



**C O N T E N T S**

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**Chairman:** Mr. Juliusz KATZ-SUCHY (Poland).

Mr. Tabibi (Afghanistan), Vice-Chairman, took the chair.

**Publication of documents concerning the drafting and application of the Charter (A/2415, A/C.6/343, A/C.6/L.305, A/C.6/L.306/Rev.1) (*continued*)**

[Item 58]\*

**Preparatory work with regard to the possible holding of a General Conference of the Members of the United Nations in accordance with Article 109 of the Charter (A/2442, A/C.6/343, A/C.6/L.305, A/C.6/L.306/Rev.1) (*continued*)**

[Item 70]\*

**Amendment of the Charter: election of a technical committee to study and report on the amendment of the Charter on the basis of proposals to be submitted by Member States (A/2466 and Add.1, A/C.6/L.305) (*continued*)**

[Item 72]\*

**GENERAL DEBATE (*continued*)**

1. Mr. HOLMBACK (Sweden) recalled that during the debate in a plenary meeting of the General Assembly<sup>1</sup> his delegation had already expressed the opinion that there was no immediate or compelling need to revise the basic provisions of the Charter. Nevertheless, it did not deny that certain reforms could be held to be desirable. In certain cases, however, they could be effected technically without amendment of the Charter.

2. The Committee was not at present required to state whether a revision of the Charter was necessary

\* Indicates the item number on the agenda of the General Assembly.

<sup>1</sup> See *Official Records of the General Assembly, Eighth Session, Plenary Meetings*, 443rd meeting.

or not. It was for Member States to decide at the tenth session of the General Assembly whether the General Conference referred to in Article 109 of the Charter should be convened. The Committee had only to decide whether it should undertake the preliminary work for the conference, so that at the tenth session Member States would be in a position to take a decision in full knowledge of the facts. Most members of the Committee appeared to be anxious that such preparatory work should be begun at once. The Swedish delegation felt that the work would be useful and therefore associated itself with them.

3. It did not approve the draft resolution submitted by Costa Rica and Egypt (A/C.6/L.305). First, the resolution did not give the Secretary-General sufficiently clear instructions. Secondly, apart from the not inconsiderable expenditure involved, the setting up of an advisory committee might lead to complications and the opening of a discussion which should not take place before the tenth session of the General Assembly. Finally, Member States would be able to approach the problem in a more genuine way if they did not have to conform to the method proposed in paragraphs 3 and 4 of the draft resolution.

4. The six-Power draft resolution (A/C.6/L.306/Rev.1) offered many advantages. It defined the work which was to be done, work which would be of great use to the General Conference if it should be convened. His delegation was doubtful of the wisdom of fixing the period for completion of the study of the legislative history of the Charter which was mentioned in paragraph 1 (c). That would be an extensive scientific job and it was difficult to decide in advance how long it would take. Moreover, it would be a fairly costly undertaking. The Swedish delegation did not intend to submit an amendment to the six-Power draft resolution at that stage, but it urged members of the Committee to give further consideration to the question before taking a final decision.

5. The same problem arose in connexion with the repertory mentioned in sub-paragraph (d). The Secretariat would probably find it very difficult to prepare such a repertory within the period laid down.

6. The Swedish delegation approved of the contents of paragraphs 2 and 3 of the six-Power draft resolution, for in its opinion they did not deny Member States' complete freedom of action. It was therefore prepared to vote for the draft resolution at the appropriate time.

7. He wished to make some observations on the opposition in some quarters to the proposal to undertake the preliminary work for the General Conference on review of the Charter.

8. First of all, the mere convening of such a conference would in no way affect the legal position of any Member of the Organization, because any amendment recommended by the conference would require the approval of two-thirds of the Members, including all the

permanent members of the Security Council, before it could enter into force. If the great Powers felt that an amendment limited their sovereign rights, they had but to withhold approval. The position of States not permanent members of the Security Council would be exactly the same whether a General Conference was convened or not, since the General Assembly could adopt amendments by a two-thirds majority and they came into force if they were ratified by two-thirds of the Members of the Organization, including all the permanent members of the Security Council. Thus the majority required was exactly the same for the General Assembly and for the General Conference. The same States had the same rights at both; they could do no more in the one than in the other.

