

Review of the Role of the Secretary-General of the United Nations in the Preservation of JCPOA

Ebrahim Rostamizadeh¹, Sattar Azizi^{*2}

1. PhD Candidate of International Law at Shahid Beheshti University, Tehran, Iran
2. Associate Professor of international law at Bu-Ali Sina University, Hamadan, Iran

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Abstract

According to the UN Secretary-General, JCPOA represents a major achievement in nuclear non-proliferation and diplomacy and has contributed to regional and international peace and security. The United Nations policy has always been formed to welcome such international agreements and to try to form a suitable bed for their full implementation. Considering the unilateral withdrawal from the JCPOA by the U.S and the favorable positions of the European countries in preserving it, the role that the Secretary-General of the United Nations can play as the chief administrative officer in this regard is very important. Based on article 99 of the UN Charter, the Secretary-General is to play his role in maintaining the integrity and commitment of the United Nations to its obligations in accordance with the document and UN Security Council resolution 2231. It seems that Mr Antonio Guterres with his good record in his former role in UNHCR, can play a positive role in maintaining the JCPOA.

Keywords: JCPOA, Secretariat, Secretary-General, Peaceful Settlement of Disputes, Security Council, United Nations

*Corresponding author's e-mail: satarazizi@ymail.com

Introduction

The importance of pacific settlement of international disputes has been mentioned in the Charter of the United Nations and can be considered as the primary and ultimate purpose of the establishment of the Organization. As the first paragraph in Article 1 of the Charter enumerates, the Charter seeks to address the aims and purposes of the United Nations:

“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”.

Therefore, Chapter VI of the Charter is devoted to achieving this purpose, which is a key chapter in the Charter.

The Secretariat of the United Nations under the chairmanship of the Secretary-General (hereafter “SG”), as one of the main bodies of the Organization, can play an important role in this regard. The SG is the only official who can attend all meetings, including those of General Assembly (hereafter “GA”) and the Security Council (hereafter “SC”), and shall be notified of the decisions made by these political bodies. In other words, the SG of the United Nations has a fluid role in the United Nations, and all organs of the Organization are obliged to notify him/her of their decisions, and from this point of view, the SG’s task is a special and exclusive one, and certainly the SG’s action and personality can impact the Organization's activities.

Undoubtedly, one of the most recent important achievements of international diplomacy is the Joint Comprehensive Plan of Action (hereafter “JCPOA”). Diplomatic efforts to reach a comprehensive, long-term and proper solution to the Iranian nuclear issue culminated in the JCPOA, concluded on 14 July 2015 by China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union (the E3/EU+3) and the Islamic Republic of Iran. On 20 July 2015, the Security Council unanimously adopted resolution 2231 (2015) endorsing the JCPOA. This instrument was registered with the Secretariat of the United Nations. The Security Council affirmed that conclusion of the JCPOA marked a fundamental shift in its consideration of the Iranian nuclear issue, expressed its desire to build a new relationship with Iran strengthened by the implementation of the JCPOA, and to bring to a satisfactory conclusion its consideration of this matter.

The Security Council further affirmed that full implementation of the JCPOA would contribute to building confidence in the exclusively peaceful nature of Iran’s nuclear programme and emphasized that the JCPOA is conducive to promoting and facilitating the development of normal economic and trade contacts and cooperation with Iran.

Resolution 2231 (2015) provides for the termination of the provisions of previous Security Council resolutions on the Iranian nuclear issue and establishes specific restrictions that apply to all States without exception. Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out Security Council’s decisions.

The Organization's approach certainly implies support for JCPOA, which is also emphasized in the statements and positions held by the two recent UN Secretary-Generals. Undoubtedly, the importance of

playing the role of the United Nations, especially the SG, in preserving of this instrument is highlighted in the case of non-compliance of JCPOA by either party. In the first section of this Article, we examine the importance of JCPOA within the law of control of weapons of mass destruction under the normative system of SC, and in the second section, we assess the role of the SG in protecting the JCPOA and implementing its provisions.

I. Importance of JCPOA within the Law of Control of Weapons of Mass Destruction under the Normative System of the Security Council

After the irreparable damages of the U.S. nuclear attacks in the two cities of Hiroshima and Nagasaki and inventing new destructive weapons, the international community has become more aware of the dangers of the use of weapons of mass destruction. The proliferation of high power weapons, especially nuclear weapons, poses a threat to world peace and stability. The spread of these weapons increases the possibility of access of non-governmental entities to these weapons, such as terrorist groups, which are less committed to refraining from their use.¹ In this section, we first examine the concept of disarmament and arms control, and in the second section we review the actions of the various organs of the United Nations, especially the Security Council.

¹ Doris KONIG, Peter-Tobias Stoll, Volker Roben, Nele Metz-Luck, *International Law Today: New Challenges and the Need for Reform?*, (New York, Springer, 2007), at 59.

