

ARTICLES 108 AND 109

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ARTICLES 108 AND 109

TEXT OF ARTICLE 108

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

TEXT OF ARTICLE 109*

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

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

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

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

INTRODUCTORY NOTE

1. The present study has been written on the basis of the organization of material adopted in previous *Supplements* to the *Repertory*¹ for studies on these same articles. Their general structure has therefore been reproduced here even if in some cases no materials could be found during the period under review for insertion or analysis under the respective headings or sub-headings.

I. GENERAL SURVEY

2. During the period under review the General Assembly, by resolution 2847 (XXVI) of 20 December 1971 and acting upon a recommendation of the Economic and Social Council, decided to adopt an amendment to Article 61 of the Charter, enlarging the membership of the Council from 27 to 54 members. The amendment came into force on 24 September 1973, all the requirements of Article 108 having been met on that date.

3. Furthermore, the Assembly, after repeatedly postponing consideration of an item proposing the amendment of Article 22 of the Statute of the International Court of Justice, under Article 108 of the Charter, finally decided on 24 September 1976 to remove the item from its agenda.

4. With reference to Article 109, the Committee on arrangements for a conference for the purpose of reviewing

the Charter did not meet again during the period under review.

5. The General Assembly discussed at various sessions the item entitled: "Need to consider suggestions regarding the review of the Charter of the United Nations". By resolution 3349 (XXIX) of 17 December 1974 the Assembly decided to establish an "*Ad Hoc* Committee on the Charter of the United Nations", the name of which was changed the following year to "Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization". The name and mandate of the Committee, however, indicated a shift of approach from the strict concept of "suggestions regarding the review of the Charter" contained originally in the item which led to the Special Committee's creation.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Procedure for the amendment or review of the Charter

1. PROPOSALS SUBMITTED UNDER ARTICLE 108

a. Amendment to Article 61 of the Charter

6. At its fifty-first session held in July 1971 the Economic and Social Council, one of the principal organs of the United Nations according to Article 7 of the Charter, decided to recommend to the General Assembly the enlargement of its membership from 27 to 54 members. Although the question had already been discussed during its fiftieth session, held in January and April-May 1971, and several draft resolutions had been submitted in that connection,² it was only in July 1971 that a formal recommendation to the General Assembly was approved. The Council considered a draft resolution submitted by 16 countries³ and adopted it as resolution 1621 (LI) on 30 July 1971.⁴

7. By the terms of the relevant part of the resolution, after reaffirming that the Council's role as a principal organ of the United Nations should be enhanced and its methods of work improved to enable it to discharge more effectively the functions conferred upon it by the Charter in the formulation of general economic and social policies and after considering that the participation of a larger number of Member States would strengthen its representative character, its authority and its dynamism, the Council recommended to the General Assembly "to take, at its twenty-sixth session, all necessary steps to amend the Charter to ensure an early enlargement of the Council to 54 members, the additional 27 seats to be allocated in accordance with the present geographical distribution in the Council". It also decided "to enlarge in the interim period the membership of its sessional committee and the Committee on Natural Resources to 54 members as from 1 January 1972"; and requested "the General Assembly to elect, at its twenty-sixth session, in addition to the 9 new members of the Council, 27 States Members of the United Nations to serve on the sessional committees of the Council in accordance with the present geographical distribution of seats in the Council".⁵

8. The Second Committee of the General Assembly, to which the matter was allocated, considered the question at the Assembly's twenty-sixth session in 1971.⁶ A draft resolution designed to implement the Economic and Social Council's recommendation was sponsored by 41 countries and submitted to the Committee.⁷ The discussion in the Second Committee centred around the geographical distribution of the seats in the Council. In this connection several proposals, later rejected or withdrawn, were made either to defer the question to the twenty-seventh session of the General Assembly or to review the distribution of seats in 1972 or to apportion the seats in the enlarged Council in such a manner that the principle of equitable geographical distribution would be the main criterion.⁸ The Committee approved instead an Australian amendment to the draft resolution setting forth the geographical pattern of seats on the Council and its sessional committees.⁹ The Committee then went on to approve separately paragraph 2 of the draft resolution containing the amendment to Article 61 of the Charter,¹⁰ that amendment to be effected in accordance with the procedure contemplated in Article 108 of the Charter. In essence the amendment enlarged the Council's membership to 54 Members. It then approved the draft resolu-

tion as a whole,¹¹ which thus contained, in addition to the amendment to Article 61 of the Charter, a paragraph setting the pattern of the seat distribution.

