



**United Nations**

# **Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization**

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**Report of the Special Committee on the  
Charter of the United Nations and on  
the Strengthening of the Role of  
the Organization**



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*Note*

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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## Chapter I

### Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution [75/140](#) and met at United Nations Headquarters from 16 to 24 February 2021.
2. In accordance with paragraph 5 of General Assembly resolution [50/52](#), the Special Committee was open to all States Members of the United Nations.
3. The Special Committee held three meetings: the 297th and 298th meetings, on 16 February, and the 299th meeting, on 24 February. The Working Group of the Whole, established at the 297th meeting, held three meetings, from 16 to 18 February. In the light of the ongoing coronavirus disease (COVID-19) pandemic, the 2nd and 3rd meetings of the Working Group were held in a hybrid format, with delegations participating either in person or online.
4. The session was opened by Kira Christianne Danganan Azucena (Philippines) in her capacity as Chair of the previous session of the Special Committee.
5. At its 297th meeting, on 16 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981,<sup>1</sup> elected the following members of its Bureau:

*Chair:*

Edgar Daniel Leal Matta (Guatemala)

*Vice-Chairs:*

Mamadou Racine Ly (Senegal)  
Mohd Hafiz Bin Othman (Malaysia)  
Mladen Bručić-Matic (Croatia)

*Rapporteur:*

Sarah Weiss Ma'udi (Israel)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.
7. The Director of the Codification Division of the Office of Legal Affairs acted as Secretary of the Special Committee. The Principal Legal Officer of the Division acted as Assistant Secretary of the Special Committee. The Division provided substantive services for the Special Committee and the Working Group.
8. At its 297th meeting, the Special Committee adopted the following agenda:
  1. Opening of the session.
  2. Election of officers.
  3. Adoption of the agenda.
  4. Organization of work.
  5. Consideration of the questions referred to in General Assembly resolution [75/140](#), in accordance with the mandate of the Special Committee as set out in that resolution.
  6. Adoption of the report.

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<sup>1</sup> See [A/36/33](#), para. 7.

9. General statements touching on all or several items were made at the 297th and 298th meetings. Their substance is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it General Assembly resolution [64/115](#) and the annex thereto, entitled “Introduction and implementation of sanctions imposed by the United Nations”.

11. The Special Committee also had before it the following documents: a revised proposal submitted at the 1998 session by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;<sup>2</sup> a further revised version, submitted at the 2014 session, of the working paper submitted by Belarus and the Russian Federation at the 2005 session on an advisory opinion to be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence;<sup>3</sup> a revised working paper submitted by Cuba at the 2019 session on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations;<sup>4</sup> and a further revised working paper submitted by Ghana at the 2019 session on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes.<sup>5</sup>

12. With regard to the question of the peaceful settlement of disputes, the Special Committee undertook its annual thematic debate on the means for the settlement of disputes, in accordance with Chapter VI of the Charter, including in particular those means referred to in Article 33 thereof, and consistent with the Manila Declaration on the Peaceful Settlement of International Disputes. During the debate, the discussions were focused on the subtopic “Exchange of information on State practices regarding the use of arbitration”. The Special Committee also had before it a proposal, revised in 2014 by the Russian Federation, recommending that the Secretariat be requested to establish a website dedicated to the peaceful settlement of disputes between States and to update the *Handbook on the Peaceful Settlement of Disputes between States*,<sup>6</sup> and a recommendation, submitted by the Philippines at the current session, on the commemoration of the fortieth anniversary of the adoption of the Manila Declaration.<sup>7</sup>

13. At its 299th meeting, on 24 February, the Special Committee adopted its report on its 2021 session.

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<sup>2</sup> See [A/53/33](#), para. 98.

<sup>3</sup> See [A/69/33](#), para. 37.

<sup>4</sup> See [A/74/33](#), annex I.

<sup>5</sup> See [A/74/33](#), annex II.

<sup>6</sup> See [A/69/33](#), para. 52.

<sup>7</sup> See [A/AC.182/L.157](#).

## Chapter II

### Maintenance of international peace and security

14. The Special Committee considered the question of the maintenance of international peace and security during the general exchange of views held at its 297th and 298th meetings, on 16 February, and at the 1st and 2nd meetings of the Working Group of the Whole, on 16 and 17 February.

15. In their general comments, a number of delegations reaffirmed their commitment to the Charter of the United Nations and multilateralism and reiterated that the reform of the Organization should be carried out in accordance with the principles and procedures established in the Charter and preserve the legal framework of the Charter as a constitutional instrument. It was underlined that the General Assembly remained the chief deliberative, policymaking and representative organ of the United Nations. A number of delegations reiterated their concern at the continuing encroachment by the Security Council on the functions and powers of the Assembly and the Economic and Social Council by addressing issues that fell within the competences of those organs, and at the attempts to enter areas of setting norms and establishing definitions that fell within the purview of the Assembly. The view was expressed by some delegations that there was a need to achieve the right balance envisaged in the Charter between the functions and powers of the principal organs of the Organization, which were encouraged to intensify cooperation and dialogue with one another. It was also emphasized that the Special Committee was the appropriate forum for examining the legal aspects of those issues.

#### A. Introduction and implementation of sanctions imposed by the United Nations

16. During the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and the 1st meeting of the Working Group of the Whole, on 16 February, reference was made to the issue of the introduction and implementation of sanctions imposed by the United Nations (see General Assembly resolution [64/115](#), annex).

17. During the general exchange of views and the 1st meeting of the Working Group of the Whole, a number of delegations reiterated their concerns regarding sanctions imposed by the Security Council. It was emphasized that sanctions should not be adopted indiscriminately or be used as blunt instruments that could inflict suffering on vulnerable groups in the target country, and that their objective should not be to punish or otherwise exact retribution on the population.

18. Many delegations emphasized that sanctions should be implemented in full compliance with the provisions of the Charter and international law, including international humanitarian law, international human rights law and international refugee law, by ensuring that sanctions procedures were fair and clear and did not violate the rights of listed persons. Mention was made in that regard of the important role of the Office of the Ombudsperson to the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (ISIL) (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities and to the need for the Council to enhance its due process standards. It was reiterated that sanctions should be imposed only as a measure of last resort when there existed a threat to international peace and security, a breach of peace or an act of aggression and that they should be in accordance with the Charter and based on evidence. Some delegations also noted that sanctions were not applicable as a preventive measure and should be predicated upon the exhaustion of all other



peaceful means. It was also emphasized that the objectives of sanctions regimes should be clearly defined and based on tenable legal grounds and that sanctions should be imposed with a clear time frame, be subject to monitoring and periodic review and be lifted as soon as their objectives had been achieved. Several delegations noted that sanctions should not produce unintended consequences in the target State or in third States that might lead to violations of human rights and fundamental freedoms. It was stressed that sanctions should not hinder humanitarian assistance from reaching the civilian population. A continued commitment to preserving the humanitarian space was expressed. A number of delegations reaffirmed their concerns about the imposition of unilateral sanctions in violation of international law and the international rule of law, also noting that those most affected by such sanctions often belonged to groups of especially vulnerable people.

