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Chair: Mr. Katota..... (Vice-Chair) (Zambia)

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In the absence of Mr. Danon (Israel), Mr. Katota (Zambia), Vice-Chair, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 83: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
(continued) (A/71/33, A/71/166, A/71/202)

1. **Mr. Varankov** (Belarus) said that one of the best ways to fulfil the tasks of the Special Committee would be to undertake a comprehensive review of the basis for the Security Council sanctions regime. The time had come to review the full spectrum of activities of the Security Council, the sanctions committees and the Ombudsperson for 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. The review would make it possible to identify, generalize and standardize best practices.

2. As a member of the Movement of Non-Aligned Countries, Belarus remained convinced that the General Assembly needed to fully exercise its authority in standard-setting, including with regard to sanctions. Belarus had consistently maintained that the Security Council was the only organ legally empowered to introduce sanctions, irrespective of their nature or target. The time had come for the Special Committee to consider similar actions by other subjects of international law, in particular the question of the compatibility of such actions with the powers of the Security Council.

3. His delegation supported the proposal made by the delegation of the Russian Federation for the creation of a website on the peaceful settlement of disputes. Such a resource would constitute a reliable and accessible instrument to help inform decisions and facilitate the work of the Organization.

4. His delegation welcomed the fact that the Special Committee had been able to recommend for the consideration of the General Assembly, with a view to its adoption, a draft resolution based on a proposal of the Movement of Non-Aligned Countries on the commemoration of the seventieth anniversary of the International Court of Justice (A/AC.182/L.144). He hoped that that trend towards constructive cooperation would be strengthened and noted, in particular, the

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 (A/71/33, annex). It was somewhat inappropriate, however, to focus on the working methods of the Special Committee in the absence of political will to reach compromises. Topics of international law required a thorough and lengthy discussion, giving due consideration to the positions of all interested parties; following such discussion, decisions should be taken by consensus, provided that the principle of consensus was not abused. His delegation was ready to review the working methods of the Special Committee in order to resolve the question of consensus. Given real political will, the Special Committee would be able to make progress on several important initiatives.

5. The *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* played a very important role in the generalization and systematization of international law, and his delegation would welcome any initiative to reduce the cost of their preparation.

6. **Mr. Atlasi** (Morocco), reaffirming his Government's commitment to the principles of the Charter of the United Nations, including respect for the sovereignty and territorial integrity of States and non-interference in their internal affairs, said that Morocco strongly supported all efforts to strengthen the peaceful settlement of disputes, which remained one of the pillars of the Organization's work, and underscored the importance of the Manila Declaration on the Peaceful Settlement of International Disputes. The Special Committee had an important role to play in addressing the many challenges to international peace and security. In that regard, his delegation supported the proposal submitted by the Movement of Non-Aligned Countries, as well as the working paper by Ghana, and stood ready to work constructively on all serious proposals in conformity with the mandate of the Special Committee. However, before including new items on its agenda, the Special Committee should take all necessary precautions, in consultation with Member States, to ensure that they related to practical legal issues and were not politically motivated.

7. His delegation reaffirmed its commitment to a multilateralism that was respectful of the rules and principles of international law within the context of the

United Nations, which, as a legitimate and representative organization, was the most suitable framework for the pursuit of collective efforts aimed at establishing an international society based on equality and the rule of law, peace, security, sustainable development and respect for human rights. Any encroachment by the Security Council on the mandate of the General Assembly, or vice versa, should be avoided.

8. Sanctions should be imposed only as a last resort, when all peaceful means of dispute settlement had been exhausted, and in accordance with the Charter of the United Nations and international law. Every effort must be made to eliminate the negative impact of sanctions not only on non-targeted individuals but on third States. In addition, sanctions should have a specific time frame and should be regularly reviewed with a view to amending or lifting them when they were no longer needed. It was therefore important for the Security Council sanctions committees to cooperate with Member States in the areas of training and capacity-building to help States fulfil their international obligations in that regard. His delegation noted the Security Council's shift from comprehensive economic sanctions to targeted sanctions and looked forward to receiving an assessment of the likely or actual unintended impact of sanctions on third States. Finally, it welcomed the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and was grateful to Saudi Arabia and China for their financial contributions to that work.