A: Definition of Disarmament and Control of Weapons

The Charter of the United Nations, recognizing the concerns of these weapons, cited in the introduction and articles of the Charter of disarmament and control of weapons as one way to achieve the goals and principles of the Charter. The Charter, in the second paragraph of its introduction enshrines “to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest [...]”. Paragraph one of Article 11 also allows the GA to address the general principles of cooperation for the maintenance of international peace and security, including the principles governing the disarmament and regulating of arms, and may prescribe recommendations to the members of the United Nations and the SC on the aforementioned principles. Since its inception, the United Nations has deemed disarmament and arms control at the center of issues related to peacekeeping and international security. The Charter of the United Nations has charged the GA and the SC responsible for the pursuit of disarmament, and the main bodies of the United Nations have established subdivisions to achieve this purpose permanently and temporarily.²

Nevertheless, it can be said that the disarmament and control of weapons are directly linked to the main purpose of the Charter, which is international peace and security. It is even said that the three main pillars of the foundation of the Charter were peace, peaceful settlement of international disputes and disarmament and control of

² Nader, SAED, "The process of disarmament and controlling arms in international law of the Charter from view to action" [Persian], (2003), Journal of Law and Political Sciences faculty, No. 65, at 74.

weapons.³ Although the direct aim of disarmament and weapons control process is to reduce and limit the existing reserves and to prevent the development and proliferation of weapons in the future and complete destruction of weapons, this is not a direct but important goal, which tends to limit hostilities and spread international peace and security.⁴

Historically, the issue of arms control was first introduced at The Hague Peace Conferences of 1899 and 1907. The issue of limitation of military weapons and the prevention of destructive arms race, on a political level, was described as a goal, with the global public opinion in mind. After that, in the United Nations, the subject of disarmament was directly addressed. It may be noted due to the idealistic thoughts of international politics after World War I and the adoption of covenant on the basis of fourteen points declaration by the U.S president Woodrow Wilson. On the contrary, the United Nations Charter addresses the question of disarmament, weapons regulation or reduction of weapons as an agenda item.⁵

Disarmament is the process which eventually leads to whole or partial eradication of all or certain types of weapons, which is a quantitative or qualitative limitation of some kinds of weapons.⁶ These are old terms in the literature of international law and international relations that focus on negotiating military weapons to reduce them to zero or at least to very low levels, in order to reduce governments'

3 Ardeshir, AMIR-ARJOMAND, "Examining the disarmament process from the perspective of international humanitarian law with emphasis on CTBT" [Persian], (2002), Research Centre of the Islamic Consultative Assembly, Political Studies Office, end quote from supra note 2 at 61.

4 Ibid at 63.

5 Shahrooz, IBRAHIMI, "United Nations: disarmament and control of arms after the Cold War" [Persian], (2001) Defence Policy Magazine, No. 35, at 49.

6 Nader, SAED, supra note 2 at 62.

choices of methods of warfare.⁷ From the perspective of international law, the rule of control of weapons has ascended to the level of *Jus cogens* or *Erga omnes*.⁸ And while those two concepts are often used interchangeably, they are distinct concepts. Disarmament is meant to eliminate and restrict arms, but arms control is a term for international restrictions upon the development, production, stockpiling, proliferation and usage of small arms, conventional weapons, and weapons of mass destruction.⁹ Arms control and disarmament, according to conceptual differences, have a different place in international law, while arms control is *lex lata* in international law. Disarmament is rather a new branch of international law under the title of international security law. Arms control seems to be based on equal security that prevailed in American-Soviet relations¹⁰. During the course of the period between 1919 and 1936, we see dramatic efforts to reach disarmament, and the era between 1959 and 1986, the control of arms is the dominant approach. In the aftermath of 1986, access to security in the Northern Hemisphere was integrated through the combination of the two approaches in which the main assumption of arms control remained intact, but emphasized on the implementation of methods on disarmament.¹¹

7 Mohamed Mahmoud, REZAPOUR, "Disarmament and weapons control regimes in international relations theories" [Persian], (2010), Rahavard Publication, at 70.

8 The report of the disarmament conference, the control of arms and international law, The group of law and international relations of the University of Defense Sciences of Imam Hossein University, Defence Policy Magazine, No. 25, Winter 1998, at 155.

9 Shahrooz, IBRAHIMI, supra note 5 at 48.

10 Haidar Ali, BELOUJI, "Design and evolution in the International System: Case Study International regimes Control of Weapons of Mass Destruction" [Persian], (2002), The Quarterly Review of Foreign Policy, the seventeenth, Number 3, at 754.

11 Haidar Ali, BELOUJI. "The position of disarming and controlling weapons in international relations theories" [Persian], (2003), the Quarterly Review of Foreign Policy, 17th, No. 1, at 149.

Weapons control has long been defined as a collection of arrangements within the framework of mutual cooperation that governments meet to improve their mutual security. These measures are typically an indicator of the power or capacity of the military. Governments enjoy establishing such measures to achieve certain goals such as reducing the probability of war, reducing the economic and political costs of maintaining war readiness, and lowering the level of violence in the event of an armed conflict.¹²

Proponents of weapons control against accreditors of disarmament, evaluate military weapons positively even to strengthen international peace and security, and consider the doctrine of deterrence more effective than the doctrine of disarmament, even in order to prevent war and military aggression. They contrary to the proponents of disarmament, reject war as an immoral and heinous phenomenon and justify the use of force if necessary to protect national security.¹³

The term *weapons control*, though developed in the 1950s for the conclusion of an international treaty on the limitation of the arms race, was a subject of disarmament, but today it is widely understood that disarmament and other concepts are considered below its components. The spread of weapons control system consists of all types of weapons, including weapons of mass destruction. Therefore not only nuclear, chemical and biological weapons, but in theory, all conventional weapons are covered. Other features of these weapons are attributed to the lack in distinction among their targets, destructive effects of which affect not only troops and soldiers, but civilians,

12 Martin, GRIFFITHS, Encyclopedia of International Relations and Politics, [Persian] translator; Alireza Tayyeb, (Tehran, Ney Publishing, First Edition, 2009), at 791.

