

ARTICLES 108 AND 109

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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 seven 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.

INTRODUCTORY NOTE

1. Since the adoption by the General Assembly of resolution 796 (VIII) on the publication of documents concerning the drafting and application of the Charter, 1/ representatives of Member States have made statements concerning the question of Charter review both at the meetings held in San Francisco in June 1955 to commemorate the tenth anniversary of the signing of the Charter and during the general debate at the tenth session of the General Assembly.

2. The most extensive discussion of the question of a review of the Charter took place at the tenth session of the General Assembly in connexion with the agenda item "Proposal to call a General Conference of the Members of the United Nations for the purpose of reviewing the Charter (Article 109 of the Charter)". During the discussion of that item the following questions bearing upon the provisions of Articles 108 and 109 had been raised: (a) whether a general conference should in principle be held; (b) what should be the scope of review and whether "review" should be distinguished from "revision" or "amendment" of the Charter; and (c) whether the voting procedure provided for in Article 109 could be applied to the calling of a general conference by the General Assembly at a later session in accordance with a decision of the Assembly taken at its tenth session. It has therefore been found necessary to formulate new headings for these questions under the more general heading "Proposals for a review of the Charter". Except for the addition of these new headings, the outline of the present study follows that of the corresponding study in the Repertory relating to Articles 108 and 109.

I. GENERAL SURVEY

3. Up to the end of the tenth session of the General Assembly no formal proposals had been submitted for the amendment of an Article of the Charter in accordance with the

1/ See also in the Repertory, vol. V, under Articles 108 and 109.

provisions of Article 108. The amendment procedure laid down in Article 108 had, however, been mentioned by a number of representatives as an alternative to the holding of a general conference to review the Charter under Article 109. On 26 June 1956 the following items were proposed by certain Member States for inclusion in the provisional agenda of the eleventh regular session of the General Assembly:

Question of amending the United Nations Charter, in accordance with the procedure laid down in Article 108 of the Charter, to increase the number of non-permanent members of the Security Council and the number of votes required for decision of the Council; 2/

Question of amending the United Nations Charter, in accordance with the procedure laid down in Article 108 of the Charter, to increase the membership of the Economic and Social Council; 3/

Question of amending the Statute of the International Court of Justice, in accordance with the procedure laid down in Article 108 of the Charter; (a) Increase in the number of judges of the International Court of Justice; 4/

4. Article 109 (3) was applied when the item entitled "Proposal to call a general conference of the Members of the United Nations for the purpose of reviewing the Charter (Article 109 of the Charter)", was included by the Secretary-General in the agenda of the tenth session of the General Assembly. 5/ During the debate it was the consensus among representatives that this item was included in the agenda through the automatic operation of Article 109 (3). Opinions differed, however, on the question whether a review conference should in principle be called and on other related questions. At its 547th meeting on 21 November 1955, the General Assembly adopted by 43 votes to 6, with 9 abstentions the following resolution (992 (X)):

"The General Assembly,

"Mindful that paragraph 3 of Article 109 of the Charter of the United Nations provides that if a General Conference of the Members of the United Nations for the purpose of reviewing the Charter has not been held before the tenth annual session of the General Assembly, such a 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,

"Believing that it is desirable to review the Charter in the light of experience gained in its operation,

"Recognizing that such a review should be conducted under auspicious international circumstances,

"1. Decides that a General Conference to review the Charter shall be held at an appropriate time;

"2. Further decides to appoint a Committee consisting of all the Members of the United Nations to consider, in consultation with the Secretary-General, the question of fixing a time and place for the Conference, and its organization and procedures;

2/ A/3138.

3/ A/3139.

4/ A/3140.

5/ G A (X), annexes, a.i. 55, A/2919.

"3. Requests the Committee to report with its recommendations to the General Assembly at its twelfth session;

"4. Requests the Secretary-General to complete the publication programme undertaken pursuant to General Assembly resolution 796 (VIII) of 23 November 1953 and to continue, prior to the twelfth session of the General Assembly, to prepare and circulate supplements, as appropriate, to the Repertory of Practice of United Nations Organs;

"5. Transmits the present resolution to the Security Council."

5. The text of the resolution was transmitted 6/ by the Secretary-General to the Security Council. At its 707th meeting held on 16 December 1955, the Security Council adopted by 9 votes to 1, with 1 abstention, a draft resolution submitted by the representatives of Brazil, Iran, the United Kingdom and the United States, which reads as follows: 7/

"The Security Council,

"Mindful that Article 109, paragraph 3, of the Charter of the United Nations provides that if a General Conference of the Members of the United Nations for the purpose of reviewing the Charter has not been held before the tenth annual session of the General Assembly, such a 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,

"Having considered resolution A/RES/324 8/7 adopted by the General Assembly on 21 November 1955 in which the Assembly decided that a conference to review the Charter of the United Nations shall be held at an appropriate time,

"Expresses its concurrence in the Assembly's decision, as set forth in resolution A/RES/324 of the General Assembly."

