

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

(prior to 12 June 1968)

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.

(after 12 June 1968)*

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.

* The amendment to Article 109 merely replaced the word "seven" in the first sentence of paragraph 1 by the word "nine". With respect to the retention of the word "seven" in paragraph 3 of this Article, see paragraphs 45-50 below.

INTRODUCTORY NOTE

1. The organization of this study follows that of the previous studies of Articles 108 and 109 contained in the *Repertory* and its *Supplement No. 2*.

2. During the period under review amendments to Articles 23, 27, 61 and 109 of the Charter were adopted by the General Assembly. While the procedure for amending the Charter and the constitutional issues pertaining to Articles 108 and 109 are dealt with in this study, the proceedings relating to the amendment of the texts of Articles 23, 27 and 61 are presented in the studies of those Articles in the present *Supplement*. The question of the deposit and notifications of the rati-

fications of the amendments is treated under Articles 110 and 111, and the question of whether amendments to the Charter should be registered is treated under Article 102.

3. Although the date in which the amended text of Article 109 came into force is beyond the period under review, reference to that date is included in this study¹ since the entry into force brings to a conclusion the action on that amendment.

¹ See para. 18 below.

I. GENERAL SURVEY

4. In accordance with General Assembly resolutions 1299 (XIII) and 1300 (XIII) of 10 December 1958,² the following items were included in the provisional agenda of the fourteenth session of the Assembly:³

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.

The General Assembly decided to place those three items on the agenda of its fifteenth session and to refer them to the Special Political Committee for consideration and report.⁴

5. After consideration of these items, the Special Political Committee recommended to the General Assembly the adoption of two draft resolutions.⁵ Under draft resolution I the General Assembly would set up a committee consisting of representatives of five States to study the possibility of arriving at an agreement which would facilitate the amendment of the Charter so as to increase the membership of the Security Council and the Economic and Social Council. Under draft resolution II the General Assembly would

decide to include the three items in the provisional agenda of its fifteenth session.

6. At its 843rd meeting on 25 November 1959, the General Assembly adopted an amendment to draft resolution I submitted by El Salvador and Japan and recommended by the Special Political Committee, by which the Assembly would set up the study committee at its fifteenth session if no progress was made at that session towards the achievement of an increase in the membership of the two Councils.⁶ As amended, the draft resolution was adopted as resolution 1404 (XIV) entitled "Question of the increase in the membership of the Security Council and of the Economic and Social Council". At the same meeting the General Assembly decided not to vote on draft resolution II submitted by the Special Political Committee.

7. At its fifteenth session, the General Assembly decided to include the item entitled "Question of an increase in the membership of the Security Council and of the Economic and Social Council" in its agenda and allocated it to the Special Political Committee for consideration and report.⁷ Three draft resolutions were submitted in the Committee: the first dealt with the amendment of Article 61;⁸ the second concerned the amendment of Articles 23 and 27;⁹ and the third would set up a committee to find a satisfactory solution of the question.¹⁰ After discussion, the first two draft resolutions were rejected by a roll call vote¹¹ and the third was withdrawn by its sponsors.¹² The Special Political Committee therefore reported that it had no recommendation to make to the Assembly.¹³

⁶ See paras. 21 and 25 below.

⁷ G A (XV), Annexes, a.i. 23, A/4626, para. 1.

⁸ *Ibid.*, A/SPC/L.51 and Add.1-5 and Corr. 1.

⁹ *Ibid.*, A/SPC/L.52 and Add.1-3.

¹⁰ *Ibid.*, A/SPC/L.53/Rev.1.

¹¹ By 41 to 38, with 17 abstentions; and 42 to 36, with 17 abstentions.

¹² G A (XV), Annexes, a.i. 23, A/4626, paras. 12-14.

¹³ *Ibid.*, para. 15.

² See *Repertory Supplement No. 2*, vol. III, under Articles 108 and 109, para. 7.

³ Agenda items 19, 20 and 21.

⁴ G A (XIV), Annexes, a.i. 19, 20 and 21, A/4256, para. 1.

⁵ *Ibid.*, para. 14.

8. At its 960th plenary meeting on 20 December 1960, the General Assembly decided to keep the item on the agenda of its fifteenth session and merely took note of the report of the Special Political Committee.¹⁴

9. On the recommendation of the Economic Commission for Africa, the Economic and Social Council, at its 1290th meeting on 22 July 1963, adopted a resolution (974 B (XXXVI)) proposing to the General Assembly that "all measures be taken to ensure adequate representation of Africa in the Council on the basis of equitable geographical distribution". In another resolution (974 C(XXXVI)) adopted on the same day, the Council urged the General Assembly to take the necessary action at its eighteenth session to bring about an appropriate increase in the membership of the Council.

10. The foregoing resolutions were subsequently included by the Economic and Social Council in section VI of chapter XIII of its report to the General Assembly.¹⁵

11. During the eighteenth session, at its 1210th plenary meeting on 20 September 1963, the General Assembly, acting on the recommendation of its General Committee, decided to include the following items in the agenda of that session and allocated them to the Special Political Committee for consideration and report.¹⁶

Question of the composition of the General Committee of the General Assembly;¹⁷

Question of equitable representation on the Security Council and the Economic and Social Council;¹⁸

Report of the Economic and Social Council (chapter XIII (section VI)).

12. At the same session, the General Assembly had also before it an item entitled "Report of the Committee on arrangements for a conference for the purpose of reviewing the Charter". In that report, the Committee included the following conclusions and recommendations:¹⁹

"(c) It was also generally agreed that the composition of the Security Council and the Economic and Social Council should reflect better the increase in the number of United Nations Members, in particular those from Africa and Asia, although there were differences of opinion regarding the methods of achieving this agreed goal.

"(d) The Committee wishes therefore to draw the attention of the General Assembly to this problem and expresses the hope that the General Assembly will have the opportunity of dealing with it as an urgent and important matter at its eighteenth session.

"(e) The General Assembly may set up a Special Committee to negotiate as to the generally acceptable

means of achieving an increased membership of the two Councils under the Charter with a view to ensuring adequate and equitable representation of all Member States, in particular those from Africa and Asia. This Special Committee could be requested to report to the Assembly not later than at its nineteenth session."

13. On the recommendation of the Special Political Committee, the General Assembly adopted, at its 1285th plenary meeting on 17 December 1963, resolutions 1991 A and B (XVIII). In those resolutions, the Assembly, recognizing the need to enlarge the membership of the two Councils and bearing in mind the conclusions and recommendations of the Committee on arrangements for a conference for the purpose of reviewing the Charter, decided to adopt, in accordance with Article 108 of the Charter, amendments to Articles 23, 27 and 61, so as to increase the number of members of the Security Council from eleven to fifteen and that of the Economic and Social Council from eighteen to twenty-seven, and called upon all Member States to ratify those amendments, in accordance with their respective constitutional processes, by 1 September 1965.