9. Nor could it be maintained that the convening of a General Conference would be contrary to the principle *pacta sunt servanda*, since the result of the conference, at the most, would be the conclusion of new *pacta*, the adoption of which would be governed by the provisions of the present Charter.

10. The Swedish delegation did not share the Polish representative's opinion that the convening of a General Conference, or even the preliminary work for it, would give an opportunity for propaganda for undesirable amendments to the Charter. It was quite unthinkable that the publication of the San Francisco documents, an index of them, a history of the Charter or a repertory of its provisions could be used for propaganda purposes. Nor could the opinions expressed by Member States on possible review of the Charter be used in a propaganda campaign like statements made by politicians. Knowing that their remarks would be critically examined by other Governments and the world at large, Governments would state their positions with great care. It might therefore be presumed that their statements would in no way be usable as instruments of propaganda.

11. Mr. VAN REMOORTELE (Belgium), replying to the Argentine representative's observations at the 372nd meeting, wished to explain the legal considerations which led him to believe that the provisions of Article 109 of the Charter rendered unacceptable the proposal, contained in paragraph 2 of the Costa Rican-Egyptian draft resolution (A/C.6/L.305), to establish an advisory committee.

12. It was clear from paragraphs 1 and 3 of Article 109 that the General Assembly at its tenth session would automatically have before it a proposal to convene a General Conference to deal only with the review of the Charter, and that all the General Assembly would have to do would be to fix the date and place for the Conference, the Conference itself considering any proposal or proposals which might be submitted to it. The procedure under Article 109 therefore could not be anticipated without contravening the letter of its provisions.

13. If the Charter had been vague or silent on the matter, it might have been possible, by virtue of the saying that what is not forbidden is permitted, to take certain steps preliminary to a discussion of review. But the saying, though no doubt valid for criminal or private law, had little validity in constitutional law, and none at all where a text was clear and definite, as was the case with Article 109 of the Charter.

14. Basic agreements, whether national constitutions or the United Nations Charter, had one essential feature in common: a permanence which ensured stability.

Permanence, however, was not to be confused with unalterability, for it was clear that circumstances might lead to the revision of agreements, as the Brazilian representative had said at the 371st meeting. But such revision should be rare and, when it occurred, necessary and well-founded. That was the reason why national constitutions and the Charter itself laid down a special procedure which hindered rather than encouraged revision. That procedure must be respected in the same way as the other provisions of constitutional texts.

15. There was an essential difference between the procedure for revision in some national constitutions and the procedure for revision in the Charter, a difference which it might be interesting to point out. According to the Belgian Constitution of 1831, for example, Parliament was responsible for considering the desirability of revision and for deciding which provisions were to be revised. When it had done that, it was automatically dissolved and its place was taken by an elected Constituent Assembly, which decided whether to retain or to amend the provisions in question.

16. If such a system had been adopted by the United Nations, the General Assembly would of course have been able to entrust the preliminary work to an advisory committee, which it would have set up for the purposes suggested in the Costa Rican-Egyptian draft resolution. However, that system, although it was known and applied in many States at the time of the preparation of the Charter, had not been adopted, and that meant that the authors of the Charter had wanted a different procedure. Their intention was clearly expressed in Article 109: it was a General Conference and a General Conference alone, not the General Assembly or its organs, which was competent to work on a review of the Charter. To entrust part of the work at once to an advisory committee appointed by an Assembly which was competent only to convene the conference would be to contravene the provisions of Article 109. In so doing, a premature discussion on review of the Charter would be initiated.

17. The Belgian delegation had already indicated that it was not in favour of the Costa Rican-Egyptian draft resolution. It was also opposed to operative paragraphs 2 and 3 in the six-Power draft resolution (A/C.6/L.306/Rev.1), which did not agree with the Charter and would inevitably involve a premature discussion of review of the Charter. It would lead certain Members, if not all, to adopt an attitude before the convening of a General Conference and to appear at any such conference with their views cut and dried. The conference would thus be deprived of the necessary independence in discussions which would take place at a time when, and in an atmosphere in which, opinions might perhaps have developed further.

