

The work of the Sixth Committee of the United Nations General Assembly in 2011

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1 Introduction

The Legal Committee of the General Assembly, commonly known as the ‘Sixth Committee’, is one of the Main Committees of the United Nations General Assembly.¹ As its name suggests, it is the subsidiary body of the Assembly in which legal matters are to be considered. In practice, legal questions (including those relating to international law) are, on occasion, also raised in other Main Committees in relation to, for example, disarmament (First Committee) and the protection of human rights (Third Committee). Nonetheless, those issues are raised in particular contexts and linked to the specific competences of those Committees. The Sixth Committee enjoys a general competence over legal matters, without restriction to any specific topic or thematic area. Nor is it, necessarily, limited to considering matters of public international law (although the majority of its work tends to be in that area): it also considers legal questions pertaining more to private international law (such as those relating to trade and international commercial law), as well as the internal rules of organisation, for example, pertaining to the administration of justice within the United Nations. It has even considered some topics which arguably relate to the internal law of the members states of the United Nations.²

A general distinction might be drawn between the policy functions of the Sixth Committee, as opposed to its role in the ‘quasi-legislative’ activities of the General Assembly. The Committee, whose membership is open to all the member states of the United Nations, serves as a coordinating body for a number of activities pertaining to legal matters, undertaken each year at the

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¹The Sixth Committee is established under Rule 98 of the Rules of Procedure of the General Assembly, see UN doc A/520/Rev 17.

²See, eg, the Sixth Committee’s consideration of the topic ‘rule of law at the national and international levels’, discussed in 4.1, below.

international level. It is the entity which considers the annual reports of the various specialised legal bodies, including the International Law Commission, which have been established to consider specific legal questions, with a view to making recommendations for consideration by the General Assembly. It is in the Sixth Committee where the mandates for the work of those bodies, to be undertaken the following year, is negotiated and proposed to the plenary of the General Assembly for adoption. It also considers, and negotiates the mandates for some of the technical activities of the Secretariat pertaining to wider dissemination of information on international law, as well as teaching and training.

The Sixth Committee carries out the ‘quasi-legislative’ functions of the General Assembly in at least two senses: it is the body to which internal legal issues are referred for consideration and recommendation. For example, as discussed below (in the context of the administration of justice), in recent times, proposals for amendments and additions to the internal rules of the organisation have been referred to the Committee for consideration (by member states), with a view to being reviewed and proposed for adoption by the General Assembly. The ‘quasi-legislative’ nature of the Committee’s activities is starker in the second sense, which pertains to its specific role in the process of international law-making. It is the Sixth Committee that considers the various proposals and recommendations of the subsidiary legal bodies for the development of new international rules. It has been on the recommendation of the Sixth Committee that a number of international diplomatic conferences were convened by the General Assembly for the purpose of negotiating and adopting major multilateral treaties. The Committee has itself, on several occasions, undertaken extensive substantive negotiations resulting in the adoption of treaties by the General Assembly. As is elaborated below, several such proposals for the development of new international instruments are currently before the Sixth Committee.

The task of the Committee is to consider a number of items on the agenda of the General Assembly,³ which have been allocated to it (by the General Committee), followed by the negotiation and adoption of one or more draft resolutions (or decisions) on each item, which are then transmitted to the General Assembly for its consideration, and adoption. The present article seeks to provide an overview of the most recent session of the Sixth Committee, held over six weeks, starting in early October 2011, following the convening of the sixty-sixth session of the General Assembly. The agenda items considered by the Sixth Committee at that session are arranged, simply

³In some cases, the work was undertaken in a working group established by the Sixth Committee, the results of which were then subsequently considered in the plenary of the Committee itself.

for ease of presentation, into four categories: the consideration of substantive topics; the consideration of the reports of expert bodies; oversight activities; and the consideration of requests for observer status.⁴

An overview of the work undertaken at one of the annual sessions of the General Assembly necessarily takes the form of a progress report, with the consideration of different topics being at varying stages of completion. Some are more procedural, in the sense that no end-result is necessarily anticipated. Instead, they provide the basis for an annual (sometimes biennial) discussion on legal issues of international concern. A key component of the work is the negotiation around the continued consideration of the agenda items (and possibly new items) by the Sixth Committee at future sessions of the Assembly. Accordingly, the draft resolutions negotiated in the Committee seek not only to reflect the prevailing consensus⁵ within the membership of the United Nations at that point, but also typically look to the future: by providing the legal basis for the continued inclusion of the topic in the Committee's agenda, according to a set periodicity, and by mandating the preparation (by the Secretariat of the United Nations) of reports and other documents⁶ which will provide the basis for such future discussion.