14. The amendments adopted by the General Assembly in the above resolutions mentioned came into force on 31 August 1965. The Protocol of their entry into force, which reproduced the amended text of Articles 23, 27 and 61, included also the following paragraphs:²⁰

"Whereas Article 108 of the Charter of the United Nations provides as follows:

'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.'

"Whereas the General Assembly of the United Nations adopted on 17 December 1963, in accordance with the said Article 108, the amendments to Articles 23, 27 and 61 of the Charter of the United Nations as set forth in resolutions 1991 A and B (XVIII),

"Whereas the requirements of the said Article 108 with respect to the ratification of the above-mentioned amendments were fulfilled by 31 August 1965, as shown in the Annex to this Protocol, and the said amendments entered into force on that day for all Members of the United Nations,"

15. On 16 September 1965, the Secretary-General requested the inclusion in the agenda of the twentieth session of the General Assembly of an item entitled "Amendment to Article 109 of the Charter of the United Nations".²¹ In this request he drew attention to a discrepancy between the amended text of Articles 23 and 27 and the then existing text of Article 109, "with

¹⁴ G A (XV), Plen., 960th mtg., paras. 19 and 20. There was no further discussion of the item.

¹⁵ G A (XVIII), Suppl. No. 3, paras. 619-621.

¹⁶ Agenda items 81, 82 and 12.

¹⁷ See this Supplement under Article 21, paras. 12, 20, 21 and 44.

¹⁸ Proposed by forty-four Member States from Africa and Asia as an additional item. See G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5520. See also para. 34 below.

¹⁹ G A (XVIII), Annexes, a.i. 21, A/5487, para. 9.

²⁰ United Nations, *Treaty Series*, vol. 557, No. 8132, pp. 143-171.

²¹ G A (XX), Annexes, a.i. 104, A/5974.

reference to the required majority on the Security Council".²²

16. At its 1336th plenary meeting on 24 September 1965, the General Assembly decided²³ to include the item in its agenda and allocated it to the Sixth Committee.

17. At its 1404th plenary meeting on 20 December 1965, the General Assembly adopted²⁴ the draft resolution submitted by the Sixth Committee as resolution 2101 (XX). In this resolution the Assembly decided to adopt, in accordance with Article 108 of the Charter, an amendment to paragraph 1 of Article 109 to replace the word "seven" therein by the word "nine" and called upon all Member States to ratify the amendment in accordance with their respective constitutional processes at the earliest possible date.

18. The amended text of Article 109 came into force on 12 June 1968 when it received the required ratifications.

19. The Committee on arrangements for a Conference for the purpose of reviewing the Charter, which was established by General Assembly resolution 992 (X) "to consider in consultation with the Secretary-General the question of fixing a time and place for the Conference, and its organization and procedures",²⁵ met in 1959, 1961, 1962, 1963 and 1965 respectively.

²² *Ibid.*, para. 3.

²³ G A (XX), Plen., 1336th mtg., paras. 113 and 117-121.

²⁴ G A (XX), Plen. 1404th mtg., para. 123.

²⁵ See *Repertory Supplement No. 1*, vol. II, under Articles 108 and 109, para. 4; *Supplement No. 2*, vol. III, under Articles 108 and 109, para. 8.

At each of those sessions the Committee considered that the then existing international circumstances were not propitious for the holding of a General Conference under Article 109. On the recommendation of the Committee,²⁶ the General Assembly adopted resolutions 1381 (XIV), 1670 (XVI), 1756 (XVII), 1993 (XVIII) and 2114 (XX), according to which the Committee was kept in being and invited to report with recommendations to the General Assembly at one or two-year intervals. In those resolutions, the General Assembly further requested that the preparatory work envisaged in paragraph 4 of Assembly resolution 992 (X) should be continued.

20. It may be noted that the question of the relationship of Article 108 and 109 to Article 13 was discussed at the eighteenth session of the General Assembly but no decision thereon was taken.²⁷

²⁶ G A (XIV), Annexes, a.i. 22, A/4199, para. 10; G A (XVI), Annexes, a.i. 18, A/4877, para. 10; G A (XVII), Annexes, a.i. 21, A/5193, para. 8; G A (XVIII), Annexes, a.i. 21, A/5487, para. 9 (b); G A (XX), Annexes, a.i. 26, A/5987, para. 5.

²⁷ During the discussion at the eighteenth session of the General Assembly in the Sixth Committee of the item "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", preparation of a declaration adding new elements to the Charter was opposed on the ground that for this purpose the procedure of article 13 could not be followed. It was contended that gaps in the Charter would have to be filled by the amendment procedure set forth in Article 108, or in case of principles constituting the very legal foundation of the legal order of the United Nations through a review of the Charter under Article 109. Other representatives pointed out that the General Assembly on several occasions had interpreted the fundamental provisions of the Charter, thus enriching the Charter not by revising or amending it, but simply by interpreting it (G A (XVIII), Annexes, a.i. 71, A/5761, paras. 43-47).

II. ANALYTICAL SUMMARY OF PRACTICE

A. Procedure for the amendment or review of the Charter

1. PROPOSALS SUBMITTED UNDER ARTICLE 108

At the fourteenth session of the General Assembly

21. Two draft resolutions on the question of increasing the membership of certain principal organs of the United Nations were submitted in the Special Political Committee. In the first draft resolution,²⁸ which was submitted and later revised by El Salvador, the General Assembly would, *inter alia*, note "that an increase in the membership of those organs [the Security Council and the Economic and Social Council] would necessitate the amendment of certain provisions of the Charter of the United Nations", and decide to set up a committee to study the possibility of arriving at an agreement to facilitate the amendment of the Charter. In the second draft resolution,²⁹ sponsored by Afghanistan, Burma, Cambodia, Ceylon, Ghana, Jordan,

Indonesia, Iraq, Lebanon, Libya, Pakistan and Saudi Arabia, the General Assembly would recognize that there was a strong volume of opinion among Member States in favour of an enlargement of the Security Council and the Economic and Social Council and that this could not be achieved "except by amendment of the Charter of the United Nations". In both draft resolutions it was also proposed that the items relating to the increase of membership³⁰ be placed on the provisional agenda of the fifteenth session of the General Assembly.

22. During the discussion it was pointed out³¹ that the proposed amendment should be examined by the General Assembly individually, in terms of Article 108 of the Charter, rather than as a part of a complete review of the Charter under Article 109. As to the provision of Article 108 requiring ratification of any amendment of the Charter by "all the permanent

³⁰ See para. 4 above.

³¹ G A (XIV), Spec. Pol. Com., 129th mtg.: Japan, para. 15. See also *ibid.*, Italy, para. 11; 130th mtg.: United Kingdom, para. 9; 132nd mtg.: Mexico, para. 25; 136th mtg.: El Salvador, para. 29.

