THE LEGAL STATUS OF THE SECRETARY-GENERAL OF THE UNITED NATIONS IN CONTEMPORARY INTERNATIONAL LAW: PROBLEMS AND SOLUTIONS

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Abstract

This article examines the legal status of the Secretary-General of the United Nations (UN) as codified in Articles 97–101 of the UN Charter and as it has actually developed through eight decades of institutional practice. The office was drafted at San Francisco in 1945 in essentially administrative language, yet it has evolved into a hybrid position combining the functions of chief administrative officer, international civil servant, diplomatic mediator, and, on rare occasions, an autonomous political actor invoking Article 99 of the Charter. Using formal-dogmatic, historical-legal, and case-study methods, the article identifies four structural problems of the contemporary status of the Secretary-General: (1) the unresolved doctrinal tension between the administrative and political readings of the office; (2) the "chilling effect" that the politics of appointment and reappointment exerts on the independence guaranteed by Article 100; (3) the absence of any formal mechanism of accountability or removal short of non-reappointment or resignation; and (4) the growing dependence of the Secretariat on the voluntary and assessed contributions of a small number of powerful states. The analysis draws on the doctrinal positions of leading international lawyers — Hans Kelsen, Bruno Simma, Simon Chesterman, Leland Goodrich, Henry Schermers and Niels Blokker, Chittharanjan Amerasinghe, José Alvarez, David Malone, Edward Luck — as well as on Uzbek and Russian doctrine (Akmal Saidov, Igor Lukashuk, Grigory Tunkin), and is illustrated by concrete cases, from Dag Hammarskjöld's Congo operation and the 1994 failure to act on Rwanda to António Guterres's invocation of Article 99 over Gaza in December 2023 and the ongoing 2025–2026 selection of the tenth Secretary-General, which the authors of this article treat as a live empirical test of the reforms adopted since 2015. On the basis of this analysis, the article proposes a package of de lege ferenda solutions: a single non-renewable term of office, codified and reasoned Security Council recommendations, an independent ethics mechanism compatible with Article 100, an institutionalised "early-warning" unit to reduce the political cost of invoking Article 99, and diversification of the Organisation's financial base.

Keywords: United Nations, Secretary-General, UN Charter, Article 97, Article 99, Article 100, international civil service, political independence, selection and appointment process, accountability, international organisations law, UN reform.

1. Introduction

Eighty years after the signature of the Charter of the United Nations in San Francisco on 26 June 1945 [1], the office of the Secretary-General remains one of the least precisely regulated and most consequential positions in the entire architecture of international law. Article 97 of the Charter describes the Secretary-General in four words — "the chief administrative officer" — and says almost nothing else about the substance of the role [1]. Yet the individuals who have occupied the office have, at various moments, mediated the Cuban missile crisis, negotiated the release of hostages, brokered ceasefires, warned the Security Council of impending genocide (and, tragically, sometimes failed to do so in time), and publicly invoked the Charter against the wishes of a permanent member of the Security Council. This gap between the modest textual mandate of 1945 and the expansive political practice of 2026 is, in our view, the central analytical problem of the institution, and it is the problem to which this article is devoted.

The relevance of the subject is not merely historical. As this article is being written, the United Nations is in the middle of the process of selecting its tenth Secretary-General: a joint letter of the Presidents of the General Assembly and of the Security Council opened the nomination process on 25 November 2025 [71], several candidates — Michelle Bachelet of Chile, Rebeca Grynspan of Costa Rica, Rafael Grossi of Argentina, María Fernanda Espinosa of Ecuador, and others — have presented vision statements and undergone public interactive dialogues with Member States and civil society between April and June 2026 [72; 73; 8], and the final recommendation of the Security Council is expected later in 2026, ahead of the expiry of António Guterres's second term on 31 December 2026 [8]. This is, quite literally, the institution of the Secretary-General under construction in real time, and it allows the present article to test its doctrinal conclusions against a living case rather than against archival material alone.

The scientific novelty of the article consists in combining, within a single analytical frame, (a) a formal-dogmatic reading of Articles 97–101 of the Charter and the surrounding instruments (the 1946 Convention on the Privileges and Immunities of the United Nations [3], the Staff Regulations and Rules [10], and the relevant General Assembly resolutions on the revitalisation of its own working methods [13; 14; 15; 16]); (b) a historical-comparative survey of the practice of Article 99 from Trygve Lie and Dag Hammarskjöld to António Guterres; and (c) a contemporaneous case study of the 2025–2026 selection process, which the authors treat not as background information but as primary evidential material for assessing whether the transparency reforms adopted after the "1 for 7 Billion" civil-society campaign have, in fact, altered the underlying political dynamics of the office.

The purpose of the article is to identify the principal legal problems affecting the contemporary status of the Secretary-General and to propose concrete, implementable solutions. Its objectives are, first, to reconstruct the doctrinal debate on the nature of the office (Chapter 2); second, to analyse the political dimension of the mandate through the prism of Article 99 (Chapter 3); third, to expose the structural problems of the selection and reappointment process (Chapter 4); fourth, to examine the deficit of accountability, immunity, and financial independence (Chapter 5); and fifth, to formulate reform proposals, including our own (Chapter 6). Each chapter is connected to the next by a single underlying claim, which we state at the outset and defend throughout: the Secretary-General's authority is real, but it is chronically under-institutionalised, and every one of the problems examined below — doctrinal ambiguity, political dependency in selection, absence of accountability, and financial vulnerability — is a symptom of the same underlying cause, namely that the drafters of the Charter regulated an office they did not fully anticipate.

The methodological basis of the study is formal-legal (dogmatic) analysis of the Charter and subsidiary instruments, the historical-legal method applied to the practice of the office since 1946, the comparative method applied to doctrinal positions developed in different legal traditions (Western European, Anglo-American, and post-Soviet/Central Asian), and the case-study method applied to the Gaza Article 99 invocation of 2023 and to the ongoing selection of the tenth Secretary-General.

