

## **Article 109 Charter Review**

### **Strategy for Implementing Substantive UN Reform and Democratization**

Article 109 of the UN Charter provides rules for the convening of a General Conference of UN member states for the purpose of reviewing the UN's Charter. According to para. (3), a majority vote of the UN General Assembly and the UN Security Council would suffice to mandate such a review conference. No veto right would apply.

#### **Background**

According to legislative history, Article 109 was not part of the original Big-3 (USA, Soviet Union, UK) proposal for a UN organization at the San Francisco Conference of 1945. However, once the smaller states expressed their opposition to the Security Council composition and the veto privilege of the P5, the review process was introduced as a compromise according to which the Charter and the Security Council would be subject to change and democratization at a later time. To reflect this, Article 109 was introduced. In fact, Article 109 (3) reflects that after 10 years a "general conference" to review the charter, presumably, towards its democratization, was promised. However, up to now no Charter review conference was held under Article 109.

#### **Substantive and legally binding nature of the outcome**

Although the Charter amendment process according to Article 108 is another means of introducing changes and reforms of the UN, Article 109 was designed to facilitate more substantive changes. For example, the addition of a UN Parliamentary Assembly as a new main organ would imply overall changes and therefore multiple provisions would be affected, for example the Charter sections on the General Assembly and the Security Council. Therefore, the alternate path of Art. 109 for a more elaborative and "general" review conference to adopt such changes was provided for. The outcome of a review conference, once adopted and ratified, becomes binding on all member states.

#### **Adoption Process**

There are two stages in the UN charter review process. First, convening of the conference under Article 109, and adopting the desired changes. At this stage, two-thirds of the favorable vote of the member states is needed to adopt changes whereas the P5 are not able to veto the outcome.

In the second phase the adopted changes are sent to member states for ratification. At this stage the P5 can, according to the Charter, potentially veto any decision. This is probably the reason why most international law scholars and policy makers have historically neglected this path as being viable.

However, there is disagreement, as to how a member of the P5 can veto the outcome of a Charter Review in practice once it was held. For example, the Charter is not clear as to the duration of the ratification process, and what happens if a member of the P5 abstains from the ratification process, neither adopting or rejecting the review outcome. Further, based on the historical data of a similar processes under Article 108, when the UNSC and ECOSOC memberships were increased in the 1960s and 1970s, despite one or more P5 opposing the changes, once the ratification process started, they gave in to global political pressure and eventually ratified the changes.

*Shahr-yar Sharei, February/2018, Center for United Nations Constitutional Research*