

**REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS  
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Volume VI**

**ARTICLES 108 AND 109**

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## **ARTICLES 108 AND 109**

### **TEXT OF ARTICLE 108**

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

### **TEXT OF ARTICLE 109\***

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

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\* After 12 June 1968. For the background of the amendment to Article 109, see *Repertory*, Supplement No. 3, vol. IV, under Articles 108 and 109, paras. 15-18 and 45-50.

## INTRODUCTORY NOTE

1. The present study generally retains the organizational approach adopted in the previous Supplements to the *Repertory* with respect to the same Articles, following in particular the changes<sup>1</sup> introduced in Supplement No. 9, save for the deletion of subheading 1(d) “Proposals concerning the ICJ”, seeing that such proposals had been withdrawn during the 54th session of the General Assembly and not been re-introduced during the period under review.<sup>2</sup>

### I. GENERAL SURVEY

2. Reference to Article 108 was made a number of times in relation to several issues during the period under review. In this regard, it is to be recalled that discussions in the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council, established at the forty-eighth<sup>3</sup> session of the General Assembly (hereinafter referred to as the “Working Group”), had led to the adoption of General Assembly resolution 53/30, in which the Assembly determined “not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly”.<sup>4</sup>

3. During the period under review, Article 108 was also referred to in the discussions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (hereinafter referred to as the “Special Committee”), particularly in connection with the questions of deleting the “enemy State” clauses,<sup>5</sup> as well as of the future role of the Trusteeship Council, which were raised in the Special Committee,<sup>6</sup> as well as in the General Assembly debate, where it was relevant in connection with the question of reforming the Security Council.<sup>7</sup>

4. In 2005, the Heads of States and Governments resolved to delete the “enemy State” clauses from the relevant Articles of the Charter of the United Nations. Although the General Assembly endorsed this commitment as part of the World Summit Outcome,<sup>8</sup> no action was taken, during the period under review, to implement such amendments to the Charter.

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<sup>1</sup> In Supplement No. 9, a subheading entitled “Proposals to amend Article 61 of the Charter” was deleted as no such proposals were made during the relevant period.

<sup>2</sup> See Supplement No. 9, vol. VI under this Article. The proposal previously submitted to amend the Statute of the International Court of Justice (ICJ) to extend its competence with respect to contentious matters to disputes between States and intergovernmental organizations was withdrawn by the sponsor delegation at the 1999 session of the Special Committee (see Report of the Special Committee A/54/33, para. 116) and no further action was taken on the matter during the period under review.

<sup>3</sup> General Assembly resolution 48/26.

<sup>4</sup> General Assembly resolution 53/30.

<sup>5</sup> See under Articles 53, 77 and 107: *Repertory*, Supplement No. 10, vol. VI.

<sup>6</sup> See Reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, A/54/33, A/55/33, A/56/33, A/57/33, A/58/33, A/59/33, A/60/33 and A/61/33.

<sup>7</sup> See, for example, A/55/PV.67, A/56/PV.85, A/57/PV.62, A/58/PV.23, A/60/PV.7, A/61/PV.77, A/62/PV.21, A/63/PV.56 and A/64/PV.121.

<sup>8</sup> General Assembly resolution 60/1.

## II. ANALYTICAL SUMMARY

### A. Procedure for the amendment or review of the Charter

#### 1. PROPOSALS SUBMITTED UNDER ARTICLE 108

##### (a) *Proposals to amend Articles 23, 27 and 109 of the Charter*

5. Pursuant to General Assembly decision 52/490 of 24 August 1998, the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council continued throughout the period under review to consider questions relating to the increase in the membership of the Security Council, its working methods and voting procedures. The General Assembly renewed the mandate of the Working Group at each session during the period under review and requested it to submit reports on its work taking into account the progress already achieved.

6. The Working Group submitted annual reports, containing summaries of discussions, working papers and proposals from Member States regarding, among other things, the expansion of the Security Council and its voting procedures, which would largely require amendments to the Charter of the United Nations.<sup>9</sup>

7. In its resolution 53/30, the General Assembly had determined that it would not adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters “without the affirmative vote of at least two thirds of the Members of the General Assembly”.<sup>10</sup>

8. The item on Security Council reform continued to be considered during the period under review in the Working Group<sup>11</sup> and in the General Assembly, but no action was taken during the period under review.