2. The Charter Framework of the Secretary-General’s Status: Between Administration and Politics

This chapter is a necessary starting point because none of the practical problems discussed later in the article can be properly understood without first establishing how thin the textual basis for the office actually is, and how much has therefore been left to practice and doctrine to fill in.

Article 97 of the Charter provides that the Secretariat shall comprise a Secretary-General and such staff as the Organization may require, that the Secretary-General shall be the chief administrative officer of the Organization, and that he or she shall be appointed by the General Assembly upon the recommendation of the Security Council [1]. Read in isolation, this text supports what might be called the “minimalist” or purely administrative interpretation: the Secretary-General is the head of a civil service, comparable in legal terms to the executive head of any international secretariat, and possesses no autonomous political authority beyond what is delegated to him or her by the political organs.

This minimalist reading found its most rigorous defender in the Austrian-American jurist Hans Kelsen, whose 1950 treatise The Law of the United Nations remains, in our assessment, the single most influential positivist commentary on the Charter [41]. Kelsen approached the Charter as a treaty to be construed according to the ordinary meaning of its terms, and he was notably reluctant to read into Article 97 or Article 99 any inherent political prerogative that the text itself did not expressly grant. For Kelsen, the Secretary-General’s authority under Article 99 — the power to bring a matter to the attention of the Security Council — was a narrow, delegated competence, not evidence of an underlying constitutional status equivalent to that of an “executive” in a domestic constitutional order [41].

A different and, in our view, more persuasive account is offered by the German international lawyer Bruno Simma and his co-editors in the third edition of The Charter of the United Nations: A Commentary, published by Oxford University Press, which is widely regarded — including by the present authors — as the leading article-by-article commentary on the Charter available in English [26]. Simma’s commentary treats Articles 97–101 not as a static administrative charter but as a framework whose content has been substantially supplemented by seven decades of subsequent practice, so that the “office” that exists today is properly described as a composite of Charter text, General Assembly resolutions, Secretariat practice, and customary expectations of Member States. The German scholar Bardo Fassbender goes further still, arguing in his monograph on the Charter as “the constitution of the international community” that the Organization’s founding instrument should be read, as domestic constitutions are read, with an eye to the evolving needs of the community it constitutes [27] — an interpretive method that, applied to Article 97, readily accommodates the political functions the Secretary-General has in fact assumed.

Article 98 obliges the Secretary-General to act in that capacity in all meetings of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council, and to perform such other functions as are entrusted by these organs; it also requires an annual report to the General Assembly on the work of the Organization [1] — a practice institutionalised in the continuing series of Reports of the Secretary-General on the Work of the Organization [18; 66; 67]. Article 100 is, in our reading, the true constitutional core of the office: it obliges the Secretary-General and the staff “not to seek or receive instructions from any government,” and it obliges every Member State “to respect the exclusively international character” of their responsibilities and “not to seek to influence them” [1].

Article 100 is frequently described in the literature as establishing the principle of international civil service, and the Singaporean-trained international lawyer Simon Chesterman, in what is in our judgment the single best modern monograph devoted specifically to the office — tellingly titled

Secretary or General? The UN Secretary-General in World Politics — argues that Article 100 creates a legal obligation of independence that exists in permanent tension with the political reality that the Secretary-General is selected, and may be re-selected, by the very governments Article 100 tells him or her to ignore [28]. Chesterman's central thesis, which this article adopts as its own analytical starting point, is that the office is inherently dualistic: the Secretary-General is simultaneously a "secretary" bound by administrative loyalty to the Member States and a "general" expected to exercise independent moral and political leadership on their behalf [28]. We consider this dualism not a defect to be argued away but the permanent structural condition of the office, and the source of every problem examined in Chapters 3 and 4 below.

Article 101 vests in the Secretary-General the authority to appoint the staff of the Secretariat under regulations established by the General Assembly, subject to the "paramount" consideration of securing staff of the highest standards of efficiency, competence, and integrity, with due regard to geographical distribution [1]. This provision, together with the Staff Regulations and Rules of the United Nations [10] and the Regulations Governing the Status of officials other than Secretariat officials [9], is the textual foundation of what the Dutch scholars Henry Schermers and Niels Blokker, in their authoritative treatise on international institutional law, call the "functional" theory of an international civil service: officials of an international organisation owe their loyalty exclusively to the organisation and are legally shielded, through Article 100 and the 1946 Convention on the Privileges and Immunities of the United Nations [3], from the ordinary jurisdiction and instructions of any single state, including their own state of nationality [45]. The Sri Lankan-American scholar Chittharanjan Amerasinghe reaches a similar conclusion in his study of the institutional law of international organisations, describing the independence of the Secretariat as a functional necessity without which an international organisation could not perform any task requiring impartiality [46].

Before proposing our own working definition, it is worth widening the doctrinal lens beyond the specialist commentaries already discussed, because the general international law and international organisations textbooks used across law faculties worldwide converge, in our reading, on a similar dualism even where they do not use Chesterman's precise vocabulary. Leland Goodrich, together with Edvard Hambro and Anne Patricia Simons, in their early and still frequently cited article-by-article commentary on the Charter, already noted at the founding of the Organization that the Secretary-General's practical influence would inevitably exceed the narrow administrative language of Article 97, given the office's unique vantage point over the whole of the Organization's work [32]. The American scholar Oscar Schachter, writing more generally on the relationship between international legal theory and diplomatic practice, treated the Secretary-General as one of the clearest illustrations of his broader thesis that international law "in practice" regularly outruns international law "in theory" [33]. Dame Rosalind Higgins, in her own study of international law as a process rather than a static set of rules, likewise emphasised that organs such as the Secretary-General derive real authority from the way in which international actors actually use and respond to a given power, not merely from the words in which that power was originally drafted [34] — an observation that, applied to Article 99, anticipates precisely the argument this article develops in Chapter 3. The American political scientist Ian Hurd, approaching the question from the discipline of international relations rather than law, argues that the Secretary-General's authority is best explained sociologically, as a form of legitimacy that Member States confer on the office through repeated practice rather than as a fixed legal competence [38]; we do not adopt Hurd's sociological method as our own, but we consider his underlying observation compatible with, and indeed reinforcing of, the evolutive Charter interpretation associated with Simma [26] and Fassbender [27]. Finally, the general treatises of Malcolm Shaw [39] and of James Crawford, continuing Ian Brownlie's classic textbook [40], as well as Jan Klabbers's introduction to the law of international organisations [47], all treat the Secretary-General as the paradigmatic example of an organ whose formal Charter mandate and actual institutional practice have diverged furthest — precisely the phenomenon around which this article is organised.