9. By its resolution 2847 (XXVI) of 20 December 1971¹² the General Assembly adopted the recommendation of its Second Committee. After recognizing that an enlargement of the Economic and Social Council would provide broad representation of the United Nations membership as a whole and make the Council a more effective organ for carrying out its functions under Chapters IX and X of the Charter of the United Nations, the General Assembly:

" . . .

"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 fifty-four Members of the United Nations elected by the General Assembly.

"2. Subject to the provisions of paragraph 3, eighteen 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 twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine 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."

The Assembly also:¹³

" . . .

"Urges all Member States to ratify the above amendment in accordance with their respective constitutional processes as soon as possible and to deposit their instruments of ratification with the Secretary-General;"

" . . .

"Further decides that the members of the Economic and Social Council shall be elected according to the following pattern:

"(a) Fourteen members from African States;

"(b) Eleven members from Asian States;

"(c) Ten members from Latin American States;

"(d) Thirteen members from Western European and other States;

"(e) Six members from socialist States of Eastern Europe."

10. At its fifty-fourth session, in 1973, the Economic and Social Council reverted to the question of enlargement of its membership. On the basis of a draft resolution sponsored by 10 States and recommended by its Co-ordination Committee,¹⁴ the Council, on 18 May 1973, unanimously adopted resolution 1767 (LIV).¹⁵ Recalling General Assembly resolution 2847 (XXVI) quoted above

and noting that, in spite of the length of time that had elapsed and notwithstanding the fact that the amendment to Article 61 of the Charter would facilitate the implementation of procedural and structural reform measures for the rationalization of the Council's work, many Member States had not yet ratified the amendment, the Council urged "all Member States which have not yet done so, particularly the permanent members of the Security Council, to ratify the amendment at an early date, pursuant to paragraph 3 of General Assembly resolution 2847 (XXVI), with a view to making the amendment effective before the convening of the twenty-eighth session of the General Assembly, if possible;" and requested "the Secretary-General to inform the Economic and Social Council at its fifty-fifth session of the progress made in implementing paragraph 3 of General Assembly resolution 2847 (XXVI)."

11. On 31 July 1973 the Economic and Social Council was advised that 88 Member States had ratified the amendment to Article 61. The Council took note of that report.¹⁶

12. The amendment entered into force on 24 September 1973, the requirements of Article 108 of the Charter for ratification by two thirds of the Members of the United Nations,¹⁷ including the five permanent members of the Security Council, having been met on that date.

13. On 12 October 1973 the General Assembly approved without objection a proposal by its President on an arrangement concerning the entry into force of the amendment to Article 61. The Assembly thereby decided, in view of a resumed session of the Economic and Social Council scheduled to open on 15 October, to empower the additional 27 members of the sessional committees of the Council, whom the Council itself had elected pursuant to paragraph 4 of Assembly resolution 2847 (XXVI), to serve on the Council itself for a term of office commencing on 12 October 1973 and ending on 31 December 1973.¹⁸

14. Later in the session, on 23 November 1973, the General Assembly elected 36 members of the enlarged Council to take office on 1 January 1974, in accordance with rule 141 of the rules of procedure of the General Assembly¹⁹ and the transitional paragraph 3 of the amended Article 61 of the Charter.

b. *Amendment to Article 22 of the Statute of the International Court of Justice*