2 Substantive topics on the agenda of the Sixth Committee

In 2011, the Sixth Committee had six items on its agenda relating to specific topics, including several related to international law. Some of the items were placed on the agenda of the Committee on the recommendation of the International Law Commission, while others were placed on the recommendation of states or of the Secretary-General. One item, relating to measures to eliminate international terrorism, has been on the agenda of the Committee since the 1970s, while the others are of a more recent provenance. The Committee's focus on at least two of the topics (nationality of natural persons in relation to the succession of states, and the law of transboundary aquifers) was primarily procedural. It is to be noted that the debate on these agenda items was not the only time when substantive issues were discussed by the Committee. Substantive debate also took place in the context of a number of other agenda items, particularly those pertaining to the reports of the expert

⁴The Sixth Committee was also assigned to generic agenda items which were assigned to all the Main Committees, concerning the revitalisation of the work of the General Assembly and programme planning.

⁵All the draft resolutions referred to below were adopted by consensus (ie without a vote), which is the prevailing practice in the Sixth Committee.

⁶All the documents referred to herein are available on the website of the Sixth Committee (<http://www.un.org/ga/en/sixth/>) or from the United Nations online documents repository (<http://documents.un.org>). The website of the Sixth Committee further includes summaries of the debate held during the plenary meetings of the Sixth Committee in 2011.

bodies, such as that of the International Law Commission (discussed in the next section). The difference lies in the fact that in the case of a report of a subsidiary body, the substantive debate typically takes the form of evaluating the work undertaken by the body that year, with a view to recommending further action (or providing information to assist it) in its future work. The following items were before the Sixth Committee itself, for its consideration and decision.

2.1 Measures to eliminate international terrorism

The item ‘measures to eliminate international terrorism’ has been on the agenda of the Sixth Committee since 1972. It was considered, initially, on a biennial basis, but has been discussed annually since 1994. The item has served as the focus for the debate in the international community on the legal aspects of international efforts at combating terrorism. The substantive work on legal texts has largely been undertaken in an Ad Hoc Committee, most recently established by the General Assembly in 1996, and which has met every year since then,⁷ and usually continued in the framework of a working group established at each year’s session of the Sixth Committee. Following the adoption of the ‘Declaration on Measures to Eliminate International Terrorism’ in 1994,⁸ which was supplemented in 1996,⁹ the Ad Hoc Committee was mandated to negotiate several international treaties dealing with specific manifestations of terrorism. Those efforts resulted in the adoption of the International Convention for the Suppression of Terrorist Bombings,¹⁰ in 1997; the International Convention for the Suppression of the Financing of Terrorism,¹¹ in 1999; and the International Convention for the Suppression of Acts of Nuclear Terrorism,¹² in 2005 (which had been largely negotiated by 1998, but only finalised in 2005).¹³

Despite its early success, the Ad Hoc Committee’s work on the last item¹⁴ of its mandate, namely a comprehensive convention on international terrorism, has proved more difficult. The shift in the prevailing international political climate since the late 1990s has made consensus on some remaining issues more difficult. Although the treaty has, in large part, already been agreed to

⁷For the 2011 Report of the Ad Hoc Committee see UN doc A/66/37.

⁸GA res 49/60 of 9 December 1994, annex.

⁹GA res 51/210 of 12 December 1996, annex.

¹⁰2149 UNTS 256.

¹¹2178 UNTS 197.

¹²2445 UNTS 89.

¹³For more information, including links to documentation, see the website of the Ad Hoc Committee (<http://untreaty.un.org/cod/terrorism/>).

¹⁴The Ad Hoc Committee has also been considering a proposal by Egypt to convene a high-level conference on terrorism. See the 2011 ‘Report of the Ad Hoc Committee’ UN doc A/66/37 annex I pars 21-24.

(primarily because many of the draft provisions are based on the ‘template’ of the 1997 Bombings Convention), its scope, *ie* which acts are to be covered by the definition of terrorism (in particular whether the acts of military forces are to be regulated by the treaty or not) still remains a stumbling block. Furthermore, the relationship of the proposed convention with existing international rules, particularly those pertaining to international humanitarian law, continues to be considered. The focus of the work has turned to a set of ‘elements of an overall package’, proposed in 2007 by the coordinator of the consultations on the proposed treaty.¹⁵ In 2011, the Sixth Committee took stock of the work undertaken on the draft comprehensive convention, both in the Ad Hoc Committee and in the working group established by the Sixth Committee. A difference of views still existed among the member governments as to the best way forward, and the Committee subsequently decided to recommend that the work in 2012 on the draft convention be undertaken only in a working group to be established by the Sixth Committee during the sixty-seventh session of the General Assembly, and that the Ad Hoc Committee be convened only in 2013.

