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Back to  
IABA Law Review  
Vol. 6

Regresar a la Revista  
jurídica Vol. 6

IABA (main site)

FIA (página inicial)

### ACCESS TO INTERNATIONAL JUSTICE THROUGH A NEW JUDICIAL, LEGISLATIVE AND POLITICAL INTERNATIONAL ORDER, AS A RESULT OF THE TRANSFORMATION OF THE UNITED NATIONS INTO A WORLD FEDERATION OF NATIONS.

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Currently, because of economic and technological globalization as well as serious world problems which humanity is facing, the intervention of new supranational organizations is necessary. Within this way of thinking, we propose a procedure for a deep solution as follows:

### LEGAL BASIS OF THE INTEGRAL REVIEW OF THE 1945 SAN FRANCISCO CHARTER THROUGH A GENERAL CONFERENCE OF THE U.N. MEMBERS

There has been insistence generally that based on the 1945 United Nations Charter, it is impossible to enforce any *reform to the Charter* of the United Nations *without the consent* of each one of the **five** Permanent Members of the Security Council, *because of the fact that they hold the right of veto* (Art. 108). It is also stated that if there is the intention of *modifying* such Charter as a result of a recommendation of a General Conference (Art. 109, 2<sup>nd</sup> paragraph.) it would be a waste of time for the same reason that the modification or alteration of the Charter itself, could be vetoed by any of the five Permanent Members.

By means of this document, we show that there is an immune track in order to avoid the exercise of the right of veto, through an official call *not to reform or alter the U. N. Charter*, but for its *integral* review and that as a consequence of such review it is possible to start the procedure of *transformation of the UN. The right of the Nations to call a conference to Review the Charter* that is embedded in Article 109, paragraphs 1<sup>st</sup> and 3<sup>rd</sup>, which has been ignored or forgotten for more than 60 years.

In this regard, personally as a lawyer, and on behalf of the Non Governmental Organization "*Planetafilia A.C.*" we have established multiple contacts with several government offices and institutions both private and public around the world with the same basic idea which consists in "*Reviewing and transforming the U.N.*", instead of "*Reforming*" the Charter.

As a historical background, we should mention that in the year 1955, ten years after the San Francisco Charter was issued, there was an opportunity to have it **Reviewed** with a facilitated call procedure, as provided by Art. 109, paragraph 3<sup>rd</sup>, but the matter was postponed 12 consecutive times and then indefinitely. Also, since the beginning of the Cold War, the most powerful nations eliminated the possibility to put up an international agenda containing the topic to establish a world government, which was used in many stories or fiction films where the main theme was reduced to the evilness that the military or scientific empire can represent for humankind. As a counter- proposal to this idea of a possible abominable empire, we pronounce ourselves in favor of justice and supremacy of international law, and eventually world law, through a new judicial, legislative and political order, which consists of ***the transformation of the U.N. into the World Federation of Nations*** based on the general principles of international law, known as "***ius cogens***" and particularly by the "***Peoples Self Determination Principle***"; principles that have been widely recognized by the current International Community and particularly by Art. 38<sup>th</sup>, 1<sup>st</sup> paragraph, clause c) of the Statute of the International Court of Justice.

The solution that we have been proposing, since 2001, aims at pointing out a way through which it is legally feasible that the General Assembly may call a General Conference of U.N. Members, with the aim of **REVIEWING** the entire U.N.'s Charter. This call is not subject to the right of veto of the five Permanent Members of the Security Council. On the other hand, the veto of the five world powerful countries may be applied for other issues related to the amendments or alterations to the Charter, as can be verified in Articles 108 or 109, 2<sup>nd</sup> paragraph, respectively.

**Once the General Conference is installed and the Charter's Review has taken place, the Member Nations could agree to initiate the transformation of the U.N. into a World Federation of Nations, based on the "Right of Self Determination of the Nations as a Whole" and which derives naturally from the abovementioned Peoples Self Determination Principle.**

*To call for such conference in order to review the Charter, what is desirable would be to reach a consensus of all the Nations including the five Permanent Members of the Security Council. Otherwise it could be called by a simple sheer majority of the Members of the U.N. General Assembly, plus the vote of only any 7 of the 15 Members of the Security Council. When we say any we mean permanent members or non-permanent members, based on Article 109, 3<sup>rd</sup> paragraph of the U.N. Charter. This third paragraph was established to facilitate the call at the tenth Assembly and in our opinion, is still enforceable and in good standing.*

In 1955 the tenth session of the General Assembly established a Preparatory Committee under resolution 992 (X) and the call was postponed 12 consecutive times until 1967. It was argued that there were not suitable conditions to carry out the review. And some time after, the General Assembly decided to create an *Ad Hoc* Committee with 42 members, GA Res. 3349 (XXIX), in 1974. The *Ad Hoc* Committee was reconvened as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Its membership was enlarged to 47 members, GA Res. 3499 (XXX) in 1975.

Twenty years later, the General Assembly on its Resolution 50/52, December 15<sup>th</sup>, 1995, decided that the "Special Committee shall be open to all States Member of the United Nations and will continue to operate on the basis of the practice of consensus", practice which limited the work and possible effective results.

It is clear the urgent necessity that General Assembly retakes its responsibility and proceed to call the General Conference of U.N. Members with the purpose to Review the entire U.N. Charter, as it is imperatively stated in Article 109, paragraph 3<sup>rd</sup>, which has never been abolished.