Taken together, Articles 97, 98, 100, and 101 create an office that cannot be reduced either to a purely administrative post or to a fully autonomous political actorship. In our assessment, the most accurate characterisation — and the one this article adopts for the remainder of its analysis — synthesises Chesterman's dualism [28] with Simma's evolutive reading of the Charter [26]: the Secretary-General is a sui generis hybrid organ whose administrative competence is comprehensively regulated by the Charter and subsidiary instruments, while its political competence is almost entirely a matter of accumulated practice, resting on the single, narrow textual hook of Article 99. It is precisely because the political dimension of the office rests on so narrow a textual basis, and so heavily on practice, that Chapter 3 of this article is devoted to Article 99 specifically.

No account of the Secretary-General's legal status is complete without reference to the 1949 advisory opinion of the International Court of Justice in Reparation for Injuries Suffered in the Service of the United Nations, and we regard its omission from much of the specialised literature on the Secretary-General specifically — as opposed to the literature on international organisations generally — as a curious gap that this article seeks to correct. The opinion arose directly out of an attack on a UN official: the assassination, in September 1948, of Count Folke Bernadotte, the UN Mediator for Palestine appointed under the Secretary-General's authority, together with his aide Colonel André Serot, in Jerusalem. The General Assembly asked the Court whether the United Nations, as an organisation, had the capacity to bring an international claim against a state for injury caused to one of its agents in the course of duty. The Court answered that it did, holding that the Organization possesses "objective" international legal personality — opposable to non-member states as well as member states — precisely because it could not otherwise perform the functions with which the Charter had entrusted it. We consider this opinion doctrinally indispensable to the present article for two connected reasons. First, it is the origin of the very "functional protection" theory on which Schermers and Blokker [45] and Amerasinghe [46] later built their accounts of Secretariat independence discussed in Section 2.3 above: if the Organization can protect its agents diplomatically because doing so is functionally necessary to its work, then the same functional logic — and not any inherent personal status of the Secretary-General — is what ultimately underwrites the privileges and immunities examined in Chapter 5. Second, the case is a sobering reminder, still relevant in an era in which UN mediators and special envoys continue to operate in active conflict zones, that the Secretary-General's authority under Article 99 to raise a matter with the Security Council coexists with a persistent, unresolved vulnerability of the individuals who act in the Secretary-General's name in the field — a vulnerability the Charter's text does not itself address, and which the Court in 1949 could remedy only after the fact, through a claim for reparation, rather than in advance, through any mechanism of protection. In our assessment, this is an early and largely forgotten precedent for exactly the kind of institutional gap this article identifies throughout: the Charter's silences have repeatedly had to be filled, after the event, by the Court, by the General Assembly, or by the personal initiative of successive Secretaries-General, rather than by the deliberate design of 1945.

3. The Political Dimension of the Office: Article 99 and the Doctrine of the "Independent Political Actor"

If Chapter 2 established that the Secretary-General's political authority is a matter of practice rather than of clear textual grant, this chapter asks what that practice has actually looked like, and what it reveals about the strength and the fragility of the office's independence.

Article 99 of the Charter provides, in its entirety, that "the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security" [1]. It is, as several commentators have observed, the only provision of the Charter that grants the Secretary-General an autonomous, non-delegated political competence — the power to place an item on the Council's agenda by his or her own initiative, without waiting to be asked [17; 43].

The Swedish diplomat and jurist Dag Hammarskjöld, the second Secretary-General, is generally credited by the literature — and by the present authors — with having transformed this modest textual hook into the doctrinal foundation of what he himself called "preventive diplomacy": the idea that the Secretary-General bears an independent responsibility to act, within the limits of the Charter, wherever a threat to peace is emerging, rather than waiting passively for the political organs to request assistance. Hammarskjöld's conduct of the 1960 Congo operation, extensively documented in Brian Urquhart's classic biography [29; 30], remains the paradigmatic instance of an activist reading of the office, and it provoked precisely the backlash one would expect: the Soviet Union's proposal, in the "troika" crisis of 1960–61, to replace the single Secretary-General with a three-person directorate was a direct reaction against the political autonomy Hammarskjöld had assumed. U Thant's quiet mediation during the 1962 Cuban missile crisis, and Javier Pérez de Cuéllar's shuttle diplomacy during the Iran–Iraq War, are further, less dramatic instances of the same pattern — a Secretary-General using informal good offices, backed by the latent authority of Article 99, to reduce the temperature of a crisis without necessarily invoking the article formally.

The negative instance is equally instructive, and, in our view, equally important to the doctrinal record. In 1994, as the genocide in Rwanda unfolded over some one hundred days, Secretary-General Boutros Boutros-Ghali did not invoke Article 99, and the Security Council — confronting a catastrophe of a scale that had been repeatedly signalled to it by UN peacekeeping commanders on the ground — failed to act in time. Analysts writing about the December 2023 Gaza invocation explicitly cite the Rwanda precedent as the standard against which the "under-use" of Article 99 must be judged [15 — see also 20]. We agree with this comparative judgment: Article 99 is a power whose value lies largely in its threat of use, and a Secretary-General who never invokes it risks being judged, after the fact, by the silences as much as by the speeches.

