

# 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. The structure of the present study follows that of previous Repertory studies of Articles 108 and 109. The major headings established in the first study have been maintained.

#### I. GENERAL SURVEY

2. During the period under review, the amendment procedure provided in Article 108 was invoked when the General Assembly included in the agenda of its eleventh session the following items: 1/

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 decisions of the Council;

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;

Question of amending the Statute of the International Court of Justice, in accordance with the procedure laid down in Article 108 of the Charter of the United Nations and Article 69 of the Statute of the Court with respect to an increase in the number of judges of the International Court of Justice.

3. The General Assembly discussed 2/ these agenda items but decided 3/ to postpone their consideration until its twelfth session.

4. The three items were placed on the agenda of the twelfth session of the General Assembly and were allocated to the Special Political Committee. On the recommendation of the Special Political Committee, the General Assembly adopted 4/ resolution 1190 (XII) by 65 votes to none; in this it decided to give further consideration to the three agenda items at its thirteenth session and requested the Secretary-General to include the items in the provisional agenda of the thirteenth session of the General Assembly.

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1/ Agenda items 56, 57 and 58.

2/ G A (XI), Plen., vol. I, 612th mtg.; vol. II, 620th-622nd, 624th, 628th, 629th and 661st mtgs.

3/ G A (XI), Plen., vol. II, 661st mtg., para. 108.

4/ G A (XII), Plen., 728th mtg., para. 1.

5. During the thirteenth session of the General Assembly, the three items included in the agenda in pursuance of resolution 1190 (XII) were referred to the Special Political Committee. 5/ The General Assembly also decided at its 752nd meeting to refer to the Special Political Committee chapter I, section VI, of the report of the Economic and Social Council, 6/ entitled "Question of increasing the membership of the Council", and at the same time referred it to the Second Committee, in order that the latter might consider it before it was discussed by the Special Political Committee.

6. The Second Committee discussed the question from the 549th to the 552nd meetings. It did so on the understanding that the responsibility for taking a decision in the matter lay with the Special Political Committee. After discussion, the Chairman of the Second Committee, at the Committee's request, sent a letter 7/ to the President of the General Assembly, requesting him to forward its contents to the Chairman of the Special Political Committee. The letter summarized the opinions which various representatives in the Second Committee had expressed on the subject.

7. The Special Political Committee considered these agenda items simultaneously at its 114th, 115th and 116th meetings and recommended 8/ the adoption of two draft resolutions to the General Assembly. The draft resolutions were adopted 9/ by the General Assembly without change; the first, by 65 votes to none, with 9 abstentions, and the second, by 52 votes to 9, with 17 abstentions. They became General Assembly resolutions 1299 (XIII) and 1300 (XIII), reading as follows:

Resolution 1299 (XIII)

"The General Assembly,

"Realizing that the membership of the United Nations has increased considerably in recent years,

"Taking note of the feeling expressed by many Members that there should be an increase in the membership of some of the organs of the United Nations,

"Noting that such increases would necessitate amendments to the Charter of the United Nations,

"Realizing that such amendments to the Charter require a larger area of agreement than prevails at present,

"1. Decides to postpone until its fourteenth session the consideration of items 21, 22 and 23 of the agenda of the thirteenth session;

"2. Decides that these items should be placed on the provisional agenda of its fourteenth session."

5/ G A (XIII), Annexes, a.i. 21, 22 and 23, A/4022, paras. 1-3.

6/ G A (XIII), Suppl. No. 3 (A/3848), paras. 26-28.

7/ G A (XIII), Annexes, a.i. 12, p. 5, A/SPC/30.

8/ G A (XIII), Annexes, a.i. 21, 22 and 23, A/4022, paras. 8 and 9.

9/ G A (XIII), Plen., 783rd mtg., paras. 1 and 2.

## Resolution 1300 (XIII)

"The General Assembly,

"Noting Economic and Social Council resolution 690 B (XXVI) of 31 July 1958,

"1. Recognizes that, in view of the increase in the membership of the United Nations since its establishment, an increase in the membership of the Economic and Social Council is desirable in order to achieve a wider representation and thus to make the Council a more effective organ for carrying out the obligations placed upon it under Chapters IX and X of the Charter of the United Nations, and that such an increase should be so designed as to preserve the expeditious conduct of the work of the Council;

"2. Decides to include in the provisional agenda of its fourteenth session the item entitled "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."