²⁸ G A (XIV), Annexes, a.i. 19, 20 and 21, A/4256, para. 8 (A/SPC/L32/Rev.2).

²⁹ *Ibid.*, A/4256, para. 6 (A/SPC/L.33 and Add.1).

members of the Security Council", some representatives considered that no amendment was possible without the agreement of the People's Republic of China.³² A second group of representatives did not consider the question of representation of China relevant to the problem of amending the Charter.³³ The third group of States, while supporting the enlargement, referred to the practical difficulty inasmuch as one permanent member of the Security Council would not agree to any such amendment; they therefore preferred postponing any action until such time as the permanent members of the Security Council were able to harmonize their views on the question.³⁴

23. There was also some discussion concerning the nature of the amendments in question. It was argued that, at least in so far as the enlargement of the Economic and Social Council was concerned, the proposal should be regarded as a technical matter and not a political question, and that the amendments in question would affect only the functional machinery of the Organization without altering its structure.³⁵ In reply to this argument, it was contended that Article 108 which spoke simply of "amendments", without any qualification such as "procedural" or "substantive", clearly applied to all changes without distinction of any kind and that there was no room for any other interpretation.³⁶

24. After discussion, the Special Political Committee adopted the two drafts as draft resolutions I and II respectively and recommended them for adoption by the General Assembly.³⁷

25. At its 843rd plenary meeting on 25 November 1959, the General Assembly adopted³⁸ draft resolution I recommended by the Special Political Committee, as amended by El Salvador and Japan,³⁹ as resolution 1404 (XIV); and decided⁴⁰ not to vote on draft resolution II. Resolution 1404 (XIV) read as follows:

"The General Assembly,

"Realizing that many delegations have expressed the opinion that, in view of the considerable increase in the membership of the United Nations in recent years, there should be an increase in the membership of the Security Council and the Economic and Social Council which would make it possible to improve the present distribution of seats in those organs,

" . . .

"Noting that an increase in the membership of those organs would necessitate the amendment of

certain provisions of the Charter of the United Nations,

"Expressing the hope that the strong desire manifested by a large number of Member States will help to bring about such amendment at the earliest opportunity,

"Considering that, in order to solve this problem, further efforts must be made with a view to obtaining the agreement of the greatest possible number of Member States,

"1. Decides that items relating to an increase in the membership of the Security Council and of the Economic and Social Council shall be placed on the provisional agenda of its fifteenth session;

"2. Declares that, if progress is not made during the fifteenth session of the General Assembly towards the achievement of an increase in the membership of the Security Council and of the Economic and Social Council, the Assembly should set up at that session a committee to study the possibilities of arriving at an agreement which will facilitate the amendment of the Charter to achieve the increase in membership referred to above."

At the fifteenth session of the General Assembly

26. Three draft resolutions were submitted to the Special Political Committee under the item "Question of an increase in the membership of the Security Council and of the Economic and Social Council."⁴¹

27. In the first draft resolution⁴² it was proposed to increase the membership of the Economic and Social Council by amending Article 61 of the Charter. In the second draft resolution⁴³ it was proposed to increase the membership of the Security Council by amending Articles 23 and 27 of the Charter. Both draft resolutions further contained the following provisions: (1) that the Assembly would adopt the amendments and submit them "for ratification to the Members of the United Nations"; (2) that the 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"; (3) that all Members of the United Nations would be urged to ratify the amendments "in accordance with their respective constitutional processes, with the least possible delay" and (4) that the Assembly should fill the new seats created by the amendments "as soon as possible after

⁴¹ See para. 7 above.

³² G A (XIV), Spec. Pol. Com., 129th mtg.: Czechoslovakia, para. 21; USSR, paras. 5 and 6; 131st mtg.: Romania, paras. 14 and 27.

³³ *Ibid.*, 131st mtg.: China, para. 35; 136th mtg.: El Salvador, para. 33.

³⁴ *Ibid.*, 130th mtg.: India, para. 3; 131st mtg.: Ceylon, paras. 33 and 34; 137th mtg.: Nepal, paras. 15-18.

³⁵ *Ibid.*, 128th mtg.: Greece, para. 13; Netherlands, para. 9; United States, para. 24; 130th mtg.: United Kingdom, paras. 9 and 11.

³⁶ *Ibid.*, 130th mtg.: Bulgaria, para. 18; USSR, para. 35.

³⁷ G A (XIV), Annexes, a.i. 19, 20, 21, A/4256, para. 14.

³⁸ G A (XIV), Plen., 843rd mtg., para. 95.

³⁹ G A (XIV), Annexes, a.i. 19, 20 and 21, A/L.269, see also para. 6 above.

⁴⁰ G A (XIV), Plen., 843rd mtg., para. 116.

⁴² Submitted to Argentina, Australia, Austria, Bolivia, Brazil, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia Congo (Brazzaville), Costa Rica, Cyprus, Dahomey, Ecuador, El Salvador, Federation of Malaya, Gabon, Greece, Guatemala, Haiti, Honduras, Italy, Ivory Coast, Japan, Laos, Madagascar, Netherlands, New Zealand, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Senegal, Somalia, Thailand, Togo, Tunisia, Upper Volta, Uruguay and Venezuela. (See G A (XV), Annexes, a.i. 23, A/SPC/L.51 and Add.1 to 5 and Corr.1).

⁴³ *Ibid.*, A/SPC/L. 52 and Add.1 to 3. Submitted by Argentina, Bolivia, Brazil, Canada, Cameroon, Central African Republic, Chad, Chile, Colombia, Congo (Brazzaville), Costa Rica, Cyprus, Dahomey, Ecuador, Federation of Malaya, Gabon, Greece, Guatemala, Haiti, Honduras, Italy, Ivory Coast, Japan, Laos, Madagascar, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Senegal, Thailand, Togo, Upper Volta, Uruguay and Venezuela.

the amendments have entered into force and, if necessary, hold a special session of the General Assembly for that purpose”.

28. The third draft resolution⁴⁴ read in part as follows:

“*The General Assembly,*

“ . . .

“*Noting* the overwhelming desire of all Member States for taking effective and appropriate steps for the attainment of this objective,

“*Recognizing further* that under the Charter any amendments to it require ratification by two-thirds of the Members of the United Nations including all the permanent members of the Security Council,

“1. *Recommends* that a committee composed of the United States of America, the United Kingdom, France, the Union of Soviet Socialist Republics, . . . be set up immediately for the purpose of finding a satisfactory solution to this pressing problem taking into account the views expressed in this connexion in the General Assembly;

“2. *Expresses* the fervent hope that the said committee will find a solution and also recommend the proper means of implementing it;

“3. *Requests* the committee to report to the sixteenth session of the General Assembly.”