15. It will be recalled that, towards the end of the previous period under review, in *Supplement No. 4* of the *Repertory*, the International Court of Justice proposed the inclusion in the agenda of the twenty-fourth session of the General Assembly of an item entitled "Amendment to Article 22 of the Statute of the International Court of Justice (Seat of the Court) and consequential amendments to Articles 23 and 28". The item had been allocated to the Sixth Committee and the General Assembly, on the proposal of that Committee, had decided to postpone consideration thereof, and to request the Secretary-General to include it in the provisional agenda of its twenty-fifth session.²⁰ From 1970 to 1973, at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sessions, the General Assembly, on the recommendation either of its Sixth Committee or of its General Committee, consistently postponed consideration of the item during the session concerned and included it in the provisional agenda of its next session.²¹ In 1974, at its twenty-ninth session, the Assembly decided to postpone consideration of the item until its thirty-first session.²² At the fourth plenary meeting of its thirty-first session, held on 24 Sep-

tember 1976, the Assembly, on the recommendation of the General Committee,²³ which itself followed a recommendation of the Secretary-General,²⁴ decided to remove the item from its agenda.²⁵

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

a. *Proposals for a review of the Charter*

16. Although, as reported in *Supplement No. 4*, volume II, of the *Repertory*,²⁶ the General Assembly, by resolution 2285 (XXII) of 5 December 1967, had decided to keep in being the Committee on arrangements for a conference for the purpose of reviewing the Charter and had requested that the work envisaged in paragraph 4 of General Assembly resolution 992 (X) should be continued, the Committee did not meet again during the period presently under review.

17. In *Supplement No. 4*, volume II, of the *Repertory* mention was also made of the inclusion in the agenda of the twenty-fourth session of the General Assembly, following a proposal by Colombia, of an item entitled: "Need to consider suggestions regarding the review of the Charter of the United Nations". The consideration of the item was postponed for inclusion in the provisional agenda of the twenty-fifth session.²⁷ The fact that, in the explanatory memorandum to the proposal, reference was made to Article 109 (3) of the Charter led to its categorization under the present heading.

18. During the period under review there were some developments concerning this item. The Assembly, on the basis of resolutions 2552 (XXIV) of 12 December 1969, 2697 (XXV) of 11 December 1970 and 2698 (XXVII) of 14 December 1972, included in its agenda, allocated to the Sixth Committee and discussed the item, drafted exactly in the above-mentioned terms, at its twenty-fifth (1970), twenty-seventh (1972) and twenty-ninth (1974) sessions. In its resolutions 2697 (XXV) and 2698 (XXVII) the Assembly had requested the Secretary-General to invite Member States to communicate to him their views and suggestions on the review of the Charter of the United Nations for inclusion in a report to be submitted by the Secretary-General to the General Assembly. The views and suggestions contained in those reports²⁸ as well as the views expressed in the Sixth Committee²⁹ during the discussions held in the above-mentioned sessions of the General Assembly evidenced the existence of differing and frequently opposing views concerning the need for a review of the Charter. While some delegations were in favour of a general review of the Charter, other delegations suggested that caution was necessary, without opposing the possibility of amending some specific provisions of the Charter if it proved necessary to do so. Still other delegations were totally against any review of the Charter. These different approaches were to a large extent reflected in the various draft resolutions³⁰ and amendments thereto that the Sixth Committee had before it in 1974 during the twenty-ninth session in relation to the future course of action to give to the item. According to the terms of the draft resolution³¹ finally recommended by the Sixth Committee and adopted by the General Assembly, as amended by Colombia,³² on 17 December 1974, as resolution 3349 (XXIX),³³ the Assembly decided:

"To establish an *Ad Hoc* Committee on the Charter of the United Nations, consisting of forty-two members to be appointed by the President of the General Assembly with due regard for the principle of equitable geographical distribution, with the following aims:

“(a) To discuss in detail the observations received from Governments;

“(b) To consider any additional specific proposals that Governments may make with a view to enhancing the ability of the United Nations to achieve its purposes;

“(c) To consider also other suggestions for the more effective functioning of the United Nations that may not require amendments to the Charter;

“(d) To enumerate the proposals which have aroused particular interest in the *Ad Hoc* Committee.”

By the same resolution the Assembly invited the Secretary-General to submit to the *Ad Hoc* Committee his views on the experience acquired in the application of the provisions of the Charter with regard to the Secretariat and an analytical paper on the observations received from Governments pursuant to resolution 2697 (XXV) as well as on the views expressed at the twenty-seventh and twenty-ninth sessions.