9. Similarly to the previous period under review, the reform of the Security Council was also considered in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Special Committee), under the item “Maintenance of international peace and security”. In this regard, the Special Committee, at its 1995 session, had before it a proposal previously submitted by the Libyan Arab Jamahiriya and a proposal by Cuba on, among other things, the question of the composition of the Security Council and its decision making procedure. Revised versions of the proposals were submitted at the subsequent sessions of the Special Committee.<sup>12</sup> However, during the period under

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<sup>9</sup> See Reports of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council (A/53/47, A/57/47, A/55/47, A/56/47, A/57/47, A/58/47, A/59/47, A/60/47, A/61/47, A/62/47, A/63/47 and A/64/47).

<sup>10</sup> General Assembly resolution 53/30.

<sup>11</sup> The basis of discussions, according to the Report of the Working Group submitted at the sixty-third session, was the Working paper presented by Argentina and Spain at the 3rd meeting of the Working Group, on 5 December 2008.

<sup>12</sup> For the most recent revisions of the draft proposals, see General Assembly resolution 64/115.

review, no recommendations were made by the Special Committee regarding the proposals.

10. In its resolution 62/69 of 6 December 2007, the General Assembly made reference to its resolution 47/62 on the question of equitable representation of and increase in the membership of the Security Council and requested the Special Committee to continue its consideration of proposals relating to the maintenance of international peace and security.

11. By his letter<sup>13</sup> addressed to the President of the General Assembly, the Secretary-General informed the Assembly of the establishment of a 16-member High-level Panel on Threats, Challenge and Change<sup>14</sup> to review current and future threats to international peace and security and to identify the contribution that collective action can make and the changes necessary to ensure effective collective action, including a review of the principal organs of the United Nations. The Panel was tasked with examining the major threats and challenges the world faces in the broad field of peace and security, including economic and social issues insofar as they relate to peace and security, and making recommendations for the elements of a collective response, to be presented for the consideration of Member States.<sup>15</sup> The Panel recommended, *inter alia*, that a decision on the enlargement of the Security Council, honouring Article 23 of the United Nations Charter, satisfy four criteria: (a) increasing the involvement in decision-making of those who contribute most to the United Nations financially, militarily and diplomatically; (b) bringing into the decision-making process countries more representative of the broader membership, especially of the developing world; (c) not impairing the effectiveness of the Security Council; and (d) increasing the democratic and accountable nature of the body.<sup>16</sup>

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<sup>13</sup> Letter dated 3 November 2003 from the Secretary-General to the President of the General Assembly, A/58/612.

<sup>14</sup> The panel was chaired by Anand Panyarachun (Thailand), former Prime Minister of Thailand and consisted of the following members: Robert Badinter (France), Member of the French Senate and former Minister of Justice of France; João Clemente Baena Soares (Brazil), former Secretary-General of the Organization of American States; Gro Harlem Brundtland (Norway), former Prime Minister of Norway and Director-General of the World Health Organization; David Hannay (United Kingdom of Great Britain and Northern Ireland), former Permanent Representative of the United Kingdom to the United Nations and United Kingdom Special Envoy to Cyprus; Mary Chinery-Hesse (Ghana), Vice-Chairman, National Development Planning Commission of Ghana and former Deputy Director-General, International Labour Organization; Gareth Evans (Australia), President of the International Crisis Group and former Minister for Foreign Affairs of Australia; Enrique Iglesias (Uruguay), President of the Inter-American Development Bank; Amre Moussa (Egypt), Secretary-General of the League of Arab States; Satish Nambiar (India), former Lieutenant-General in the Indian Army and Force Commander of the United Nations Protection Force; Sadako Ogata (Japan), former United Nations High Commissioner for Refugees; Yevgeny Primakov (Russian Federation), former Prime Minister of the Russian Federation; Qian Qichen (China), former Vice -Prime Minister and Minister for Foreign Affairs of China; Nafis Sadiq (Pakistan), former Executive Director of the United Nations Population Fund; Salim Ahmed Salim (United Republic of Tanzania), former Secretary-General of the Organization of African Unity; and Brent Scowcroft (United States of America), former Lieutenant-General in the United States Air Force and United States National Security Adviser.

<sup>15</sup> A/58/612, *supra*.

<sup>16</sup> Report of the High-Level Panel on Threats, Challenges and Change (A/59/565), para. 249.

(b) *Proposals to amend Articles 53, 77 and 107 of the Charter*

12. The General Assembly had previously taken note of the recommendation on the most appropriate legal action to be taken on the question of the deletion of the “enemy State” clauses from Articles 53, 77 and 107 of the Charter,<sup>17</sup> and recognized that such clauses have become obsolete, given the changes that had taken place in the world since the Charter was drafted. In its third operative paragraph, General Assembly resolution 50/52 thus reflected the Assembly’s intention “to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the “enemy State” clauses from Articles 53, 77 and 107 at its earliest appropriate future session.”