II. ANALYTICAL SUMMARY OF PRACTICE

A. Procedure for the amendment or review of the Charter

1. *Proposals submitted under Article 108*

6. As stated in paragraph 3 above, three items relating to the amendment of the Charter to increase the membership of the Security Council, 9/ the Economic and Social Council 10/ and the International Court of Justice, 11/ in accordance with the procedure laid down in Article 108, were proposed for inclusion in the provisional agenda of the eleventh session of the General Assembly. In the explanatory memoranda

6/ S/3503.

7/ S C resolution of 12 December 1955, S/3504.

8/ A/RES/324 was a provisional symbol which became resolution 992 (X) of the General Assembly.

9/ Item proposed by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Panama, Paraguay, Peru, Spain and Venezuela.

10/ Item proposed by the seventeen above-mentioned States and Mexico.

11/ Item proposed by Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti and Spain.

accompanying the proposals, it was stated 12/ that, because there had been a substantial increase in the membership of the United Nations and more Members would probably be admitted in the near future, the items were being proposed "with a view to maintaining a satisfactory distribution in the membership of some of the principal organs of the United Nations and to facilitating the participation of new Members in the work of those organs". It was further pointed out that the sponsors of those items were of the opinion that an amendment to the Charter was unnecessary in the case of the Trusteeship Council "because under Article 86 of the Charter its membership is automatically increased upon the admission of States administering Trust Territories".

2. *Proposals for the calling of a general conference under Article 109*

a. PROPOSALS FOR A REVIEW OF THE CHARTER

7. At the tenth session of the General Assembly, the item "Proposal to call a general conference of the Members of the United Nations for the purpose of reviewing the Charter", which was included in the agenda in pursuance of Article 109 (3), was allocated for consideration in plenary meetings of the Assembly without reference to a committee. The Assembly devoted six meetings (from the 542nd to the 547th meeting held from 17 to 21 November 1955) to the examination of the item.

8. A draft resolution was submitted 13/ by the representatives of Canada, Ecuador, Iraq, Thailand, United Kingdom and United States (referred to hereinafter as the six-Power draft resolution) which reads as follows:

"The General Assembly,

"Mindful that paragraph 3 of Article 109 of the Charter of the United Nations provides that if a General Conference of the Members of the United Nations for the purpose of reviewing the Charter has not been held before the tenth annual session of the General Assembly, such a 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,

"Believing that it is desirable to review the Charter in the light of experience gained in its operation,

"Recognizing that such a review should be conducted under auspicious international circumstances,

"1. Decides that a General Conference to review the Charter shall be held at an appropriate time;

"2. Further decides to appoint a Committee consisting of Australia, Burma, Chile, China, Colombia, Czechoslovakia, the Dominican Republic, Egypt, El Salvador, France, India, the Netherlands, Norway, the Philippines, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to consider, in consultation with the Secretary-General, the question of fixing a time and place for the Conference, and its organization and procedures;

"3. Requests the Committee to report with its recommendations to the General Assembly at its twelfth session;

"4. Requests the Secretary-General to complete the publication programme undertaken pursuant to General Assembly resolution 796 (VIII) of 23 November 1953 and to continue, prior to the twelfth session of the General Assembly, to prepare and circulate supplements, as appropriate, to the Repertory of Practice of United Nations Organs;

12/ A/3138, p. 3; A/3139, p. 3; A/3140, p. 3.

13/ G A (X), annexes, a.1. 55, p. 2, A/L.197/Rev.1.

"5. Transmits the present resolution to the Security Council."

9. Amendments to the six-Power draft resolution were submitted 14/ by Syria which would (1) delete the second and third paragraphs of the Preamble, and insert the following as the second paragraph: "Recognizing that the review of the Charter is a matter of high importance that requires careful study"; (2) delete the first operative paragraph; (3) ask the committee proposed in the second operative paragraph to consider the desirability of the review of the Charter, in addition to the consideration of time, place, organization and procedure of the review conference.

10. Another amendment was submitted 15/ by Egypt and India which would add twelve countries to the list of Members comprising the committee proposed in operative paragraph 2 of the six-Power draft resolution.

11. In view of the opinions expressed by various representatives in favour of wider representation in the proposed committee, the sponsors of the six-Power draft resolution, joined by Uruguay, revised their text to make the committee to be appointed under operative paragraph 2 consist of "all the Members of the United Nations". The amendment submitted by Egypt and India to increase the membership originally envisaged for the committee was therefore not voted upon. 16/

12. The General Assembly, having rejected 17/ the amendments submitted by the representative of Syria (see paragraph 9 above), adopted 18/ the revised draft resolution as resolution 992 (X).

