



Twentieth session
Agenda item 104

AMENDMENT TO ARTICLE 109 OF THE CHARTER OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. Gonzalo ALCIVAR (Ecuador)

INTRODUCTION

1. On 16 September 1965, the Secretary-General requested, under rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the twentieth session of an item entitled "Amendment to Article 109 of the Charter of the United Nations" (A/5974).

2. In the explanatory memorandum accompanying the foregoing request, the Secretary-General referred to resolution 1991 A (XVIII) of 17 December 1963, whereby the Assembly adopted amendments to Articles 23 and 27 of the Charter, increasing the number of members of the Security Council from eleven to fifteen and changing the majority votes required for decisions of the Security Council from seven to nine. He also recalled that these amendments had come into effect on 31 August 1965.

3. The Secretary-General then drew attention to the existing text of Article 109 of the Charter, paragraphs 1 and 3 of which read as follows:

"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 on the conference.

"

"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."

4. The Secretary-General pointed out that a discrepancy exists between the amended text of Articles 23 and 27 of the Charter and the present text of Article 109. An amendment to the latter was called for, consequential to amendments already approved; in that the word "nine" should be substituted for the word "seven" in paragraph 1 of Article 109, with reference to the required majority in the Security Council.

5. As regards paragraph 3 of Article 109, the Secretary-General 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 3 November 1955, a decision in which the Security Council concurred on 16 December 1955.^{1/} The Secretary-General suggested that paragraph 3 of Article 109 could therefore be considered as obsolete and it might be deleted. The alternative solution to replace, by an amendment to the Charter, the word "seven" by the word "nine" in the existing third paragraph of Article 109 would serve no practical purpose and its technical and legal correctness could be questioned.

6. The General Committee proposed (A/5988) that the item be included in the agenda, and be allocated to the plenary. This recommendation was considered by the General Assembly at its 1336th plenary meeting, on 24 September 1965. At that meeting, one representative suggested that it would be desirable to request the Legal Committee of the Assembly, whose assistance had been invoked in the past in the solution of constitutional and other legal questions, to review the legal situation with respect to Article 109 of the Charter and to advise the Assembly on the steps to be taken. He therefore proposed that the item be allocated to the Sixth Committee, and the General Assembly so decided.

^{1/} Official Records of the Security Council, Tenth Year, 707th meeting, para. 171.

7. The Sixth Committee considered the item at its 897th meeting, on 14 December 1965.

PROPOSALS

8. The Secretary-General's note and explanatory memorandum requesting the inclusion of the item on the agenda was accompanied, in accordance with rule 20 of the rules of procedure, by a draft resolution, the operative paragraphs of which stated that the General Assembly:

"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 ...".

9. At the 897th meeting of the Sixth Committee, on 14 December, 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.

10. Also at the 897th meeting, the representative of Greece presented the draft resolution, in the name of his delegation, omitting reference to the deletion of paragraph 3 of Article 109, making the consequential editorial changes and completing operative paragraph 2 to call upon Member States to ratify the amendment to paragraph 1 of Article 109 "at the earliest possible date". The text of this draft resolution (A/C.6/L.584) is identical with the recommendations of the Sixth Committee contained in paragraph 15 of the present report.

DEBATE

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. Those delegates who spoke on this 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 this sense, no longer operative. One delegate 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, 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 this 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.

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 this 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.

VOTING

14. At its 897th meeting, on 14 December, the Sixth Committee adopted unanimously the draft resolution submitted by Greece (A/C.6/L.584).

RECOMMENDATION OF THE SIXTH COMMITTEE

15. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

Amendment to Article 109 of the Charter of the United Nations

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 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.
