affairs and the Department of Peacekeeping Operations, is also significant in the evolution of the trend. Obviously, the Secretary-General intervention through good offices are independent and most of the time, by its nature preventive, hence preceding any peace-keeping operations. However, the mentioned reformed architecture certainly contributes to the presence on the ground that could potentially benefit future deployment of good offices. Therefore, his recent organizational evolution certainly helped the consolidation of several aspects fundamental to presence: knowledge of the field, credibility, and relationship with all parties on the ground.

*Timing* is also a determinant factor. Although interventions of non-diplomatic nature may be more resolute, diplomacy has the advantage of being an instrument of more rapid deployment. If used timely, preventive diplomacy could certainly and positively affect change in the short term. However, the effective deployment of actions of preventive diplomacy needs to take into consideration the pre-conflict stages. Pre-conflict timelines have been often theorized as following a specific framework<sup>21</sup> scaling from latent tensions to the actual decision of engaging in violent conflict. In this sense, preventive diplomacy through good offices has a very limited window of potential effectiveness, between the stage of raising tensions between the parties and the decision points represented by the political process of

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<sup>20</sup> A. DAY, A. PICHLER FONG, *Diplomacy and Good Offices*, cit., p. 4 s.

<sup>21</sup> R. GOWAN, *Special Report on Multilateral Political Missions and Preventive Diplomacy*, in *US Institute of Peace*, Washington, 2011, available at <https://www.usip.org/sites/default/files/SR299.pdf>

decision-making towards violent escalation. If the preventive diplomacy action does not take advantage of this window of the pre-conflict timeline, then it is hard to avoid military confrontation. Out of the several empirical examples of timely deployment of preventive diplomacy, the case of Kyrgyzstan is exemplary. During the popular uprising of 2010 the timely deployment of a high-level delegation comprising the UN, the EU and OSCE contributed to avert a degeneration of the crisis and effectively persuaded the then President to go into exile rather than respond violently to repress its opposition.

*Leverage* is probably one of the most complex features of good offices in preventive diplomacy. Envoys, especially at UN level, often cannot formally dispose of military pressure nor huge economic funds to be used as “hard” leverage to influence actors on the field. Frequently, an approach based only on the capacity to speak gently leveraging on the moral authority of the UN may not be enough and may not lead to a successful and effective resolution of the dispute. The diplomacy of UN Chapter VI-based peaceful settlement of disputes frequently needs to be associated to the leverage of a potential Chapter VII- based coercive approach. Hence, the need to obtain at least informal backing from the UN Security Council. Often, envoys engaged in a preventive diplomacy mission must work to align powers, and especially the Security Council’ P-5 on a common position to gain leverage. This may be quite a complex exercise as history has demonstrated. There have been cases in which the informal backing of the UN Security Council was sufficient to lead to a diplomatic breakthrough (see Guinea 2009-2010). In other instances, there was no possibility to gain the backing of the Security Council, not even informally, as it was extremely polarized from day one and there was no chance to get the P-5 on a common position (see Syria 2012).

Another important feature for Good Offices and a critical element for the success of preventive diplomacy is the capacity to build long term solutions. *Sustainability*, therefore, becomes essential in this respect. While this feature can certainly be obtained promoting structural reforms at national institutional level, structural reform programs also have the risk of not considering immediate interests of groups of parties that may be essential in avoiding conflict or, on the contrary in escalating it. Effective preventive diplomacy needs to work as both, first-aid kit, and prolonged prophylaxis, if it wants to eradicate the disease of conflict<sup>22</sup>. Good offices oriented to preventive diplomacy<sup>23</sup> need to have both: the capacity to address the immediate crisis and the problem-solving implementation mechanism.

#### 4. Preventive Diplomacy and Good Offices in the 21st Century: Fading Practice and Call for Reform

The more recent history has not provided valid and successful examples of conflict prevention through the exercise of the Secretary General’s good offices. On the contrary, the latest international events have, in practice, relegated the Secretary General’s good offices to a very residual role. This is due to a series of factors. First, a polarized Security Council discouraged a more proactive role of the Secretary General in conflict prevention. Second, the emergence of an increasing multipolarity in international relations favored fragmentation in UN institutions. Third, the trend of diverting from the UN to different formal or informal global governance forum clearly jeopardized the Secretary General’s role. Last, but more

<sup>22</sup> A. O’DONOGHUE, *Good Offices: grasping the place of law in conflict*, in *Legal Studies*, vol. 34, 2014, pp. 469-496.

<sup>23</sup> A. BREHIO, *Good Offices of the Secretary-General as preventive measures*, in *New York University Journal of International Law and Politics*, 1998, pp. 589-644.



importantly, the overall UN system is affected by an increasing inefficiency and ineffectiveness that results in an undelayable need for reform.