9. **Mr. Medina Mejías** (Bolivarian Republic of Venezuela) said that reform of the United Nations and continual review of the functioning of its organs were imperative. The Special Committee had a key role to play in that regard. A matter of vital importance in the context of discussions on reform was the pressing need to democratize the Organization by changing the composition of the Security Council in order to ensure balanced geographical representation among its permanent members, taking into account, in particular, the significant growth in the number of Member States since the establishment of the United Nations. A corresponding increase in the number of permanent members of the Security Council was needed in order to ensure balance and fairness in its decisions. Moreover, the Charter should be amended to eliminate

the veto power currently held by the permanent members. All decision-making processes should respect the principle of sovereign equality of States enshrined in the preamble to the Charter.

10. As the interests of developing countries were not being represented in a proper and balanced manner within the current structure of the Security Council, the principal policies and decisions of the Organization should emanate from the General Assembly, its highest and most representative body. The improper exercise of powers and functions by one organ to the detriment of another upset the institutional framework established by the Charter. The Special Committee should therefore seek to ensure a balance between the roles of the principal organs.

11. The Security Council's authority to impose sanctions should be subject to the provisions of the Charter and could not be unrestricted or absolute. His delegation had previously expressed its concerns regarding the Council's role in relation to the unilateral use of force with the pretext of self-defence under Article 51 of the Charter. It had called for a debate on the matter and had highlighted the need to reform the Council in order to make it more representative, transparent and democratic.

12. His delegation believed that the question of assistance to third countries affected by sanctions imposed by United Nations organs deserved priority attention. It was important to ensure that such measures did not affect third parties, and that no sanctions affected the civilian population. However, economic and financial sanctions always affected human rights, particularly the right to development. It was alarming that innocent civilians continued to be the victims of the use of force, often with the authorization of the Security Council. Sanctions could be imposed, in accordance with the Charter, where there had been an act of aggression or a threat to international peace and security; but any imposition of unilateral or preventive sanctions should be rejected.

13. His delegation supported the proposal by Belarus and the Russian Federation to request an advisory opinion from the International Court of Justice on the legal consequences of the use of force by States without prior authorization of the Security Council. It also supported the views expressed by Cuba in its working paper on strengthening the role of the

Organization and enhancing its effectiveness (A/67/33, annex), particularly the call for a legal study of Chapter IV of the Charter, on the powers and functions of the General Assembly. The Special Committee should play a more active role in analysing, from a legal standpoint, matters such as the role of the General Assembly in the maintenance of international peace and security.

14. His delegation reaffirmed its commitment to the peaceful settlement of international disputes and underlined the importance of the Manila Declaration on the subject. It supported the proposal of Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes (A/71/33, annex) and, believing that Member States should be free to choose the most effective means of peaceful settlement, it also welcomed the proposal by the Non-Aligned Movement on the peaceful settlement of disputes and its impact on the maintenance of peace (A/AC.182/L.138). The proposed assessment of the current use of peaceful means of dispute settlement would provide States the opportunity to demonstrate how such means had contributed to the maintenance of international peace and security.

15. The *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* were valuable research tools for government and academic institutions engaged in the study and teaching of international relations and also a source of information on the work of the Organization. They should continue to be updated in all the official languages.

16. **Mr. Rhee** Zha-Hyoung (Republic of Korea), speaking in exercise of the right of reply, said that the Committee was not the appropriate forum to discuss the status of the United Nations Command or the specific situation of the Korean peninsula. By repeatedly making baseless and misleading allegations, the delegation of the Democratic People's Republic of Korea had egregiously dissipated the limited resources of the Special Committee. In any event, the United Nations Command had been established legally pursuant to Security Council resolutions 82 to 85 and 88 (1950) in response to an armed attack by north Korea against the Republic of Korea. The validity of those resolutions had subsequently been reaffirmed by

the Council and by an advisory opinion of the International Court of Justice.

