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

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Draft report

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II. Maintenance of international peace and security

1. The Special Committee considered the item entitled “Maintenance of international peace and security” during the general exchange of views held at its 290th and 291st meetings, on 19 February, and at the 1st meeting of the Working Group of the Whole, on 20 February.

2. In their general comments, a number of delegations reaffirmed that the reform of the Organization should be carried out in accordance with the principles and procedures established by 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 that the Security Council had encroached 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 attempting to enter areas of setting norms and establishing definitions which fell within the purview of the Assembly. The view was expressed that the Assembly had, on occasion, gone beyond its mandate, in violation of Article 12 of the Charter, by beginning debates on matters that were still being considered by the Security Council. Another view was expressed that there was a need to achieve the right balance envisaged by the Charter between the functions and powers of the principal organs of the United Nations. It was further 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

3. Reference was made to the question of the introduction and implementation of sanctions imposed by the United Nations (see General Assembly resolution [64/115](#), annex) during the general exchange of views held at the 290th and 291st meetings of



the Special Committee, on 19 February, and during the 1st meeting of the Working Group of the Whole, on 20 February.

4. 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 designed to 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.

5. Many delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter and international law. It was asserted that sanctions should be implemented in full compliance with international human rights law by ensuring that sanctions procedures are fair and clear and respect the rights of sanctioned persons. The important role of the Office of the Ombudsperson established pursuant to Security Council resolution [1904 \(2009\)](#) was mentioned in that regard. 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 the peace or an act of aggression, in accordance with the Charter. It was asserted that the objectives of sanctions regimes should be clearly defined, based on tenable legal grounds and imposed with a clear time frame, and that sanctions should be subject to monitoring and periodic review and be lifted as soon as their objectives are achieved. It was further emphasized that sanctions should not hinder humanitarian assistance from reaching the civilian population. Delegations reaffirmed their concerns about the imposition of unilateral sanctions in violation of international law. The view was expressed that, in practice, such sanctions were often imposed as a result of the extraterritorial application of national laws, with extraterritorial effects, that disregarded the sovereignty of States. In that connection, the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights contained in document [A/73/175](#) was recalled.

6. A number of delegations reaffirmed that sanctions were an important tool under the Charter for ensuring the maintenance and restoration of international peace and security. In addition, it was highlighted that, when applied in a targeted fashion, sanctions could increase efficiency in attaining their agreed objectives, while minimizing their adverse impact and unintended consequences for the well-being of the civilian population and third parties.

7. Delegations welcomed the institution of regular briefings by the Secretariat on the document entitled “Introduction and implementation of sanctions imposed by the United Nations”, annexed to General Assembly resolution [64/115](#), which had been adopted on the basis of the work of the Special Committee. The increased transparency and responsiveness of the sanctions committees in providing guidance on 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- and long-term socioeconomic and humanitarian consequences of the Organization’s sanctions regimes. The increasing dialogue between the Organization and the private sector on sanctions and the best-practices guidelines project was noted.

Briefing

8. 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 annexed to General Assembly resolution [64/115](#), as requested by the Assembly in paragraph 4 of its resolution [73/206](#). The representative 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, 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. The representative also responded to questions from delegations on several aspects of the sanctions regimes. The representative indicated that the information presented was available on the website of the subsidiary bodies of the Security Council, in particular in the fact sheets of the subsidiary organs of the Security Council.¹

9. 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.

10. The Secretariat was encouraged to further improve communication with countries affected by the United Nations sanctions regimes, with a view to identifying lessons learned and best practices. The representative of the Department of Political and Peacebuilding Affairs clarified that the Department had limited capacity to conduct lessons-learned exercises owing to budgetary and resource constraints. The representative stated that the sanctions committees and their chairs conducted outreach to affected countries and regions in order to further improve interaction with Member States. Moreover, the representative noted that, in 2018, the Secretariat had conducted outreach and workshops for Member States and the private sector on the implementation of United Nations sanctions and that it stood ready to continue those activities within existing capabilities and resources.

11. On the issue of expert panels, the Secretariat was asked how a sanctions committee obtained the necessary information on a particular situation when no expert panel had been established to support the committee. The representative of the Department of Political and Peacebuilding Affairs highlighted that Member States, including committee members themselves, provided such information and that the establishment of expert panels fell within the purview of the Security Council.

12. The Secretariat was encouraged to develop its capacity for the assessment of the unintended side effects of sanctions imposed by the Security Council. The representative of the Department of Political and Peacebuilding Affairs indicated that international humanitarian law and human rights law experts already served on the expert panels but that focused consideration of this issue might require a specific mandate, dedicated expertise and additional resources.

13. The Secretariat was asked to clarify which criteria were applied in the decision to lift sanctions. The representative of the Department of Political and Peacebuilding Affairs clarified that the establishment of such criteria fell within the purview of the Security Council and that they were determined on a case-by-case basis.

14. The Secretariat was asked to improve geographical representation in the selection of the Ombudsperson of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities. The representative of the Department of Political and Peacebuilding Affairs explained that the Security Council, in paragraph 20 of its resolution 1904 (2009), had mandated the Secretary-General to appoint the Ombudsperson in close consultation with the Committee. While the Secretariat ensured that its selection process resulted in a list of qualified and geographically diverse candidates, the final decision remained with the Committee.

¹ Available at www.un.org/securitycouncil/sanctions/information.

15. The Secretariat was also asked to indicate which system, in its view, was more efficient in the delisting process: the Ombudsperson or the Focal Point for Delisting. The representative of the Department of Political and Peacebuilding Affairs stated that empirical research already existed that indicated that the Ombudsperson mechanism was more likely to withstand fair process legal challenges compared with the Focal Point system.² The decision to extend the mandate of the Ombudsperson or a similar mechanism to other sanctions regimes remained with the Security Council.

² 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).