(i) The question whether a general conference for the purpose of reviewing the Charter should be held

13. In anticipation of a discussion of the question of calling a general conference to review the Charter in accordance with Article 109 (3), representatives of Member States attending the commemorative meetings held in June 1955 in San Francisco had expressed 19/ their views on whether such a conference should be called or whether such a review of the Charter was needed. Opinions on the same questions were again

14/ G A (X), Plen., 544th mtg., paras. 123, 126, 127, 129 and 130, A/L.200.

15/ G A (X), annexes, a.i. 55, p. 3, A/L.201/Rev.1.

16/ G A (X), Plen., 547th mtg., para. 105.

17/ Ibid., paras. 112, 115 and 117.

18/ The draft resolution, after having been voted on paragraph by paragraph was adopted as a whole by 43 votes to 6, with 9 abstentions. (G A (X), Plen., 547th mtg., para. 120.)

19/ For texts of relevant statements, see Tenth Anniversary of the Signing of the Charter, United Nations Publication, Sales No.: 1955.I.26.

1st mtg.: Chile, pp. 70 and 71; Denmark, p. 66;

2nd mtg.: Colombia, p. 78; Haiti, p. 95; Iceland, p. 97; Pakistan, pp. 84 and 85; Panama, p. 89;

4th mtg.: Australia, pp. 136 and 137; Costa Rica, p. 151; Luxembourg, p. 154; Sweden, p. 135; Venezuela, p. 140;

5th mtg.: Honduras, p. 181; Lebanon, p. 178;

6th mtg.: Byelorussian SSR, pp. 208 and 209;

7th mtg.: Canada, p. 214; Ecuador, p. 229; Indonesia, p. 232; Peru, p. 222;

8th mtg.: El Salvador, p. 262; India, pp. 264 and 265; Uruguay, pp. 241 and 242.

expressed 20/ during the general debate at the tenth session of the General Assembly. Although no formal proposal had been submitted, the statements made on those two occasions had sometimes been quoted, repeated or emphasized during the consideration by the General Assembly of the agenda item "Proposal to call a General Conference of the Members of the United Nations for the purpose of reviewing the Charter. (Article 109 of the Charter)".

14. Representatives of thirty-nine Member States participated in the discussion of the above-mentioned item at the tenth session of the General Assembly. Twenty-six Members, including the sponsors of the six-Power draft resolution, were in favour of calling a review conference in principle but considered that such a conference should be held only at a time when the international atmosphere was favourable to a review of the Charter. One Member favoured the calling of a review conference but maintained that it was not legally possible for the General Assembly to take a decision in principle at its tenth session to call the conference without fixing the date and place for that conference. The remaining twelve Members were against any review of the Charter. The arguments advanced in support of these positions are summarized below.

15. The majority view, expressed by the sponsors and supporters of the six-Power draft resolution, stressed three points: (a) that the Charter should be reviewed; (b) that a decision in principle to call a review conference should be taken at the tenth session of the General Assembly; and (c) that the question of the appropriate time for calling that conference should be left to a preparatory committee which was to report to the General Assembly at its twelfth session.

(a) The need for a review of the Charter: On this point the following reasons were advanced. (1) The epochal developments in the fields of atomic energy and disarmament seemed to justify the re-examination of a Charter drafted when the possibilities of atomic warfare had not been as well understood as they were today. (2) Some of the expectations and assumptions upon which the Charter was based had not been fulfilled. Other provisions had operated in a way that was not anticipated. Certain powers in the Charter had never been utilized. In these respects, new comparisons between Charter goals and available powers and machinery for their fulfilment deserved mature consideration. (3) The United Nations derived its greatest strength from the support and understanding of the peoples of the world. A conference to review the Charter could greatly strengthen that public understanding. (4) The mere increase in size of the United Nations demanded a review and consideration of the structure of the councils and their membership. Moreover, since the international conscience was more alive today than ever before to the cause of freedom and liberation of peoples, the provisions of the Charter dealing with dependent peoples had to be reviewed. Furthermore, certain points in the Charter needed clarification or probably amendment. (5) The Charter could not be considered immutable, for it had defects which

- 20/ For texts of relevant statements, see G A (X), Plen.,
- 518th mtg.: Brazil, para. 12; Dominican Republic, paras. 151-153; Egypt, para. 141; United States, para. 22;
 - 519th mtg.: Ecuador, paras. 17-20; New Zealand, para. 51;
 - 520th mtg.: Australia, paras. 45-47; USSR, paras. 172-174;
 - 522nd mtg.: Chile, paras. 7-12; Iraq, para. 123;
 - 523rd mtg.: Canada, para. 36;
 - 524th mtg.: Paraguay, para. 39; Poland, para. 85; Thailand, para. 30;
 - 526th mtg.: Burma, para. 53; Denmark, paras. 107 and 108; Ukrainian SSR, para. 32;
 - 527th mtg.: Byelorussian SSR, para. 23; France, paras. 105 and 106; Venezuela, paras. 8 and 9;
 - 529th mtg.: Czechoslovakia, para. 106; United Kingdom, paras. 25 and 26;
 - 531st mtg.: Pakistan, paras. 70-73; Sweden, paras. 29-31;
 - 532nd mtg.: Israel, paras. 18 and 19; Syria, para. 52;
 - 533rd mtg.: India, paras. 33-36.