13. In its report transmitted by the Secretary-General to the General Assembly in December 2004, the High-level Panel on Threats, Challenges and Change suggested, *inter alia*, that articles 53 and 107 referring to “enemy States” be revised.<sup>18</sup>

14. This suggestion was eventually included as part of the 2005 World Summit Outcome, adopted by General Assembly resolution 60/1. In that document, the Heads of States and Governments, “taking into account General Assembly resolution 50/52 of 11 December 1995 and recalling the related discussions conducted in the General Assembly, bearing in mind the profound cause for the founding of the United Nations and looking to our common future, [resolved] to delete references to “enemy States” in Articles 53, 77 and 107 of the Charter.”<sup>19</sup>

15. However, no action was taken to implement paragraph 177 of the aforementioned resolution during the period under review.

(c) *Proposals concerning the Trusteeship Council*

16. As noted in volume VI of Supplement No. 8 of the *Repertory*, in light of the fact that the Trusteeship Council had completed its work on the last remaining item on its agenda, a debate had commenced regarding its future role.

17. Upon a request by Malta,<sup>20</sup> the item entitled “Review of the role of the Trusteeship Council” was included in the agenda of the 50th session of the General Assembly. In its explanatory memorandum,<sup>21</sup> Malta expressed the view that the role of the Trusteeship Council should be enhanced to that of trustee of the common heritage of humankind.

18. Following General Assembly resolution 50/55, in which the Secretary-General was requested to invite Member States to submit written comments on the future of the Trusteeship Council, the Secretary-General issued a report reflecting the

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<sup>17</sup> See vol. VI, Suppl. No. 9, under Article 53, 77 and 107.

<sup>18</sup> Report of the High Level Panel on Threats, Challenges and Change, A/59/565 & Corr.1.

<sup>19</sup> GA resolution 60/1, para. 177.

<sup>20</sup> Letter dated 2 June 1995 from the Permanent Representative of Malta to the United Nations addressed to the Secretary-General, A/50/142.

<sup>21</sup> *Ibid*, Annex.

divergent views expressed in the replies received from Member States.<sup>22</sup> While some States were in favour of assigning the Council a new mandate, *e.g.* as suggested by Malta, that of trustee of the common heritage of humankind, other States argued that the Council should be abolished in accordance with the procedure for amendment set forth in Article 108 of the Charter. The view was also expressed that the Council, having no financial implications to the Organization, should remain unchanged.

19. The debate in the Special Committee, which considered the item during the period under review, reflected the three main views outlined above. The sponsor delegation, Malta, reiterated its view that the proposal merited an in-depth consideration also because, in its view, it had been endorsed by the Secretary-General<sup>23</sup> in the context of the reform of the United Nations, in his note entitled “A new concept of trusteeship”.<sup>24</sup> The observation was also made that it would be premature to discuss the details regarding the functioning of the proposed mechanism until an agreement was reached on the concept.

20. In the context of the Working Group of the Special Committee, different views were expressed during the debate.<sup>25</sup> While support was expressed for the proposal extended by Malta, it was also observed that it would require further consideration in the future, since it would necessitate an amendment to the Charter and, therefore, should be considered in the context of the reform of the Charter of the United Nations. In that regard, the suggestion was made that the sponsor delegation could provide delegations with the Charter amendments that its proposal would entail.

21. During the general exchange of views in the meetings of the Special Committee in the 249th meeting of the Special Committee on 3 April 2006,<sup>26</sup> delegations referred to paragraph 176 of the 2005 World Summit Outcome adopted by the General Assembly in its resolution 60/1. The paragraph in question embodied the recommendation of the General Assembly<sup>27</sup> to delete Chapter XIII of the United Nations Charter, as well as any references to the Trusteeship Council, considering that the latter “no longer meets and has no remaining functions”. While support was expressed for such a deletion, the point was also made that the amendments to the Charter should be considered in the overall context of the reform of the Organization and should be dealt with cautiously.<sup>28</sup>

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<sup>22</sup> A/50/1011. See also, *e.g.*, GA (50), Plen., 68th mtg, pp. 3-8; GA (50), 6th Comm., 34th mtg, paras. 7 and 24; GA (50), 6th Comm., 44th mtg, paras. 15-17; and GA (50), 6th Comm., 45th mtg, para. 1.

<sup>23</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 33 (A/57/33)*, para. 164.

<sup>24</sup> A/52/849.

<sup>25</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 33 (A/56/33)*, para. 253 ff.