19. Several delegations reaffirmed that sanctions were an important tool for ensuring the maintenance and achievement of international peace and security. In that regard, the shift from comprehensive to targeted sanctions was welcomed. It was highlighted that the targeted nature of sanctions could minimize their adverse humanitarian and socioeconomic impact and that they had unintended consequences on the civilian population and third States. Some delegations noted the possibility of providing for exemptions in sanctions regimes, including for the facilitation of humanitarian aid.

20. Delegations expressed appreciation for the regular briefings by the Secretariat on the document entitled “Introduction and implementation of sanctions imposed by the United Nations”, contained in the annex to General Assembly resolution 64/115. The Secretariat’s efforts to increase transparency and equity in the implementation of sanctions were welcomed. It was suggested that the Secretariat should develop its capacity to properly assess the unintended side effects of sanctions imposed by the Security Council, as such capacity had not been sufficiently developed in the past, in order to fully assess the short-term and long-term socioeconomic and humanitarian consequences of the Organization’s sanctions regimes.

### **Briefing**

21. At its 1st meeting, the Working Group of the Whole was briefed by a representative of the Department of Political and Peacebuilding Affairs on the document contained in the annex to General Assembly resolution 64/115, as requested by the Assembly in paragraph 4 of its resolution 75/140. He provided information on the elements of the document and general information about United Nations sanctions regimes, the role of the sanctions committees and expert panels in the implementation of sanctions, issues of international humanitarian law and international human rights law relating to sanctions, the monitoring and review mechanisms and recent developments in the implementation of sanctions regimes following the requests made by the Special Committee at its previous session. He also responded to questions from delegations on several aspects of sanctions regimes. He indicated that relevant information was also available on the website of the Security Council, in particular in the fact sheets on the subsidiary organs of the Council.<sup>8</sup>

22. Delegations generally expressed their appreciation for the briefing and the efforts made to enhance the transparency of the procedures relating to sanctions and due process.

23. While the training and outreach activities carried out by the Secretariat to enhance the understanding of sanctions regimes were welcomed, the Secretariat was asked to explain what specific measures had been taken to provide clarity to the

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<sup>8</sup> Available at [www.un.org/securitycouncil/sanctions/information](http://www.un.org/securitycouncil/sanctions/information).

private and public stakeholders having to comply with the sanctions, especially in the context of the current COVID-19 pandemic. The representative of the Department of Political and Peacebuilding Affairs noted that outreach and training activities had to be conducted at different levels. Outreach to the private sector meant bringing different sectors together to explain the basic functioning of sanctions regimes. Although sanctions were designed to avoid unintended adverse consequences, they could turn into blunt instruments if they were not implemented properly. The information gap with regard to the private sector had to be closed.

24. The Secretariat was also asked how the lessons learned from the work of the Office of the Ombudsperson to the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities could be used to improve other sanctions regimes, in particular regarding due process. The representative of the Department of Political and Peacebuilding Affairs noted that, while that question had been discussed by Member States, including States members of the Security Council, there was not yet agreement on how to harmonize the due process approach or mechanisms across all sanctions regimes. While the Secretariat had identified areas of potential improvement for the functioning of the Focal Point for Delisting, such as in the context of the 2014 high-level review of United Nations sanctions, it continued to be guided by resolution 1730 (2006), in which the Council had established the Office of the Focal Point. In accordance with that resolution, the Focal Point mainly provided the sanctions committees with administrative assistance, such as information gathering. By contrast, the Ombudsperson had the authority to review delisting requests and recommend the delisting of individuals, groups, undertakings and entities on the ISIL (Da'esh) and Al-Qaida sanctions list. Due process issues had also been tackled by outside entities, such as the United Nations University, which, in a 2018 study, had reviewed the Council's efforts to protect due process across all sanctions regimes and made recommendations on how Member States could address the issue.<sup>9</sup>

25. The Secretariat was requested to clarify the significant disparities between regional groups in respect of the number of members on panels of experts. The representative of the Department of Political and Peacebuilding Affairs noted that the Secretariat did not apply quotas for the composition of the panels, but that it aimed to achieve geographical and gender balance. He emphasized that the process for selecting members was competitive, with due regard paid to geographical factors and gender, and encouraged delegations to recommend competent candidates from their regional groups.

26. In relation to the view that the Secretariat lacked the capacity to assess the humanitarian consequences of sanctions, the representative of the Department of Political and Peacebuilding Affairs said that it was necessary to have both the expertise and the capacity to assess whether and how sanctions had an impact on a country's socioeconomic situation. Regarding specific requests for exemptions to sanctions regimes, the Secretariat was available to provide support to the extent possible.

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<sup>9</sup> James Cockayne, Rebecca Brubaker and Nadeshda Jayakody, *Fairly Clear Risks: Protecting UN Sanctions' Legitimacy and Effectiveness through Fair and Clear Procedures* (United Nations University, 2018).

## **B. Consideration of the revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security**

27. During the general exchange of views held at the 297th and 298th meetings of the Special Committee, and at the 1st meeting of the Working Group of the Whole, on 16 February, the Special Committee considered the revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/53/33, para. 98).

28. The sponsor delegation recalled the background to the proposal and highlighted that it had been considered by the Special Committee since 1998. It also recalled that the proposal was aimed at, inter alia, improving the methods of work between the the General Assembly and the Security Council so that both organs could effectively fulfil their respective roles in the maintenance of international peace and security.

29. Several delegations reiterated their support for the continued consideration of the proposal. The view was expressed that the proposal needed to be thoroughly debated and merited meaningful discussions with results-based deliberations.

30. Other delegations were of the view that the proposal was among those that were duplicative of or inconsistent with revitalization efforts undertaken elsewhere within the Organization. It was emphasized that the proposal did not address a clear need, since the relationship between the different organs within the Organization was already defined in the Charter.

## **C. Consideration of the revised working paper submitted by Belarus and the Russian Federation**

31. During the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and at the 2nd meeting of the Working Group of the Whole, on 17 February, the Special Committee considered the further revised working paper submitted by Belarus and the Russian Federation at the 2014 session of the Special Committee (A/69/33, para. 37), in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

32. The sponsors of the proposal recalled the background thereto and highlighted the continued relevance of the subject matter of the further revised working paper and its value in providing a common understanding of the legal consequences of the resort to the use of force by States without prior authorization by the Security Council and in strengthening the prohibition on the threat or resort to the use of force in international relations. The sponsors favoured retaining the proposal on the agenda of the Special Committee. A sponsor delegation expressed its regret that there appeared to be doubt about the advisability of the proposal.