29. One of the amendments submitted to the first two draft resolutions would reduce from three to two years the time-limit within which the proposed Charter amendments should be ratified by the Member States.⁴⁵ It was explained⁴⁶ that the original three-year provision meant that the new members would be deprived of their right to participate effectively in the major organs of the United Nations for a further three years even if the necessary amendments to the Charter were ratified by two thirds of the Members of the United Nations, including the five permanent members of the Security Council. The proposed reduction to a two-year period sought to remedy this defect.

30. During the discussion in the Special Political Committee, arguments⁴⁷ similar to those advanced at the fourteenth session of the General Assembly were again put forward by various delegations. In regard to the requirement of ratifications of amendments by all permanent members of the Security Council, a number of representatives further observed⁴⁸ that Article 108 envisaged two steps in the process of amendment: first, the amendment must be adopted by a two-thirds majority of the members of the General Assembly, and it must then be ratified by two thirds of the Members of the Organization, including all

⁴⁴ *Ibid.*, A/SPC/L.53/Rev.1. Submitted by Burma, Ceylon, Ghana, India and Iraq.

⁴⁵ *Ibid.*, A/4626, paras. 9 and 10 (A/SPC/54 and Add.1; A/SPC/55 and Add.1).

⁴⁶ G A (XV), Spec. Pol. Com., 214th mtg., para. 3. See also para. 27 above.

⁴⁷ See paras. 22 and 23 above.

⁴⁸ G A (XV), Spec. Pol. Com., 186th mtg., para. 3; 188th mtg., para. 19; 190th mtg., para. 17; 191st mtg., para. 27; 192nd mtg., para. 10; 193rd mtg., para. 28; 194th mtg., paras. 10 and 27-29; 195th mtg., paras. 15 and 25; 196th mtg., para. 7; 197th mtg., paras. 12 and 21.

the permanent members of the Security Council. In the first stage unanimity of the permanent members of the Security Council was not required. They felt that the adoption of the amendments by the General Assembly would at least be one step forward and might bring a certain moral pressure to bear so that the necessary ratifications could be obtained at the second stage. Some of these representatives considered that once the first step had been taken and pending the completion of the second stage, the problem might be eased by the application of the provision of Article 69 of the Charter allowing the Economic and Social Council to invite any Member to participate without vote in its deliberations on any matter of particular concern to that Member. Two representatives felt that an attempt should be made to win unanimous support for the draft resolutions to increase the membership of the two Councils, on the understanding that those delegations which were in a certain difficulty at that time would not be committed to ratify the amendments.

31. Some representatives maintained⁴⁹ that Article 108 of the Charter could not be split up, for it formed one indivisible whole. The procedural device proposed during the discussion — settlement of the question of the amendment of the Charter by means of a resolution adopted by the mechanical majority — would set a dangerous precedent. One of these representatives stated that his delegation was not prepared to discuss the question of an increase in the membership of the two councils on any basis because a question of principle was involved.

32. Some other representatives who had sponsored the third draft resolution for the establishment of a committee to seek a solution of the problem considered⁵⁰ that it was a mistake to think that a vote could alter the decision of the great Powers, and that the two steps — adoption by the General Assembly and ratification by Member States including all permanent members of the Security Council — being part of the same process, the first step would serve no practical purpose when the second step was not feasible. Any resolution aiming at amending the Charter without observing the fundamental principle of unanimity among the great Powers might result in a weakening of the Charter and thus would endanger the future of the United Nations itself.

33. After discussion, the first two draft resolutions, as amended, were rejected⁵¹ by the Special Political Committee and the third draft resolution was withdrawn⁵² by its sponsors.

At the eighteenth session of the General Assembly

34. In a letter dated 16 September 1963⁵³ the permanent representatives of forty-four Member States⁵⁴

⁴⁹ *Ibid.*, 190th mtg., para. 7; 195th mtg., para. 10; 197th mtg., paras. 13 and 14.

⁵⁰ *Ibid.*, 191st mtg., paras. 5 and 7; 198th mtg., para. 10; 215th mtg., para. 11; 217th mtg., paras. 16 and 18.

⁵¹ *Ibid.*, 217th mtg., para. 65 and 218th mtg., para. 36.

⁵² *Ibid.*, 219th mtg., para. 8.

⁵³ G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5520.

⁵⁴ Afghanistan, Algeria, Burma, Cambodia, Cameroon, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Ivory

requested the inclusion in the agenda of the eighteenth session of the General Assembly of an item entitled "Question of equitable representation on the Security Council and the Economic and Social Council". In an explanatory memorandum accompanying the request, it was stated that a review of the composition of the two Councils had become necessary in order to reflect the increase in the membership of the United Nations.

35. The General Assembly had also before it the report of the Committee on arrangements for a Conference for the purpose of reviewing the Charter, which contained certain conclusions and recommendations,⁵⁵ and the report of the Economic and Social Council containing resolutions 974 B and C (XXXVI) in which the Council urged the General Assembly to take action to enlarge the membership of the Council in order that it could "remain the effective and representative organ envisaged in Chapters IX and X of the Charter."⁵⁶

36. The General Assembly decided to include both the proposed item and the relevant section of the Economic and Social Council's report in its agenda and referred them to the Special Political Committee for consideration.⁵⁷

37. On 10 and 11 December 1963, two draft resolutions were submitted⁵⁸ by twenty-one Latin American States in the Special Political Committee, according to which the General Assembly would decide to adopt amendments to Articles 23, 27 and 61 of the Charter by increasing the members of the Security Council from eleven to thirteen and the members of the Economic and Social Council from eighteen to twenty-four. The two draft resolutions also contained the following identical provisions:

"The General Assembly,

". . .

"*Bearing in mind* the conclusions and recommendations of the Committee on Arrangements for a Conference for the Purpose of Reviewing the Charter, contained in document A/5487 and its annex,

"1. *Decides* to adopt, in accordance with Article 108, the following amendments to the Charter and submit them for ratification by the Members of the United Nations:

"2. *Further decides* that these amendments shall be inoperative unless, within two years from the date of their adoption by the General Assembly, they are ratified as required by Article 108 of the Charter;

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

38. On 13 December, two draft resolutions dealing also with the enlargement of the two Councils were submitted⁵⁹ by thirty-seven African and Asian States but were later withdrawn; their provisions were then introduced by fifty-six African and Asian States as amendments⁶⁰ to the twenty-one Power draft resolutions. These amendments, in so far as they related to Charter amendments procedure, would replace operative paragraphs 2 and 3 of the original drafts by the following paragraph:

"2. *Calls upon* all Members of the United Nations to ratify the above amendments in accordance with their respective constitutional processes by 1 September 1965;".

