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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.

INTRODUCTORY NOTE

1. The present study generally retains the organizational approach adopted in the previous Supplements to the Repertory\(^1\) with respect to the same Articles. However, a few changes have been made which deserve mention. Two additional subheadings have been introduced under Chapter II.A.1 to cover new issues in relation to amendment proposals under Article 108. Furthermore, for clarity, two subheadings under chapter II.A.2 entitled “Proposals for a review of the Charter” and “Proposals to amend a specific Article” have been deleted. The material relating to the calling of a general conference under Article 109, whether it relates to proposals to amend a specific Article or to review the Charter as a whole, have been treated together under the main heading “Proposals for the calling of a general conference under Article 109”.

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

I. GENERAL SURVEY

2. During the period under review, the Charter amendment procedure set forth in Article 108 of the Charter was invoked before the General Assembly with regard to four separate issues. The first was in relation to the process of the restructuring and reform of the economic and social sectors of the United Nations system under which the question of the composition of the Economic and Social Council was considered. The second related to the possibility of amending Articles 23, 27 and 109 of the Charter with regard to the question of equitable representation and increase in the membership of the Security Council. The third arose in the context of a discussion to delete the “enemy-state” clauses contained in Articles 53, 77 and 107 of the Charter and the fourth related to the future role of the Trusteeship Council.

3. Throughout the period under review, no amendment to the Charter was adopted. However, the General Assembly undertook measures to consider the possibility of amending it with regard to the Economic and Social Council, the Security Council and the “enemy-state” clauses. With regard to the Economic and Social Council, the General Assembly adopted a resolution which called for a review of its composition. Similarly, in relation to the “enemy-state” clauses the General Assembly adopted a resolution requesting the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (hereinafter referred to as the “Special Committee”) to “...consider the question of the deletion of the ‘enemy-state’ clauses of the Charter...” and to recommend the most appropriate legal action to take on this question. In the context of the question of equitable representation and increase in the membership of the Security Council, the General Assembly adopted at its forty-seventh session a resolution inviting Member States to submit comments on the possibility of amending Articles 23, 27 and 109 and requested the Secretary-General to submit a report containing such comments. Additionally, at its forty-eighth session the General Assembly established an Open-ended Working Group to further review the issue.

4. No formal proposals to hold a general conference for the purpose of reviewing the Charter, as provided for under Article 109, were made during the period under review.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Procedure for the amendment or review of the Charter

1. PROPOSALS SUBMITTED UNDER ARTICLE 108

(a) Proposals to amend Article 61 of the Charter

5. The question of reviewing the composition of the Economic and Social Council was considered in relation to the agenda item “Report of the Economic and Social Council”. As was noted in Supplement No. 7, volume VI of the Repertory, consideration in the Second Committee of a draft resolution entitled “Implementation of section II of the annex to General Assembly resolution 32/197 on the restructuring of the economic and social sectors of the United Nations system”, calling, inter alia, for opening the Economic and Social Council to all States Members

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2 GA resolution 45/264. GA (45), Plen., 75th mtg. See also below under II.A.1(a).
3 GA resolution 49/58. GA (49), Plen., 84th mtg. See also below under II.A.1(c).
4 GA resolution 47/62. GA (47), Plen., 84th mtg. See also below under II.A.1(b).
5 GA resolution 48/26. GA (48), Plen., 69th mtg.
6 See Repertory, Supplement No. 7, vol. VI, under Articles 108 and 109, paras. 8-16.
of the United Nations, had been deferred to the forty-fifth session of the General Assembly. However, during the forty-fifth session, on the recommendation of the Second Committee, the General Assembly decided to defer consideration of the item until its forty-seventh session\(^7\) and at its forty-seventh session, the General Assembly again postponed consideration of the draft resolution until its forty-eighth session.\(^8\) No further action on the draft resolution was taken during the forty-eighth and the forty-ninth sessions.

