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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 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.

2. 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

3. 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).

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 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.

5. 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.

6. 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.

7. 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

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 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.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. 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 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.

11. 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.²

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

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).

12. 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.

13. 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.