39. The fifty-six Power amendments were accepted⁶¹ by the co-sponsors of the twenty-one Power draft resolutions. As amended, the two draft resolutions were recommended by the Special Political Committee and adopted by the General Assembly on 17 December 1963 as resolutions 1991 A and B (XVIII). They read as follows:

A

"The General Assembly,

"*Considering* that the present composition of the Security Council is inequitable and unbalanced,

"*Recognizing* that the increase in the membership of the United Nations makes it necessary to enlarge the membership of the Security Council, thus providing for a more adequate geographical representation of non-permanent members and making it a more effective organ for carrying out its functions under the Charter of the United Nations,

"*Bearing in mind* the conclusions and recommendations of the Committee on arrangements for a conference for the purpose of reviewing the Charter, (A/5497),

"1. *Decides* to adopt, in accordance with Article 108 of the Charter of the United Nations, the following amendments to the Charter and to submit them for ratification by the States Members of the United Nations:

(a) In Article 23, paragraph 1, the word 'eleven' in the first sentence shall be replaced by the word 'fifteen', and the word 'six' in the third sentence by the word 'ten';

⁵⁹ By Algeria, Burundi, Cameroon, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey, Ethiopia, Gabon, Ghana, Guinea, India, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Togo, Tunisia, Uganda, United Arab Republic and Upper Volta (see G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5675, paras. 13-15; A/SPC/L. 109 and A/SPC/L. 110 (mimeographed)).

⁶⁰ The amendments were co-sponsored by the thirty-seven States, together with the following nineteen States: Afghanistan, Burma, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Malaysia, Philippines, Syria, Saudi Arabia, Thailand, Yemen, Yugoslavia and Zanzibar (see G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5675, para. 18).

⁶¹ *Ibid.*, A/5675, para. 19.

Coast, Japan, Kuwait, Laos, Liberia, Libya, Malaysia, Mali, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Philippines, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Thailand, Tunisia, Uganda, United Arab Republic, Upper Volta and Yemen.

⁵⁵ See para 12 above and paras. 55 and 66 below.

⁵⁶ See paras. 9 and 10 above.

⁵⁷ See para. 11 above.

⁵⁸ By Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela (see G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5675, paras. 8-10; A/SPC/L.104/Rev.1 and A/SPC/105 (mimeographed)).

(b) In Article 23, paragraph 2, the second sentence shall then be reworded as follows:

'In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year';

(c) In Article 27, paragraph 2, the word 'seven' shall be replaced by the word 'nine';

(d) In Article 27, paragraph 3, the word 'seven' shall be replaced by the word 'nine';

"2. *Calls upon* all Member States to ratify the above amendments, in accordance with their respective constitutional processes, by 1 September 1965;

"3. *Further decides* that the ten non-permanent members of the Security Council shall be elected according to the following pattern:

- (a) Five from African and Asian States;
- (b) One from Eastern European States;
- (c) Two from Latin American States;
- (d) Two from Western European and other States."

B

"The General Assembly,

"Recognizing that the increase in the membership of the United Nations makes it necessary to enlarge the membership of the Economic and Social Council, with a view to providing for a more adequate geographical representation therein, and making it a more effective organ for carrying out its functions under Chapters IX and X of the Charter of the United Nations,

"Recalling Economic and Social Council resolutions 974 B and C (XXXVI) of 22 July 1963,

"Bearing in mind the conclusions and recommendations of the Committee on arrangements for a conference for the purpose of reviewing the Charter, (A/5847, para. 9),

"1. *Decides* to adopt, in accordance with Article 108 of the Charter of the United Nations, the following amendment to the Charter and to submit it for ratification by the States Members of the United Nations:

'Article 61

'1. The Economic and Social Council shall consist of twenty-seven Members of the United Nations elected by the General Assembly.

'2. Subject to the provisions of paragraph 3, nine members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

'3. At the first election after the increase in the membership of the Economic and Social Council from eighteen to twenty-seven members, in addition to the members elected in place of the six members whose term of office expires at the end of that year, nine additional members shall be elected. Of these nine additional members, the term of office of three members so elected shall expire at the end of one year, and of three other members at the end of two years, in accordance with arrangements made by the General Assembly.

'4. Each member of the Economic and Social Council shall have one representative.';

"2. *Calls upon* all Member States to ratify the above amendment, in accordance with their respective constitutional processes, by 1 September 1965;

"3. *Further decides* that, without prejudice to the present distribution of seats in the Economic and Social Council, the nine additional members shall be elected according to the following pattern:

- (a) Seven from African and Asian States;
- (b) One from Latin American States;
- (c) One from Western European and other States."

40. During the discussion, one representative noted⁶² that, in view of the difference in meaning between amendment and review, it was evident that the procedure to be followed in the present case was that laid down in Article 108. Another representative stated⁶³ that the existence of Article 108 was evidence that the authors of the Charter had recognized that it might eventually have to be changed.

41. Some representatives again maintained that, while they favoured the enlargement of the two Councils, the lawful rights of the People's Republic of China in the United Nations must be recognised before the Charter could be amended in keeping with its letter and spirit. Inasmuch as the Government of the People's Republic of China was the only legal representative of China and a permanent member of the Security Council, any amendment of the Charter without its approval would mean violation of the Charter.⁶⁴ One of those representatives further stated that his Government had consulted the Government of the People's Republic of China; the latter had made it plain that it did not approve of any attempt to settle the question of equitable representation by increasing the membership of the organs in question and that it favoured instead an equitable distribution of the existing seats in those organs.⁶⁵

42. Some other representatives contented that the restitution to the People's Republic of China of its legitimate rights and the just representation claimed by the countries of Africa and Asia were two different questions and that no political consideration should enter into the question of equitable geographical distribution.⁶⁶ In this connexion, some representatives considered that, while the question of representation of China had been settled by the General Assembly and was not a question before the Special Political Committee, no revision of the Charter was valid unless it was endorsed and subsequently ratified by the five permanent members of the Security Council and no

⁶² G A (XVIII), Spec. Pol. Com., 420th mtg., para. 2.

⁶³ *Ibid.*, 422nd mtg., para. 18.

⁶⁴ *Ibid.*, 423rd mtg., para. 44; 427th mtg., para. 30; 428th mtg., paras. 13, 28, 43, 45 and 63; 429th mtg., paras. 1, 6, 53 and 54; G A (XVIII) Plen., 1285th mtg., paras. 95, 101 and 146-151.

⁶⁵ G A (XVIII), Spec. Pol. Com., 423rd mtg., para. 44; 427th mtg., para. 30. G A (XVIII), Plen., 1285th mtg., paras. 96-100. See also G A (XVIII), Annexes, a.i. 81, 82 and 12, A/5686, paras. 14-37.