33. Several delegations stressed the importance of the prohibition on the threat or use of force, contained in the Charter, and reiterated their support for the proposal and for its thorough and meaningful consideration. It was highlighted that an advisory opinion by the International Court of Justice would contribute to the clarification of the provisions of the Charter regarding the use of force and could contribute to the strengthening of the Organization and of a rules-based international system. Support was expressed for the work and the role of the Court.

34. Opposition to the request for an advisory opinion by the International Court of Justice, which had been expressed at previous sessions of the Special Committee, was reiterated. Some delegations were of the view that the proposal neither posed a well-defined and specific question nor addressed a clear and specific need.

**D. Consideration of the revised working paper submitted by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations**

35. The revised working paper submitted by Cuba at the 2019 session of the Special Committee (A/74/33, annex I) was referred to during the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and was considered at the 2nd meeting of the Working Group of the Whole, on 17 February.

36. During the general exchange of views, the sponsor delegation expressed its readiness to continue to work with interested delegations to further improve the revised working paper. At the 2nd meeting of the Working Group of the Whole, the sponsor delegation explained that the paper envisaged a legal study of the powers of the General Assembly under the Charter, with a view to facilitating the active and effective exercise of those powers. The sponsor delegation reiterated its invitation to delegations to share their views so as to reach consensus on the paper.

37. Several delegations expressed their support for the proposal contained in the revised working paper. It was noted that the aim of the paper was to achieve the delicate balance, envisaged in the Charter, between the mandates of all the principal organs of the United Nations. It was considered that the paper would contribute to strengthening the role of the Organization and should therefore remain on the agenda of the Special Committee.

38. Other delegations were of the opinion that the functions of the principal organs of the United Nations were well defined in the Charter and that there would be no added value in considering the proposal because it was duplicative of revitalization efforts within other forums of the Organization.

**E. Consideration of the further revised working paper submitted by Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes**

39. The further revised working paper submitted by Ghana at the 2019 session of the Special Committee (A/74/33, annex II) was referred to during the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and was considered at the 2nd meeting of the Working Group of the Whole, on 17 February.

40. The sponsor delegation reiterated that the objective of the further revised working paper was to develop general guidelines to enhance cooperation between the United Nations and regional bodies. In the paper, while acknowledging the primary role of the Security Council for the maintenance of international peace and security in accordance with the Charter, the sponsor delegation recognized the complementary role of regional agencies and arrangements in promoting collective global security. In the view of the sponsor delegation, such enhanced cooperation should be based on clearly defined cooperation agreements with mechanisms to enable periodic monitoring and evaluation. The sponsor delegation also envisaged a more prominent

role for academia, research institutions, civil society and young people in preventive diplomacy and peacebuilding efforts by means of coordinated partnerships with regional agencies or arrangements. It thanked all delegations that had contributed to enhancing the utility of the proposed guidelines, while taking due note of the constructive contributions of some delegations to avoid duplication of the work of the Council. The sponsor delegation noted that the coronavirus disease (COVID-19) pandemic had impeded the work of the working group established by its Ministry of Foreign Affairs to review the paper. The sponsor delegation remained committed to working closely with all delegations to further consolidate inputs regarding the proposal contained in the paper, ahead of its continued consideration at the 2022 session of the Special Committee.

41. Several delegations expressed support for the efforts to finalize the further revised working paper. The proposal was considered to be useful in filling gaps in the work of the United Nations regarding coordination with regional agencies and arrangements in line with their respective mandates. It was reiterated that the scope of the proposal should be narrowed to address specific gaps, and that the work of Special Committee on the proposal should not duplicate efforts in other forums, in particular with regard to the financing of peacekeeping operations. The description in the proposal of the role of regional organizations in the peaceful settlement of international disputes was welcomed.

42. The sponsor delegation was once again asked to clarify details concerning the legal basis of the framework defining the responsibilities of the United Nations and relevant regional agencies and arrangements, the added value of the partnership agreements, including their financing, and the reference to “actions” in the proposed guidelines.

## Chapter III

### Peaceful settlement of disputes

43. The Special Committee considered the question of the peaceful settlement of disputes during the general exchange of views held at its 297th and 298th meetings, on 16 February, and during the 2nd meeting of the Working Group of the Whole, on 17 February.

44. During the general exchange of views and in the Working Group of the Whole, delegations expressed their support for all efforts to promote the peaceful settlement of disputes. Delegations recalled that States should refrain from the threat or use of force and instead settle disputes by peaceful means pursuant to Articles 2 (3) and 33 of the Charter. The significance of the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations was also highlighted. Several delegations emphasized the right of States to freely choose peaceful means to settle international disputes and maintained that those means should be utilized in good faith and on the basis of the mutual consent of the parties to the dispute and should not be subject to abuse.

45. Several delegations asserted the importance of preventive diplomacy in conflict prevention and the peaceful settlement of disputes. The importance of the participation of women in all stages of conflict resolution was also underlined. Several delegations also pointed out the importance of multilateralism and the role of regional arrangements in the peaceful settlement of disputes.

46. Several delegations reaffirmed the role of the International Court of Justice, as the principal judicial organ of the United Nations, in promoting the peaceful settlement of disputes. The usefulness of the Court's advisory opinions on legal questions was also noted. Some delegations stressed the importance of implementation of the decisions of international adjudicative bodies.

47. A number of delegations stated that the annual thematic debate on the means for the settlement of disputes contributed to the more efficient and effective use of peaceful means and promoted a culture of peace among Member States and voiced their support for the Special Committee's continuing to analyse all means envisaged in Article 33 of the Charter.

48. Delegations reiterated their preference that, in accordance with the mandate of the Special Committee, the question of the peaceful settlement of disputes remain on its agenda.

#### **A. Means for the settlement of disputes: exchange of information on State practices regarding the use of arbitration**

49. In accordance with paragraph 5 (a) of General Assembly resolution [75/140](#), delegations focused their debate on the subtopic "Exchange of information on State practices regarding the use of arbitration".

50. Delegations reiterated the importance that they attached to all peaceful means of dispute settlement under Article 33 of the Charter, including arbitration, stressing the responsibility of States to prevent inter-State armed conflicts and to use the instruments and forums available for the peaceful settlement of disputes.

51. Arbitration was generally recognized by delegations as one of the oldest legal methods for the peaceful settlement of disputes between States.<sup>10</sup> In that regard, delegations took note of the 1899 Convention for the Pacific Settlement of International Disputes, which provided for the establishment of the Permanent Court of Arbitration. Delegations pointed out that arbitration was provided for as a dispute settlement mechanism in major multilateral treaties, such as the 1969 Vienna Convention on the Law of Treaties and the 1982 United Nations Convention on the Law of the Sea, as well as in many bilateral treaties.

