



Twentieth session
Agenda item 103

AMENDMENTS TO THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY
CONSEQUENT UPON THE ENTRY INTO FORCE OF THE AMENDMENTS TO
ARTICLES 23, 27 AND 61 OF THE CHARTER OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. Gonzalo ALCIVAR (Ecuador)

INTRODUCTION

1. On 14 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 "Amendments to the rules of procedure of the General Assembly consequent upon the entry into force of the amendments to Articles 23, 27 and 61 of the Charter of the United Nations" (A/5973).
2. In the explanatory memorandum accompanying the foregoing request, the Secretary-General referred to resolutions 1991 A and B (XVIII) of 17 December 1963, whereby the Assembly had decided, in accordance with Article 108 of the Charter of the United Nations, to adopt and to submit for ratification by the States Members of the United Nations amendments to Articles 23, 27 and 61 of the Charter. He also recalled that these amendments had come into effect on 31 August 1965.
3. The Secretary-General pointed out that, as the amended text of Article 23 of the Charter increased from six to ten the number of non-permanent members of the Security Council, rule 143 of the rules of procedure of the General Assembly should be amended to provide that the Assembly should each year, in the course of its regular session, elect five non-permanent members of the Security Council.

for a term of two years. As a consequence of the increase in membership provided for in the amendment to Article 23 of the Charter, the amended text of Article 27, relating to voting in the Security Council, provided for the substitution of the word "nine" for the word "seven" in that Article. Rule 8 (b) of the rules of procedure of the General Assembly should, therefore, be amended to substitute the word "nine" for the word "seven".

4. The Secretary-General's explanatory memorandum also indicated that, as the amended text of Article 61 of the Charter increased from eighteen to twenty-seven the members of the Economic and Social Council, rule 146 of the rules of procedure should be amended to provide that the Assembly should each year, in the course of its regular session, elect nine members of the Economic and Social Council for a term of three years.

5. Finally, the Secretary-General suggested that the foregoing amendments should take effect as from 1 January 1966, the date on which the terms of office of the members of the enlarged Councils elected during the twentieth session would begin, in accordance with rule 140 of the General Assembly's rules of procedure.

6. At its 1336th plenary meeting, on 24 September 1965, the General Assembly decided to include the item in its agenda, and allocated it to the Sixth Committee. The Sixth Committee considered the item at its 873rd meeting, on 10 November, and at its 878th and 879th meetings, on 18 and 19 November.

PROPOSALS

7. 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. By the operative paragraph of this draft resolution, the General Assembly would decide, with effect from 1 January 1966, to amend rules 8 (b), 143 and 146 of its rules of procedure as follows: (a) in rule 8 (b) the word "seven" would be replaced by the word "nine"; (b) in rule 143 the word "three" would be replaced by the word "five"; and (c) in rule 146 the word "six" would be replaced by the word "nine".

8. At the 878th meeting of the Sixth Committee, on 18 November, the representative of Peru presented the draft resolution, in the name of his delegation, in the form of three separate draft resolutions, draft resolution A

dealing with rule 8 (b), draft resolution B with rule 143 and draft resolution C with rule 146. The text of these three draft resolutions (A/C.6/L.573) was introduced in the Sixth Committee at its 879th meeting, on 19 November, and is identical with the recommendations of the Sixth Committee contained in paragraph 21 of the present report.

DEBATE

9. A number of delegations were of the view that the item under discussion should not give rise to a protracted debate. The proposed amendments to the rules of procedure were a direct consequence of the entry into force of the amendments to Articles 23, 27 and 61 of the Charter. These amendments were contained in a prior decision of the General Assembly set out in resolutions 1991 A and B (XVIII) of 17 December 1963 with which the Committee had to comply. The Committee was bound to give effect to the Charter amendments. If the rules of procedure were not amended, they would be at variance with the Charter and the latter would prevail.
10. Apart from general remarks of the foregoing character, discussion on the substance of the item centred around the effective date for the entry into force of the proposed amendments to the rules of procedure, and the substantive provisions of rule 8 (b) which relate to the convening of emergency special sessions of the General Assembly under the procedure laid down in General Assembly resolution 377 (V) of 3 November 1950 (the resolution entitled "Uniting for peace").