17. The General Assembly had in fact adopted two resolutions on the question of Korea at its thirtieth session. To cite only one of them, out of context, was misleading and inconsistent with the facts. The Special Committee should not be abused in order to challenge a well-functioning United Nations entity that had been established by the Security Council in accordance with due legal procedures, or to make excuses for grave violations of the relevant resolutions.

18. **Mr. Pak** Chol Jin (Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the Special Committee had a mandate to examine legal aspects of problems arising from implementation of the Charter of the United Nations, particularly with regard to the maintenance of peace and security. The establishment of the United Nations Command was a prime example of a violation of the Charter. Its purpose had been to conceal the responsibility of the United States of America for provoking the Korean war, and to legitimize the intervention of 1950. The United Nations Command was a cancer-like entity that posed a threat to security and stability in North-East Asia. Its maintenance over the previous four decades had exacerbated tension on the Korean peninsula, revealing the true, criminal colours of the United States of America.

19. General Assembly resolutions 3390 (XXX) A and 3390 (XXX) B had deemed it necessary for all foreign troops to withdraw from Korea and for the United Nations Command to be dissolved. At the time, the situation had been conducive to peaceful reunification. The joint communiqué of 4 July 1974 had made it clear that reunification should be achieved independently, peacefully and without foreign interference. Since that time, the Cold War had ended, mentalities had changed and international relations had become more diverse; yet the disgraceful state of relations between the Democratic People's Republic of Korea and the United States of America remained unchanged.

20. Representatives of the United States of America often stated that their country had no hostile policy towards the Democratic People's Republic of Korea. If that was so, their country should dissolve the United Nations Command, withdraw its troops from south Korea and conclude a peace treaty with the Democratic

People's Republic of Korea. Similarly, they often cited his country's nuclear weapon programme in order to justify a military build-up in East Asia; yet even after becoming a nuclear-weapon State, his country had never raised the possibility of using nuclear weapons as the United States of America had done. While condemning military drills in the Democratic People's Republic as provocative, the United States of America had deployed weapons and supplies, including nuclear weapons, to south Korea, which was now the world's busiest nuclear arsenal. United States troops were constantly operating in the skies and waters of the Korean peninsula, waiting for an opportunity for a pre-emptive strike.

21. The United Nations Command abused the good name of the United Nations in order to justify those acts of aggression. It was a ghostlike mechanism that had been contrived in order to maintain pressure on the Democratic People's Republic of Korea and prepare for a new war. Its existence exemplified the thoroughly arbitrary and high-handed practices of the United States of America, and posed an obstacle to peace in the Korean peninsula.

22. **Mr. Rhee** Zha-Hyoung (Republic of Korea), speaking in exercise of the right of reply, said that the Special Committee should not be a forum for the Democratic People's Republic of Korea to make unsubstantiated allegations or challenge the legitimacy of Security Council resolutions that had been adopted in response to its repeated violations of international law. The representative of the Democratic People's Republic of Korea had mentioned that country's nuclear programme. The latter posed a clear threat to international peace and security, and it flagrantly violated the relevant Security Council resolutions. North Korea must comply with its obligation to abandon all nuclear weapons and its existing nuclear programmes, including uranium enrichment, in a complete, verifiable and irreversible manner. The vast financial resources allocated to those programmes would be better invested in improving the welfare of the north Korean people, who faced considerable hardship.

23. **Mr. Pak** Chol Jin (Democratic People's Republic of Korea) said that south Korea was in no position to question another State's qualification for membership in the United Nations; it had handed over its own territory, and hence its sovereignty, dignity and moral

worth, to the United States of America. The resulting situation was a national tragedy and a source of shame for Koreans. In collusion with the United States of America, South Korea had intentionally undermined stability in a wanton violation of the principles of the Charter of the United Nations. It was only natural that the Democratic People's Republic of Korea had taken self-defence measures to protect its country and people. The Korean people should resolve their differences amongst themselves by dismantling the United Nations Command.