13 Haidar Ali, BELOUJI. "The position of disarming and controlling weapons in international relations theories", supra note 11 at 150.

women, children, animals and the environment.¹⁴ Of course, the most dangerous type is nuclear weapons, which is the basis of adoption of JCPOA, as well as the threats emanating from the same weapons. The threat to use or use of nuclear weapons is influenced by the rules of international law applicable to armed conflict, especially the rules and norms of international humanitarian law, as well as the obligations which are specifically applicable to nuclear weapons.¹⁵

The arms control system, although has been fully established in the legal and international institutions, is not devoid from criticism. Despite opponents of militarism and proliferation of weapons, most jurists have been very concerned about the content of the treaties concluded under this system and their approaches in spite of the recognition the merits of the arms control system for the world free of arms and war and violence, and specifically the practice of governments in fulfilling their arms control obligations, which take inconsistent steps, increasing the threat to international peace and security.¹⁶

B: United Nations Measures, Especially of the Security Council, in the Field of Arms Control

Some believe that in line with Article 11(1) of the Charter, which states that “considering the general principles of cooperation in the maintenance of international peace and security, including the

14 Charles, ROUSSEAU, *Law of Armed Conflicts*, Translation of Sayed Ali Hanji, (Tehran, International Legal Service, 1990), at 141.

15 Hassan, SAVARI and Haidar PIRI, "The vital national interest of States in the light of disarmament and weapons control"[Persian], (2011), *Quarterly Journal of Foreign Relations*, 4th Year, Third Number, at 270.

16 Mohamed Mahmoud, REZAPOUR, "Disarmament and weapons control regimes in international relations theories"[Persian] (2010), Rahavard Publication, at 74.

principles governing the regulation of armaments”, and considering the fact that there is no such article regarding the competence of the Security Council, it is the General Assembly that has the competence and responsibility for arms control, and not the Security Council. However, from a legal point of view, this is an exaggerated and unrealistic interpretation. The main responsibility for the maintenance of international peace and security is upon the SC, and thus, the GA’s measures in this respect are only binding if approved by the SC, and the GA cannot make binding decisions *per se*. However, it is necessary to mention GA’s actions in this regard. These include the establishment of the Conventional Weapons Registration Office in 1992 and adoption of the programme for transparency of military expenditure and transport of weapons. It has also created two subsidiary organs for accomplishing the above-mentioned responsibility: the First Committee and the United Nations Disarmament Commission. The first committee, under the title of The Committee for Disarmament and International Security is one of six committees of the GA which convenes during any normal session of the GA, and reviews all issues related to disarmament. The Islamic Republic of Iran is one of the most active States in the committee. The Disarmament Commission is also an advisory and specialized body which meets at other times than the GA meetings and addresses specific issues. Establishment of Nuclear-Weapon-Free Zones (“NWFZ”) and procedures relating to international arms transfers, the conclusion of the biological weapons convention, the chemical weapons convention, the Comprehensive Nuclear Test Ban Treaty (“CTBT”), and the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines, are among important achievements of this body.¹⁷

17 Nader, SAED, *supra* note 2 at 76-77.

In multilateral relations, the Antarctic Treaty 1959, the Nuclear Nonproliferation Treaty 1968, and the Biological Weapons Convention 1972, and within the framework of bilateral relations, several control and reduction of strategic weapons treaties between Soviet Union and the United States, such as IBM and SALT I & II, are among the achievements of disarming and controlling weapons during the Cold War, The first of which was concluded within the framework of the United Nations and the latter group outside of this framework. The conclusion of the United Nations Convention on Certain Conventional Weapons (“CCWC”) 1980, the Chemical Weapons Convention 1993, The Comprehensive Nuclear Test Ban Treaty 1996 and the Convention of Anti-Landmines 1997, are among important achievements of the post-Cold War era.¹⁸

The SC, as the executive body of the United Nations tasked with maintaining international peace and security, considers the spread of the above-mentioned weapons a threat to international peace and security.¹⁹ In fact, after the end of the Cold War and the threat of nuclear conflict between the United States and the Soviets, international security has been threatened more by regional wars where there is a possibility of the use of weapons of mass destruction.²⁰ One of the most important post-Cold War developments in the field of disarmament and arms control is to expand the role of the SC and initiatives taken by the General Assembly. The Security

18 Shahram, KALEJI, "Weapons Control: From dream to reality"[Persian], (2009), 18th year, Number 21, at 20.

19 Djamshid, MOMTAZ, "International Law of Weapons of Mass Destruction"[Persian], (1998), Translator; Amir Hossein Ranjbarian, First edition, Tehran, Dadgostar Publishing, at 8.

20 Saeideh, LOTFIAN, "Weapons of Mass Destruction and Control of Weapons in the Middle East"[Persian], (2009), International Quarterly Journal of Foreign Relations, First Year, No. 1, at 209.