19. The *Ad Hoc* Committee, later to be called the “Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization”,³⁴ met for the first time in 1975 and met subsequently in each year³⁵ of the period under review. Thus at each session the General Assembly has renewed and clarified its mandate in subsequent resolutions.³⁶ Regarding the clarifications introduced by subsequent resolutions into the Special Committee’s mandate or assigned tasks,³⁷ the General Assembly at almost every session has requested the Special Committee: (a) to examine in detail the observations received from Governments,³⁸ (b) to consider any additional proposal made within the Committee,³⁹ (c) to list and to identify the proposals which had awakened special interest,⁴⁰ together, with a view to according priority to the consideration of those areas on which general agreement was possible.⁴¹

20. Another decision of the General Assembly during the period under review concerning the Special Committee related to the enlargement of its membership to 47 States⁴² by the addition of the following five Member States: Barbados, Belgium, Egypt, Iraq and Romania.

21. An examination of the present relationship between the Special Committee and its mandate and the original item entitled “Need to consider suggestions regarding the review of the Charter of the United Nations”, which led to the Special Committee’s creation, shows that, although the resolutions which created the Committee or renewed its mandate have always recalled in their preambular part resolution 2552 (XXIV) of 12 December 1969, on the basis of which the above-mentioned item was first considered by the Assembly, as well as others related to it, nevertheless the concept of “review of the Charter” has disappeared from the name of the Special Committee itself and from the items of the General Assembly successively referring to its reports. There appears to have been a shift of approach from the strict concept of “suggestions regarding the review of the Charter” to the concept of “examination of suggestions and proposals on the Charter of the United Nations and the strengthening of the role of the Organization”.

**b. Proposals to amend a specific Article

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

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

2. COMPETENCE TO UNDERTAKE PREPARATORY WORK

22. Paragraph 3 of General Assembly resolution 2968 (XXVII) of 14 December 1972 requested the Secretary-General to bring up to date as quickly as possible the *Repertory of Practice of United Nations Organs*. The present *Supplement* continues the previous one (*Supplement No. 4*), and covers the period comprised between 1 July 1970 and 31 December 1978.

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

NOTES

¹ See *Repertory, Supplement No. 3*, vol. IV, and *Supplement No. 4*, vol. II.

² See E S C (L), Plen., 1734th-39th, 1743rd, 1745th, 1761st, 1765th, 1768th and 1772nd mtgs.

³ Draft resolution E/L 1451 (part A) (mimeographed).

⁴ E S C (LI), 1798th mtg., para. 19.

⁵ E S C resolution 1621 A (LI), paras. 1-3.

⁶ G A (26), 2nd Com., 1370th-1382nd; 1426th and 1442nd-1446th mtgs.

⁷ See draft resolution A/C.2/L.1184/Rev.1 (mimeographed).

⁸ See amendments to A/C.2/L.1184/Rev.1 presented by Congo (A/C.2/L.1208 and Rev.1); Congo and Rwanda (A/C.2/L.1208/Rev.2 and 3) and Upper Volta (A/C.2/L.1190).

⁹ See A/C.2/L.1221 approved by Second Committee by a roll-call vote.

¹⁰ This part of the draft resolution was approved by a roll-call vote of 93 to 4, with 16 abstentions.

¹¹ The draft resolution as a whole was approved by a roll-call vote of 93 to 4, with 17 abstentions.

¹² G A (26), Plen., 2026th mtg., para. 19.

¹³ In paras. 5 to 7 of the resolution, the Assembly also welcomed the decision of the Economic and Social Council, pending the receipt of the necessary ratifications, to enlarge its sessional committees to fifty-four members; invited the Economic and Social Council, as soon as possible and not later than the organizational meetings of its fifty-second session, to elect the twenty-seven additional members from States Members of the United Nations to serve on the enlarged sessional committees, by elections to be held in accordance with paragraph 4 and each year pending the coming into force of the enlargement of the Council; and decided a consequential amendment of rule 147 of its rules of procedure.