On 6 December 2023, Secretary-General António Guterres invoked Article 99 explicitly for the first time since taking office in 2017, in a letter to the President of the Security Council concerning the war between Israel and Hamas in Gaza [13; 19]. The Secretary-General's spokesperson, Stéphane Dujarric, described the step as one of "the most powerful tools" available to the office and stressed that it had not been used in this explicit form since 1989 [17; 18]. Guterres's letter stated that "more than eight weeks of hostilities in Gaza and Israel have created appalling human suffering, physical destruction and collective trauma," and he called on the Council to help avert "a humanitarian catastrophe" [11].

The political reaction illustrates, in miniature, everything this article argues about the fragility of the office's independence. Israel's ambassador to the United Nations, Gilad Erdan, condemned the invocation as further evidence of what he called the Secretary-General's bias, and publicly called on Guterres to resign [12; 14]. The Palestinian representative, by contrast, praised the same act as "brave" and "principled" [14]. Daniel Forti, a senior analyst at the International Crisis Group, observed that the fact that the tool had lain dormant for over three decades "does resonate diplomatically and symbolically" [12] — in other words, the rarity of the invocation is itself part of what gives it political weight, and, simultaneously, part of what makes each individual use of it so costly to the Secretary-General personally.

We would identify at least three distinct scholarly positions on the legal significance of Article 99, each of which this article treats seriously in turn. The first, articulated by commentary published in the immediate aftermath of the Gaza invocation, holds that the act carries essentially no binding legal consequence: it does not oblige the Security Council to act, does not create any legal obligation for the parties to the conflict, and is, in this reading, "nothing more than a political booster with no legal implications" [14]. The second position, associated with the historical work of Sydney Bailey on Security Council procedure [43], treats Article 99 as a structurally important check-and-balance mechanism precisely because it is one of the few points in the Charter's institutional design at which an individual, rather than a state or a bloc of states, can compel the Council's attention. The third position, developed by Edward Luck in his study of Security Council practice and promise [37], situates Article 99 within a broader argument that the office's political value depends less on its formal powers than on the personal moral authority the incumbent has managed to accumulate — meaning that the same textual provision can function as a genuine constraint on state behaviour in the hands of one Secretary-General and as an empty gesture in the hands of another.

Our own position draws on all three accounts but departs from each of them in one respect. We agree with the first position that Article 99 has no directly binding legal effect on the Council or on the parties to a conflict. We agree with Bailey that its structural function is nonetheless significant, because it is the one moment in which the Charter allows an individual official to override the ordinary state-driven agenda-setting process of the Council. But we would add — and this is, in our judgment, the point the existing literature under-emphasises — that the political cost imposed on the Secretary-General personally by each invocation (illustrated vividly by the calls for Guterres's resignation in December 2023 [12]) is precisely what deters a rational, reappointment-seeking incumbent from using the power. Article 99, in other words, functions today less as an instrument the Secretary-General wields freely and more as an instrument whose use is itself evidence that ordinary channels have already failed and that the incumbent has concluded that his or her political survival is a secondary consideration. That is a serious institutional weakness, and it is the reason this article proposes, in Chapter 6, an institutional buffer designed specifically to lower the personal political cost of invoking Article 99.

A second contemporary case study, distinct from the Article 99 practice discussed above but closely related to it, illustrates the same underlying tension between independence and political vulnerability. In September 2004, roughly eighteen months after the United States and a coalition of allied states invaded Iraq without a further, explicit Security Council authorisation, Secretary-General Kofi Annan stated publicly, in response to a direct question, that the war had been conducted "not in conformity with the Security Council" and was, in his view, illegal under the Charter. Annan did not invoke Article 99 in making this statement — the war was already under way, and no new matter was being brought before the Council — but the episode belongs, in our assessment, in the same doctrinal category as the Article 99 cases discussed above, because it represents the same phenomenon in a different procedural guise: a Secretary-General exercising independent legal judgment, adverse to the position of one or more permanent members of the Security Council, at real personal and institutional cost.

The reaction to Annan's statement followed the same pattern later repeated after the Gaza invocation of 2023: representatives of the states whose conduct had been criticised described the comment as unhelpful and beyond the proper role of an international civil servant, while other Member States and much of civil society praised it as a rare instance of the Secretary-General speaking plainly on a question of fundamental importance to the international legal order. We would suggest that the recurrence of this same pattern — a legally grounded statement by the Secretary-General, sharp criticism from an affected permanent member, and no formal consequence either way — across cases as different in time and subject matter as Iraq in 2004 and Gaza in 2023 is itself evidence that the phenomenon this article describes is structural rather than specific to any one Secretary-General, any one conflict, or any one permanent member of the Council.

4. Selection, Appointment, and the Structural Problem of Independence

Chapter 2 identified political independence, guaranteed on paper by Article 100, as the constitutional core of the office; Chapter 3 showed how fragile that independence proves in practice once a Secretary-General actually exercises political judgment under Article 99. This chapter turns to what we regard as the deepest structural cause of that fragility: the process by which the Secretary-General is chosen and, in practice, re-chosen.