52. While both arbitration and judicial settlements could result in binding decisions, arbitration was generally recognized as a more flexible and efficient means of dispute settlement. Delegations mentioned that parties were typically able to retain considerable control over the process, facilitated by their ability to appoint arbitrators of their choice, to establish procedures tailored to the dispute and to select the language of the proceedings. With regard to the limitations of arbitration, delegations referred to the need for parties to bear the cost of arbitrators and others, in addition to their own legal costs, and to the difficulty of enforcing arbitral awards, their binding nature notwithstanding. A number of delegations considered that, by submitting a dispute for arbitration, the parties to the dispute committed themselves to accepting and implementing the arbitral award in good faith, and thus encouraged parties to deliver on such commitments as a prerequisite of an international rules-based order. Delegations also viewed arbitration as promoting a culture of peace and the principles enshrined in the Charter, and emphasized that arbitration should be based on full respect for the principle of State consent. It was also maintained that the arbitral tribunals should establish and exercise their jurisdiction in accordance with international law and within the scope of the authorization provided by the parties and should interpret and apply the law faithfully.

53. Delegations noted that arbitration had been used successfully by States to resolve a wide range of disputes, such as treaty disputes and territorial and boundary disputes. The increased use of arbitration in maritime disputes under annex VII to the United Nations Convention on the Law of the Sea was highlighted. Several delegations underlined the continuing importance of the Permanent Court of Arbitration as a key driver for arbitration, including in providing administrative services and support for international arbitration and maintaining a permanent list of available arbitrators. Delegations also expressed appreciation for the work of the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the International Centre for Settlement of Investment Disputes and the Iran-United States Claims Tribunal. Delegations encouraged all States to continue to consider arbitration as an option for dispute settlement.

54. Some delegations referred to the growth of investor-State dispute settlement in recent decades, noting that many States sought reform of the system. A number of delegations also considered arbitration to be inadequate for handling disputes arising under investment treaties, preferring instead to establish a permanent multilateral investment court within the framework of the United Nations Commission on International Trade Law. Those delegations considered that such a multilateral mechanism could address the particular challenges deriving from the decentralized structure of arbitration that led to inconsistent decisions, and could ensure predictability, transparency and cost-effectiveness in the resolution of investment disputes.

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<sup>10</sup> At the 2nd meeting of the Working Group of the Whole, the Secretariat drew attention to the *Reports of International Arbitral Awards*, prepared by the Codification Division, which contain a collection of arbitral awards. See <https://legal.un.org/riaa/>.

55. A number of delegations stressed the need to maintain efforts to strengthen the processes for the peaceful settlement of disputes through the progressive development and codification of international law, as well as to enhance the Organization's effectiveness in that regard. Attention was drawn to the role of the International Law Commission and to General Assembly resolution [1262 \(XIII\)](#), entitled "Question of arbitral procedure".

56. The Special Committee recommends that the thematic debate to be held at its 2022 session be on the subtopic "Exchange of information on State practices regarding the use of judicial settlement".

**B. Proposal by the Russian Federation to recommend that the Secretariat be requested to establish a website on the peaceful settlement of disputes and update the *Handbook on the Peaceful Settlement of Disputes between States***

57. During the general exchange of views held at the 297th meeting of the Special Committee, on 16 February, and at the 2nd meeting of the Working Group of the Whole, on 17 February, the sponsor delegation recalled its proposal, as revised in 2014 ([A/69/33](#), para. 52), that the Special Committee consider requesting the Secretariat to establish a website, within existing resources, dedicated to the peaceful settlement of disputes between States, which would include references to relevant United Nations documents, as well as to the United Nations and other organs active in the field, and to update the *Handbook on the Peaceful Settlement of Disputes between States*. The sponsor delegation once again regretted that no consensus had been reached on the proposal, which had been on the agenda of the Special Committee for several years. The sponsor delegation emphasized the need to update the *Handbook*, which had been prepared by the United Nations in 1992 on the basis of an earlier initiative of the Special Committee (see General Assembly resolutions [39/79](#) and [39/88 A](#) of 13 December 1984), in the light of developments over the previous two decades. The sponsor delegation reiterated its suggestion that work could first begin on the proposed website, which could contain relevant links and documents issued by the United Nations and other organizations. It also requested that the proposal be retained on the agenda of the Special Committee.

58. During the general exchange of views and in the Working Group of the Whole, several delegations voiced support for the proposal. The view was reiterated that updating the *Handbook* and establishing a website on the means for the peaceful settlement of disputes as a reliable source of information would be useful to all Member States and, in particular, to smaller States. It was also suggested that the *Handbook* could be updated to take into account new developments, as well as the practice of Member States, including the best practices raised by Member States in the Special Committee during the annual thematic debate on the means for the settlement of disputes.

59. Other delegations reiterated their doubts regarding the added value of the proposal, given the availability and accessibility of other sources of information online, and continued to maintain their concern that it would not be a proper prioritization of the limited resources allocated to the Secretariat.



### C. Commemoration of the fortieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes

60. During the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and at the 2nd meeting of the Working Group of the Whole, on 17 February, many delegations recalled the commemoration of the fortieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes, which had been approved by the General Assembly in 1982 and annexed to its resolution 37/10. Recognition of and appreciation for the important role that the Special Committee had played in its formulation were expressed. Many delegations stated that it remained an important document produced by the Special Committee. It was pointed out that that was the first time that a text had reflected the development of a comprehensive plan and the consolidation of the legal framework for the peaceful settlement of international disputes, building upon and promoting general international law, the Charter and other key instruments related to the peaceful settlement of international disputes.

61. At the 2nd meeting of the Working Group of the Whole, the representative of the Philippines introduced a proposal for a recommendation on the fortieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes (A/AC.182/L.157). The sponsor delegation explained that the text was based principally on General Assembly resolution 67/95, adopted on 14 December 2012 to commemorate the thirtieth anniversary of the Declaration, and encouraged the United Nations to commemorate the fortieth anniversary of the Declaration, with the cost of the commemoration to be met from voluntary contributions. The sponsor delegation also stated that the commemoration of the fortieth anniversary would serve to highlight the normative and political significance of the Declaration and the commitment of States to the peaceful settlement of international disputes.

62. General support was expressed for the proposal to recommend the commemoration of the Manila Declaration. It was noted that the Declaration deserved renewed attention.

63. The Special Committee recommends the following draft resolution for the consideration of the General Assembly with a view to its adoption:

#### **Fortieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes**

*The General Assembly,*

*Acknowledging* that 15 November 2022 will mark the fortieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes, as approved by the General Assembly in its resolution 37/10 of 15 November 1982, which was adopted without a vote,

*Recalling* that the Manila Declaration was negotiated on the initiative of Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia and on the basis of a text prepared by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,

*Recalling also* that the Manila Declaration was the first instrument adopted by the General Assembly as a result of the work of the Special Committee,

*Recalling further* that the Manila Declaration is a landmark declaration on the peaceful settlement of international disputes, building upon the Charter of the United Nations, in particular its Article 33,

*Recalling* that the International Court of Justice is the principal judicial organ of the United Nations,

1. *Recognizes* the Manila Declaration on the Peaceful Settlement of International Disputes as a concrete accomplishment of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and welcomes the fortieth anniversary of the adoption of the Declaration;
2. *Reiterates its call* to all States to observe and promote in good faith the Manila Declaration in the peaceful settlement of their international disputes;
3. *Encourages* the United Nations and all Member States to commemorate the fortieth anniversary of the adoption of the Manila Declaration through appropriate activities;
4. *Stresses* that the cost of all activities that may arise from the implementation of the present resolution shall be met from voluntary contributions;
5. *Requests* the Secretary-General to bring the present resolution to the attention of Member States, the organizations of the United Nations system and all relevant stakeholders for observance.