Nevertheless, even if it supposedly were accurate to say that the **third** paragraph of Article 109 for any reason which answers to other interests is not enforceable, **anyway the first paragraph of Article 109.**

It is clear the urgent necessity that General Assembly retakes its responsibility and proceed to call the General Conference of U.N. Members with the purpose to Review the entire U.N. Charter, as it is imperatively stated in Article 109, paragraph 3<sup>rd</sup>, which has never been abolished.

Nevertheless, even if it supposedly were accurate to say that the **third** paragraph of Article 109 for any reason which answers to other interests is not enforceable, **anyway the first paragraph of Article 109** allows the General Conference to be called by the General Assembly with a qualified quorum of two thirds of its members and the vote of **any nine members of the Security Council.**

Therefore by either the third or first paragraphs the General Conference may be called, because both instances foresee any seven or nine members of the Security Council, which incidentally, may be selected from the "ten non-permanent members" of the Security Council, in both cases.

However, before continuing with the analysis of the topic of the *review of the Charter* by an *Ad Hoc* Members General Conference, we will make a brief summary of the characteristics to **reform or alter** the Charter, itself:

**The U.N. General Assembly** is the competent body to **amend** the Charter under the terms of **Article 108**, which accurately states:

**“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”.**

Consequently to amend or *reform* the Charter, it is clear that when including the ratification of all the Permanent Members of the Security Council, each one individually has the right to veto any amendment or reform, simply by not ratifying it. The same applies to *modify* the Charter, according to Article 109, 2<sup>nd</sup> paragraph.

However, our proposal **is not to reform, amend or alter** the Charter but to **REVIEW** it, through a **General Conference of the Members of the United Nations** in terms of the 3rd. paragraph of Article 109 or the 1st. paragraph of the same Article, which states as follows:

**“Article 109.- 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.(1st. Paragraph, Art. 109).**

Consequently, a General Conference for the Members with the purpose of REVIEWING the Charter, can be called by the General Assembly without the risk of being vetoed (the call) by any of the five Permanent Members, as long as said legal voting quorum is observed in the understanding that the Charter does not specifies any ratification of the participating nations, because it is a call considered to facilitate the Conference.

**Even more, the U.N. founding members foresaw that the 3rd. paragraph of the same Article 109 should have a reduced quorum to call a Members General Conference that would *Review the Charter* in the year 1955 imperatively establishing that:**

**“If such 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 in 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” (3rd. Paragraph of Article 109).**

This 3rd paragraph reduces the quorum to call a General Conference with the purpose to review the Charter. It was made to facilitate the Call procedure for the General Assembly to hold such Conference, rule that in our opinion remains in force, because there is not valid reasons to think it can not be applied after the tenth Assembly. Otherwise it would be against the clear spirit of founding members for the renewal of United Nations Organization.

Amazingly, in 60 years has never been called the General Conference to which we have been referring, and the purpose of this essay is to create consciousness among lawyers, world civil society and governments of this convenient and valid legal procedure established by the UN Charter itself. It is an inalienable right of the nations, by virtue of the fact that if the door was opened for the “tenth annual session” there is no clear reason to deny the next General Assemblies of the U. N. to exercise their right to call in the terms of the abovementioned 3rd. paragraph. It is convenient to note that the special quorum was not specifically established “only” for the tenth annual meeting. That would had been short vision and contrary to the Charter’s universal spirit. In deed, this right has never been abolished in view of the fact that the right to call of the yearly assembly was only postponed. Finally, the subject was minimized in different committees that have been taking care of other subjects up to the present time.

To summarize, the *Ad Hoc* Conference recommended in this document, is possible **“with the purpose of reviewing the Charter”** in its entirety and not for matters that mean its amendment or alteration. In other words, the Members of the **General Conference duly called and installed based in paragraphs 1st or 3rd (as the case may be) of Article 109**, can go ahead and review all the Charter without interference from the veto right and **carry out the analysis and arguments regarding the “raison d’etre” of the United Nations, before the great challenges of these new XXI century.**

After carrying out the corresponding debate within the proposed General Conference, if the United Nations Members consider that in **essence** the U. N. neither answers to the needs of the peoples and nations nor fulfills completely all its responsibilities, because of the lack of equity in the voting system and ineffectiveness due to the absence of coercive structures as well as of enforceable and judicial standards, **then the Nations would have the opportunity to agree, at the heart of the above-mentioned Conference, on the transformation of the U. N. into a WORLD FEDERATION OF NATIONS. Their decision would be based in the “Right to self-determination of the Nations as a whole” and the General International Law Principles known as ius cogens. All this can occur without having amended or altered any legal provision of the San Francisco Charter.**

To conclude, the world community can not renounce the evolution of Public International Law to attain a new efficient and effective legal and political world order that recognizes and asserts enforceable legislation and judicial standards that would work **by means of weighted voting and representation** in the integration of a Parliament or Congress of such World Federation. Its purpose would be to guarantee access to justice with full jurisdiction, **exclusively for international global matters that, because of their nature, affect the international community and viability of the planet earth and future generations.** It should be according with the system of specific and delegated powers in a future World Federal Treaty, with division of powers and a democratic, plural and accountable global governance which, at the same time must respect the internal administration of the nations federated as authorized by their citizens, to achieve jointly structures for a more peaceful and secure world .

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