⁶⁶ G A (XVIII), Spec. Pol. Com., 420th mtg., para. 22; 421st mtg., para. 25; 423rd mtg., para. 47; 428th mtg., paras. 33 and 60. G A (XVIII), Plen., 1285th mtg., para. 169.

one could ignore the position taken by a Power which held the key to the enlargement of the Councils.⁶⁷

43. Several representatives observed that the interpretation of the intentions of the People's Republic of China in regard to the question of equitable representation in the two Councils, as given by one representative in the Committee, did not correspond to reality. They urged support for the just demands of the countries of Asia and Africa.⁶⁸

44. Some representatives again considered that the adoption of the draft resolutions would represent a significant progress towards a solution of the problem under discussion and that the question of ratification could be left to a later stage.⁶⁹

At the twentieth session of the General Assembly

45. In the explanatory memorandum⁷⁰ accompanying his request for the inclusion of the item on amendment to Article 109 of the Charter the Secretary-General expressed his belief that as a consequence of the amending of the text of Articles 23 and 27, the word "nine" should be substituted for the word "seven" in paragraph 1 of Article 109. As regards paragraph 3 of Article 109, he recalled that its provisions had already been complied with. The proposal to call a conference for the purpose of reviewing the Charter had been placed on the agenda of the tenth regular session of the General Assembly and resolution 992 (X) was adopted on November 1955, a decision in which the Security Council concurred on 16 December 1955. He suggested that paragraph 3 of Article 109 could therefore be considered as obsolete and might be deleted. The alternative solution to replace, by an amendment to the Charter, the word "seven" by the word "nine" would serve no practical purpose and its technical and legal correctness could be questioned.

46. The request of the Secretary-General was also accompanied by a draft resolution which he attached to his memorandum, reading as follows⁷¹

"The General Assembly,

"Considering that the Charter of the United Nations has been amended to provide that the membership of the Security Council, as provided in Article 23, should be increased from eleven to fifteen and that decisions of the Security Council should be taken, as provided in Article 27, by an affirmative vote of nine members instead of seven,

"Considering that these amendments make it necessary also to amend Article 109 of the Charter,

"1. Decides to adopt, in accordance with Article 108 of the Charter of the United Nations, the following

amendments to the Charter and to submit them for ratification by the States Members of the United Nations:

(a) In Article 109, paragraph 1, the word 'seven' in the first sentence shall be replaced by the word 'nine';

(b) Paragraph 3 of Article 109 shall be deleted;

"2. *Calls upon* all Member States to ratify the above amendments, in accordance with their respective constitutional processes, by . . ."

47. At the 897th meeting of the Sixth Committee, on 14 December 1965, the representative of the Secretary-General stated that, since the above draft resolution had been put forward, the Secretary-General had formed the conclusion that for historical reasons at least, paragraph 3 of Article 109 should not be deleted and, therefore, reference to such deletion should be omitted from the draft.⁷²

48. At the same meeting, the representative of Greece submitted the draft resolution in the name of his delegation, omitting reference to the deletion of paragraph 3 of Article 109, making the consequent editorial changes in operative paragraph 1 and rewording operative paragraph 2 as follows:⁷³

"2. *Calls upon* all Member States to ratify the above amendment, in accordance with their respective constitutional processes, at the earliest possible date."

49. The debate that took place on this item in the Sixth Committee was summarized as follows:⁷⁴

"11. There was general agreement in the Sixth Committee regarding the need to amend paragraph 1 of Article 109, to conform with the amended texts of Articles 23 and 27 of the Charter. Some observations were made regarding paragraph 3 of Article 109. The representatives who spoke on that point expressed the view that paragraph 3 of Article 109 had already been acted upon at the tenth session of the General Assembly and was, in that sense, no longer operative. One representative stated that, apart from historical reasons, a practical purpose might be served by retaining paragraph 3 in its present form, as the decision to convene a conference for the purpose of reviewing the Charter at the tenth session had not yet been fully implemented. To delete paragraph 3 might give rise to the question whether that decision remained in effect. Some delegations expressed the view that any conference convened to review the Charter in the future should be convened only under paragraph 1 of Article 109.

"12. The representative of the Secretary-General, in proposing, as explained in paragraph 9 above, that paragraph 3 be maintained for historical reasons, suggested that the Secretary-General should be authorized, in future editions of the text of the Charter, to include an editorial preface which would set out the history of the Charter amendments,

⁶⁷ G A (XVIII), Spec. Pol. Com., 420th mtg., para. 22; 428th mtg., para. 59.

⁶⁸ *Ibid.*, 423rd mtg., para. 47; 428th mtg., paras. 21 and 22; 429th mtg., paras. 13 and 14. See also G A (XVIII), Plen., 1285th mtg., paras. 124-134.

⁶⁹ G A (XVIII), Spec. Pol. Com., 428th mtg., paras. 38 and 40; 429th mtg., paras. 14 and 15; G A (XVIII), Plen., 1285th mtg., paras. 158 and 159.

⁷⁰ G A (XX), Annexes, a.i. 104, A/5974. See also para. 15 above.

⁷¹ *Ibid.*, A/5974, para. 5.

⁷² *Ibid.*, A/6810, para. 9.

⁷³ G A (XX), 6th Com., 897th mtg., paras. 5 and 7. See also G A (XX), Annexes, a. i. 104, A/6180, paras. 8 and 10 (A/C.6/L/584).

⁷⁴ *Ibid.*, A/6180, paras. 11-13.

and which would explain the apparent anomaly that would exist between paragraph 1 of Article 109, as amended, and paragraph 3 of Article 109, as unamended, by reference to the decision taken at the tenth session of the General Assembly under paragraph 3 of Article 109 (see paragraph 5 above). The Committee accepted that suggestion on the understanding that such a preface would be of a purely editorial nature and would not be presented in a manner implying that it formed a part of the text of the Charter.⁷⁵

"13. The representatives of Czechoslovakia and the Union of Soviet Socialist Republics referred to the ratification of any amendment which might be adopted to Article 109 of the Charter. They expressed the view that, under Article 108 of the Charter, it would be necessary, for the amendment to enter into force, for it to be ratified by two-thirds of the Members of the United Nations including the five permanent members of the Security Council, among whom they mentioned the People's Republic of China. The representative of China recalled, in that connexion, that amendments to Articles 23, 27 and 61 of the Charter had already, as recognized by all Members of the United Nations, entered into force, in accordance with Article 108, without any purported ratification by the régime mentioned by certain other delegations. He stated that Article 108 included, among the necessary requirements, ratification of any amendment by the five permanent members of the Security Council, among whom was included the Republic of China."