<sup>26</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official Records of the General Assembly, Sixty-first session, Supplement No. 33 (A/61/33)*, para. 53.

<sup>27</sup> General Assembly resolution 60/1, para. 176.

<sup>28</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official Records of the General Assembly, Sixty-first session, Supplement No. 33 (A/61/33)*, para. 53.

## **2. PROPOSALS FOR THE CALLING OF A GENERAL CONFERENCE UNDER ARTICLE 109**

22. No formal proposal for holding a conference for the purpose of reviewing the Charter of the United Nations in accordance with Article 109 was made during the period under review. However, the desirability of reviewing the Charter in accordance with Article 109 was referred to during the debates relating to the reform of the Security Council,<sup>29</sup> the deletion of the “enemy State” clauses<sup>30</sup> and the future role of the Trusteeship Council.<sup>31</sup>

### **B. The Powers of the General Assembly in respect of the calling of a general conference to review the Charter**

#### **\*\*1. COMPETENCE TO PRESCRIBE THE TERMS OF REFERENCE OF THE CONFERENCE**

##### **2. COMPETENCE TO UNDERTAKE PREPARATORY WORK**

23. During the period under review, the Secretary-General continued the preparation of supplements to the publications *Repertory of Practice of United Nations Organs* (hereinafter referred to as the “*Repertory*”) and *Repertoire of the Practice of the Security Council* (hereinafter referred to as the “*Repertoire*”) pursuant to General Assembly resolutions 796 (VIII), 992 (X) and 686 (VII). The Secretary-General submitted annual progress reports to the General Assembly regarding the work done for the preparation of studies for *Repertory* and the *Repertoire*.<sup>32</sup>

24. During meetings of the Special Committee, delegations continued to commend the ongoing efforts undertaken by the Secretariat to reduce the backlog in the preparation of the *Repertory of Practice of United Nations Organs* and of the *Repertoire of the Practice of the Security Council*.<sup>33</sup> In this context, the enhanced cooperation with academic institutions, as well as the progress made towards making both publications available on the Internet, were welcomed by delegations during the debate and by the General Assembly in the relevant resolutions.<sup>34</sup>

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<sup>29</sup> See Official Records of the General Assembly, 59th session, 25th plenary meeting, Monday, 11 October 2004, 3 p.m. (A/59/PV.25).

<sup>30</sup> See Official Records of the General Assembly, A/58/PV.8, A/59/PV.26, A/60/PV.23 and A/61/PV.21.

<sup>31</sup> See Official Records of the General Assembly, A/55/PV.107, A/56/PV.85, A/57/PV.83, A/58/PV.25, A/59/PV.87, A/60/PV.21 and A/61/PV.89.

<sup>32</sup> See Reports of the Secretary-General on the Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council, A/55/340, A/56/330, A/57/370, A/58/347, A/59/334, A/60/320, A/61/153, A/62/206 and Corr.1, A/63/98 and A/64/125.

<sup>33</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, Official Records of the General Assembly, Sixty-fourth session, Supplement No. 33 (A/63/33), para. 45

<sup>34</sup> General Assembly resolutions 55/156, 56/86, 57/24, 58/248, 59/44, 60/23, 61/38, 62/69, 63/127 and 64/115.

25. Some delegations recalled the significance of the two publications as research tools for the international community, in particular for the diplomatic community and academia, and their importance in the preservation of the institutional memory of the Organization. Recalling also the request by the General Assembly for the Secretary-General “to establish a trust fund to eliminate the backlog of the *Repertory of Practice of United Nations Organs*, which shall accept voluntary contributions by States, private institutions and individuals,”<sup>35</sup> resolutions adopted by the General Assembly in subsequent sessions<sup>36</sup> reflected the Assembly’s appreciation of “the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as the trust fund for the elimination of the backlog in the *Repertory*.”<sup>37</sup> However, regret was also expressed concerning the financial situation and, in that context, a number of delegations called for additional voluntary contributions to the trust funds established for the *Repertory* and *Repertoire*.<sup>38</sup> Such a call was included in the relevant General Assembly resolutions.<sup>39</sup>

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<sup>35</sup> General Assembly resolution 59/44, para. 9.

<sup>36</sup> See General Assembly resolutions 60/23, 61/38, 62/69, 63/127 and 64/115.

<sup>37</sup> *Ibid.*

<sup>38</sup> See Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Official records of the General Assembly, Sixtieth session, Supplement No. 33 (A/64/33)*, para 45.

<sup>39</sup> See General Assembly resolutions 60/23, 61/38, 62/69, 63/127 and 64/115.