18. The Belgian delegation had no objection to the Secretariat being asked at once to compile and publish the documents which constituted the preparatory work on the Charter and its jurisprudence. It would therefore vote for operative paragraph 1 of the six-Power draft resolution.

19. Mr. VALLAT (United Kingdom) emphasized that by general consent the discussion was to be limited to the examination of measures preliminary to the decision which, under Article 109, paragraph 3, the General Assembly was to take at its tenth session regarding the advisability of reviewing the Charter. As

the Belgian representative had recalled it was for a General Conference, and not for the General Assembly, to review the Charter if necessary.

20. The problem should be approached in logical stages and should not be rushed. It would, therefore, be premature for the Organization as such to begin probing into the operation of the Charter. He recalled in that connexion that at the 443rd plenary meeting<sup>2</sup> the United Kingdom representative had declared that delegations should be careful not to take up rigid positions at once and not to show alarm at the prospect of a review of the Charter. As the Swedish representative had rightly recalled, in a very pertinent statement, the right of veto might be used in regard to such a review.

21. Any suggestions which the United Kingdom Government might make with regard to a review of the Charter would depend on the results of a careful study both of the Charter and of any documents which might help to determine how its various provisions had been applied and how, if necessary, they could be improved. That was why it would not be advisable to set up a committee to examine the views of Governments. On the other hand, it would be advisable to prepare documentation of the kind contemplated in the six-Power draft resolution (A/C.6/L.306/Rev.1). The next step might be to invite Governments to submit their comments. Then only would be the time to consider setting up a committee.

22. It was less the letter of the Charter than the spirit in which Members had approached the various problems that had arisen which had called forth criticism. The Ukrainian representative, at the 371st meeting, and the Polish representative, at the 372nd, had both referred to various illegal acts of which, they alleged, the Organization or certain of its Members had been guilty. It would be easy but useless to imitate them and refer to others. Before formulating views on Charter revision it would be useful for Governments to have studies such as those originally proposed by Argentina (A/2415) and the Netherlands (A/2442) and studies prepared by bodies such as the Brookings Institute and the Royal Institute of International Affairs. International relations were going through a period of uncertainty; for half of its life the United Nations had been involved in hostilities, and it was perhaps premature to say whether the Charter was satisfactory as it stood. As the representative of France had pointed out, the stands taken by various delegations on the matters before the Committee did not necessarily correspond to their opinions on a review of the Charter.

23. A special committee might have quite the opposite effect from what was desired by the authors of the proposal; the experiences of special committees were hardly encouraging. The draft resolutions before the Committee (A/C.6/L.305 and A/C.6/L.306/Rev.1) were not complementary. Paragraph 1 of the operative part of the six-Power draft resolution was more specific than the corresponding paragraph of the Costa Rican-Egyptian draft resolution, which proposed to set up a committee with ill-defined terms of reference. Moreover, it would be better to give the Secretary-General complete freedom in preparing the documents. Paragraph 3 of the Costa Rican-Egyptian draft was also not clear. According to the explanatory memorandum submitted by Egypt (A/2466/Add.1), the

committee would facilitate the ratification of amendments to the Charter, but he felt that it was premature to deal with that question and that, if that were done, there would be some risk of limiting the scope of suggestions from Member States.

24. Without committing the United Kingdom delegation, he indicated that his attitude would seem to be closer to the solution proposed in the six-Power draft resolution, but he reserved the right to comment in greater detail on the draft resolutions before the Committee.

25. The preparation of a legislative history of the Charter seemed to him to be a very heavy and burdensome task, as was pointed out in the Secretary-General's memorandum (A/C.6/343). It would, moreover, be of doubtful value. The United Kingdom delegation would prefer the preparation of a comprehensive index of the kind indicated in paragraph 39 of the Secretary-General's memorandum.

26. Mr. IRGENS (Norway) wholeheartedly supported the six-Power draft resolution (A/C.6/L.306/Rev.1). Any resolution from such widely differing countries was worthy of attention.