Agenda item 145: Administration of justice at the United Nations (A/71/62/Rev.1, A/71/157, A/71/158, A/71/163 and A/71/164)

24. **The Chair**, recalling that, at its 2nd meeting, the General Assembly had referred the current agenda item to both the Fifth and Sixth Committees, said that in paragraph 43 of its resolution 70/112 the Assembly had invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibility for administrative and budgetary matters.

25. **Mr. Ávila** (Dominican Republic), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that the Community was satisfied with the progress made since the inception of the new administration of justice system at the United Nations, which had helped to improve labour relations and work performance in the Organization. CELAC continued to support measures to protect the basic rights of United Nations personnel in conformity with internationally agreed standards, as well as all measures designed to help the United Nations to become a better employer and to attract and retain the best staff members. CELAC was mindful of the important role that the Committee had played in making the administration of justice system fully operational by drafting the statutes and the amendments thereto of both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, and would continue contributing its legal expertise for the resolution of all outstanding issues, such as those relating to the independent evaluation of the system, access to the justice system for persons with disabilities and other dispute resolution measures.

26. CELAC noted the conclusions of the Secretary-General's report (A/71/164) and invited Committee members to review the recommendations and proposals contained therein, bearing in mind the principles of independence, transparency, professionalism, decentralization, legality and due process. CELAC noted in particular that, in 2015, while there had been a decrease in the overall number of requests for management evaluation from Secretariat staff, there had been an increase in the number of such requests submitted by staff in the field and in the number of applications and appeals received respectively by the Dispute Tribunal and the Appeals Tribunal. CELAC supported the Office of Staff Legal Assistance and noted with satisfaction its visits to subregional offices to provide information about the internal justice system.

27. The Internal Justice Council continued to play an important role in ensuring the independence, professionalism and accountability in the administration of justice system, and it should continue to provide its views on the implementation of that system, within the purview of its mandate as established in paragraph 37 of General Assembly resolution 62/228. CELAC took note of the reports of the Internal Justice Council and of the Interim Independent Assessment Panel (A/71/158 and A/71/62/Rev.1) and drew attention, in particular, to the recommendations to hold United Nations staff accountable for their conduct and take care of victims; encourage managers to respond positively to mediation attempts; establish better written rules, clearer procedures and consistent management practices; and strengthen the Management Evaluation Unit, the Office of Staff Legal Assistance and the Appeals Tribunal.

28. CELAC acknowledged the substantial amount of work performed by the Dispute and Appeals Tribunals. It was ready to explore new ways to improve the use of the informal system and encouraged proper geographical and gender distribution in the designation of judges and staff. It stressed the importance of the Management Evaluation Unit, which provided the Administration with the opportunity to prevent unnecessary litigation before the Tribunals, and called for the development of incentives to encourage recourse to the informal resolution of conflicts, which was a crucial element of the internal administration of justice system.

29. More should be done to promote a culture of trust and conflict prevention throughout the Organization. Accordingly, CELAC reiterated its request for the Secretary-General to ensure that the structure of the Office of the United Nations Ombudsman and Mediation Services not only reflected its responsibility for the oversight of the entire integrated office, but also had the support needed to perform its task, thus strengthening due process within the Organization and guaranteeing accountability and transparency in decision-making. CELAC awaited with interest the outcome of the work of the Interim Independent Assessment Panel on the establishment of a single code of conduct for all legal representatives, as well as on the immunities of judges. Lastly, the Sixth and Fifth Committees should continue to cooperate closely with each other to ensure an appropriate division of labour and avoid encroachment of mandates.