Council's initiative on Iraq is the most obvious example of this case. The SC has also specialized in the issue of weapons control over nuclear weapons, and its discovery of Iraq's plans to build nuclear weapons is known a turning point. The council was able to increase its connection with the International Atomic Energy Agency IAEA. Resolution 687 of the Security Council to probe Iraq's nuclear capabilities and to form a special commission following it, issuing resolution 699 for the destruction of Iraq's nuclear infrastructure, issuing resolution 715 for monitoring Iraqi weapons purchases and the declaration of the Security Council in January 1992, in which it emphasized the threat to international peace and security due to proliferation of nuclear weapons, all indicate the special dedication of the Security Council to nuclear weapons control.²¹

In addition to the activities of the above-mentioned organs of the United Nations, the issue of arms control is considered by the International Court of Justice (hereafter "ICJ"). ICJ in its 1996 Advisory Opinion has stated that there is an obligation to continue and conclude negotiations until nuclear disarmament in all its aspects falls under strict international supervision. The Court has thus far exceeded the commitment which exists under Article 6 of the NPT, the obligation to continue with the good faith of the negotiations to achieve nuclear disarmament. Such a commitment is more an obligation of result.²²

One of the most important principles of Law of Treaties is the element of consent in accepting the obligations of a treaty. Along with the logical conclusions arising from the doctrine and scientific

21 Shahrooz, IBRAHIMI, supra note 5 at 59-60.

22 Haidar Ali, BELOUJI, "Design and evolution in the International System: Case Study International regimes Control of Weapons of Mass Destruction", supra note 10 at 752.

interpretation of the process of adoption of treaties, a series of international procedures and practices in the recent centuries, especially in the late 20th century, have emerged which have rendered the principle of consent uncertain. At least, it seems that there is somewhat an exception in regard to the principle of consent. The requirement of States to accept some treaties in the field of disarmament, arms control, and non-proliferation is one of these exceptions. Iraq's obligation to accept the Biological Weapons Convention 1972 following the Security Council resolution 687, the obligation of North Korea to not withdraw from the NPT in accordance with UN Security Council resolution 837, as well as the obligation of Iran to sign, ratify and implement the 1997 Additional Protocol to the safeguard system of non-proliferation of nuclear weapons, confirm the trend towards adjustment of the principle of consent.²³ In this case, it must be said that the unilateral denunciation of States of international treaties is not legitimate and cannot be a legal entitlement to end obligations that has arisen from international treaties. The intensity of reaction and protest by the international community towards the withdrawal of a State from disarmament and arms control treaties, citing national interests, is a proper criteria of illegitimacy of such action.²⁴

In general, Security Council resolutions on Iraq and North Korea and Special inspections of the International Atomic Energy Agency (hereafter "IAEA" or "Agency") within those States who are

23 Nader, SAED, "Revolving on the principle of acceptance of treaties in mirrors, international developments of disarmament and control of arms"[Persian], (2005), legal magazine, number 32, at 57.

24 Abbas_ali, KADKHODAEI and Nader SAED, "Critical Review the legitimacy of unilateral termination of unilateral termination of anti - ballistic missiles from the perspective of international law"[Persian], (2003), Journal of Law and Political Science faculty of Tehran University, No. 60, at 272.

suspected of producing nuclear weapons, and pressure on India, Pakistan and Israel to join the treaty and conclude agreements with the Agency, are all related to the change in the role of the Security Council on the issue of disarmament and arms control in the post-Cold War period.²⁵ Therefore, in the current situations and the prevailing United Nations Framework, especially the Security Council, disarmament and control of arms is so important that the SC does deal with it on the basis of Chapter VII of the Charter. The SC's approach in this matter is, of course, due to the interpretation of the Charter by itself, and by resorting to the letter of Charter articles cannot be taken.²⁶

One of the other measures of the SC is the introduction of Middle East as a NWFZ in July 1991, declared in Paris, aimed at imposing a comprehensive ban on unconventional weapons in the Middle East through a global program. It also urged the Middle East States to put their nuclear activities under regular supervision of the IAEA.²⁷ Therefore, due to its relevance to the issue of nuclear weapons control, the importance of JCPOA for the SC must be emphasized under the arms control system.

The Security Council, under the prescribed dispute settlement mechanism in JCPOA, also serves as the last forum for dispute resolution. In case the Joint Commission fails to settle the issue upon its deadline, the Ministers of Foreign Affairs are be obliged to settle the matter during a certain period. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level - either the complaining participant or the participant whose

25 Shahrooz, IBRAHIMI, supra note 5 at 61.

26 Nader, SAED, supra note 2 at 71.

27 Mohamed Al - Said, SELIM, "The position of arms control in the Middle East peace process"[Persian], the Quarterly Journal of the Middle East, at 122.

performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant nonperformance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance."²⁸

Therefore, it is very important for the Security Council to include JCPOA within the framework of the nuclear control system and the auspices of the IAEA. Resolution 2231, as one of the most important resolutions of the SC in recent years, indicates the high importance of this program, and perhaps one of the most important agreements on nuclear weapons control in the history of the United Nations. It is natural that the SC cannot ignore the violation the obligations of the agreement by either party, which might undermine the legitimacy of the SC and consequently the UN in the view of the universal public opinion.

²⁸ The "Joint Comprehensive Plan of Action" (JCPOA), *Dispute Resolution Mechanism*, para.36.

II. The Role of Secretary-General in the Protection of JCPOA and the its Implementation

The SG is the head of the United Nations Secretariat, one of the six principal organs of the United Nations. The Secretary-General serves as the chief administrative officer of the United Nations. The role of the United Nations Secretariat, and of the Secretary-General in particular, is laid out by Chapter XV (Articles 97 to 101) of the United Nations Charter.

As of 2019, the Secretary-General is António Guterres of Portugal, appointed by the General Assembly on 13 October 2016.