Article 97 provides only that the Secretary-General "shall be appointed by the General Assembly upon the recommendation of the Security Council" [1]; General Assembly resolution 11 (I) of 1946 and resolution 97 (I) on the "Terms of Appointment of the Secretary-General" supplemented this bare procedural rule but did not specify substantive criteria [11; 12]. For the first seventy years of the Organization's existence, the process operated, in practice, through closed straw polls among the five permanent members of the Security Council, informal "gentlemen's agreements" on regional rotation, and an understanding — never written into any binding instrument — that the post would circulate among Western Europe (Trygve Lie, Dag Hammarskjöld, Kurt Waldheim, António Guterres), Asia (U Thant, Ban Ki-moon), Africa (Boutros Boutros-Ghali, Kofi Annan), and Latin America (Javier Pérez de Cuéllar, 1982–1991) [6]. The American scholar David Malone, editor of the leading volume on the UN Security Council [36], and the Canadian scholar Edward Luck [37] both emphasise that this rotational practice, however well entrenched, has never bound the Council legally, a point vividly confirmed by the 2026 selection cycle, discussed below, in which a candidate from Africa (Macky Sall of Senegal) stood alongside three candidates from the region conventionally "next in line," Latin America and the Caribbean [6].

A further illustration of the informality of the process is the 2021 controversy over the self-nomination of Arora Akanksha, which the General Assembly ultimately deemed invalid because it lacked the sponsorship of any Member State — prompting the Assembly to clarify explicitly that candidates for the office must be nominated by at least one government [3]. We regard this episode as doctrinally significant because it confirms, as a matter of settled practice if not of Charter text, that the office of Secretary-General remains legally and politically the property of Member States rather than of an open, individual candidacy process; the Secretary-General is chosen by governments, not by global public opinion, however much civil-society campaigns may wish otherwise [3].

The opacity described above provoked a sustained civil-society campaign, known as "1 for 7 Billion," in the run-up to the 2016 selection that produced António Guterres's first term. The campaign's central demands — published vision statements, open timelines, public hearings with candidates, and a formal end to the practice of treating the office as the exclusive preserve of the five permanent members —

were substantially, if incompletely, absorbed into General Assembly resolution 69/321 on the revitalisation of the work of the General Assembly [15], building on the earlier resolution 60/286 [14] and, most recently, resolution 79/327 of 5 September 2025 [10], which the General Assembly explicitly frames as codifying "the process for the selection and appointment [of the Secretary-General] in line with Article 97 of the Charter" [10].

We consider this reform genuinely significant: it has produced the public vision statements, curricula vitae, and campaign-financing disclosures that did not exist before 2016, and it requires candidates to suspend any current UN employment during their campaign [10]. But — and this is the central claim of this section — the reform has left entirely untouched the one feature of the process that actually determines the outcome: the requirement, unaltered since 1945, that the Security Council "recommend" a single candidate to the General Assembly by a vote requiring at least nine affirmative votes and no veto from any of the five permanent members [4]. Transparency in the public phase of the process has not been matched by any comparable transparency, still less by any binding rule, governing the closed negotiations that follow within the Council itself.

We treat the process currently under way as the clearest available empirical test of whether the post-2016 reforms have altered the underlying political dynamics of the office, and we summarise its principal features here precisely because, unlike the historical episodes discussed in Chapter 3, this material has not yet been absorbed into the doctrinal literature.

The process was formally opened by a joint letter of the Presidents of the General Assembly and of the Security Council on 25 November 2025 [71]. By mid-2026, at least six candidates had been nominated, one of whom subsequently withdrew [72]. The most prominent candidate, Michelle Bachelet of Chile — twice President of Chile, first Executive Director of UN Women, and UN High Commissioner for Human Rights from 2018 to 2022 — was nominated jointly by Brazil, Mexico, and Chile and received early expressions of support, reportedly including from the outgoing Secretary-General himself [6]. Rebeca Grynspan of Costa Rica, currently Secretary-General of the UN Conference on Trade and Development and formerly Secretary-General of the Ibero-American General Secretariat, entered the race on a platform emphasising gender equality and reform of development finance [6]. Rafael Grossi of Argentina, Director General of the International Atomic Energy Agency, María Fernanda Espinosa of Ecuador, a former President of the General Assembly, and Macky Sall, former President of Senegal, complete the field discussed in the sources available to us [5; 6; 8]. Interactive dialogues with the candidates, open to Member States and civil society and webcast publicly, were held in April and again in June 2026, with a further "Town Hall" debate scheduled for 23 July 2026 [2; 8].

Two features of this process bear directly on the argument of this article. First, the German Foreign Minister and President of the General Assembly, Annalena Baerbock, publicly stated in relation to the process that "the choice of Secretary-General will show whether the United Nations reflects the diversity of the 8 billion people it serves" [4] — language that echoes, almost verbatim, the rhetoric of the 2016 civil-society campaign, and which we read as evidence that the underlying legitimacy concerns of that campaign remain unresolved a decade later. Second, commentary on the 2026 process explicitly identifies the possibility that the government of the United States, given its stated wariness toward multilateral institutions, "could use its Security Council veto to block any candidate it finds insufficiently aligned with US interests" [6]. If this occurs — and at the time of writing the outcome of the Council's internal negotiations is not yet known — it will confirm, in the starkest possible terms, the central claim of this chapter: that no amount of public transparency in the nomination phase alters the decisive fact that a single permanent member retains an absolute veto over the outcome.

The final structural problem examined in this chapter concerns not first appointment but reappointment. Every Secretary-General since 1946, with the sole exception of Boutros Boutros-Ghali — whose bid for a second term in 1996 was blocked by a lone United States veto despite support from every other member of the Council, a fact we consider one of the most instructive episodes in the entire history of the office — has served, or has sought to serve, a second five-year term [8]. Chesterman argues that the realistic prospect of a second term creates a structural incentive for an incumbent Secretary-General to avoid antagonising the five permanent members, particularly during the first term, precisely at the moments when Article 99 initiative might be most needed [28]. We share this assessment, and we would add the following observation, drawn from the material discussed in Chapter 3: Guterres's own decision to invoke Article 99 over Gaza came in December 2023, roughly midway through his second and, by convention, final term — a term in which reappointment was no longer a live consideration. We do not think this timing is coincidental, and we regard it as some of the clearest circumstantial evidence available that the reappointment incentive genuinely does constrain the exercise of the office's one autonomous political power.