6. The composition of the Economic and Social Council was also considered in relation to the item on the review of the administrative and financial functioning of the United Nations. Throughout the period under review, the efforts to restructure and revitalize the United Nations in the economic, social and related fields continued.\(^9\) During the forty-fifth session of the General Assembly, certain States were of the view that the process of the restructuring and revitalization of the Economic and Social Council should include a review of its size with a view of enlarging the membership.\(^10\) Eventually, the General Assembly adopted resolution 45/264, which contained an annex setting forth the basic principles and guidelines, goals and measures, as well as issues to be addressed in the future, for the restructuring and revitalization of the United Nations in the economic, social and related fields.\(^11\) The annex provided, in its Section IV, that the “...process of restructuring and revitalization of the United Nations in the economic, social and related field... shall include a review of the composition of the Economic and Social Council with due regard to equitable geographical representation and other relevant factors, in order to ensure the most effective participation of Member States, to be undertaken at a resumed forty-seventh session of the General Assembly.” However, during the remaining period under review, no further action was taken by the General Assembly with regard to the enlargement of the Economic and Social Council.

(b) Proposals to amend Articles 23, 27 and 109 of the Charter

7. During the period under review, no amendment to Articles 23, 27 and, as a corollary, Article 109 of the Charter was adopted. However, the possibility of amending those Articles was considered under the agenda item “Question of equitable representation and increase in the membership of the Security Council”.

8. At its forty-fourth and forty-fifth sessions, the General Assembly did not consider the item, as it was not requested to do so, but kept it on its agenda.\(^12\) At its forty-sixth session, the General Assembly discussed the item\(^13\) and decided to defer further consideration of it to its forty-seventh session.\(^14\)

9. At its forty-seventh session, the General Assembly adopted resolution 47/62.\(^15\) The resolution invited Member States to the United Nations to submit written comments on a possible

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\(^7\) GA decision 45/436.
\(^8\) GA decision 47/438.
\(^9\) See Repertory, Supplement No. 7, vol. VI, paras. 8-16.
\(^10\) See A/45/991.
\(^11\) Without a vote. GA (45), Plen., 75th mtg. See also GA (45), Plen., 73rd and 74th mtgs.
\(^12\) GA decisions 44/460 and 45/421. As was noted in Supplement No. 7, the General Assembly has continuously postponed consideration of the item since the thirty-fifth session but kept it on the agenda. See Repertory, Supplement No. 7, vol. VI, under Articles 108 and 109, paras. 4 and 17-18. See also GA decisions 40/460, 41/469, 42/459 and 43/458.
\(^13\) See GA (46), Plen., 68 mtg.
\(^14\) See GA decision 46/418.
\(^15\) Without a vote. See GA (47), Plen., 84th mtg.
review of the membership of the Security Council and requested the Secretary-General to submit a report containing such comments to the General Assembly at its forty-eighth session.

10. Following consideration of the report of the Secretary-General during the forty-eighth session, the General Assembly adopted resolution 48/26. The resolution, inter alia, established an Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and other Matters Related to the Security Council (hereinafter referred to as the “Working Group”), to consider all aspects of the question of increase in the membership of the Security Council and other related matters. Furthermore, it requested the Working Group to report to the General Assembly before the end of its forty-eighth session.

11. At the end of the forty-eighth session, having considered the report of the Working Group, the General Assembly took note of its work and decided that the Working Group should continue its efforts, taking into account, inter alia, the views expressed at the forty-ninth session of the General Assembly. Furthermore, the Working Group was requested to submit a report on the matter to the General Assembly at the end of that session.

12. The Working Group continued its work during the forty-ninth session. However, it did not submit its report before the end of the period under review. Similarly, the General Assembly continued to consider the item during its forty-ninth session but did not take any further action on the item before the end of the period under review.

13. In addition to the debate on the item in the General Assembly and its Working Group, the Special Committee considered a proposal submitted by the Libyan Arab Jamahiriya on, among other things, the question of the composition of the Security Council and the decision making procedure provided for in Article 27(3) of the United Nations Charter. The proposal was similar to the proposals previously introduced by the Libyan Arab Jamahiriya in the Sixth Committee of the General Assembly regarding the same subject matter. Furthermore, the Special Committee also considered a working paper on the same matter introduced by Cuba. Throughout the period under review, the Special Committee discussed the two items but did not make any recommendation regarding these proposals.

14. In resolutions 48/36 and 49/58 on the report of the Special Committee, the General Assembly made reference to its previous resolution 47/62 on the question of equitable representation on and increase in the membership of the Security Council and requested the Special Committee to continue its consideration on proposals relating to the maintenance of international peace and security.