A: Position of the Secretary-General and the Secretariat in the United Nations

Although the United Nations Secretariat is an administrative body, it also deals with certain executive issues integrated into such administrative affairs. The Department of Disarmament Affairs is a body formed for this purpose. It implements the General Assembly's decisions on disarmament. The registration of conventional weapons, exchange of information of various arms deals, facilitating the discussion of topics covered in the GA and the disarmament conference, and supplying information for scientific and educational purposes of the United Nations are among the important responsibilities of the Department. The United Nations Institute for Disarmament Research, Based in Geneva (hereafter “UNIDIR”), is centrally positioned to assist the international community in developing the practical, innovative thinking needed to find solutions to the challenges of today and tomorrow.²⁹

29 Nader, SAED, supra note 2 at 80.

The Secretary-General and the Secretariat have important responsibilities in the United Nations system. The SG, according to Article 97, is the chief administrative officer of the organization and the Secretariat is a main organ besides to the General Assembly, the Security Council, the Economic and Social Council and the International Court of Justice. The climax of the role of the SG is reflected in Article 99 of the Charter, where the SG is competent to “[b]ring to the attention of the Security Council any matter which in his/her opinion may threaten the maintenance of international peace and security”. Under Article 98, the SG shall make an annual report to the GA on the work of the Organization. It falls under his purview also the responsibility of preparation of the budget of UN on the request of the General Assembly. It is to be understood that the Charter of the UN, rather than the former Covenant of League of Nations, has predicted independent diplomatic functions for the Secretary-General.³⁰

The role of the SG should be considered from two angles: one from the perspective of the Charter and the other from a practice point of view. It is derived from a number of provisions of the Charter that the SG is basically a non-independent entity with limited powers, but on the contrary, it is held from some provisions of the Charter, that the SG is an independent body, which may work with its own initiative, especially in the context of peaceful settlement of disputes. In such cases, the SG has acted without taking orders from any other bodies of the organization. Some scholars interpret this precedent of the SG in accordance with the vacuum theory.³¹ In international legal literature,

30 Abou Muhammad, ASGARKHANI, "The United Nations, past, present, future"[Persian], (1999), Foreign Policy Magazine, Year 13, Number 4.at 1185.

31 Franz, CEDE, and Lilly Sucharipa-Behrmann, the United Nations Law and Practice, (Boston, Kluwer Law International, 2001), at 69.

tendency toward increasing the competences of the SG in practice has been formed.³²

Every SG must play its role in a manner in which he seeks to implement his initiatives for international peace and security, and to respect the views of the Member States, especially those of the permanent members of the SC. Otherwise, in case of the SG losing the support of SC, he/she would not be able to perform responsibilities. The experience of former Secretary-Generals of the UN confirms that. After the resignation of Trygve Lie, the first SG of the UN following the opposition of the Soviet government for his stance on the Korean War as well as the displeasure of the Secretariat staff for his inaction during his rule in Mac-Chartism period, Doug Hammarskjold was nominated and elected by the SC. Initially, he improved the morale of the Secretariat staff, and hindered the infiltration of U.S. government officials through FBI agents into the UN office. He went personally to Beijing for the release of U.S. pilots who were captured by the Chinese during the Korean War. In 1956, during the Suez Canal crisis, in contrast to the West and the Soviet Union's views, he took a moderate approach; he elevated his position especially before the SC. He believed that there were gaps in the provisions of the Charter, which could render the SC deadlocked. At the same time, the SG should seek a remedy and take an initiative. However, following the crisis of the Congo, the Soviet Union sharply criticized his actions, and the confidence of the UK and France in him also declined.³³

The SG executes the responsibilities entrusted in him by the GA and the SC on the peaceful settlement of disputes. In the case of the

32 Seyyed Baqher, MIRABBASI, *International Law* [Persian](Tehran, Mizan Publishing, Fifth Edition, Second volume, 2012), at 104.

33 Jalal, ABDON, "The role of Secretary - General of the United Nations"[Persian], *World Issues Magazine*, Year 2, Number 5, at 20.

second category of competences that the SG takes into its initiative, it should be noted that the autonomy of the SG, in spite of some objections in the past and especially by the Socialist Bloc, is supported by most States. As for personal initiatives of the SG, sending a fact-finding mission regarding the status of Iraqi and Iranian prisoners of war in 1985, and the 1988 report on the use of chemical weapons by Iraq against Iran are worth mentioning. In addition to these competences, States can also ask the SG to take action to resolve their disputes. As for Iran and Britain, these States requested the SG to investigate the wishes of the Bahraini people about accession to Iran or independence. In such cases, the SG sets a panel to study the issue, in order to address a certain dispute.³⁴

Therefore, the overall competences of the Secretary-General may be summarized in three categories:

1. The role vested in the SG by the main organs, particularly the General Assembly and the Security Council;
2. The role that the Secretary-General plays based on their own initiative;
3. Other competences, including the requests of States Parties regarding certain matters.

The SG has a right to make suggestions, but other organs such as the SC and the GA may reject such proposals. In decision-making theories, it is said that the difference in individual and personality characters have a direct effect on decisions, be it a company manager or chancellor, Head of State or the Secretary-General of the United Nations. All of these duties, of course, are under the influence of the

34 Seyyed Baqher, MIRABBASI, *supra* note 32 at 105.

massive environmental factors that the SG is concerned with.³⁵ The SG, contrary to the belief of some, is not the head of the world or its executive authority, and will never be. Governments generally prefer to develop initiatives, while the SG is the Guidance Manager of the most important global entity, which makes the position of Secretary General even more important.³⁶