A further structural problem, closely connected to the reform debate discussed throughout this chapter, concerns the fact that in eighty years and nine incumbents, the office of Secretary-General has never once been held by a woman. This is not a marginal detail of the 2025–2026 selection process; it has been, if anything, its dominant public theme. Annalena Baerbock, in her capacity as President of the General Assembly, framed the question in terms that go to the very legitimacy of the Organization, asking whether the selection would show that the United Nations "reflects the diversity of the 8 billion people it serves" [4], and commentary on the field of candidates has repeatedly observed that, should either Michelle Bachelet or Rebeca Grynspan be recommended by the Council, she would become the first woman to hold the post [4; 6].

We would identify two distinct arguments commonly advanced in the literature and in UN practice for treating this as a genuine legal, and not merely political or symbolic, problem. The first argument, reflected in the General Assembly's own resolutions on the revitalisation of its working methods [14; 15], treats gender balance in senior UN appointments as an obligation flowing from the Organization's own Charter commitment, in the Preamble and in Article 8, to the equal rights of men and women, including eligibility "to participate in any capacity" in the Organization's principal and subsidiary organs [1]. On this view, the persistent absence of a woman Secretary-General is not a neutral historical accident but a standing, if informal, breach of an equality commitment the Charter itself articulates. The second argument, developed more cautiously in the comparative institutional literature, is functional rather than textual: because the selection process still operates, as Section 4.1 above demonstrates, through informal Council negotiation rather than through any binding merit criterion, there is no legal mechanism capable of correcting a pattern of exclusion that has persisted for eighty years, however clearly that pattern conflicts with the Charter's own equality language.

Our own view is that the gender representation problem is best understood as a further, particularly stark, illustration of the central argument of this article rather than as a separate issue requiring separate treatment: the transparency reforms adopted since 2016 have made it possible for female candidates to compete openly, to publish vision statements, and to participate in public dialogues on equal terms with their male competitors — but, exactly as in Section 4.3 above, these reforms have left untouched the closed Council negotiation in which the actual recommendation is made, and it is precisely at that final, closed stage that the historical pattern has so far always reasserted itself. We consider that the reasoned-recommendation reform we propose in Section 6.2 below, requiring the Council to publish a statement confirming that its recommended candidate met the publicly disclosed qualifications, would have the incidental but valuable effect of making it considerably harder for the Council to depart, without explanation, from a field of candidates in which women are, for the first time in the Organization's history, serious front-runners.

5. Accountability, Immunity, and the Rule-of-Law Deficit

Having examined how the Secretary-General is chosen (Chapter 4) and what he or she can do once in office (Chapter 3), this chapter turns to a question the existing literature addresses far less systematically: what legal mechanisms exist to hold the Secretary-General to account, and what happens when they prove insufficient.

The 1946 Convention on the Privileges and Immunities of the United Nations extends to the Secretary-General, together with his or her spouse and minor children, the privileges and immunities, exemptions, and facilities accorded to diplomatic envoys under international law [3]. The British scholar Derek Bowett, in his classic study of the law of international institutions, and the more recent treatise by Philippe Sands and Pierre Klein that continues Bowett's project, both explain this immunity on functional rather than personal grounds: the Secretary-General is shielded from the jurisdiction of any single state not as a matter of personal privilege but in order to guarantee, in the interest of every Member State collectively, that the office can be exercised without fear of coercive retaliation by the state in which the incumbent happens to be physically present or of which he or she happens to be a national [49; 50]. This functional theory is the same doctrinal foundation that underlies Article 100's guarantee of independence, and it is consistent with the position taken by Schermers and Blokker in respect of the wider international civil service [45].

Functional immunity, however, has a structural cost that is, in our judgment, insufficiently addressed in the literature: the Charter provides no formal mechanism by which the Secretary-General can be removed from office, censured, or disciplined for conduct in office short of the political decision of Member States not to renew a term, or the Secretary-General's own decision to resign. When Ambassador Erdan publicly called on Secretary-General Guterres to resign over the Article 99 invocation of December 2023 [12], he was invoking the only accountability mechanism the system in fact possesses: informal political pressure, deployed unilaterally by whichever state happens to object to a given exercise of the office's discretion. There is no equivalent, within the UN system, of an impeachment procedure, a no-confidence vote available to the General Assembly acting alone, or a judicial forum in which allegations of misconduct by a sitting Secretary-General could be adjudicated according to settled rules of procedure and evidence.

We regard the precedent of 1996 — the non-renewal of Boutros Boutros-Ghali's term by a single US veto, notwithstanding support from every other Council member — as the clearest illustration of how this gap operates in practice: the absence of any formal disciplinary process means that the only available sanction, a unilateral veto over reappointment, is simultaneously blunt (it cannot distinguish between serious misconduct and mere policy disagreement) and disproportionate (it terminates the entire tenure rather than addressing a specific complaint). This is, in our assessment, a genuine rule-of-law deficit in the internal constitutional order of the Organization, and we return to it with a concrete proposal in Chapter 6.

A further, and closely related, constraint on the Secretariat's independence is financial. The Organization is funded through a combination of assessed contributions, apportioned among Member States by the General Assembly, and voluntary contributions that are frequently earmarked for specific programmes by the donor state. Reports of the Advisory Committee on Administrative and Budgetary Questions document recurrent liquidity crises produced by the late payment or withholding of assessed contributions by major contributors [69], and the Security Council Report's own account of the 2026 selection process explicitly notes that the incoming Secretary-General "will take over an organisation that is impacted by financial constraints" [9]. We consider this financial vulnerability a structural analogue, in the budgetary sphere, to the political vulnerability examined in Sections 5.1 and 5.2: just as the absence of a formal disciplinary mechanism leaves the Secretary-General exposed to informal political pressure, the Organization's dependence on a small number of major contributors leaves the Secretariat's day-to-day administrative capacity exposed to informal budgetary pressure, without any comparable formal safeguard.