Effective date of the amendments to the rules of procedure

11. One delegation requested a clarification as to why the Secretary-General had proposed that the amendments to the rules of procedure should become effective only on 1 January 1966, and not immediately upon the adoption of the resolution amending the rules, particularly as far as rules 143 and 146 were concerned, since elections of members of the Security Council and of the Economic and Social Council would be held at the current session of the Assembly.
12. The representative of the Secretary-General explained that, in this respect, a distinction could be made between rule 8 (b) and rules 143 and 146, and the change in the majority required in the Council for the adoption of decisions would therefore be applied only as of 1 January 1966. If rule 8 (b) were amended

immediately, there would be a discrepancy between that rule, as amended, and the practice which would be followed in the Council up to 1 January 1966 with respect to the majority required to adopt decisions. It had, therefore, been proposed that the amendment to rule 8 (b) should become effective on that date and not before. As regards rules 143 and 146, they would not be applied in practice until elections to the Security Council and to the Economic and Social Council were held in 1966 at the twenty-first session of the General Assembly. The present year was a transitional one, when the Charter amendments were first given effect. Both the seats of retiring members and all the new seats on these Councils would be filled at one and the same time, and it would thus be necessary this year to elect more than five members of the Security Council and more than nine members of the Economic and Social Council. The elections at the twentieth session would therefore proceed directly on the basis of the Charter, as amended, and not of the rules of procedure.

13. A few delegations expressed the view that it might be desirable to adopt provisional rules of procedure to cover the situation arising at the twentieth session with respect to the elections to the Security Council and to the Economic and Social Council. One delegation observed that the elections at the twentieth session would proceed, so far as the filling of seats of retiring members was concerned, on the basis of rules 143 and 146 in their present form, and so far as filling new seats were concerned, directly on the basis of the Charter as amended, there being a vacuum in the rules in this latter respect.

14. A number of other delegations thought that it was unnecessary to adopt provisional rules for the elections at the twentieth session. Those elections would proceed directly on the basis of the Charter, as amended, which prevailed over provisions in the rules of procedure in the event of conflict. It was undesirable to adopt rules which were not of a permanent nature or to legislate for a situation which was already covered in General Assembly resolutions 1991 A and B (XVIII) and the text of the Charter, as amended. It would be sufficient if it were recorded in the report of the Sixth Committee or in a preambular paragraph to the resolution that it was generally agreed that the elections should proceed on the basis of the Charter, as amended.

15. The representative of Peru, in introducing the text of the three revised draft resolutions (A/C.6/L.573) at the 879th meeting, stated that, although he did not consider this necessary, he had added a new preambular paragraph to draft resolutions B and C to accommodate the views expressed in the Committee with respect to the elections at the twentieth session to the Security Council and to the Economic and Social Council.

Rule 8 (b)

16. In explanation of vote, some delegations, while expressing their support for draft resolutions B and C, said they would vote, or had voted, against draft resolution A for reasons of principle, since the amendment it proposed related to rule 8 (b) of the rules of procedure. That rule was based on General Assembly resolution 377 (V) which, in their opinion, was unconstitutional and illegal. Resolution 377 (V) had sought to undermine the very foundations of the United Nations by bypassing the Security Council and by conferring on the Assembly powers reserved by the Charter for the Security Council, which was the sole organ authorized to take measures for the maintenance and restoration of international peace and security. Resolution 377 (V) was contrary to Articles 24, 39 and 51 of the Charter.

17. One delegation announced that it would abstain on the vote on draft resolution A. While only a minor procedural change was proposed in that draft resolution, the rule involved, namely rule 8 (b), defined the procedure for convening emergency special sessions of the General Assembly pursuant to resolution 377 (V). That resolution, in the opinion of this delegation, had the effect of introducing modifications into the provisions of the Charter concerning the division of functions between the General Assembly and the Security Council. Such modifications could only be made by the amendment procedures specified in the Charter itself.