27. Article 109 of the Charter envisaged the possibility of reviewing the Charter ten years after its signature. It was therefore natural to think now of making preparations for a discussion of possible amendments to the existing text. The question of possible changes in the main structure of the Charter would have to wait till there was more confidence and less distrust in the world, but this should not prevent the preparation now for such changes in the Charter as might make it a better instrument for practical purposes. He noted that paragraphs 2 and 3 of the six-Power draft resolution imposed no obligation on States and that it was simply a question of ascertaining their preliminary views.

28. Mr. POVET'YEV (Byelorussian Soviet Socialist Republic) objected to the attempts being made to undermine the very foundation of the United Nations. Those who supported a review of the Charter were acting against the unanimity rule inscribed therein. As long ago as October 1946 Mr. Molotov had denounced attacks on the essential principle of co-operation between small and great Powers. Those manoeuvres, which emanated from reactionary circles, might well transform the Security Council into a field of battle between the Powers, which could only weaken the United Nations and prevent it from ensuring the maintenance of international peace and security.

29. As the Ukrainian and Polish representatives had pointed out at the 371st and 372nd meetings respectively, the flaws in the work of the United Nations were due not to the inadequacy of the provisions of the Charter, but to the fact that certain parties did not respect those provisions. The United Kingdom representative had shown deplorable partiality, and the statements of the United States representative at the 372nd meeting were contradicted by the campaign waged in his country against the Charter. The cessation of hostilities in Korea had slackened international tension; it was therefore advisable to emphasize the *détente* by showing greater respect for the Charter and developing the part played by the United Nations. Any proposal to review the Charter might well prove harmful to international peace and security. As the Belgian representative had pointed out at the 371st meeting, the draft resolutions before the Committee

<sup>2</sup> *Ibid.*

(A/C.6/L.305, A/C.6/L.306/Rev.1) implied a review of the Charter in the guise of technical studies, although, under Article 109, the question was not to be raised for two years.

30. The attitude to be adopted at that time should not be prejudiced, and the Byelorussian delegation therefore could not support any of the draft resolutions submitted to the Committee.

31. Mr. GOMEZ ROBLEDO (Mexico) said that his delegation did not ally itself either with the convinced advocates of review or with those who were firmly opposed to any change in the Charter. As always, it would consider with complete impartiality the reasons of principle and expediency for or against what was a particularly serious decision.

32. Ever since 1945 Mexico had been of the opinion that the Charter could be improved. While the organization which the peoples of America had provided for themselves was the outcome of more than a hundred years' experience and of prolonged and careful studies and consultations, and had taken account of the slow rhythm of historical developments, the United Nations Charter seemed to have been a spontaneous creation of the mind, based on theory rather than on fact. The opinions freely expressed at San Francisco had, however, made it possible to prepare in the end an instrument which had won the support of all. The disturbed situation of the post-war world would not allow the adoption of an international statute safeguarding peace, security and—what was at least as important—justice to be deferred. It had frequently been said that the Charter in its present form represented the best solution possible at the time of its adoption. The qualification implied in the words "at the time of its adoption" confirmed the opinion, which the Mexican delegation shared with many others, that the Charter could be improved.

33. To aspire to perfection did not mean the adoption of a rigid programme aimed at an absolute theoretical perfection, which took no account of the possibilities of application in a particular political situation. In such a case it might be better to leave well alone. Mexico had a number of reservations to make about the present provisions of the Charter, whether in Article 27 or in other articles. It was possible, however, that when the question was raised formally before the General Assembly Mexico would prefer to support the *status quo* rather than see the danger of international tension increased as a result of hasty changes. On the substance of the problem, therefore, Mexico reserved complete freedom of decision.

34. It was certainly necessary, however, to do some preliminary work which would throw light on all the factors in the problem and enable governments in due course to make the right decision in full knowledge of the facts. The Secretariat should publish all the documents which would facilitate a better understanding of the Charter in relation to its antecedents and a better knowledge of the interpretation which had been placed on its provisions in the course of ten years' experience.