The SG shall be a statesman, diplomat, and servant of the international community at the same time.³⁷ If the SG wishes to deal with these contradictions of international life, he should consider two features. The first is faith and conviction that humanity can actually step towards a wiser, less violent, and more forgiving international atmosphere, or feel that he is a global citizen. These are stereotypes, but if the SG does not feel the sense of belonging to all nations and cultures, it is not worthy of this title and the fulfillment of peace and stability that concerns all nations.³⁸ He is a global citizen because all global problems are considered his problems; the Charter is his house and his ideology, and his principles, his moral belief.³⁹

Some believe that if the SG is chosen to be more careful in selecting him to become the most prominent global personality, he can influence the developments of the UN, and even in the developments of the world around us. In other words, they have an absolute effect on the Secretary-General's personality. In contrast to others, it is believed

35 Abou Muhammad, ASGARKHANI, *supra* note 30 at 1182.

36 Jane Kirk PATRICK, "Campaign to elect Secretary - General of the United Nations"[Presian], translator; Fereidoun Dolatshahi, *Political - Economic Review*, No. 45 and 46, at 37.

37 *ibid* at 36.

38 Ramesh, THAKUR, *the United Nations, Peace and Security*, (New York, Cambridge University Press, 2006), at 322.

39 Timothy L.GALL and Jeneen M. Hobby, *Worldmark Encyclopedia of the Nations*, Twelfth Edition, (New York, Thomson Gale, 2008), at 59.

that the ability of individuals against global events is ineffective. But the truth must be sought to integrate these two perspectives. No one can ignore the character and abilities of an individual for global businesses, nor can they deny the role of events around the world. At the time of drafting the United Nations Charter, an approach was taken that the SG of the, in some cases, should also have this competence in order to take measures initiatively to strengthen the principles of international peace and security.⁴⁰

The UN forces are under the responsibility of its originator, the GA or the SC and the SG. Doug Hammerskjold played an important role in the UN initiatives in the Belgian Congo in 1960. At the time, some governments believed that such a role was contrary to the neutrality of the SG. The role of the SG after this period, had been paler than that of the Javier Perez de Cuellar (1992-1982) and Boutros Ghali (1992-1997). With more attention to the role of the SG, Boutros Ghali did hesitate to tangle the SC, and such a case took place when the orientations were different. The conflict clearly showed during the operation in Somalia, which the SG called for more effective operations, as well as during the UN support force development in the former Yugoslavia. This approach by the SG undoubtedly resulted in his career ending due the United States' opposition to his re-election.⁴¹

On the other hand, some issues are particularly important according to the time period for each SG, and each SG defines its role within the framework of its own term of office. The unprecedented increase of the United Nations peacekeeping operations, for example, led to Ban Ki-Moon demanding substantial reforms to empower the United

40 Jalal, ABDOH, *supra* note 33 at 18.

41 Jean - Mark SORREL, "United Nations and resolve international crises"[Persian] (1998), translator; Ibrahim, Beigzadeh, Mofid letter publication, number 14.

Nations for maintaining peace.⁴² The Charter has referred to the general duties of the Secretary-General, without going into details. This will depend on the general initiative and policies of the SG in the use of his powers to resolve disputes. Of course, as mentioned earlier, the potential role of the SG solely on the basis of mutual acts of the other, especially the SC and the GA, as well as the full support of States, especially the Permanent Members of the SC, can be effectively applied.⁴³ In recent years, there are important documents relating to the role of the SG to resolve international disputes. They include the Manila Declaration of 1982 on ways to resolve the peaceful settlement of international disputes as well as the 1988 declaration on prevention and removal of situations that may threaten international peace and security.⁴⁴

B: Secretary-General Efforts on Resolving Conflicts with Emphasis on the Issue of JCPOA

The Secretary-General can take action to resolve disputes in terms of the following:

1. Negotiation; a general way in resolving all disputes being one of the oldest approaches. For instance, the SG succeeded in releasing American pilots through negotiation;
2. “Good offices” and “Mediation” efforts are a method often used by Secretary-Generals to resolve disputes which are one of the most important ways of dispute settlement by the SG, e.g. settlement of

42 United Nations Department of Public Information, *The United Nations Today*, (New York, asdf United Nations, 2008), at 15.

43 Elhaam, AMINZADEH, "Fundamental principles of the Charter of the United Nations on the creation and maintenance of peace"[Persian], translator; Syed Fazlullah MOUSAVI, *legal views*, No. 4, at 216.

44 Seyyed Baqher, MIRABBASI, *supra* note 32 at 105.

disputes between Iran and Iraq as well as the Netherlands and Indonesia. Another example of this is the case of Afghanistan in 1988. The Secretary-General's good offices have been used in a large number of crises including Cyprus, East Timor, Iraq, Libya, the Middle East, Nigeria and the Western Sahara Desert.⁴⁵ Good offices may also be undertaken jointly with the SG initiative and representatives of regional Organizations⁴⁶;

3. Creation of Fact-Finding Missions; the approach to which the SG has resorted in recent years. For example, creation of a Fact-Finding Mission on the use of chemical weapons in Iran-Iraq War;
4. Arbitration; the SG sometimes utilizes the role of arbitrator to perform its own responsibility. Similar to the Secretary-General's arbitration in the case of Rainbow Warrior between France and New Zealand in 1986.⁴⁷

The Secretary-General's good offices have been very effective in international disputes relating to the parties and the continuation of political negotiations, and sometimes compromise between divisive positions. Article 33 of the Charter, regarding the peaceful settlement of international disputes, is fully in line with the SG, and he/she may play an effective role in this regard through negotiation and approximation of the parties with other means of diplomacy for the interests of the international community in such matters and in implementing his political tasks. During U Thant tenure as SG, good offices were used several times, and there were so many crises, the Cuban Missile Crisis being the most crucial one. That is, of course, all