50. After discussion the draft resolution submitted by Greece was unanimously approved by the Sixth Committee and was subsequently unanimously adopted on 20 December 1965 by the General Assembly as resolution 2101 (XX) reading as follows:

"The General Assembly,

"Considering that the Charter of the United Nations has been amended to provide that the membership of the Security Council, as provided in Article 23, should be increased from eleven to fifteen and that decisions of the Security Council should be taken, as provided in Article 27, by an affirmative vote of nine members instead of seven,

"Considering that these amendments make it necessary also to amend Article 109 of the Charter,

"1. Decides to adopt, in accordance with Article 108 of the Charter of the United Nations, the following amendment to the Charter and to submit it for

⁷⁵ After the entry into force of the amendment to Article 109, the following paragraph, was included in the Introductory Note to the Charter of the United Nations:

"The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the 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 (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a 'vote of any seven members of the Security Council', the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council".

ratification by the States Members of the United Nations:

"In Article 109, paragraph 1, the word "seven" in the first sentence shall be replaced by the word "nine";

"2. *Calls upon* all Member States to ratify the above amendment, in accordance with their respective constitutional processes, at the earliest possible date."

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

a. *Proposals for a review of the Charter*

51. At its sessions held in 1959, 1961, 1962, 1963 and 1965 respectively, the Committee on arrangements for a conference for the purpose of reviewing the Charter did not consider the then existing international circumstances as propitious for a review of the Charter and therefore recommended that it be kept in being and be invited to report with recommendations to the General Assembly at certain intervals.⁷⁶

52. In the report on its work at the 1961 session, the Committee referred specifically to the need for a review of the Charter "as soon as international circumstances permit".⁷⁷

53. In 1963, the Committee held extensive discussions on what recommendations it should make to the Assembly. As a result its report contained a number of conclusions and recommendations, one of which stated that "While the merits of a General Review Conference after the Organization has functioned for more than seventeen years were recognized, there was general agreement that international circumstances at the present time were still not propitious for the holding of a General Conference for the purpose of reviewing the Charter under Article 109 of the Charter".⁷⁸

54. At each of the five sessions of the Committee, some representatives expressed the view that no review or modification of the provisions of the Charter was possible without the participation of the People's Republic of China.⁷⁹

b. *Proposals to amend a specific Article*

55. The Committee on arrangements for a conference for the purpose of reviewing the Charter was

⁷⁶ See G A (XIV), Annexes, a.i. 22, A/4199; G A (XVI), Annexes, a.i. 18, A/4877; G A (XVII), Annexes, a.i. 21, A/5193; G A (XVIII), Annexes, a.i. 21, A/5487; and G A (XX), Annexes, a.i. 26, A/5987. See also para. 19 above.

⁷⁷ This provision was contained in the preamble of the draft resolution recommended by the Committee and later adopted by the General Assembly as resolution 1670 (XVI), which read in part as follows:

"Conscious of the fact that present international circumstances are not auspicious for a review of the Charter of the United Nations.

"Recognizing at the same time the need for such a review as soon as international circumstances permit", (see G A (XVI), Annexes, a.i. 18, A/4877).

⁷⁸ G A (XVIII), annexes, a.i. 21, A/5487, para. 9(a).

⁷⁹ See, for example, G A (XIV), Annexes, a.i. 22, A/4199, para. 7; G A (XVI), Annexes, a.i. 18, A/4877, para. 8; G A (XVII), Annexes, a.i. 21, A/5193, para. 6; G A (XVIII), Annexes, a.i. 21, A/5487, para. 6.

established by General Assembly resolution 992 (X) "to consider, in consultation with the Secretary-General, the question of fixing a time and place for the Conference, and its organization and procedures". At its 1963 session these terms of reference of the Committee were the subject of considerable discussion in connexion with a proposal to establish a sub-committee and the work proposed for the Sub-Committee.

56. At the seventh meeting of the Committee on 1 July 1963, a draft resolution was submitted by Ghana and Guinea in which it was proposed to "create a sub-committee composed of nine members which shall establish contact with all the Member States of the United Nations and, in particular, the permanent members of the Security Council, with a view to reaching an agreement regarding what recommendation should be made to the General Assembly at its eighteenth session".⁸⁰ The introduction of this draft resolution by the representative of Ghana and the statements made by many other delegations made it clear that uppermost in their mind was the question of adequate representation of African and Asian States in the organs of the United Nations, especially in the Security Council and the Economic and Social Council.

57. Some representatives considered that certain provisions of the Charter could be adapted to the changed situation in accordance with the procedure laid down in Article 108, rather than through a review of the Charter under Article 109 for which the international climate was not yet favourable; they would therefore support the establishment of a sub-committee to facilitate the work of the Committee in that direction.⁸¹ One representative, citing the terms of reference set forth in General Assembly resolution 992 (X), emphasized that the Committee could not assume any other task than that which had been expressly entrusted to it.⁸² Another representative pointed out that no recommendation by the sub-committee could exceed the terms of reference of the Committee. He gave as an example that while it was within the competence of the sub-committee to recommend that the General Assembly should discuss the enlargement of the membership of one or more councils, it would not be appropriate for the Committee to make substantive recommendations for changes in the existing structure.⁸³

58. The draft resolution was later revised to require the proposed sub-committee to report to the Committee as soon as possible and in any case before the opening of the eighteenth session of the General Assembly while the mandate of the sub-committee remained unchanged.⁸⁴ It was adopted by the Committee by 62 votes to none, with 10 abstentions.

59. In its report to the Committee, the Sub-Committee stated (1) that it understood its task to be

one of serving as a channel for contacts between the Members of the organization, particularly the permanent members of the Security Council whose ratification was indispensable to bring into effect any modifications of the present text of the Charter, (2) that the purpose of the contacts was to survey the possibilities of assisting the Committee in the formulation of an agreed recommendation to the General Assembly, and (3) that being aware of the terms of reference of the Committee as expressed in Assembly resolution 992 (X) of 21 November 1965 and taking into account the mandate the Sub-Committee had received from the Committee, it felt that it could take cognizance of the views which Members held on the appropriateness of a revision of certain specific Charter provisions, the application of which gave rise to concern.⁸⁵

60. The Sub-Committee took various steps to discharge its responsibilities. Firstly, the Chairman of the Sub-Committee addressed a letter to all Member States inviting them to express their views concerning the recommendations that should be made to the General Assembly; secondly, the officers of the Sub-Committee were entrusted with the task of contacting the permanent members of the Security Council to ascertain their views on the matter; thirdly, members of the Sub-Committee were organized into negotiating teams to establish informal contacts for the same purpose with the various groupings which existed within the Organization. The results of the consultations were reported to the Sub-Committee, and replies to the Chairman's letter were received from fifty-one States by 15 August, a date set in view of the time-limit on the Sub-Committee's work.⁸⁶ Nine additional replies were received later.⁸⁷

61. The Sub-Committee arrived at the conclusion that, while there were certain important similarities between the views held by Member States regarding the question of Charter review and modifications, there was at that time still no unanimous agreement as to an effective way of solving the concrete problems to which most of the Member States attached special importance.⁸⁸

62. Among the views of Member States on the question of possible modifications of the Charter, as summarized by the Sub-Committee in its report, the following related to the question whether revision of specific Articles of the Charter, for which the amendment procedure under Article 108 was available, was within the competence of the Committee which was established under Article 109 with specific terms of reference.⁸⁹

"13. It was stated that the Committee might formally draw the attention of the General Assembly to Article 108 of the Charter as a means of bringing about the desired increase in the membership of the two Councils. While some members indicated

⁸⁰ A/AC.81/L.4 (mimeographed). See also footnote 75.