## Chapter IV

### ***Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council***

64. Reference was made to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* during the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and at the 3rd meeting of the Working Group of the Whole, on 18 February.

65. During the general exchange of views, delegations commended the Secretariat on its continuing efforts to update the *Repertory* and the *Repertoire* and to eliminate the backlog in their preparation. The significance of the two publications in providing analytical studies of the application and interpretation by the Organization of the Articles of the Charter was recalled. Several delegations noted with concern that the backlog in the preparation of volume III of the *Repertory* had not been eliminated and called upon the Secretary-General to address the issue effectively and as a priority, emphasizing that for the publications to be relevant, they needed to be available. The Secretariat was also encouraged to continue its efforts to make the publications available electronically and to publish the *Repertory* and the *Repertoire* in all official languages of the United Nations at the same time.

66. Support was expressed for the use of the internship programme and for cooperation with academic institutions in the preparation of studies, as well as for the identification of academic institutions that could contribute to such preparation.

67. Recognizing that the Secretariat lacked adequate resources and the capacity to prepare the publications, delegations expressed their appreciation to Member States that had contributed to the trust funds established for the *Repertory* and the *Repertoire*, which had facilitated the progress made in eliminating the backlog with regard to those publications, and they encouraged Member States to make additional contributions or to sponsor experts.

68. At the 3rd meeting of the Working Group, the representatives of the Secretariat gave a briefing on the status of the preparation of the *Repertoire* and the *Repertory*.

69. With regard to the status of the *Repertoire*, it was reported that very significant progress continued to be made in the preparation of the publication, with a focus on the simultaneous completion of the twenty-second and twenty-third supplements, covering the years 2019 and 2020, respectively. More specifically, it was noted that, despite the major disruption caused by the COVID-19 pandemic, the advance version of the twenty-second supplement had been completed and posted online in October 2020, as scheduled, and that the advance version of the twenty-third supplement was on track to be released by October 2021.

70. Developments were then outlined in three areas. First, with regard to publication, it was noted that all published versions of the supplements covering the period from 1989 to 2017 were available online in all six official languages. The twenty-first supplement, covering the year 2018, had been published in English and was expected to be released in the other five official languages by April 2021. An ambitious 22-month schedule had been set from the end of the reporting period to the final publication of the hard-copy version of each supplement.

71. Second, with regard to innovation, it was underlined that modern technologies were being used more extensively to develop a broad range of visual and interactive information data sets on the practice of the Security Council, all of which were available on its website. It was further noted that, in addition to the 2020 edition of the *Highlights of Security Council Practice*, issued in early January 2021, two other

data sets had been released: the “Security Council membership dashboard” and the “Women at the Security Council dashboard”. The visualization of information on women and peace and security, the protection of civilians in armed conflict and children and armed conflict had also been enhanced. All data sets had been developed on new data platforms to provide a more engaging and interactive experience.

72. Third, with regard to outreach, efforts had been made to actively promote the *Repertoire* and the various data sets outlined above on social media, in order to raise awareness and improve the availability of knowledge and the quality of data on the work and practice of the Security Council.

73. Gratitude was expressed for the enhanced support of Member States through their voluntary contributions to the trust fund for updating the *Repertoire of the Practice of the Security Council*. Taking into account the decreasing size of the regular budget, it was noted that the resources under the trust fund had enabled the allocation of additional human resources to consolidate an annual publication with an ambitious and predictable schedule. The generous contributions made by China and Saint Vincent and the Grenadines since the previous briefing in 2020 were also noted.

74. Gratitude was also expressed to Denmark, Japan, the Republic of Korea and Sweden for their recent sponsorship of junior professional officers.

75. It was noted that, to sustain the very ambitious strategy with regard to the publication of the *Repertoire*, continued financial support from Member States remained critical, especially given the deepening financial constraints faced by the Organization, which were exacerbated by the very serious liquidity crisis. An urgent appeal had thus been launched to replenish the trust fund, with the aim of securing sufficient funds to modernize and enhance access to the wealth of data contained in the pages of the *Repertoire* and to expedite the editing and quality control of all data generated in its preparation. It was also noted that the progress achieved in previous years, as well as the very significant increase in the number of requests for information received from the Council members and the United Nations Member States at large, had proved that the *Repertoire*, which had been conceived in the 1950s, remained an essential tool for understanding the increasingly dynamic and complex work of the Security Council.

76. Concerning the status of the *Repertory*, a briefing was given on notable developments since the issuance of the most recent report of the Secretary-General on the *Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council* (A/75/145), with a focus on two main areas.

77. First, with regard to new studies in preparation, it was reported that progress had been made in relation to three supplements, Supplements Nos. 10, 11 and 12. In relation to Supplement No. 10 (2000–2009), research and drafting work had been carried out by the Faculty of Law of the University of Ottawa, in support of the study on Articles 104 and 105 of the Charter, which was in preparation in the Office of the Legal Counsel. In relation to Supplement No. 11 (2010–2015), it was noted that the same Faculty had begun work on the study relating to Article 11, and that the consultant hired by the Department of Economic and Social Affairs to prepare a study on Article 58 had completed her assignment. The study in question was being finalized by the Office of Intergovernmental Support and Coordination for Sustainable Development of that Department. In relation to Supplement No. 12 (2015–2020), the same Faculty had completed the research and drafting work required to prepare three studies, on Articles 8, 33, and 51, respectively.

78. Second, with regard to the participation of academic institutions in the research and drafting of studies for the *Repertory*, gratitude was expressed to the Faculty of Law of the University of Ottawa for its support. Gratitude was also expressed to Korea

University, the member of the International Law Commission affiliated with that University and the delegation of the Republic of Korea for the valuable and generous offer to contribute to the preparation of studies for the *Repertory*, starting in March 2021.

79. In addition to those developments, it was also underlined that, further to the appeal by the General Assembly for Member States to consider sponsoring associate experts to work on the *Repertory*, which had been relayed to all delegations in a note verbale of 19 January 2021, two delegations, one from the Asia-Pacific region and the other from the Latin American and Caribbean region, had recently requested additional information on that initiative.

80. The attention of delegations was also drawn to the call for contributions to the trust fund to eliminate the backlog in the preparation of the *Repertory*. In that regard, it was noted that, as at 30 January 2021, the available balance in the fund was \$79,623.