45 The United Nations Today, (New York, asdf United Nations, 2008), at 15.

46 Malcolm N. SHAW, International law, (New York, Cambridge university press, sixth edition, 2008), at 1019.

47 Seyyed Baqher, MIRABBASI, supra note 32 at 106.

the Secretary-Generals have a special look at this peaceful settlement. Boutros Ghali described the approach as peaceful diplomacy and Ban Ki-Moon referred to it as preventative diplomacy. The Secretary-General may take action himself or may appoint special representatives and envoys to carry out good offices and mediation on his behalf.⁴⁸

It should be noted that evaluating the effectiveness of good offices made by the SG is difficult due to its lack of clarity in its steps, as the SG does not report on such missions or its details. Moreover, it is harder to assess the level of activity and the role of the SG, as he is one of several actors on the subject. The results of his actions may be put into account by some other factors. It is therefore necessary that the SG should reveal the effect of these efforts for everyone by informing the public of its progress and results, and the periodic publication of its actions. Despite the intangibility of good offices, this is one of the most important activities in the UN. Of course, its importance is not just about its application, but because it always expresses the active and productive role of the SG within the framework of the UN system.⁴⁹

In the case of JCPOA, however, there is no prohibition on this issue with the SG regarding the anticipated dispute settlement mechanism, and parties of a dispute may consent to the SG to address the matter. In addition, within the framework of the three-member Consultative Body in the JCPOA as a dispute resolution mechanism, subsequent to the Joint Commission, parties can request the SG to act as an independent third person on the board. It is natural that the Secretary-

48 <https://peacemaker.un.org/peacemaking-mandate/secretary-general>. 24/11/2019

49 Sima, HAJHARIRI, "United Nations role in international relations"[Persian], Middle East quarterly, at 1114-1115.

General's position and personality might work very well on this subject and facilitate the acceptance of the final view of the panel by the parties. In such circumstances, if the opinion of the delegation is not accepted by the parties, it is very important to evaluate the opinion of the Board by the SC, as the final authority of the dispute, and the Secretary-General's view of the matter can be very effective in the decisions that the SC might take.

The point in which it should be noted is that the Secretary-General's intervention in the pursuit of peace and international security is the use of resolving disputes in the interests of the international community, and as his actions are accomplished confidentially, it facilitates access to a solution. For, in the public meetings of the SC or the GA, the parties insist on their position due to the general public opinion and it is difficult to reach an agreement. Therefore, in such circumstances, expanding the role of the SG will lead to the dynamics and efficiency of the United Nations, and the image of UN in global public opinion would be enhanced and the general belief in States would increase.⁵⁰

Although the Secretary-General is selected by Member States and its proceeding validity depends on their support, governments are often so preoccupied with their national interests that if the SG wants to move and act within the framework of the Charter, it cannot be successful. It is true that the SG should assist Member States within the framework specified in the Charter to achieve common interests, but the problem is that there is sometimes no common interest or common understanding. This is where the gap between governments

50 Jalal, ABDOH, *supra* note 33 at 24.

and the SG is created and that the SG should think about people who need peace and security.⁵¹

Undoubtedly, the SG can use the Secretariat as an international platform to shape policy and change norms. However, its depth and effect depends on the external forces outside the control of the SG. More importantly is the position of relations with key organs of the UN, including the GA and the SC, as well as personality traits such as attractiveness, civility and ability to convince. The SG must play its political role as a supplement of the SC, and is never in competition with it due to respect for the fundamental role of the SC in preserving international peace and security. As compared to the Council, the moderate political thought of the GA is a more realistic measure of the feelings of the international community in general. Under such circumstances, the most important requirement for the SG is to implement soft leadership skills. The SG has the power to advise, encourage, discourage, and warn. He does so by taking advantage of access to all parties. That is why States with necessary technical capacities may deviate from discussions with the SG to gather information that others may tell him and exploit the Secretary-General's information for their interests. Thus, when the SG is widely questioned, one of his most important assets is lost.⁵²

The SG has two direct and indirect roles regarding the implementation and observation of JCPOA. Regarding its direct role, as requested by the Security Council, the Secretary-General reports to the Council every six months on the implementation of the provisions of resolution 2231 (2015). Concerning its indirect role, the SG may

51 Sima, HAJHARIRI, *supra* note 49 at 1114.

52 Ramesh, THAKUR, *the United Nations, Peace and Security*, *supra* note 38 at 341.

have a role in Dispute Resolution Mechanism of JCPOA; namely, he can appoint the third independent member of the Advisory Board.

The United Nations Secretariat also provides support to the work of the Security Council and is its Facilitator in implementing resolution 2231 (2015), including by assisting correspondence with Member States on behalf of the Council, maintaining and promoting publicly available information on the specific restrictions and providing administrative support for the Council's review of Joint Commission recommendations.

Regarding his indirect role, the SG with his personal initiatives, and the competencies granted by the UN Charter and its Member States, can help preserve JCPOA as one of the most important recent agreements in the field of nuclear weapons control. The JCPOA is an important document of UN and its subject matter is one of the most important resolutions of the SC. Bearing the above in mind, the SG initially could address the matter within the SC and seek to approximate the conflicting views of Permanent Members in this regard. It could also be mentioned that coordination among Permanent Members of the SC is one of the most important responsibilities of the SG. Obviously, when Permanent Members of the SC agree on an issue, international peace and security can hardly be threatened and compromised. The main problem arises when the views of the Permanent Members of the SC are in conflict with each other. In case of conflict of opinion in the SC, the SG can prevent chaos at the United Nations.