8. As stated in a previous Repertory study, 10/ the General Assembly, in its resolution 992 (X), had decided to hold a general conference to review the Charter at an appropriate time and to appoint a committee to consider the question of fixing a time and place for such a conference, and its organization and procedures. Further resolutions adopted by the General Assembly at its eleventh 11/ and twelfth sessions 12/ were relevant to the question of convening a Charter review conference.

9. At its eleventh session, the General Assembly considered an item entitled "Draft Convention concerning a System of Consultation" proposed by Argentina. 13/ On the recommendation of the Special Political Committee, 14/ to which the item was referred for discussion, the General Assembly adopted resolution 1014 (XI), which read as follows:

"The General Assembly,

"Noting the proposal of the Government of Argentina for a draft convention to establish a system of consultation as part of the general United Nations system,

"Believing that this proposal should be considered in the context of existing United Nations procedures and mechanisms for peaceful settlement, and of the relevant Charter provisions,

"Recalling the decision taken by the General Assembly at its tenth session to hold a General Conference to review the Charter at an appropriate time,

"1. Decides to refer to Member States the proposal of the Government of Argentina and the records of the consideration of this proposal at the eleventh session of the General Assembly, to be considered during the review of peaceful settlement procedures and mechanisms at such a General Conference;

10/ Supplement No. 1, vol. II, under Articles 108 and 109, para. 4.

11/ G A resolution 1014 (XI).

12/ G A resolution 1136 (XII).

13/ G A (XI), Annexes, vol. II, a.i. 64, A/3201.

14/ Ibid., p. 3, A/3484, para. 6.

"2. Recommends to the Governments of Member States that they transmit their views with respect to the proposal of the Government of Argentina to the Secretary-General prior to the convening of the General Conference."

10. The Committee on arrangements for a conference for the purpose of reviewing the Charter, appointed by resolution 992 (X) of the General Assembly, held two meetings 15/ on 3 June 1957. On that day, the Committee approved, 16/ by 67 votes to none, with 9 abstentions, the following draft resolution sponsored by Brazil, Canada, Egypt, El Salvador, India, Indonesia, Ireland, Iran, Liberia and Panama:

"The Committee on arrangements for a conference for the purpose of reviewing the Charter, appointed in accordance with General Assembly resolution 992 (X) of 21 November 1955 to consider, in consultation with the Secretary-General, the question of fixing a time and place for a general conference to be held at an appropriate time to review the Charter, and the organization and procedures for such a Conference,

"Recalling the provisions of General Assembly resolution 992 (X),

"1. Decides to recommend to the General Assembly at its twelfth session that the Committee be kept in being and be requested to report, with recommendations, to the General Assembly not later than its fourteenth session;

"2. Requests the Secretary-General to continue the work envisaged in paragraph 4 of General Assembly resolution 992 (X)."

11. At the twelfth session of the General Assembly, the item "Report of the Committee on arrangements for a conference for the purpose of reviewing the Charter" was included in the agenda. At its 705th meeting, on 14 October 1957, a twelve-Power draft resolution sponsored by Afghanistan, Argentina, Austria, Brazil, Canada, Egypt, El Salvador, India, Indonesia, Ireland, Liberia and Panama, was adopted 17/ by the General Assembly, without discussion, by 54 votes to none, with 9 abstentions, as resolution 1136 (XII). This read:

"The General Assembly,

"Recalling the provisions of its resolution 992 (X) of 21 November 1955,

"Having considered the report of the Committee established by the above resolution,

"1. Decides to keep in being the Committee on arrangements for a conference for the purpose of reviewing the Charter, established by General Assembly resolution 992 (X) and composed of all Members of the United Nations, and to request the Committee to report with recommendations, to the General Assembly not later than at its fourteenth session;

"2. Requests the Secretary-General to continue the work envisaged in paragraph 4 of General Assembly resolution 992 (X)."

15/ A/AC.81/SR.1; A/AC.81/SR.2 (both mimeographed).