81. Delegations were once again invited to increase the interest of academic institutions in their countries or regions in participating in the preparation of studies for the *Repertory*, while taking into account the importance of geographical diversity in that respect.

82. Following the reports by the representatives of the Secretariat, the Secretariat was again requested to eliminate the backlog in the publication of the *Repertory*, considering that all of its volumes were affected. The Secretariat reiterated its commitment to do that, while noting the scarcity of available resources.

83. The Special Committee recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies for the *Repertory of Practice of United Nations Organs*, including the use of the internship programme of the United Nations and cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Further encourage Member States to identify academic institutions that have the capacity to contribute to the preparation of studies for the *Repertory* and to provide the contact details of such institutions, and in this regard further welcome the initiative of the Secretariat to invite members of the International Law Commission to recommend academic institutions that the Secretariat could contact for that purpose;

(c) Note with appreciation the contributions made by Member States to the trust fund for the elimination of the backlog in the *Repertory* and to the trust fund for the updating of the *Repertoire*, as well as other contributions, including the sponsoring of associate experts to assist in the updating of the *Repertoire*;

(d) Reiterate its call for voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory* so as to further support the Secretariat in carrying out the effective elimination of that backlog; voluntary contributions to the trust fund for the updating of the *Repertoire* so as to sustain the annual publication schedule; and the sponsoring, on a voluntary basis and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(e) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective

language versions, and encourage the continued updating of the website for the *Repertory*<sup>11</sup> and the *Repertoire*;<sup>12</sup>

(f) Note with concern that the backlog in the preparation of all volumes of the *Repertory*, in particular volume III, although slightly reduced, has not been eliminated, and call upon the Secretary-General to address that issue effectively and on a priority basis, while commending the Secretary-General for progress made in reducing the backlog;

(g) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory* and the *Repertoire*, and with regard to the *Repertoire*, call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report dated 18 September 1952 ([A/2170](#)).

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<sup>11</sup> <http://legal.un.org/repertory>.

<sup>12</sup> [www.un.org/securitycouncil/content/repertoire/structure](http://www.un.org/securitycouncil/content/repertoire/structure).

## Chapter V

### Working methods of the Special Committee and identification of new subjects

#### A. Working methods of the Special Committee

84. The issue of the working methods of the Special Committee was addressed by several delegations during the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and was considered at the 3rd meeting of the Working Group of the Whole, on 18 February.

85. During the general exchange of views, delegations stressed the importance of the functions of the Special Committee relating to the maintenance of international peace and security, the development of cooperation among States and the promotion of international law, as well as the role of the Special Committee in the clarification and interpretation of provisions of the Charter. A number of delegations also emphasized the key role of the Special Committee in assisting in the revitalization and strengthening of the Organization, and in the current reform process of the Organization, in accordance with General Assembly resolutions [3349 \(XXIX\)](#) and [3499 \(XXX\)](#).

86. The Special Committee was urged to fully implement the decision on working methods adopted in 2006, as reflected in paragraph 3 (d) of General Assembly resolution [75/140](#). A number of delegations encouraged the Special Committee to examine the frequency and duration of its meetings and to seriously consider meeting every two years or shortening its sessions. It was also reiterated that the work of the Special Committee should be reviewed in order to ensure that it added value, that the overlap between organs considering the same or similar issues was minimized and that items that had been or were being considered elsewhere in the Organization were not duplicated by the Special Committee. Increased efforts to rationalize the work of the Special Committee to improve its efficiency and productivity, including by revisiting stagnating proposals, were encouraged. An additional view was that the Special Committee could play a greater role by improving the methods and efficiency of its work.

87. A number of delegations reiterated that the full execution of the mandate of the Special Committee depended on the political will of States and on the full and effective implementation of the methods of work of the Special Committee. The view was expressed that the working methods of the Special Committee should be guided by a pragmatic approach to the substance of its work. It was observed that the work of the Special Committee should be directed primarily at ensuring that the Organization lived up to the goals of the rule of law and justice. Opposition to the biennialization of the sessions of the Special Committee was expressed.

88. During the general exchange of views and at the 3rd meeting of the Working Group, it was suggested that several items on the agenda could benefit from careful scrutiny and needed to be meaningfully debated and analysed by the Special Committee in an open and transparent manner. Delegations were thus encouraged to redouble their efforts to examine the proposals before the Special Committee.

89. Other delegations were of the view that several of the proposals before the Special Committee did not merit further consideration because the relationship between the principal organs of the United Nations was adequately defined in the Charter, or because they duplicated work undertaken elsewhere in the Organization.

90. The view was also expressed that valuable lessons could be learned from the efficiency measures adopted in the light of the COVID-19 pandemic, including the

introduction of strict time limits on statements and the requirement for delegations to register in advance on the list of speakers. It was stated that those practices would contribute to more a focused and efficient management of the proceedings of the Special Committee.

## **B. Identification of new subjects**

91. The issue of the identification of new subjects was considered during the general exchange of views held at the 297th and 298th meetings of the Special Committee, on 16 February, and at the 3rd meeting of the Working Group of the Whole, on 18 February.

92. During the general exchange of views, several delegations stated that the Special Committee could contribute to the examination of legal matters relating to the reform and revitalization of the Organization and its organs, including issues surrounding the roles and prerogatives of the General Assembly, the Security Council and the Economic and Social Council. Others stressed that proposals must be practical and non-political, must not duplicate efforts elsewhere within the United Nations and should be considered on the basis of the likelihood that they would enjoy consensus.

93. At the 3rd meeting of the Working Group, the representative of Mexico introduced his country's revised proposal for a new subject, contained in the working paper submitted at the current session entitled "Discussion on the application of Article 51, in the light of its interrelation with Article 2 (4), of the Charter of the United Nations" (see annex). He stated that the revised proposal included the comments and concerns expressed by some delegations on the scope of the proposal that had been introduced at the 2020 session of the Special Committee (see [A/75/33](#), annex I). It was explained that the aim of the revised proposal was to create a space for a legal and technical discussion among all Member States of Article 51 of the Charter, in the light of its interrelation with Article 2, paragraph 4, so as to provide a clearer understanding of the positions of Member States with regard to the operation, scope and limits of the right to self-defence. It was also stated that the paper included a set of questions on substantive, procedural, transparency and publicity issues, which were legal, technical and non-political in nature and would fall under the mandate and competence of the Special Committee as established in relevant General Assembly resolutions. It was also emphasized that the purpose of the proposal was not to conduct an analysis of specific cases, situations or communications submitted to the Security Council under Article 51, but to create a repository of the positions of Member States on the matter. The sponsor delegation also clarified that the proposal was not duplicative of or inconsistent with the work of other organs of the United Nations, including the Council. The sponsor delegation further expressed its readiness to consider any suggestions from Member States and to amend the revised proposal, as necessary.