After the US withdrawal from JCPOA by President Donald Trump, UN Secretary-General issued a statement on 8 May 2018, which reads "I am deeply concerned by today's announcement that the United States will be withdrawing from the Joint Comprehensive Plan of Action and will begin reinstating US sanctions. I have consistently reiterated that the JCPOA represents a major achievement in nuclear

non-proliferation and diplomacy and has contributed to regional and international peace and security”.

Mr. António Guterres added that it is essential that all concerns regarding the implementation of the Plan be addressed through the mechanisms established in the JCPOA. Issues not directly related to the JCPOA should be addressed without prejudice to preserving the Agreement and its accomplishments. UN Secretary-General stated that “I call on other JCPOA participants to abide fully by their respective commitments under the JCPOA and on all other Member States to support this agreement”. It is interesting that UN Secretary-General has emphasized that it must distinguish between the Iran’s obligations under JCPOA that has been complied by Iran, and other concerns of the US.

In the Fourth Report of the SG regarding the implementation of Security Council Resolution 2231, submitted to the Council, he approved the implementation of JCPOA by Iran. UN Secretary-General urged the Islamic Republic of Iran to consider the concerns of other partners in the Agreement while encouraging the United States to meet its commitments.⁵³ Certainly, the Secretary-General's confirmation in this regard could be very important and facilitate the flow of dispute settlement among the parties. Following the departure of United States from the JCPOA, Ministers of Foreign Affairs of Iran and 4+1 gathered on September 2018 in New York and talked about JCPOA, which resulted in the release of a joint statement. They expressed their deep regret at the withdrawal of the US from the Agreement, and reiterated their commitment to the previous statement on 6 July 2018 in matters, *inter alia*, such as preserving and promoting

53 Fourth Report of the Secretary-General on the Implementation of Security Council Resolution 2231, S/2017/1030, UN doc.

broader economic relations with Iran, maintaining and perpetuating effective financial channels for dealing with Iran, the continuation of oil exports and gas condensate, petroleum products and petrochemicals. They also reiterated their commitment to pursue specific and effective measures to guarantee payment channels with Iran.

Maintaining stability in the UN is a vital need in a world that is full of conflicting interests and intentions. The UN system has introduced democratic stability as a prerequisite to the sustainability of international peace and security, for the violation of the principle of democratic legitimacy makes it so unstable that it poses a threat to international peace and security.

Conclusion

Following the adoption of various SC resolutions on the conviction of Iran's nuclear program and the entailing economic sanctions, the difficult negotiations for resolving the issue between Iran on one hand and permanent members of the Security Council and Germany on the other began. The result of this long-term negotiations in 2015 resulted in the framework of a collective action plan; JCPOA. The United Nations Security Council subsequently confirmed it in its Resolution 2231.

A review of the experiences and practices of the various organs of the United Nations, especially the Security Council approach in the years after the Cold War, we realize that the body responsible for arms control indeed the SC. Perhaps the most important reason for this is a deep bond that exists between the concepts of peace and international security and disarmament and control of arms. The Security Council's competence, as the most important body of the UN, is justified in this regard, given that the Charter makes the Security Council responsible for dealing with the issues of international peace and security. Therefore, the SC has a special look regarding the JCPOA as a

product of the United Nation's diplomacy on the arms control issue, otherwise the international peace and security in relation to arms control and the issue of terrorist groups' access to such weapons is highly prone to be threatened.

The SG of the UN has a key role in the Organization, and as the chief administrative officer of the Organization, it can take important steps. The SG is the only official in contact with all other organs of the organization, and produces annual reports to the General Assembly on the work of the Organization. In addition, the role played by the SG on the peaceful settlement of international disputes is noteworthy. Settlement of some major international crises by the former Secretary-Generals of the UN is an evidence in this regard. The SG uses political methods like good offices, mediation, negotiation, research as well as arbitration as a legal method to fulfill such a goal. As such, the SG feels responsible for any crisis that the Organization may be engaged in. Naturally, maintaining one of the important agreements under the auspices of the Organization is vital to the SG.

After the US withdrawal from JCPOA by President Donald Trump, the Secretary-General issued a statement on 8 May 2018. He noted that "I am deeply concerned by today's announcement that the United States will be withdrawing from the Joint Comprehensive Plan of Action, and will begin reinstating US sanctions. I have consistently reiterated that the JCPOA represents a major achievement in nuclear non-proliferation and diplomacy and has contributed to regional and international peace and security".

According to the above, violation of JCPOA and US unilateral withdrawal from it in any case poses a threat to peace and security. According to Article 99 of the Charter, the Secretary-General may bring to the attention of the Security Council any matter which in his/her opinion may threaten the maintenance of international peace

and security. While there is no prescribed rule for The SG in the field of dispute settlement, there is no prohibition on the SG to intervene in the issue of peaceful settlement of disputes arising from the JCPOA. It is even possible to consider the SG as a mutually agreed member of the advisory board as a superior authority to the Joint Commission. In addition, the SG cooperation with the SC, as a final forum settlements of disputes, could be very constructive.

Furthermore, the Secretary-General would be able to resolve the differences with the good offices in spite of the lack of foresight in the Charter, considering that the use of this method have been impacted by previous SGs. Also in the case of JCPOA, the SG may be able to contribute to settling the disputes quietly, which would prevent a threat to international peace and security on the important issue of arms control.

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