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16 See A/48/264 and Adds. 1-10.
17 See e.g., GA (48), Plen., 4, 5, 7-24, 26-29, 61, 62, 64 and 69 mtgs.
18 Without a vote. See GA (48), Plen., 69th mtg.
19 See doc. A/48/47. The Working Group met 22 times between 19 January and 2 September 1994. The report contained no conclusions or specific recommendations and suggested that it should continue to meet during the 49th session.
20 GA decision A/48/498.
21 See e.g., GA (49), Plen., 4-32 mtgs. See also A/49/965 of 18 September 1995, letter dated 15 September 1995 from the Permanent Representatives of Finland and Thailand, in their capacity as Vice-Chairmen of the Working Group, to the United Nations transmitting a Compendium of observations and assessment of the two Vice-Chairmen, their discussion papers, proposals and other documents presented to the Working Group.
22 A/46/33 para. 14.
25 See GA (46), (47), (48) and (49), supplement No. 33 in each year.
security, specifically referring to the two documents submitted by the Libyan Arab Jamahiriya and Cuba.

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

15. During the period under review, no amendment to Articles 53, 77 and 107 of the Charter was adopted. However, throughout the period, informal proposals for such an amendment were made during the debate of the Sixth Committee of the General Assembly and the Special Committee. Eventually, during the forty-ninth session, the General Assembly adopted resolution 49/58 which, *inter alia*, considered that Articles 53 and 107 of the Charter had become obsolete. It requested the Special Committee to consider the question of the deletion of the “enemy-state” clauses of the Charter. Furthermore, the resolution requested the Special Committee to recommend to the General Assembly at its fiftieth session the most appropriate legal action to take on this question.

(d) Proposals concerning the Trusteeship Council

16. In 1994, with Palau’s independence, the objectives of its Trusteeship Agreement had been fully attained and the Trusteeship Council had thereby completed its work on the last remaining item on its agenda. Consequently, through resolution 2200 (LXI) of 25 May 1994, the Council amended its own rules of procedures to meet only as and where occasion may require. In light of the above, the Secretary-General, in his report, recommended “…that the General Assembly proceed with steps to eliminate the [Trusteeship Council] in accordance with Article 108 of the Charter.” While some States concurred with the Secretary-General’s recommendation, other States demonstrated an interest in providing the Trusteeship Council a new role. In particular, views were expressed to transforming the Council into a clearing-house for self-determination claims and to assume the role of the depository of mankind’s common heritage, including the environment, the protection of extraterritorial zones, marine resources, the seabed and the rights of future generations. However, no formal proposal was made during the period under review.

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

17. No formal proposal calling for a general conference under Article 109 of the Charter for the purpose of reviewing the Charter was made during the period under review. However, the desirability of reviewing the Charter in accordance with Article 109 was extensively referred to during the debates on the question of equitable representation and increase in the membership of the Security Council, the question on the “enemy-state” clauses, the question of the future of the Trusteeship Council, and on the question of the establishment of an international criminal court.
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

18. At its eighth session, in resolution 796 (VIII), the General Assembly requested the Secretary-General to prepare a repertory of practice of the United Nations Organs in order to facilitate the General Assembly’s consideration, at its tenth session, of the question of calling a general conference under Article 109 of the Charter.33 Furthermore, at its tenth session, the General Assembly adopted resolution 992 (X) which, inter alia, requested the Secretary-General to prepare and circulate supplements to the publication of the *Repertory of Practice of United Nations Organs*, established under resolution 796 (VIII). Previously, at its seventh session, the General Assembly had also requested the Secretary-General to prepare a publication of the *Repertoire of Practice of the Security Council* for the purpose of “...making the evidence of customary international law readily available...”.34 Therefore, the previous Supplements to the *Repertory*,35 also provided information regarding the status of the preparation of the publication *Repertoire of the Practice of the Security Council*.

19. The present *Supplement* follows from *Supplement No. 7* (1 January 1985 to 31 December 1988) and covers the period 1 January 1989 to 31 December 1994.

20. No action with respect to the publications of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* was taken by the General Assembly throughout the period under review. However, informal suggestions were made in the Sixth Committee in relation to their updating.36

21. During the period under review, *Supplement for 1981-1984 of the Repertoire* was completed and the work on the next period of the *Supplement of the Repertoire, 1985-1988* was being progressed. None of the supplements to the *Repertory* was completed throughout the period under review but the work on *Supplement No. 6* covering 1979-1984 was being progressed.

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