should be corrected. In any case, there were new needs for which provision must be made. (6) Effect had only been given in part to the precepts of the Charter and the United Nations had thus been prevented from attempting, with any prospect of success, the solution of far-reaching international problems which had arisen during the Organization's ten years of life. As a result, some important matters were outside its jurisdiction, while those which were within it were dealt with by a procedure which was often slow. Therefore a review of the Charter was both desirable and necessary. 21/

(b) A decision in principle to call a review conference: The following arguments were put forward in favour of having the General Assembly take a decision in principle at its tenth session to hold a review conference: 22/ (1) Article 109 (3), which provides for a simple majority vote in calling a general conference to review the Charter, offered an opportunity to institute the review process at the tenth session of the General Assembly with the least possible difficulty; the Assembly therefore should seize this opportunity. (2) Under Article 109 the General Assembly had a special responsibility to consider at its tenth session the question of calling a review conference. Failure to make any positive recommendation would be tantamount to a decision that the review procedure envisaged by the Charter no longer seemed to have any value. The possibility of holding a constructive and useful review conference should not be ruled out. (3) The Syrian amendment to the six-Power draft resolution, which would postpone any decision by the General Assembly or by the Security Council with regard to the convening of the general conference (see paragraph 9 above), was in direct conflict with Article 109 (3). (4) At the time of the drafting of the Charter in San Francisco, many delegations felt that the imperfection of the Charter was such that their Governments would find it difficult to accept it unless there was machinery for revision after a period of experience of the working of the Organization. It was for this reason that provisions concerning amendment and review had been included in Articles 108 and 109 of the Charter. The principle of a review conference, therefore, could not be treated lightly. It was not written into the Charter by accident or without serious thought and intention.

(c) The conditions and the appropriate time for convening a review conference: Those representatives who maintained that a review of the Charter should be conducted under auspicious international circumstances and at an appropriate time and that a preparatory committee should be established to consider the question of time, place,

21/ For texts of relevant statements, see G A (X), Plen.,
 542nd mtg.: Ecuador, paras. 130-135; United States, paras. 55, 56 and 59;
 543rd mtg.: Iraq, paras. 6-9; Netherlands, para. 50;
 544th mtg.: Peru, paras. 33 and 46;
 545th mtg.: Argentina, paras. 113-122;
 546th mtg.: Chile, paras. 69, 70, 72 and 80; Costa Rica, para. 29;
 Venezuela, para. 84;
 547th mtg.: Panama, para. 49.

22/ For texts of relevant statements, see G A (X), Plen.,
 542nd mtg.: United Kingdom, para. 34; United States, para. 65;
 545th mtg.: Australia, paras. 137 and 138; Ecuador, paras. 134 and 135;
 New Zealand, paras. 10 and 11;
 546th mtg.: Costa Rica, para. 23; Israel, para. 90.

organization and procedures of a review conference, expressed 23/ the following views. (1) Co-operation among all States in general and agreement among the five permanent members of the Security Council in particular would be a primary condition for a review of the Charter. Therefore the appropriate time for holding a review conference was when there was a favourable international atmosphere. (2) It would be wise to await the effects of an increase in the membership of the Organization before embarking on a review of the Charter. Time should also be given to the expected new Members themselves to gain experience of the practical working of the Organization from the inside before they were called upon to give their views on any suggested improvements to the Charter. (3) Adequate time must be allowed for the completion of careful and thorough preparatory work. The proposed preparatory committee would have the task of laying the procedural and organizational groundwork for a successful conference. 24/ It would have the further duty of watching international developments to determine the moment 25/ when a conference would be best able to improve the Charter and bring about a wider agreement among Members of the United Nations. (4) A conference held prematurely would not only be likely to fail but might impair the prospects of improving international relations. A heated discussion of certain questions, ending in a deadlock, might have unfavourable repercussions on the international situation in general and on the United Nations in particular.