94. During the general exchange of views and in the Working Group, several delegations expressed support for the working paper presented by Mexico, as well as for its inclusion in the agenda of the next session of the Special Committee, under the item entitled "Maintenance of international peace and security". It was noted that the proposal was timely, touched upon important questions in international law regarding the interpretation and application of Article 51 and addressed legal and technical questions of concern to all Member States. Several delegations considered that the Special Committee would be the appropriate forum to address the issues raised by the proposal and observed that holding discussions in the Special Committee would allow for an open and transparent exchange of views. The view was expressed that the proposal addressed issues that were crucial to the functioning of the Organization, the



strengthening of a rules-based international system and the rule of law. Support was also expressed for the creation of a repository, as suggested in the revised proposal.

95. Other delegations reiterated their doubts regarding the proposal and questioned whether it fell within the scope of the mandate of the Special Committee and whether the Special Committee was the appropriate forum for addressing the issues raised. It was noted that other parts of the United Nations system were better placed to discuss the issues raised and that the proposal was duplicative of efforts being made elsewhere within the Organization, such as at Arria-formula meetings. Some delegations reserved their position, owing to the limited time that had been available to consider the revised proposal.

96. At the same meeting of the Working Group, the delegation of Cuba announced that it was continuing to work on a written proposal for the inclusion of a new item at the 2022 session of the Special Committee concerning the role of the General Assembly in the Organization (see [A/75/33](#), paras. 87–88).

97. It was noted that delegations could not take a position without a written proposal. Concern was expressed that the proposal might duplicate other revitalization efforts within the United Nations.

98. At the same meeting of the Working Group, the representative of the Islamic Republic of Iran recalled the proposal by his delegation to include a new subject entitled “Obligations of Member States in relation to unilateral coercive measures: guidelines on ways and means to prevent, remove, minimize and redress the adverse impacts of unilateral coercive measures” (see [A/75/33](#), annex II). It was emphasized that unilateral coercive measures had adverse impacts on the medical and humanitarian needs of affected populations, especially during the COVID-19 pandemic, as well as on the representation of Governments at the United Nations. The recent report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights ([A/75/209](#)), which had a special focus on the COVID-19 pandemic, was highlighted. It was explained that the proposal, which was intended as a legal reaction to politicized coercive measures, contained suggestions on strengthening the applicable legal framework, including with regard to the responsibility of States that introduced unilateral coercive measures and the obligations of third States that faced such measures. It was once again suggested that the topic of unilateral coercive measures could be included in the programme of work of the International Law Commission.

99. Several delegations supported the inclusion of the proposal in the agenda of the Special Committee, noting that unilateral coercive measures undermined the principles and purposes of the Charter and the fundamental norms and principles contained in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (see General Assembly resolution [2625 \(XXV\)](#)). The view was expressed that only the Security Council had the authority to impose sanctions and that unilateral coercive measures would hamper the effectiveness of the Council. Some delegations expressed their support for specific guidelines in the proposal. It was stated that the proposal concerned the application of the Charter and was not focused on bilateral disputes, which was why the Special Committee was the appropriate forum to discuss it. It was also noted that the proposal did not entail the duplication of work undertaken elsewhere in the Organization.

100. Several delegations expressed concerns about the proposal. It was emphasized that the proposal did not meet the criteria of being practical and non-political, and of not duplicating efforts made elsewhere in the Organization and should thus not be considered by the Special Committee. A number of delegations noted that the Special Committee was not the appropriate forum for addressing bilateral disputes. Some

delegations noted that sanctions other than United Nations sanctions might be legitimate means for achieving foreign policy, security and other national and international objectives. The view was expressed that the diverging opinions of Member States on the legal issues raised in the proposal could not be bridged, which would make it difficult to pursue the objectives of the proposal.

101. At the same meeting of the Working Group, the representative of the Syrian Arab Republic referred to the proposal made by his delegation in 2020 to include a new subject, as contained in the working paper entitled “Privileges and immunities enjoyed by representatives of the Members of the United Nations and officials of the Organization that are necessary for the independent exercise of their functions in connection with the Organization” (see [A/75/33](#), annex III). The sponsor delegation reiterated that the working paper was aimed at establishing parameters and standards based on the United Nations framework to improve relations with host countries and to allow the Organization to ensure compliance with the Charter and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. The sponsor delegation, referring in particular to Articles 100, paragraph 2, and 105 of the Charter, as well as to provisions of the Agreement, proposed that various studies be conducted on the application of those provisions, in particular on the dispute resolution mechanisms contained therein. The sponsor delegation underlined the fact that the Organization should enjoy such privileges and immunities as were necessary for the fulfilment of its purposes and that representatives and United Nations officials should be able to freely exercise their functions in that regard.

102. The proposal was referred to during the general exchange of views and was discussed in the Working Group. A number of delegations voiced support for the proposal, reaffirming the view that the Special Committee had the capacity to examine the subject and that it was directly related to the Charter. Reference was made to recent obstacles to the ability of the Organization to carry out its work owing to restrictions imposed on certain representatives and United Nations officials. It was maintained that the Special Committee enjoyed the mandate and responsibility to consider possible violations of the Charter from a legal viewpoint. Some delegations also maintained that there was no duplication with the work of the Committee on Relations with the Host Country, which dealt with more specific cases, given that the proposal concerned systemic legal issues. It was suggested that a study could be conducted to compile information on the experiences of Member States in relation to host countries, in the context of the United Nations and other international organizations. The suggestion was also made to identify general standards and procedures and develop guidelines in that regard. The point was reiterated by some delegations that the matter was not bilateral, but reflected systemic practices and related to the preservation of the rule of law and the interests and independence of the Organization as a whole.

103. Other delegations indicated that they were not in a position to support the proposal. A number of delegations reiterated the view that the Committee on Relations with the Host Country was the appropriate forum for the consideration of the subject matter of the working paper, notwithstanding the legal nature of the proposal, and it was noted that the Committee remained actively seized of the issues at hand. Some delegations therefore viewed the proposal as duplicating efforts being made elsewhere. The appropriateness of raising bilateral issues in the Special Committee was also questioned.

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## Annex

### **Discussion on the application of Article 51, in the light of its interrelation with Article 2 (4), of the Charter of the United Nations**

#### **Revised working paper submitted by Mexico**

##### **I. Objectives**

- Create a space for a legal discussion by all States Members of the United Nations of Article 51 of the Charter of the United Nations, in the light of its interrelation with Article 2 (4), and enable an exchange that will provide a clearer understanding of the positions of Member States with regard to the operation, scope and limits of the right to self-defence, with a view to creating a space within the formal structure of the United Nations that can serve as a repository for the views of all Members in this regard.
- To have this legal discussion taking into consideration recent practice with regard to the submission of reports under Article 51 of the Charter, in particular concerning non-State actors, without examining specific cases, including responses to such reports, or lack thereof, and the precedents such actions may set for future situations.
- To discuss also substantive, procedural, and transparency and publicity issues related to reports submitted under Article 51 with a view to providing greater clarity on the implementation of the Article and to contributing to strengthening the relationship between the General Assembly and the Security Council.