The Staff Regulations and Rules of the United Nations [10] establish a code of conduct binding on Secretariat personnel generally, supplemented by the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials [9]. However, as several commentators observe, these instruments were designed principally for the ordinary international civil service and were not drafted with the specific accountability needs of the single, politically exposed office of Secretary-General in mind. Secretary-General Kofi Annan's 2005 report In Larger Freedom and Secretary-General Guterres's 2021 report Our Common Agenda both call, in general terms, for strengthening the ethical and institutional foundations of multilateralism [63; 65], but neither instrument proposes a specific mechanism applicable to the Secretary-General personally, and we regard this omission as a genuine gap that the reform proposals of Chapter 6 are designed to close.

Before turning to reform proposals, it is worth pausing to ask whether the problems identified in this chapter are peculiar to the United Nations or are shared, in comparable form, by the executive heads of other international organisations — a comparison we consider indispensable to any reform proposal, since a solution that ignores existing comparative practice risks reinventing mechanisms that other organisations have already tested. The Director-General of the World Health Organization and the Director-General of the International Atomic Energy Agency, for instance, are both elected for renewable four- or five-year terms by their respective governing bodies, following broadly similar dynamics of regional rotation, informal major-power influence, and reappointment-driven caution to those documented in Section 4.4 above. Jan Klabbers's comparative account of the law of international organisations treats this pattern — renewable terms, informal but not formally binding regional rotation, and governing-body rather than judicial accountability — as close to a structural default across the modern institutional landscape, rather than as a peculiarity of the UN Charter [47]. José Alvarez likewise situates the accountability deficits of executive heads of international organisations within a wider argument about the legitimacy costs that "law-making" by international organisations generally incurs precisely because their internal governance mechanisms have not kept pace with the scope of authority such organisations have accumulated [48].

We draw two conclusions from this comparison. First, the specific package of reforms proposed in Section 6.2 below — a single non-renewable term in particular — is not experimental; single, non-renewable terms already operate successfully for a number of comparable international offices, including several UN subsidiary-organ and specialised-agency posts, and there is no persuasive institutional reason why the office of Secretary-General could not adopt the same model without any loss of continuity or competence. Second, and more troublingly, the comparison suggests that the accountability deficit identified in Section 5.2 is not unique to the Secretary-General but is characteristic of executive leadership across the wider system of international organisations — which means that the ethics-panel proposal we develop in Section 6.2 below could plausibly serve, if adopted for the United Nations first, as a template subsequently extended to other organisations facing the same structural problem.

Every problem identified in Chapters 1 through 4 — the doctrinal ambiguity of the office, the fragility of the Article 99 power, the structural weaknesses of the selection and reappointment process, and the absence of formal accountability — shares, in our assessment, a single underlying cause: the Charter regulated the administrative dimension of the office in detail while leaving its political dimension almost entirely to practice. This final chapter surveys the reform proposals already advanced in the literature and in UN practice, before setting out the package of recommendations that we, as the authors of this article, consider most likely to close the gap identified above.

The “1 for 7 Billion” campaign’s own reform agenda, referred to in Section 3.2 above, proposed — beyond the transparency measures actually adopted — a single, non-renewable term of office of seven years, on the theory that removing the possibility of reappointment would eliminate the single greatest incentive for an incumbent to avoid antagonising powerful states. José Alvarez, writing on international organisations as law-makers, situates this kind of proposal within a broader argument that the legitimacy of international organisations depends on making the exercise of delegated authority visibly independent of the states that delegated it [48]. Thomas Weiss and Sam Daws, the editors of the Oxford Handbook on the United Nations, collect several similar proposals in their volume’s chapters on Secretariat reform, generally converging on the idea that procedural transparency in the nomination phase (already achieved) must eventually be matched by comparable transparency in the Security Council’s internal deliberations (not yet achieved) [35]. Secretary-General Guterres’s own 2021 report, Our Common Agenda, calls in general terms for a more “networked and inclusive multilateralism” and for strengthening the tools available to the Secretariat for early warning and prevention, without, however, proposing any specific institutional reform of the office of Secretary-General itself [65].

Uzbek doctrine offers a complementary perspective that, in our view, deserves greater attention in the mainstream Western literature than it currently receives. Academician Akmal Saidov, in his treatises on public international law, situates the accountability of international officials within the broader framework of the international legal personality of international organisations, arguing that the legitimacy of any international official’s exercise of delegated authority depends on the clarity of the legal rules constraining that authority [51; 52] — precisely the clarity that, as Chapter 5 of this article demonstrates, is currently lacking in respect of the Secretary-General’s own accountability. The Russian scholars Igor Lukashuk and Grigory Tunkin likewise treat the codification of previously informal practice as one of the principal functions of contemporary international law-making [53; 54], a methodological preference that supports our own conclusion, developed below, that many of the reforms this article proposes could be achieved through General Assembly resolution rather than through the far more difficult route of Charter amendment.

We would add that this preference for codification through resolution rather than through formal treaty amendment is also consistent with the constitutional practice of the Republic of Uzbekistan itself, whose Constitution [59] and Law on International Treaties [60] both proceed on the premise that the country’s international legal obligations are given effect through a hierarchy of instruments of varying formality, from ratified treaties to less formal international commitments, without requiring that every refinement of an existing international obligation pass through the most cumbersome procedural channel available. In our view, the same logic applies, mutatis mutandis, to the internal law of the United Nations itself: just as Uzbekistan's own treaty practice distinguishes between the constitutional act that establishes a binding international commitment and the subsequent instruments that give it operational content, so too can the General Assembly give increasingly precise operational content to the bare text of Article 97 through successive resolutions — as it has already done through resolutions 60/286, 69/321, and 79/327 [14; 15; 10] — without needing to reopen the Charter itself. We regard this as one further reason, beyond the purely practical considerations of political feasibility discussed below, why the reforms proposed in Section 6.2 are properly pursued through resolution rather than through amendment.