16. Another group of representatives saw no need for the calling of a review conference and spoke against the six-Power draft resolution. Among this group, opinions varied slightly: some thought that no review of the Charter should be conducted at all, others felt that the question of a review of the Charter should be postponed; some referred to the Charter as a fully satisfactory and adequate document, others admitted it could be improved but thought the time was not ripe for the

23/ For texts of relevant statements, see G A (X), Plen.,

542nd mtg.: Ecuador, para. 121; United Kingdom, paras. 29-34;

United States, paras. 60 and 61;

543rd mtg.: Belgium, para. 76; Canada, paras. 61 and 62; Thailand, para. 88;

544th mtg.: Greece, paras. 54-57;

545th mtg.: Argentina, paras. 125-128; Indonesia, paras. 169 and 170;

Mexico, para. 77;

546th mtg.: Egypt, paras. 36-38, 41 and 42; Israel, para. 98;

547th mtg.: Bolivia, para. 39; Panama, para. 52.

24/ One of the sponsors of the six-Power draft resolution pointed out that the committee was not expected to undertake, even in a preliminary way, the task of reviewing the provisions of the Charter, or to examine whether this or that Article of the Charter would be acceptable to a two-thirds majority, including the five permanent members of the Security Council (G A (X), Plen., 542nd mtg., para. 38).

25/ Some representatives further stated that the proposed committee would be free to report to the General Assembly in two years' time that in its considered opinion, the time even then had not yet come to hold a review conference. (G A (X), Plen., 542nd mtg., para. 38; 545th mtg., para. 174.)

One representative stated that his delegation which would have preferred simply to postpone the question of Charter review would nevertheless vote for the six-Power draft resolution because it represented a compromise between different views. As a warning against taking hasty action which would expose the United Nations to disintegration, he referred to the terms of the commentary on withdrawal, adopted by the San Francisco Conference in plenary session on 25 June 1945, according to which it was not the intention of the Organization "to compel a Member to remain in the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect." (G A (X), Plen., 543rd mtg., paras. 73-75.)

initiation of such improvements. The following reasons for not taking a decision at the tenth session of the General Assembly to hold a review conference were advanced: 26/

(1) The Charter as it stood was a satisfactory international agreement which fully answered the purposes of strengthening international peace and promoting international co-operation in the political, economic and social fields. A review of the Charter designed to change its fundamental provisions would not only fail to promote the strengthening of trust in the relations between States, but would hinder the attainment of that objective.

(2) The wording of Article 109 (3) was permissive and not obligatory. The General Assembly and the Security Council were perfectly free to decide that there was no need for a review conference. 27/

(3) It was the conflicting interests, not only of great Powers but also of other States, which had caused international tension and thus prevented the United Nations from functioning more in conformity with the letter and the spirit of the Charter. The mere changing of words in some Articles of the Charter would not change the facts of the international situation.

(4) If the Charter had to be revised it would require agreement, and if there was agreement there would be no need for revision.

(5) The present was not the time for the General Assembly to take a decision, even in principle, to call a review conference. Since any amendment of the Charter could come into force only when it had been ratified by two-thirds of the Member States, including all the permanent members of the Security Council, the provision regarding a two-thirds majority for calling a review conference in the future hardly constituted a real hindrance to a future revision of the Charter. Moreover, a decision by a large majority of the Member States to hold a conference was a condition precedent for success since the task of the conference was likely to be difficult.

(6) Certain Articles of the Charter could be improved by alteration but their amendment would not necessarily involve the calling of a special conference, since they could be taken up in the United Nations at any time in accordance with the procedure for amendment contained in Article 108.

(7) The experience gained in the last ten years tended to show that there did not seem to be any immediate urgency about effecting any extensive modifications in the

- 26/ For texts of relevant statements, see G A (X), Plen.,
542nd mtg.: USSR, paras. 74-76, 107, 108 and 116;
543rd mtg.: Denmark, paras. 29-31 and 37-41; India, paras. 139, 140 and 159;
Sweden, paras. 92-96, 103-106;
544th mtg.: Poland, paras. 62, 81 and 82; Syria, paras. 110-112, 115-118;
Yugoslavia, paras. 13-26;
545th mtg.: Czechoslovakia, paras. 97-99, 103-105; Norway, paras. 137, 138, 141
and 142; Ukrainian SSR, paras. 147-149, 161-163;
546th mtg.: Byelorussian SSR, para. 66; Iceland, paras. 4, 5, 7-9 and 16.

27/ The view was expressed that operative paragraph 1 of the six-Power draft resolution, which provided that a general conference to review the Charter "shall" be held at an appropriate time, went further than the provisions of Article 109 and that the qualifying phrase "at an appropriate time" did not provide sufficient safety to soften the mandatory effect of the word "shall". It was suggested that the word "shall" be changed to "may". (G A (X), Plen., 543rd mtg., paras. 160-174).

Charter. The changes in the Charter should not be viewed in the abstract or be prompted by a desire for perfectionism and nothing else, but should be considered keeping existing international realities in mind. In the existing circumstances, the time was not ripe to decide on the holding of a review conference. 28/

(8) The calling of a review conference would be justified only if the foundations on which the Charter rested were to cease to be valid in the mutual relations between nations. The development of international events, however, showed that the reverse was true.