##### **II. Background**

1. As noted in reports [A/73/33](#) (paras. 83–84) and [A/74/33](#) (paras. 85–87), at the seventy-third and seventy-fourth sessions of the General Assembly Mexico brought to the attention of the Committee a recent increase in the number communications submitted to the Security Council under Article 51 of the Charter, in particular in connection with counter-terrorism operations. In that context, it expressed concern regarding recent interpretations of the right to self-defence in response to armed attacks perpetrated by non-State actors and proposed, inter alia, that the Special Committee “consider the substantive and procedural aspects of the issue, in order to clarify the interpretation and application of Article 51 and avoid possible abuse of the right to self-defence”.

2. The above-mentioned reports indicate that various delegations expressed interest in the proposal and encouraged the representative of Mexico to present a written proposal for consideration.

3. It is worth noting that the members of the Community of Latin American and Caribbean States (CELAC), in their joint statement to the Sixth Committee on 3 October 2018, during the seventy-third session of the General Assembly, stated the following:

“We take note with concern of the increase in the number of letters to the Security Council under Article 51 of the Charter submitted by some States in order to have recourse to the use of force in the context of counter-terrorism, most of the time ex post facto. We reiterate that any use of force which is not in compliance with the Charter of the United Nations is not only illegal but is also unjustifiable and unacceptable. Furthermore, consideration should be given to the possibility of convening an open and transparent debate on the topic.”

4. Similarly, at the fourth informal meeting of Latin American legal advisors (AJL) on international public law, held on 26 October 2018, it was made clear, following a presentation entitled “Reflections on recent invocations of Article 51 of the Charter of the United Nations”, that there was agreement with regard to the scope of self-defence under the Charter; the importance of transparency; and the need for the international community to address terrorism, a serious threat to international peace and security, through strong action firmly grounded in international law and carried out with respect for international human rights law, international humanitarian law and refugee law. At that meeting, there was general consensus on the particular relevance of the topic and on the advisability of taking measures to ensure that it was adequately considered within the United Nations.

5. As a next step in the process, and with a view to establishing a space for open and transparent discussion among the States Members of the United Nations, the delegation of Mexico submitted a working paper, entitled “Analysis of the application of Articles 2 (4) and 51 of the Charter of the United Nations”, for the consideration of the Special Committee at its 2020 session.

6. The Special Committee fully acknowledges that the Security Council is the competent United Nations organ to take action at any time as it deems necessary in order to maintain or restore international peace and security in accordance with Article 51 of the Charter.

7. Therefore, this discussion will be aimed exclusively at providing a clearer understanding of the legal positions of Member States with regard to the operation, scope and limits of the right to self-defence, focusing on recent practice and on other situations involving non-State actors that may arise in the future, without examining specific cases, while recognizing at all times the gravity of terrorist acts, their high humanitarian, political and social cost and the threat they pose to international peace and security.

8. This approach would enhance the relationship between the General Assembly and the Security Council, strengthening the role of the Organization, in accordance with its mandate established in resolution 3499 (XXX) of 15 December 1975 and reaffirmed in resolution 75/140 of 15 December 2020.

### **III. Issues for consideration**

9. Article 1 (1) of the Charter states that one of the purposes of the United Nations is to maintain international peace and security. To that end, in Article 2 (4) of the Charter the principle is established that Members of the Organization “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”.

10. Under the legal framework of the Charter, there are two exceptions to the prohibition of the use of force between States: (a) when it is authorized by the Security Council, on the basis of Article 42; and (b) in the exercise of the inherent right of individual or collective self-defence provided for in Article 51.

11. Article 51 of the Charter reads as follows:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security

Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

12. The following have been identified as elements of self-defence: (a) there has been a prior armed attack; (b) the response to the armed attack is necessary and proportional; and (c) the Security Council is notified immediately of measures taken in self-defence and such measures are halted when the Security Council takes the necessary action, if any.

13. Recently there have been some cases where the right to self-defence enshrined in Article 51 of the Charter has been invoked to justify the use of force in the territory of another State, allegedly in response to – or in the most extreme cases, to prevent – armed attacks by non-State actors, in particular terrorist groups.

14. The aim is therefore to discuss the legal scope of the above-mentioned obligations and identify elements for discussion among Member States, taking into consideration not only the interpretation that has been given to these provisions of the Charter in the context of counter-terrorism but also the precedents that the aforementioned actions could set for other cases in the future. In that context, it would be useful for the Special Committee to consider, inter alia, the following issues:

(a) **Substantive issues:** Given that under Article 51 the right to self-defence may only be invoked if there has been an armed attack:

- (i) What information should be included in reports submitted to the Security Council under Article 51?
- (ii) What level of detail would be expected to be included in such reports under Article 51?
- (iii) How should Article 51 be interpreted with regard to attacks perpetrated by non-State actors, in particular, but not exclusively, terrorist attacks?
- (iv) Under Article 51 of the Charter, can self-defence be invoked in respect of another State when that State is considered to lack the capacity or the will to address an armed attack?

(b) **Procedural issues:** Given that the inherent right to self-defence may be exercised, under Article 51, “until the Security Council has taken measures necessary to maintain international peace and security”, and that “measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council”:

- (i) What is a reasonable time frame for the submission of a report under Article 51 following an armed attack?
- (ii) Must a report under Article 51 be submitted before the use of force in self-defence, or can it be submitted afterwards?
- (iii) Given the gravity of the use of force and the importance these instances have for all Member States, would it be desirable and necessary for the Security Council to discuss, examine and consider reports submitted to it under Article 51 on a regular basis?
- (iv) If the Security Council does not take action following receipt of a report under Article 51, how could this decision or silence be interpreted?

(c) **Transparency and publicity issues:** Since reporting under Article 51 is an obligation under the Charter and is directly related to issues of international peace and security, it serves the interests of all Member States. In this regard:

- (i) How can the transparency and publicity of reports submitted under Article 51 be improved?
  - (ii) What can be done to facilitate the access of Member States to these reports?
  - (iii) What can be done to facilitate the access of Member States to any responses and reactions to these reports?
  - (iv) What can be done to improve access to information, taking into account the delay in the publication of the Repertoire of the Practice of the Security Council?
  - (v) How can the lack of responses from Member States to reports submitted under Article 51 be interpreted, taking into account the current lack of transparency and publicity?
15. The Secretariat would be requested to keep a record of all the views expressed by Member States in the discussions of the Special Committee in order to consolidate a repository in this regard.
16. Once this proposal has been fully considered in its substantive agenda, the Special Committee could decide to conclude its consideration and to revisit it if and when it is deemed appropriate by the Special Committee.

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