16/ G A (XII), Annexes, a.i. 22, A/3593, para. 3, A/AC.81/L.1.

17/ G A (XII), Plen., 705th mtg., para. 7.

## II. ANALYTICAL SUMMARY OF PRACTICE

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

#### 1. *Proposals submitted under Article 108*

12. As stated in paragraphs 2 to 5 above, three items relating to the amendment of the Charter - to increase the membership of the Security Council, the Economic and Social Council and the International Court of Justice, and to increase the number of votes required for decisions in the Security Council - in accordance with the procedure laid down in Article 108 of the Charter, were included in the agenda of the eleventh, twelfth and thirteenth sessions of the General Assembly.

13. At the eleventh session of the General Assembly, a twenty-Power draft resolution 18/ was submitted by the representatives of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, Spain, Uruguay and Venezuela, which read as follows:

"The General Assembly,

"Having regard to the increase in the membership of the United Nations and to the functions of the Security Council,

"Considering that, in order to give due regard to the contribution of Members of the United Nations which are not permanent members of the Security Council to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution, it is desirable to increase the number of non-permanent members of the Security Council,

"1. Adopts the following amendments to the Charter and submits them for ratification to the Members of the United Nations:

"(a) In Article 23, paragraph 1, of the Charter, the word 'eleven' in the first sentence shall be replaced by the word 'thirteen' and the word 'six' in the third sentence by the word 'eight'.

"(b) In Article 23 the following new paragraph 3 shall be inserted, and the former paragraph 3 shall be renumbered 4:

'3. Of the two additional non-permanent members first elected after the entry into force of the amendment increasing the membership of the Security Council from eleven to thirteen, one shall be replaced at the first, and one at the second, regular election thereafter and their terms shall expire at the same times as those of the other non-permanent members replaced at those elections.';

"(c) In Article 27, paragraph 2, of the Charter the word 'seven' shall be replaced by the word 'eight'.

"(d) In Article 27, paragraph 3, the word 'seven' shall be replaced by the word 'eight'.

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18/ G A (XI), Annexes, vol. II, a.i. 56, 57 and 58, p. 4, A/3446.

"(e) These amendments shall be inoperative unless, within three years from the date of their adoption by the General Assembly, they are ratified as required by the Charter for entry into force.

"2. Urges all Members of the United Nations to ratify the above amendments, in accordance with their respective constitutional processes, with the least possible delay;

"3. Decides to fill the seats of the two non-permanent members added to the Council by the above amendments as soon as possible after the amendments have entered into force and, if necessary, to hold a special session of the General Assembly for that purpose."

14. The sponsors of the twenty-Power draft resolution later proposed 19/ to amend their draft resolution by adding the following paragraph at the end of the operative part:

"4. Recommends, pursuant to Article 23 of the Charter, that when the foregoing amendments enter into force Member States should take the following distribution into account in the election of non-permanent members of the Security Council: Latin America, two seats; Asia and Africa, two seats; the Commonwealth of Nations, one seat; Western and Southern Europe, two seats; Eastern Europe, one seat."

15. A sixteen-Power draft resolution was submitted 20/ by the representatives of Afghanistan, Burma, Ceylon, Egypt, Ethiopia, India, Indonesia, Iraq, Jordan, Lebanon, Morocco, Nepal, Saudi Arabia, Sudan, Syria and Yemen, as follows:

"The General Assembly,

"Having regard to the increase in the membership of the United Nations and the developments in the status and role of Member States since the adoption of the Charter, and having regard to the nature of the functions of the Security Council,

"Considering that, in order to give due regard to the increasing contribution of the generality of Member States of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and to equitable geographical distribution, it is desirable to increase the number of members of the Security Council,

"Considering further that an adequate and appropriate increase in the number of members of the Security Council requires an amendment of the United Nations Charter and the resolving of diverse important views, which can be best effected after the necessary studies and discussions have been made,

"Decides to appoint a committee of fifteen members to study, in the light of the deliberations of the General Assembly, this matter in all its aspects and to report to the General Assembly."