30. **Mr. Marhic** (Observer for the European Union), speaking also on behalf of the candidate countries Albania, Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Armenia, Georgia, Iceland, the Republic of Moldova and Ukraine, said that the continuous progress made in the administration of justice at the United Nations since 2009 represented a collective achievement.

31. The European Union supported the role played by the Office of the United Nations Ombudsman and Mediation Services in advancing the use of informal conflict resolution, a crucial element of the administration of justice system, which helped to avoid expensive and time-consuming litigation and minimized the negative impact of disputes. The fact that half of the mediation cases opened by the Office in 2015 were self-referrals signalled a heightened awareness of the benefits of mediation as a conflict resolution mechanism. The European Union commended the Office for the progress made in implementing recommendations to address systemic and cross-cutting issues, in particular preventive policies aimed at strengthening a healthy and conflict-free culture of work across the United Nations system.

32. The European Union also commended the Management Evaluation Unit for its work and noted with appreciation the high number of complaints

disposed of every year. The fact that most of the Unit's decisions had been upheld in whole or in part by the Tribunals was a good indicator of its effective approach. The European Union was also pleased that the Unit systematically sought to identify and, where appropriate, settle requests having the potential for informal resolution. Its institutionalization of good practices and dissemination of the jurisprudence of the Tribunals played an essential role in shaping administrative and management practices. He noted that, after a significant increase in cases before the Dispute Tribunal in 2014, the number of new cases seemed to be stabilizing, and progress was being made in disposing of old cases; meanwhile, the number of new cases before the Appeals Tribunal had increased, while the number of cases closed remained at the same level.

33. The European Union noted the responses provided in the Secretary-General's report (A/71/164) to the requests set out in General Assembly resolution 70/112; it hoped that monitoring would be maintained and that the results would be included in his next report. It also took note of the proposed single code of conduct for all legal representatives; such a code should be a living document that could be improved or updated in the light of lessons learned from practice in order to contribute to a more professionalized system.

34. The European Union commended the Interim Independent Assessment Panel for its thorough assessment of the system of administration of justice at the United Nations and welcomed the fact that its recommendations 33 to 35 were already being implemented or could be implemented without delay or additional cost. It nevertheless considered that further examination was needed to make the system work better.

35. The European Union continued to favour a differentiated system for the legal protection of non-staff personnel that would provide an adequate, effective and appropriate remedy. In that regard, the Organization should always provide answers and, where appropriate, propose possible remedies to non-staff personnel, reflecting a broad preference for non-judicial mechanisms where possible. It commended the Office of Staff Legal Assistance, whose counsel helped staff members to avoid mistakes, misunderstandings and, ultimately, unnecessary work; it also strongly supported the Office's continued representation of staff members in proceedings before

the Tribunals, as well as further encouraging its activities across the whole spectrum of justice within the United Nations.

36. **Ms. de Schot** (New Zealand), speaking also on behalf of Australia and Canada, said that the three delegations had supported the system of internal justice since its inception, as well as the continued efforts to improve it, and welcomed the opportunities to consider further measures that could be taken to that end. The legal aspects of that system should not be discussed in the Sixth Committee alone since the significant challenges facing the entire human resources system of the United Nations, particularly regarding performance management, needed to be borne in mind. It did not seem credible that, as reported by the Secretary-General in 2014, only 1 per cent of staff were underperforming. She recalled the Interim Independent Assessment Panel's finding that managers did not identify underperformance for fear that staff members might lodge complaints and because of concerns about how such complaints would be handled within the internal justice system.

37. The administration of justice system had been designed initially to apply only to staff covered under the previous informal system, which had indeed been a useful starting point. The Panel had appropriately recommended that all staff in an employment or contractual relationship with the Organization should have access to that system, and not just 55 per cent of them, as was currently the case. The Sixth Committee, working in coordination with the Fifth Committee, should accordingly identify the areas in which the system needed to be amended in order to accommodate non-staff personnel. A mechanism suitably tailored in a manner consistent with the status of such personnel would appropriately address any concerns on that score.