(9) The requirement of today was not the revision of the Charter but the more consistent implementation and development of the principles of the Charter.

17. Differing from the two positions described in paragraphs 15 and 16 above, one representative considered 29/ that the General Assembly could take a decision at its tenth session with regard to the calling of a review conference and at the same time fix the date and place of the conference. In his opinion, the six-Power draft resolution which would ask the Assembly to take a decision in principle on calling a review conference and to leave the question of fixing the date and place for holding the conference to an ad hoc body was inadmissible for the following reasons. In the first place, the mechanism for delegating the function to an ad hoc body and requiring it to refer back to the twelfth session of the Assembly concerning the appropriate time and place for the holding of the review conference was not provided in Article 109 (3). When a particular mode of legal procedure had been provided for in Article 109 (3) it was not possible to graft an additional procedure on to that provision; to do so would be to read more into the language of the Charter than was warranted. The General Assembly would not be required at its twelfth session to consider the report of such an ad hoc body under Article 109 (3), because the privilege of taking a decision by a simple majority of the Members of the Assembly and by the affirmative votes of any seven members of the Security Council was granted only to the tenth session of the Assembly and could not be transmitted to the twelfth session. Moreover, it would serve no purpose to decide that a conference should be called without deciding when it should be called. Paragraph 3 of Article 109 was more or less an addendum to paragraph 1, since it began "If such a conference has not been held..." Surely such a conference referred to the conference provided for in paragraph 1, and paragraph 1 referred to time as well as place; that language, therefore, was not repeated in paragraph 3. Furthermore, the General Assembly at its eleventh or twelfth session would be in a position, by direct appeal to Article 109 (1), itself to take the decision to call a review conference.

It was further pointed out that the working of the present Charter would not be obstructed while the review conference was doing its work. There was no reason why the General Assembly, in its wisdom, should not support such a project, at least in the expectation that some formula for a new Charter would be found, and in the knowledge that in any case the United Nations would not be any the worse off.

28/ While opposing the holding of a review conference, the representative of Syria stated that he had no objection to establishing a committee to study the desirability of the review of the Charter (G A (X), Plen., 544th mtg., para. 119). Accordingly, he introduced amendments to the six-Power draft resolution which would delete any reference to a decision that a review conference should be held or to the assertion that it was desirable to review the Charter (see paragraph 9 above).

29/ G A (X), Plen., 545th mtg., paras. 22-70.

(ii) The scope of review and its relation to revision or amendment of the Charter

18. When discussing the desirability of calling a review conference, a number of representatives drew 30/ attention to the distinction between review and revision (or amendment) of the Charter. It was pointed out that the purpose of Article 109 was different from that of Article 108 in the sense that a review conference to be called under Article 109 would review the whole Charter. A review of the Charter did not mean a narrow consideration of specific verbal changes. Neither was it a task of re-writing the Charter or changing the basic character of the Organization. Such a review could usefully determine whether or not improvements in the United Nations machinery were desirable or advisable. There might be dangers in any attempt at revision, but no such dangers would exist in a review to determine whether there were any changes that could usefully be made in the Charter or in the procedures that had developed under it. It was further pointed out that it was the letter, not the spirit, of the Charter that must be reviewed, and that Charter review did not necessarily imply any basic amendment of the Charter. Attention was drawn to the discrepancy between the English and French texts of Article 109 of the Charter. The English text spoke of "reviewing the present Charter" while the French text spoke of "une révision de la présente Charte". The same discrepancy was also apparent in the English and French texts of the six-Power draft resolution.

19. Some representatives, while pointing out the difference between review and revision, considered 31/ that in any event the agenda for a review conference must be very broad; it must deal with the Charter in its entirety. The opinion was also expressed that some problems such as the question of domestic jurisdiction could be taken up in the United Nations at any time, in accordance with the procedures for amendment contained in Article 108 of the Charter. To hold a review conference for the purpose of amending single articles of the Charter was considered unnecessary.

20. Some representatives who were opposed to the holding of a review conference in principle also considered that the necessary improvements could be brought about by the application of Article 108. It was further pointed out 32/ that one should not be dogmatic on the question whether a review procedure was preferable to the alternative course which the Charter provided in Article 108, namely the amendment procedure. Attempts should be made to ascertain, in the light of previous experience and existing circumstances, which of the two approaches to the problem would appear to be more realistic and therefore the one more likely to prove satisfactory or practicable. On the whole the amendment procedure would hold out a greater prospect of improving the machinery of the United Nations without endangering its foundations. Another view was that to review the Charter and to revise the Charter were two different stages. In making necessary changes of the procedures of the Charter, greater use should be made of Article 108.