On the basis of the analysis developed in Chapters 1 through 5, we propose the following package of reforms, each designed to correspond to one of the four structural problems identified above.

First, in response to the reappointment dependency documented in Section 4.4, we recommend that the General Assembly adopt a resolution, building on the precedent of resolutions 69/321 and 79/327 [15; 10], establishing a single, non-renewable term of seven years. This measure requires no Charter amendment, since Article 97 is silent on the length or renewability of the term; it would remove, at a stroke, the single incentive that Chesterman and the present authors agree does the most to constrain the exercise of Article 99 during a Secretary-General's working life [28].

Second, in response to the persistence of closed, unreasoned Security Council deliberations documented in Section 4.3, we recommend that the Council be required, by an interpretative General Assembly resolution analogous to those governing the election of judges to the International Court of Justice, to accompany its eventual recommendation with a published statement confirming that the recommended candidate met the qualifications publicly disclosed during the candidate's vision statement and interactive dialogue. This would not eliminate the veto — which, as Section 4.3 demonstrates, is entrenched in the Charter text itself and cannot be removed by resolution — but it would impose a minimal, low-cost transparency requirement on the one stage of the process that has so far escaped the post-2016 reforms.

Third, in response to the accountability gap documented in Section 5.2, we recommend the creation of an independent ethics advisory panel, structurally analogous to the International Civil Service Commission, empowered to receive and publicly report on complaints concerning the personal conduct of a sitting Secretary-General, while expressly excluded — in order to preserve the independence guaranteed by Article 100 — from any jurisdiction over the substantive political or diplomatic judgments the Secretary-General makes in the exercise of Article 99 or of the good-offices function. Such a panel would give Member States, and the wider public, a due-process alternative to the blunt instrument of an ad hoc public call for resignation of the kind directed at Secretary-General Guterres in December 2023 [12].

Fourth, in response to the "chilling effect" on Article 99 documented in Section 3.3, we recommend the institutionalisation of a standing early-warning unit within the Executive Office of the Secretary-General, tasked specifically with preparing the analytical and factual basis for a possible Article 99 invocation well before a crisis reaches the scale of the 1994 Rwanda genocide or the 2023 Gaza war. By building the practice of early warning into the ordinary administrative apparatus of the Secretariat, rather than leaving it to depend on the personal political courage of the incumbent, this reform would, in our judgment, reduce — though it could never eliminate — the political cost that currently attaches to the exercise of the office's single autonomous political power.

Fifth, in response to the financial vulnerability documented in Section 5.3, we recommend that the General Assembly move toward multi-year assessed contributions and a formal cap on the proportion of the Organization's voluntary funding that may be accepted from any single Member State for core administrative functions, in order to insulate the ordinary work of the Secretariat from the budgetary leverage that a small number of major contributors currently exercise.

We recognise, and readily acknowledge, that none of these five measures would resolve the underlying dualism identified in Chapter 2: the office will remain, as Chesterman argues, both "secretary" and "general," and no reform short of a wholesale re-drafting of the Charter could finally collapse that tension into a single, unambiguous role [28]. But we do not consider that collapsing the tension is either possible or desirable. Our claim is more modest: that the specific institutional weaknesses which currently allow the tension to be resolved, in practice, almost entirely in favour of political dependency — the possibility of reappointment, the opacity of Council deliberations, the absence of any accountability mechanism short of resignation, and the leverage that major financial contributors exercise over an under-funded Secretariat — can each be addressed, individually and without Charter amendment, by the measures proposed above.

7. Conclusion

This article set out to answer a single underlying question: why does an office described by the Charter in four words — "the chief administrative officer" — carry the political weight that the Secretary-General has, in practice, come to carry, and what legal problems does that gap between text and practice create? Our answer, developed across five substantive chapters, is that the gap is real, that it is structural rather than accidental, and that it manifests in four distinct but related problems: an unresolved doctrinal debate about the fundamental nature of the office (Chapter 2); a chronic tension between the guarantee of independence in Article 100 and the political incentives created by the selection and reappointment process (Chapters 3 and 4); an accountability deficit that leaves informal political pressure, rather than any codified procedure, as the only available sanction against a sitting Secretary-General (Chapter 5); and a financial dependency that exposes the ordinary administrative work of the Secretariat to the same kind of informal leverage (Chapter 5).

The ongoing selection of the tenth Secretary-General, discussed throughout this article as a live case study rather than as background colour, illustrates both how far the reforms of the past decade have gone — public vision statements, financing disclosures, and open dialogues did not exist before 2016 — and how far they still have to go, since the decisive stage of the process, the Security Council's internal negotiation and eventual recommendation, remains as closed to public scrutiny in 2026 as it was in 1946 [4; 6; 9]. Whichever candidate is ultimately recommended by the Council and appointed by the General Assembly before the end of 2026, the institutional problems analysed in this article will remain in place for the tenth Secretary-General exactly as they did for the ninth, unless the reforms proposed in Chapter 6 — a single non-renewable term, a reasoned Council recommendation, an independent ethics panel, an institutionalised early-warning function, and a diversified financial base — are adopted.

We conclude, finally, that the status of the Secretary-General in contemporary international law is best understood not as a settled legal category but as a permanently contested space in which the text of

1945 and the political practice of the following eight decades continue to pull in different directions. The task of legal scholarship, in our view, is not to resolve that tension by definitional fiat but to identify, as precisely as possible, the specific institutional junctures — appointment, reappointment, accountability, and finance — at which the tension currently resolves itself in favour of political dependency, and to propose, as this article has attempted to do, concrete and realistic means of shifting that balance toward the independence the Charter's drafters wrote into Article 100 but did not fully arm with the institutional machinery necessary to make it secure.

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