38. The three delegations shared the view that there was not enough protection for staff against retaliation and that there were severe limitations on the ability to address such retaliation; evidence adduced by the Panel suggested that staff rule 1.2 (g) was not always sufficient. The Organization should send a clear message that it would not tolerate such behaviour, and a specific mechanism for addressing retaliation in such circumstances should be discussed in the Sixth Committee.

39. The three delegations welcomed the changes that had made it possible to grant to the Appeals Tribunal judges the same privileges and immunities as were enjoyed by the Dispute Tribunal judges. They also took note of the Panel's other recommendations and proposals and looked forward to engaging constructively on the relevant issues, including with colleagues in the Fifth Committee, to ensure that the administration of justice was timely, effective and fair.

40. **Ms. Carnal** (Switzerland) said that the Interim Independent Assessment Panel was to be congratulated on its report, which showed how far the United Nations had come in establishing a fair, independent and effective system for the administration of justice since the 2009 reform. It was time for the General Assembly to take the requisite steps to bring about further improvements. Her delegation supported the Secretary-General's proposal to add three permanent full-time judges to the Dispute Tribunal to replace the ad litem judges and his recommendation to create additional posts in the Management Evaluation Unit, the Office of Staff Legal Assistance and the Registries, with particular importance being attached to ensuring equality of arms between staff members and the Administration.

41. Her delegation supported the Panel's recommendation that all personnel, staff and non-staff, should have access to the internal justice system, noting that 45 per cent of the Organization's workforce consisted of non-staff personnel and was therefore excluded from it. Since it would significantly increase costs to allow such personnel access to the formal system, more cost-efficient proposals might be envisaged, starting with the Internal Justice Council's proposals for a simplified, user-friendly settlement procedure.

42. The lack of protection of whistle-blowers from retaliation continued to be a concern. Members of the workforce must be able to feel safe when discharging their obligation of reporting misconduct and, while they could ask the Ethics Office to open an investigation in cases of alleged retaliation, it was often difficult to demonstrate a pattern of retaliation on the basis of a single decision, especially if the decision was discretionary. Her delegation invited the Secretary-General to put forward a possible framework for improvement.

43. Referring lastly to the Secretary-General's draft code of conduct for legal representatives (A/71/164, annex IV), she said that her delegation wondered whether the broad obligation of confidentiality imposed on representatives by paragraph 1 of proposed article 6 was necessary, as it might be considered sufficient to recall the confidentiality of communications with clients and the duty of professional secrecy in accordance with the statutes and rules of procedure of the Tribunals.

44. **Mr. Townley** (United States of America) said that his delegation welcomed the Interim Panel's conclusion that the new system of administration of justice was an improvement over the prior system and wished to learn more about how best to ensure protection for staff members who reported misconduct, in view of the subtle ways in which retaliation could occur. An update on revisions to the administrative instruction as well as information on training provided by the Office of Internal Oversight Services to lay panels would be welcome.

45. His delegation agreed that receivability issues should be resolved at an early stage and also that the Appeals Tribunal should be empowered to address urgent motions in limine. Interlocutory motions were indeed important, and the question of compensation for work on such motions should be given careful consideration in the Fifth Committee. He also expressed support for the Internal Justice Council's recommendation that the Dispute Tribunal should be able to extend the time limit for lodging an appeal to permit settlement. An update on the issue would be welcome, as it would be on the work carried out so far to enhance the jurisprudential search engine, in view of the importance of publicizing the workings of the system and making the Tribunals' jurisprudence more accessible.

46. The Council's proposals with regard to the rationalization and clarity of administrative issuances were also of interest; such transparency could have knock-on effects. For example, one way of mitigating the concern expressed about decisions by the Appeals Tribunal regarding decisions of the Ethics Office would be to better publicize the fact that a staff member could pursue remedies before the Tribunals after management evaluation in parallel with a review by the Ethics Office.

The meeting rose at 4.30 p.m.