



General Assembly

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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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Maintenance of international peace and security

Revised working paper by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations

1. In accordance with the mandate set forth in General Assembly resolution 3499 (XXX) of 15 December 1975, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must be directly involved in the restructuring exercise that is being conducted in the United Nations in response to the growing recognition of the need for a comprehensive reform of the principal organs of the Organization.
2. In fulfilment of that mandate, the Special Committee must tackle specific tasks that will help to achieve an appropriate balance between the mandates of the principal organs of the Organization, in particular between the mandate of the General Assembly and that of the Security Council, and contribute to the necessary reform of the Security Council, with a view to making it into an organ that is more representative, more transparent and more democratic in its operations.
3. These tasks are becoming increasingly important, bearing in mind the persistence of international tensions that threaten international peace and security and the need for the full application of the principles of sovereign equality and equitable geographical representation on the basis of the Organization's universal make-up.
4. Accordingly, the Special Committee has the important responsibility of contributing actively to the efforts under way in the various open-ended working groups of the General Assembly by providing an analysis, from a juridical perspective, of fundamental issues involved in the reform process, including: "The role of the General Assembly in the maintenance of international peace and security".
5. The objective of having the General Assembly examine an issue in the context of the maintenance of international peace and security should be seen not as hindering the operation of the Security Council but as supporting its efforts in this regard. The objective is not to strip the Council of its fundamental role in the maintenance of international peace and security, but to support it in fulfilling its functions.



6. A number of examples may be cited to show that the General Assembly has broad prerogatives and powers, and that many of those extensive powers have never been used or fully exercised. Article 10 of the Charter of the United Nations¹ confers wide authority on the Assembly, and the Assembly should make greater use of that provision and actively and effectively exercise the authority conferred on it.

7. Article 12, paragraph 1, of the Charter provides that the General Assembly shall not make any recommendations with regard to a dispute or situation before the Security Council, but this provision does not prevent the General Assembly from discussing any question, dispute or situation that is being considered by the Security Council, nor does it exclude the possibility that Member States may express their opinions on these questions before the Council.

8. The Security Council must act in consonance with the purposes and principles of the United Nations, foremost among them being to maintain international peace and security; to that end, it must take effective collective measures to prevent and eliminate threats to peace or breaches of the peace. The Security Council must discharge this vitally important responsibility in accordance with Article 24 of the Charter.

9. If the Members of the Organization determine or consider that the Council is not ready to act in accordance with the purposes and principles of the Organization, whether because it takes no action or because there is a lack of consensus, such a determination may mitigate the procedural restriction contained in Article 12, paragraph 1, of the Charter, and the General Assembly should be allowed to act so that the decisions of the Security Council genuinely reflect the will of the majority of the Members of the Organization.

10. If the Security Council, owing to a lack of unanimity among its permanent members, ceases to discharge its primary responsibility for the maintenance of international peace and security in any situation in which there is a threat to or breach of international peace or security or an act of aggression, the General Assembly should immediately consider the question with a view to making appropriate recommendations to the Members for the adoption of collective measures.

11. The Special Committee on the Charter must play a more active role, from a legal viewpoint, in disputes such as those mentioned above, where the Members of the United Nations might contribute effectively to the maintenance of international peace and security.

12. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization could conduct a study on the situations described above, either directly or through ad hoc subsidiary bodies. With this in mind, the Special Committee proposes the following:

(a) Establish a working group to take the following steps:

(i) Conduct a legal study on the implementation of Chapter IV of the Charter, specifically its Articles 10, 11, 12, 13 and 14 dealing with the functions and powers of the General Assembly and the relationship between those Articles. This study should be conducted in the light of the process of reform of the Organization and should, in particular, contain an assessment of the validity of the general exception contained in Article 12, paragraph 1, of the Charter with

¹ Article 10 of the Charter of the United Nations provides: "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

respect to the provisions of Articles 10, 11, 13 and 14, under which functions are conferred on the Assembly, indicating the possibility that the Assembly may, in certain circumstances, make recommendations regarding a matter that is being considered by the Security Council.

(ii) Conduct a study to determine the following: what is the meaning of the phrase “is exercising in respect of any dispute or situation the functions ...”, used in Article 12, paragraph 1?²

(b) Request Member States to give their opinions on the questions in subparagraphs (i) and (ii) below and ask the Secretariat to submit, at the beginning of the Special Committee’s session, a report containing the views of Member States, which will serve as input for the study by the working group.

(i) Although the General Assembly may not make recommendations on a matter before the Security Council, it may discuss any question, dispute or situation on the Council’s agenda (Article 12 of the Charter in conjunction with Articles 10, 11, 13 and 14).

(ii) If the Security Council, because of its inaction, lack of consensus or lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in cases where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for the adoption of collective measures.³

(c) The working group will make recommendations to the Special Committee, which will include these recommendations in its report to the General Assembly.

(d) The Special Committee on the Charter will consider the implementation of its recommendations to the General Assembly on these matters.

² Statement made by the Legal Counsel at the 1637th meeting of the Third Committee on 12 December 1968: “Article 10 of the Charter of the United Nations provides that the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council on any such questions or matters. Article 12 provides that while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Nevertheless, the Assembly has interpreted the words ‘is exercising’ as meaning ‘is exercising at this moment’; consequently it has made recommendations on other matters which the Security Council was also considering.”

³ General Assembly resolution 377 (V), “Uniting for peace”, adopted in 1950, provides: “if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor.”