30/ For texts of relevant statements, see G A (X), Plen.,
542nd mtg.: Australia, para. 142; United Kingdom, para. 19;
United States, paras. 52, 53 and 65;
543rd mtg.: Canada, para. 57; India, paras. 148, 151 and 154; Iraq, para. 18;
Netherlands, para. 50; Thailand, para. 87;
544th mtg.: Yugoslavia, paras. 14, 15, 21 and 23;
545th mtg.: Argentina, para. 126; Pakistan, paras. 32, 33, 43 and 45;
546th mtg.: Costa Rica, para. 27.

31/ G A (X), Plen., 543rd mtg., para. 97.

32/ G A (X), Plen., 544th mtg., para. 14.

21. The following subjects had been mentioned ^{33/} as requiring reconsideration with a view to their improvement while opinions differed on whether Article 108 or Article 109 should be invoked for such improvements: The question of veto in the Security Council, especially in relation to the admission of new Members; the question of domestic jurisdiction; the possibility of increasing the membership of the Security Council, the Economic and Social Council and the International Court of Justice; regional arrangements; the possibility of defining the term "self-determination"; the abolition of certain obsolete terminology such as "enemy state"; the possibility of dividing the Economic and Social Council into an Economic and Technical Assistance Council and a Social and Human Rights Council; the advisability of establishing a United Nations Tribunal to mete out justice to individuals; the question of compulsory jurisdiction of the International Court of Justice in all matters.

(iii) The question of the voting procedure to be applied if the General Assembly should decide at its tenth session to call a general conference at a later session

22. During the discussion of the six-Power draft resolution, different views were expressed ^{34/} regarding the majority required at the twelfth session of the General Assembly for voting on the time and place of the review conference which the Assembly had at its tenth session decided in principle to hold. ^{35/}

23. One view was that at the twelfth session of the General Assembly, it would certainly be said that the application at that stage of the facilitating provision in Article 109 (3) - the decision by a simple majority - would be a circumvention of Article 109 (1), in order to evade the two-thirds majority otherwise required. Even if the opinion should prevail at the twelfth session of the General Assembly that only a simple majority would be needed for the decision to fix the date and place of the conference, it would always be left in doubt whether that Assembly really had a right to do so. It should be emphasized that, according to Article 109 (1), a two-thirds majority was required for fixing the date and place of a review conference, and that the task of the twelfth session of the Assembly would be precisely to fix the date and place of a conference, which, according to the six-Power draft resolution, would have already been decided upon in principle by the Assembly at its tenth session. In this connexion, doubt was also expressed whether it would be permissible under the Charter to postpone an essential part of the decision to be taken under paragraph 3 of Article 109 to a subsequent session of the Assembly when the procedure provided for in paragraph 1 of the same Article should normally apply.

^{33/} Tenth Anniversary of the signing of the United Nations Charter, United Nations Publication, Sales No.: 1955.I.26, pp. 70, 71, 95, 181, 198 and 229; G A (X), Plen., 542nd to 547th mtgs.

^{34/} For texts of relevant statements, see G A (X), Plen., 543rd mtg., Denmark, para. 31; Sweden, paras. 107 and 108; 544th mtg., Yugoslavia, para. 22.

^{35/} When the draft resolution by which the Security Council would express its concurrence in the decision of the General Assembly concerning Charter review was considered by the Council (see paragraph 5 above), one representative stated that his delegation had no objection to voting in favour of the draft resolution. He went on to say: "Our vote for the resolution, however, will be without prejudice to Article 109 of the Charter. It may indeed be wondered whether a further decision of the Security Council will not be required under Article 109 when the question arises of actually convening the conference following the recommendations to be made by the Committee appointed by the General Assembly." (S C, 10th yr., 707th mtg., para. 170.)

24. Another view, instead of expressing doubts, asserted that the privilege of voting by simple majority had been conferred by Article 109 (3) on the tenth session of the Assembly and could not be transferred to the twelfth session. Consequently, when the report of the committee proposed in the six-Power draft resolution came before the twelfth session, only paragraph 1 of Article 109 would apply, and the adoption of the report with regard to time and place of the review conference would have to have the backing of a two-thirds majority and not merely of a simple majority of the Members of the General Assembly. 36/

25. A further view was 37/ that if a decision was taken at the tenth session that the review conference should be held, the vote required, so far as the Assembly was concerned, was a simple majority. If no such decision was taken at the tenth session, the holding of a review conference would have to be governed by the provisions of Article 109 (1); that is, a two-thirds vote of the General Assembly would be required instead of a majority vote. The Syrian amendments to the six-Power draft resolution (see paragraph 9 above) which would have the Assembly decide to appoint a committee to consider, in consultation with the Secretary-General, "the desirability of the review of the Charter" were opposed on the ground that such a decision would not be a decision that the conference be held and, in the event of the committee's recommending to the General Assembly at a subsequent session that the conference be held, a two-thirds vote of the General Assembly would be required.

b. PROPOSALS TO AMEND A SPECIFIC ARTICLE

26. As stated in paragraph 21 above, both at the commemorative meetings held in San Francisco in June 1955 and at the tenth session of the General Assembly, certain Articles (e.g., Articles 2 (7), 23 and 27) had been suggested for possible review at the general conference provided for in Article 109. The six-Power draft resolution proposed no more than to take a decision in principle to call a review conference and to establish a committee to study the question of fixing the time and place of the conference. No formal proposal to amend any specific Article of the Charter has been submitted under the provisions of Article 109.