35. The sponsors of the six-Power draft resolution (A/C.6/L.306/Rev.1) might well add to the list of publications which they had in view a reissue of the already published documents of the San Francisco Conference. The current edition was almost out of print, and it would be of little value to have at hand

what would be a kind of supplement to it unless the original work could easily be consulted.

36. The cost of all those publications would no doubt be very great, but it would be justified. Appropriations for less important and less urgent requirements might perhaps be transferred to that section.

37. He reserved his right to speak again.

38. Mr. MAURTUA (Peru) said that it was quite in order to prepare a revision which, as Article 109 showed, all parties had foreseen at the outset would be necessary. There were imperfections in the Charter which should be removed. Those defects were partly due to the very nature of the text adopted, for it was the outcome of compromises and pledges which bore the seeds of differences within them. These differences had arisen, become aggravated and resulted in the establishment of rival *blocs*. In that connexion, it had been observed that some of the procedures provided for had proved harmful, while others had been inadequate. Improvements must therefore be made, but it was extremely important to be careful in selecting the name to be given to that work: the term "review" should be replaced by "improvement based on experience". No radical change must be made. No fundamental concept must be overthrown. The essential purposes must remain the same. Above all, it must be remembered that the defects in the Charter had been aggravated by the conflict of political interests, by the refusal of some to engage in the moral disarmament which the Charter required, by the unbalanced situation resulting from the absence of unity of views among the great Powers.

39. It must be regretfully observed that some scepticism with regard to the work of the United Nations had arisen in the best minds, both the most realistic and the most idealistic. That was an undeniable injustice, for the part played by the United Nations was more important and more effective than that of the League of Nations, while the system of sanctions was more vigorous. The same was true in economic and social matters, and in the international collaboration represented by technical assistance, etc. It was quite certain, however, that there were faults in the structure of the Charter, particularly with regard to the maintenance of peace. The future of the United Nations depended on the kind of methods it used for maintaining peace, on the effectiveness of its wisely and carefully planned steps in that constant and active struggle which the reign of law required. In that respect, the United Nations needed to be endowed with the best instruments of action. In some situations the Organization had been almost paralysed. The Charter had had to be interpreted according to its spirit rather than its letter, a procedure which, although perfectly legitimate, had been described by some as a violation.

40. The source of those imperfections was to be found in the fact that an essential concept had been falsified. The non-permanent members of the Security Council had consented, for the most part unwillingly, to give the permanent members the right of veto only because they had thought that the five great Powers would in return assume the collective undertaking to make judicious use of that right together. That undertaking had not been kept, the balance had been destroyed, and it was there that the greatest threat to the United Nations was to be found.

41. The Charter must therefore be improved as an instrument for the maintenance of peace. The binding

force of certain exact interpretations which had been made must be affirmed. Some provisions, such as those defining the powers of the General Assembly in the maintenance of peace, must be clarified, as must also other provisions, such as those of Article 4 and Article 2, paragraph 7.

42. The six-Power draft resolution (A/C.6/L.306/Rev.1) seemed better than the Costa Rican-Egyptian draft resolution (A/C.6/L.305). The former made the Secretariat responsible for preparatory work which would enlighten governments. Paragraph 2 reserved the final attitude of States on the substance of review, but permitted them to make known their provisional views as to the advisability of changes. Though not very different in spirit from the six-Power draft resolution, the Costa Rican-Egyptian text, on the other hand, would give exorbitant powers to the committee of fifteen members and defined the committee's terms of refer-

ence too vaguely. It was difficult to see how the committee would determine the policy, or line of conduct—indispensable if disorder was to be avoided—by which its work would be guided. The two draft resolutions might perhaps be combined.

43. Mr. TARAZI (Syria) asked whether the meeting of the Sixth Committee arranged for 23 October at 3 p. m. might not be cancelled, in view of the fact that on the same day the General Assembly was to consider several questions of particular interest to the members of the Committee.

44. After an exchange of views, the CHAIRMAN announced that the meeting in question would be cancelled only if the General Assembly did not conclude its consideration of the items to which the representative of Syria had referred at its morning meeting.

The meeting rose at 12.45 p.m.