¹⁴ E S C (LIV), annexes, a.i. 19, E/5352.

¹⁵ *Ibid.*, 1858th mtg.

¹⁶ E S C (LV), 1875th mtg., paras. 48 and 49. See also G A (28), Suppl. No. 3 (A/9003), paras. 1099 and 1107-1109.

¹⁷ The membership in the United Nations at that date was 135.

¹⁸ G A (28), Plen., 2152nd mtg., paras. 5-8. See also *ibid.*, Suppl. No. 30, p. xiv.

¹⁹ *Ibid.*, Plen., 2177th mtg., paras. 1-35. Also *ibid.*, Suppl. No. 30, p. xiv.

²⁰ For further information concerning the rationale for the inclusion of the item in the GA’s agenda and developments concerning it during that year, see *Repertory, Supplement No. 4*, vol. II, under Articles 108 and 109, paras. 17-21.

²¹ See, for 25th session (1970), 6th Com., 1237th and 1238th mtgs.; Plen., 1920th and 1927th mtgs.; also A/8201 and A/8028; for 26th session (1971), Gen. Com., 191st mtg. and A/8500, para. 15 (i); Plen., 1937th mtg. and A/8429; for 27th session (1972), Gen. Com., 200th mtg. and A/8800/Rev.1, para. 15 (e); Plen., 2035th mtg. and A/8730; and for 28th session (1973), Gen. Com., 206th-209th mtgs. and A/9200; Plen., 2152nd mtg. and A/9030.

²² See G A (29), Gen. Com., 219th mtg.; also *ibid.*, annexes, a.i. 8; para. 20; *ibid.*, Plen., 2236th mtg.; *ibid.*, Suppl. No. 31, decision on a.i. 8.

²³ G A (31), Gen. Com., 1st mtg., para. 19.

²⁴ A/BUR/31/1, para. 18 (mimeographed).

²⁵ G A (31), Plen., 4th mtg., para. 14. See also *Yearbook of the International Court of Justice*, 1976-77, No. 31, Chap. VI, II, p. 113.

²⁶ See *Repertory, Supplement No. 4*, under Articles 108 and 109, paras. 22-24.

²⁷*Ibid.*, paras. 25-27.

²⁸See documents A/8746 and Corr.1 and Add.1-3 and A/9739 (mimeographed).

²⁹G A (25), 6th Com., 1238th-1244th mtgs; G A (27), 6th Com., 1374th-1384th mtgs.; and G A (29), 6th Com., 1511th-1521st mtgs.

³⁰G A (29), annexes, a.i. 95, A/9950.

³¹See A/C.6/L.1002 (mimeographed), draft resolution approved by 6th Com., at its 1521st mtg.

³²See G A (29), annexes, a.i. 95, A/L.759.

³³Resolution adopted by a roll-call vote of 82 to 15, with 36 abstentions.

³⁴G A resolution 3499 (XXX) of 15 December 1975, para. 1.

³⁵See reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in G A (30), (31), (32) and (33), Suppl. No. 33 in each year.

³⁶G A resolutions 3499 (XXX) of 15 December 1975; 31/28 of 29 November 1976; 32/45 of 8 December 1977 and 33/94 of 16 December 1978.

³⁷*Ibid.*, in particular resolutions 3499 (XXX), 32/45 and 33/94.

³⁸*Ibid.*, in particular para. 1 (a), resolution 3499 (XXX); para. 3, resolution 31/28.

³⁹*Ibid.*, in particular para. 1 (b), resolution 3499 (XXX); para. 2 (b), resolution 32/45; para. 2 (b), resolution 33/94.

⁴⁰*Ibid.*, in particular para. 1 (c), resolution 3499 (XXX); para. 2 (a), resolution 32/45; para. 2 (a), resolution 33/94.

⁴¹*Ibid.*, in particular para. 2, resolution 3499 (XXX); paras. 2 (b) and 3, resolution 32/45; paras. 2 (b) and 4, resolution 33/94.

⁴²G A resolution 3499 (XXX), para. 3.

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Chapter XIX
RATIFICATION AND SIGNATURE