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*

27. The six-Power draft resolution which was adopted with minor modifications by the General Assembly as resolution 992 (X) entrusted the study of the question of time, place, organization and procedures of a review conference to a preparatory committee which was to report to the Assembly at its twelfth session. In this connexion, one

36/ G A (X), Plen., 545th mtg., Norway, para. 143; Pakistan, paras. 25-27. This argument was advanced by one representative in support of his view that the General Assembly should, at its tenth session, not only decide in principle to call a review conference, but also fix the time and place for the conference. On the other hand, the same argument was used by another representative who maintained that it would serve no purpose to take a decision in principle to call a review conference at the tenth session of the Assembly and that the whole question could be postponed.

37/ G A (X), Plen., 547th mtg., paras. 71-73.

representative held 38/ the view that the General Assembly could not delegate such functions to an ad hoc body and that the establishment of such a body was not warranted by Article 109 (3).

2. Competence to undertake preparatory work

28. The General Assembly, by resolution 992 (X), requested the Secretary-General "to complete the publication programme undertaken pursuant to General Assembly resolution 796 (VIII) of 23 November 1956 and to continue, prior to the twelfth session of the General Assembly, to prepare and circulate supplements, as appropriate, to the Repertory of Practice of United Nations Organs". 39/ A number of representatives spoke 40/ of the Repertory as a useful preparatory work which should be put on a continuing basis and kept up to date. Some of these representatives considered that the Repertory was of great value in itself, even if it were not decided to initiate a review of the Charter. Other representatives spoke in general terms against the calling of a review conference without raising in particular the question of the competence of the General Assembly to undertake such preparatory work.

C. Ratifications required for the entry into force of revisions of the Charter

29. During the consideration of the question of calling a review conference, one representative raised 41/ certain questions relating to the entry into force of amendments. Referring to paragraph 2 of Article 109 he asked: (1) What organ of the United Nations would be competent to say that the ratifications were in accordance with the respective constitutional processes of the States ratifying amendments to the Charter? (2) How was the two-thirds of the Members ratifying the amendment to be

38/ G A (X), Plen., 545th mtg., paras. 25 and 30. Another representative spoke against the establishment of the preparatory committee on the ground that the General Assembly at its twelfth or any other session subsequent to the tenth session, which might decide to call a review conference would hardly need guidance from a special committee with regard to such comparatively trivial matters as time, place, organization and procedure (ibid., 545th mtg., para. 143). Three representatives stated that their delegations would not take part in the work of the committee established to make recommendations on the calling of a review conference (ibid., 547th mtg., paras. 90, 125 and 127; S C 10th yr., 707th mtg., para. 160).

39/ The Repertory, in five volumes, was published by the Secretary-General in 1955. In his preface to volume I of the Repertory, the Secretary-General stated that the Repertory served a twofold purpose: "first, to facilitate its consideration at the tenth annual session of the proposal to hold a General Conference of the Members of the United Nations for the purpose of reviewing the Charter, as provided for in Article 109 (3) of the Charter; and second, to contribute to the knowledge and understanding of the Charter as it has been applied in practice by the organs of the United Nations."

40/ For texts of relevant statements, see G A (X), Plen., 542nd mtg., United States, para. 51; 543rd mtg., Canada, para. 55; India, para. 165; Netherlands, para. 45; 545th mtg., Mexico, para. 76; New Zealand, paras. 3-5; 546th mtg., Egypt, para. 43; Israel, para. 92; Venezuela, para. 86.

41/ G A (X), Plen., 542nd mtg., paras. 122-129.

computed, especially if in the interval between the recommendation by the conference and the entry into force of the amendment, the United Nations should admit new Members?
(3) How was the question of the lapse of an amendment to be resolved?

Referring to Article 108 which provides that amendments to the Charter "shall come into force for all Members of the United Nations" he asked: Would the non-ratifying Members have the right to withdraw from the United Nations? ^{42/} If the right to withdraw were recognized, it would be necessary to specify a period, to run from the date of entry into force of the amendment or from the date of its lapse owing to the insufficient number of ratifications, within which a Member might exercise the right.

There was no discussion and no decision was taken on any of these questions.

^{42/} In this connexion the commentary on withdrawal adopted by the United Nations Conference on International Organization was cited (see footnote No. 22 above).

Chapter XIX

RATIFICATION AND SIGNATURE