18. A number of other delegations stated that, since the substance of rule 8 (b) had been raised, they were obliged to put on record their own views regarding the constitutionality of resolution 377 (V) and its continued applicability.

Resolution 377 (V) provided that if the Security Council, because of lack of unanimity of the permanent members, failed to exercise its primary responsibility for the maintenance of international peace and security in any case when there

appeared to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly should consider the matter immediately with a view to making appropriate recommendations to Member States for collective measures. On the one hand, no one denied that only the Security Council could adopt enforcement measures binding on Member States. On the other hand, there were few Member States which considered that, when the Security Council failed to perform its functions, the Organization was thereby relieved of its responsibilities for the maintenance of international peace and security. It had been precisely to help the United Nations perform its duties that the procedure provided for in resolution 377 (V) had been instituted. That procedure had received substantial support in the Special Committee on Peace-keeping Operations. In its advisory opinion, Certain Expenses of the United Nations, the International Court of Justice had recognized that the General Assembly had the power to recommend, but not to impose, certain peace-keeping measures. The constitutionality of resolution 377 (V) was therefore indisputable.

19. It was also said that to deprive the General Assembly of its peace-keeping responsibilities, as those States opposed to resolution 377 (V) sought to do, would be unconstitutional. The maintenance of peace was not the exclusive prerogative of the great Powers seated in the Security Council and the Charter could not be interpreted in that sense without doing violence to it. Maintenance of the exclusive competence of the Security Council in the field of peace and security was contrary to the sovereign equality of all States Members of the Organization. In any event, the issue before the Committee was a minor procedural change in rule 8 (b) and not the substance of that rule. As to substance, the rule remained valid until it was expressly declared by the General Assembly to be null and void. As to its procedural aspects, the rule must be brought into line with the text of the Charter, as amended.

VOTING

20. At its 879th meeting, on 19 November 1965, the Sixth Committee voted on the draft resolutions submitted by Peru (A/C.6/L.573).

Draft resolution A was adopted by 68 votes to 8, with 2 abstentions.

Draft resolutions B and C were adopted unanimously.

RECOMMENDATIONS OF THE SIXTH COMMITTEE

21. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolutions:

Amendments to the rules of procedure of the General Assembly consequent upon the entry into force of the amendments to Articles 23, 27 and 61 of the Charter of the United Nations

A

The General Assembly,

Noting that the amendments to Article 27 of the Charter of the United Nations, adopted by the General Assembly in its resolution 1991 A (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that, in accordance with rule 140 of the General Assembly's rules of procedure, the terms of office of the non-permanent members of the Security Council elected during the twentieth session, including all the additional members, will begin on 1 January 1966,

Decides, with effect from 1 January 1966, to amend rule 8 (b) of its rules of procedure to provide that in rule 8 (b) the word "seven" shall be replaced by the word "nine".

B

The General Assembly,

Noting that the amendments to Article 23 of the Charter of the United Nations, adopted by the General Assembly in its resolution 1991 A (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that at the election of non-permanent members of the Security Council at the twentieth session of the General Assembly effect must be given to the increase in membership of the Council and to the transitional provisions regarding terms of office provided in Article 23 of the Charter as amended, and that rule 143 of the rules of procedure of the General Assembly, as amended by the present resolution, will apply for the first time at the election to be held at the twenty-first session,

Decides, with effect from 1 January 1966, to amend rule 143 of the rules of procedure to provide that in rule 143 the word "three" shall be replaced by the word "five".

C

The General Assembly,

Noting that the amendments to Article 61 of the Charter of the United Nations, adopted by the General Assembly in its resolution 1991 B (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that at the election of members of the Economic and Social Council at the twentieth session of the General Assembly effect must be given to the increase in membership of the Council and to the transitional provisions regarding terms of office provided in Article 61 of the Charter as amended, and that rule 146 of the rules of procedure of the General Assembly, as amended by the present resolution, will apply for the first time at the election to be held at the twenty-first session,

Decides, with effect from 1 January 1966, to amend rule 146 of its rules of procedure to provide that in rule 146 the word "six" shall be replaced by the word "nine".