⁸¹ A/AC.81/SR.7. pp. 4, 6 and 7; SR. 8, pp. 4-7 (mimeographed).

⁸² A/AC.81/SR.8; Czechoslovakia p. 8 (mimeographed).

⁸³ A/AC.81/SR.9; United States p. 5 (mimeographed).

⁸⁴ The revised draft resolution was co-sponsored by Cyprus, Ghana, Guinea, Ivory Coast, Mauritania, Somalia, Tanganyika, and Uganda. See G A (XVIII), Annexes, a.i. 21, A/5487, para. 2 (A/AC.81/L.4/Rev. 1 and Add. 1) (mimeographed).

⁸⁵ *Ibid.*, A/5487, annex (Report of the Sub-Committee), paras. 7 and 8.

⁸⁶ *Ibid.*, A/5487, annex, paras. 3-4. For texts of the replies from Member States, see A/AC.81/SC.1/4 and Add. 1-8 (mimeographed).

⁸⁷ A/AC.81/SC.1/4/Add. 9-11 (mimeographed).

⁸⁸ G A (XVIII), Annexes, a.i. 21, A/5487, Annex, para. 9.

⁸⁹ *Ibid.*, paras. 14, 16 and 18.

possible numbers by which the size of the Councils might be increased and some expressed the view that the possibility of agreement on an enlargement of the Economic and Social Council might have some more favourable prospects at this time than that of the Security Council, reservations were expressed as to the competence of the Committee under its present terms of reference to make specific proposals to the General Assembly under Article 108.

“... ”

“15. A more specific suggestion was made by one member that at the beginning of its eighteenth session the General Assembly should set up a special committee to negotiate an appropriate formula for an increased membership of the two Councils under Article 108 of the Charter and to report back to the Assembly in the course of that session. Some other members suggested that the terms of reference of the present Committee be enlarged to enable it to submit to the General Assembly proposals under Article 108 of the Charter.

“... ”

“17. Several members stressed the importance of redistribution of the total number of seats in the two Councils after their membership has been expanded to ensure equitable geographical representation of all the Member States. Several members also stated that, if efforts to amend the Charter should prove to be unsuccessful in the near future, it would be necessary to find a negotiated formula likely to ensure that the existing seats would provide equitable representation of the new States of the African-Asian family. A number of members considered, however, that it was not within the competence of the Sub-Committee or its parent Committee to make any recommendation on the redistribution of existing seats in the Councils, in particular, as the present distribution was not regulated by the Charter. It was also pointed out that the question was a highly sensitive one which deserved separate consideration.”

63. Introducing the report of the Sub-Committee to the Committee, the Rapporteur said that the Sub-Committee had concerned itself more specifically with the desirability of expanding the membership of the Security Council and the Economic and Social Council because the Committee had considered that aspect of the problem of Charter review to be the most fruitful area for exploring the possibilities for negotiation. He further pointed out that the report made no attempt to formulate any recommendations or arrive at any conclusions.⁹⁰

64. During the consideration by the Committee of the Sub-Committee's report, one representative reiterated the position his Government had previously taken in the Committee and its Sub-Committee that a general conference should be convened to consider the amendment of Articles 108 and 109, without which there could be no amendment of Articles 23 and 61.⁹¹

65. The representative of the United Arab Republic proposed certain conclusions and recommendations for inclusion in the Committee's report. One of the recommendations read:⁹² “As far as its functions under Article 109 of the Charter are concerned, the Committee recommends that it be kept in being to discharge the functions entrusted to it by General Assembly resolution 992 (X)...”. One representative suggested the deletion of the first clause of this recommendation, as he maintained that the Committee had no other function except under Article 109. He also considered as “too recommendatory” another recommendation proposed by the United Arab Republic which referred to a general agreement that the composition of the two Councils should reflect better the increase in the number of United Nations Members, as, he explained, the suggestion by the United Arab Republic for another committee to take up action for expansion showed that the present Committee was not competent to move in this matter.⁹³

66. The suggested deletion of the clause referred to above was accepted by the representative of the United Arab Republic. The conclusions and recommendations proposed by the United Arab Republic, as further amended during their discussion, were adopted by the Committee for inclusion in its report to the General Assembly.⁹⁴

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

67. Except for the discussion⁹⁵ of the question whether the Committee on arrangements for a conference for the purpose of reviewing the Charter was competent to consider revision of specific provisions of the Charter, there was no discussion during the period covered by this *Supplement*, of the power of the General Assembly to prescribe the terms of reference of the conference.

2. COMPETENCE TO UNDERTAKE PREPARATORY WORK

68. As stated in paragraph 18 above, the General Assembly in its resolutions 1381 (XIV), 1670 (XVI), 1756 (XVII), 1993 (XVIII) and 2114 (XX) repeatedly requested that the work envisaged in paragraph 4 of General Assembly resolution 992 (X) should be continued. Pursuant to these requests, *Supplement No. 2* to the *Repertory of Practice of United Nations Organs*

⁹⁰ A/AC.81/SR.10, p. 2 (mimeographed).

⁹¹ *Ibid.*, p. 4 (mimeographed).

⁹² A/AC.81/SR.10, p. 7 (mimeographed).

⁹³ A/AC.81/SR.11, p. 7 (mimeographed).

⁹⁴ See para. 12 above.

⁹⁵ See paras. 57-66 above.

covering the period between 1 September 1956 and 31 August 1959 was published in 1964, and this *Supplement* brings the compilation up to 31 August 1966.

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

69. The question of ratifications required for entry into force of revisions of the Charter was subject to extensive discussion during the period under review, both in connexion with the amendment of specific Articles of the Charter according to the procedure

laid down in Article 108 and with the general review of the Charter under Article 109.⁹⁶

The results of the consultations were reported to the Sub-Committee, and replies to the Chairman's letter were received from fifty-one States by 15 August, a date set in view of the time-limit on the Sub-Committee's work.⁹⁷ Nine additional replies were received later.⁹⁸

⁹⁶ The relevant discussion has been summarized in section II A (paras. 22, 23, 30, 31, 40-44, 59 and 54 above).

⁹⁷ See para. 14 above.

⁹⁸ See para. 18 above.

Chapter XIX
RATIFICATION AND SIGNATURE

