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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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III. Peaceful settlement of disputes

1. 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.
2. 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.
3. 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.
4. 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 referred to the judicial means of peaceful settlement of disputes resorted to by their countries in accordance with Article 33 of the Charter.



5. 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.

6. 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

7. 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".

8. 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.

9. Arbitration was generally recognized by delegations as one of the oldest legal methods for the peaceful settlement of disputes between States.¹ 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.

10. 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.

11. 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

¹ 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/>.

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 and the International Centre for Settlement of Investment Disputes. Delegations encouraged all States to continue to consider arbitration as an option for dispute settlement.

12. 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.

13. 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".

14. 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]".