16. Neither of the draft resolutions was put to a vote. 21/

19/ G A (XI), Annexes, vol. II, a.i. 56, 57 and 58, p. 5, A/L.217/Rev.1.

20/ G A (XI), Annexes, a.i. 56, 57 and 58, p. 4, A/3468/Rev.1.

21/ For discussion of these two draft resolutions, see this Supplement, under Article 23, section II A.

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

### a. PROPOSALS FOR A REVIEW OF THE CHARTER

17. During the debates 22/ on 3 June 1957 23/ in the Committee on arrangements for a conference for the purpose of reviewing the Charter, a majority of representatives held the view that, in conformity with General Assembly resolution 992 (X), such a reviewing conference should take place, but that fixing a time and place for it should be deferred, for not more than two years, because the "appropriate time" and "auspicious international circumstances" mentioned in the resolution had not yet materialized. Some representatives stated that if in the meantime it should be found necessary to introduce certain amendments to the Charter, the procedure set forth in Article 108, which did not require calling a general conference, could be followed. A number of representatives expressed the opinion that the Charter as it stood provided fully for the maintenance of peace and the promotion of the political, economic and social advancement of all peoples; it was not a revision of the Charter which was needed, but a sincere desire on the part of all Member States to fulfil the obligations assumed by them in accordance with the Charter.

18. In the course of the discussions 24/ on proposals to amend the Charter or to convene a general conference to review it, several representatives, including the representative of a permanent member of the Security Council, expressed the view that the General Assembly should not discuss the questions of amending or reviewing the Charter in the absence of representatives of the People's Republic of China, particularly since any change in the Charter could not come into force until it had been ratified by all permanent members of the Security Council, including China. In reply, it was stated that the question of the representation of China was irrelevant to matters relating to the amendment of the Charter.

### b. PROPOSALS TO AMEND A SPECIFIC ARTICLE

19. During the period covered by this Supplement, no specific Articles were formally suggested for possible review at the general conference provided for in Article 109. In the course of the discussion in the Committee on arrangements for a conference for the purpose of reviewing the Charter, one representative mentioned 25/ the better representation of Asian and African countries on various United Nations organs as a consideration related to the revision of the Charter, and recalled, in connexion with this, that a number of Latin American countries had suggested at the eleventh session of the General Assembly that the Charter should be amended to provide for an increase in the membership of the Security Council, the Economic and Social Council and the International Court of Justice.

## 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*

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22/ A/AC.81/SR.1; A/AC.81/SR.2 (both mimeographed).

23/ See paragraph 10 above.

24/ A/AC.81/SR.1; A/AC.81/SR.2 (both mimeographed); G A (XII), Plen., 705th mtg., paras. 3-6; G A (XII), Spec. Pol. Com., 75th mtg., paras. 1-6. G A (XIII), Plen., 783rd mtg., paras. 1-21; G A (XIII), Spec. Pol. Com., 114th, 115th and 116th mtgs.; G A (XIII), Suppl. No. 3 (A/3848), paras. 26-28.

25/ A/AC.81/SR.1 (mimeographed), p. 6.

## 2. Competence to undertake preparatory work

20. The General Assembly, in resolution 1136 (XII), requested the Secretary-General "to continue the work envisaged in paragraph 4 of General Assembly resolution 992 (X)".

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

21. During the debates on the question of amending the Charter or convening a general conference to review it, many representatives expressed the view <sup>26/</sup> that, under the provisions of Articles 108 and 109, any amendment or alteration of the Charter could come into force only upon ratification by all the permanent members of the Security Council.

22. In the course of the discussion in the Committee on arrangements for a conference for the purpose of reviewing the Charter, one representative raised <sup>27/</sup> the question whether the texts adopted during such a conference should be considered as alterations covered by paragraph 2 of Article 109, or as a new treaty whose entry into force would be governed by its own provisions.

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<sup>26/</sup> See, for example, G A (XIII), Plen., 783rd mtg., para. 14; A/AC.81/SR.1 (mimeographed), p. 12; A/AC.81/SR.2 (mimeographed), p. 5.

<sup>27/</sup> A/AC.81/SR.2 (mimeographed), p. 5.



## **Chapter XIX**

### **RATIFICATION AND SIGNATURE**