The argument of the UN system reform is clearly not new in the scholarly debate, nor in the same UN inner circles. However, the indecisiveness, the procrastination, the impossibility for member States to reach an agreement on an acceptable reform or probably the lack of political will seems to condemn the institution to an inefficient irrelevance without appeal. The Secretary General's role and – particularly- its good offices seem to be one of the main glaring victims of this stalemate. The current Secretary General, Antonio Guterrez, outlined in his 2018 Report a series of measures that put the core theme of reform and modernization of the UN at the center of his mandate. Again, and in addition to other previous attempts, the theme comes back as a priority, at least on paper.

Prevention, hence preventive diplomacy, is one of the core aspects of the Guterrez Report, that should «permeate everything the UN does»<sup>24</sup> and be an across-the-board priority for all the organization's pillars. This seems to explicitly set prevention of crises and conflicts as one of the core priorities of the Secretary General. It's worth to mention that also Guterrez's predecessors emphasized on prevention and preventive diplomacy, however this emphasis did not go beyond the establishment of Regional Offices, mentioned already before in this paper, that have been somehow effective in temporarily cooling off some crisis mostly in the African continent. These efforts in emphasizing preventive diplomacy did not necessarily translate into a contemporary effective and efficient use of the Secretary General's good offices. Recent examples unfortunately show that the Secretary General's action in preventive diplomacy has been very minimally impacting, if not completely absent. In Yemen, for example, a much more effective role was played by regional organizations (such as the Gulf Cooperation Council) and mediator-States to obtain a truce to the hostilities, rather than the UN itself, and only when the conflict was already at an advanced stage. Not to mention the more recent Russian-Ukraine war, in which the role of the Secretary General and the whole UN was tremendously minimal and merely ceremonial. Certainly, no good offices and no preventive diplomacy were effectively deployed to avoid the conflict escalation. This certainly brings to more general considerations on the credibility and effectiveness of the UN as an organization. There is very little a Secretary General can do, in terms of preventive diplomacy and good offices, if the current architecture of the UN remains unreformed.

A reform is urgent and necessary, and perhaps, that is the only option for the emphasis on prevention outlined in the 2018 Report could actually see the light. Five years after the 2018 Report, the need for institutional reform is still emphasized by the UN Secretary General. On the occasion of the opening of the 78<sup>th</sup> UN General Assembly, Secretary General Guterrez has loudly called member States to seriously pursue the project of reforming UN institutions. In his words «the alternative to reform is not the status quo, it is further fragmentation and rupture»<sup>25</sup>. An effective reform of the United Nations cannot exclude a reform of the prerogatives of the Secretary General related to his good offices. Therefore, a reform of the UN Charter shall necessarily include the reformulation of Articles 33, 98 and 99 of the Charter. A more prominent role shall be assigned to the Secretary

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<sup>24</sup> A. GUTERREZ, *Report of the Secretary-General on the work of the organization*, New York, 2018, p. 28; B. RAMCHARAN, *Antonio Guterrez Strategy to modernize the UN*, in *Global Governance*, 2019, pp. 16-17.

<sup>25</sup> A. GUTERREZ, Secretary-General's address to the 78<sup>th</sup> General Assembly, 19<sup>th</sup> September 2023, available at <https://www.un.org/sg/en/content/sg/speeches/2023-09-19/secretary-generals-address-the-general-assembly>

General in the field of preventive diplomacy and exercise of his good offices. Perhaps by codifying in the UN Charter good offices of the Secretary General as a clear prerogative of his role as Chief administrative officer of the Organization. It should be suggested, in our opinion, that the good offices as a prerogative of the Secretary General should be connected to the exercise of the function of preventive diplomacy.

Furthermore, the relation between the Security Council and the Secretary General must also be better defined. The current formulation of Article 99 does not clearly provide for that. To be more explicitly frank, the UN Charter reform should clearly assign a role for the Secretary General in Chapter VI and expressly relate the role of the Secretary General good offices to the pacific settlement of disputes as one of the means available to the member States. Consequently, Chapter XV and specifically article 99, should better regulate the relationship between the Secretary General and the Security Council when it comes to matters that potentially threaten international peace and security. This would not mean to assign to the Secretary General prerogatives that may with the exercise of member States' sovereignty, nor minimize the role of the Security Council, but reinforce the role of the Secretary General as a "chief preventive diplomatic officer", in addition to its role of chief administrative officer. Without such amendments, and without an effective and reasonable reform of the whole institutional architecture, it appears quite complicated for the Secretary General's role in providing good offices to be effective and successful as it partially was in the 20<sup>th</sup> century. In a time when the international community is in need, more than ever, of stronger international institutions, the reform of the UN Charter cannot continue to be a 21<sup>st</sup> Century Godot.