While the work on the draft convention has been the main focus of the Sixth Committee on this agenda item, it has also provided the occasion for governments to comment on other activities related to counter-terrorism efforts undertaken at the international level. In 2011, the debate in the Committee¹⁶ took place against the backdrop of a commemorative ceremony of the General Assembly marking the tenth anniversary of the 9/11 attacks; a Symposium on International Counter-Terrorism Cooperation, convened by the Secretary-General; as well as a Special Meeting of the Security Council Counter-Terrorism Committee. Delegations also referred to the work of the Security Council in countering terrorism, in particular the implementation of the various sanctions regimes. The United Nations Global Counter-Terrorism Strategy was also discussed, including the role that the proposed comprehensive convention would play in the implementation of the strategy. Reference was also made, *inter alia*, to the work of the Counter Terrorism Committee (and the renewal of the mandate of the Counter-Terrorism Executive Directorate (CTED)); the role played by the United Nations Office on Drugs and Crime in capacity building; the conclusion of a contribution agreement between the United Nations and Saudi Arabia for the purpose of creating a United Nations Centre for Counter-Terrorism; and to the launching of the Global Counterterrorism Forum (GCTF) and other initiatives, such as the Trans-Sahara Counter-terrorism Initiative (TSCTI) and the Madrid Declaration and Plan of Action.¹⁷

¹⁵See the 2007 ‘Report of the Ad Hoc Committee’ UN doc A/62/37 annex par 14.

¹⁶The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR.1-4 and 28-30.

¹⁷For more information see the 2011 ‘Report of the Secretary-General’ UN doc A/66/96 and Add 1.

The Sixth Committee adopted an omnibus draft resolution dealing with these and other issues, and establishing the mandate for the continued work on the draft comprehensive convention, as discussed above. The draft resolution was subsequently adopted by the General Assembly, as resolution 66/105 of 9 December 2011.

2.2 Nationality of natural persons in relation to the succession of states

This agenda item was one of two items on the substantive agenda of the Sixth Committee which emanated from the work of the International Law Commission. In 1999, the Commission adopted the ‘Draft Articles on Nationality of Natural Persons in Relation to the Succession of States’,¹⁸ and, in accordance with its Statute, referred them to the General Assembly with the recommendation that they be adopted in the form of a United Nations declaration.¹⁹ The following year, the General Assembly, on the recommendation of the Sixth Committee, adopted a resolution in which it took note of the Commission’s draft articles, which were annexed to the resolution with the amended title ‘Articles on Nationality of Natural Persons in Relation to the Succession of States’, together with an invitation to governments to take into account, as appropriate, the provisions contained therein.²⁰ At the time, the mechanism of merely taking note of the articles, but annexing them to a General Assembly resolution so as to ensure their widespread dissemination, together with a decision to revert at a later session to the question of their final form, was adopted by way of a compromise between those states which were not prepared to adopt a declaration in the version proposed by the Commission, and other states which preferred not to reopen the text. This innovative procedural mechanism served as the model for subsequent compromises concerning the fate of draft treaties developed by the International Law Commission,²¹ including (perhaps most significantly) for the ‘Articles on the Responsibility of States for Internationally Wrongful Acts’, adopted by the Commission in 2001.

The question of the fate of the ‘Articles on Nationality of Natural Persons in Relation to the Succession of States’ was subsequently discussed in the context of a separate item on the agenda of the Sixth Committee in 2004²² and 2008.²³ At the latter session, the General Assembly also encouraged states to consider, as appropriate, at the regional or sub-regional levels, the elaboration

¹⁸(1999) II/Part Two *Yearbook of the International Law Commission* par 47, available on the website of the International Law Commission (<http://www.un.org/law/ilc/>).

¹⁹*Id* at par 44.

²⁰GA res 55/153 of 12 December 2000.

²¹See the discussion in 3.1 below.

²²See GA res 59/34 of 2 December 2004.

²³See GA res 63/118 of 11 December 2008.

of legal instruments regulating questions of nationality of natural persons in relation to the succession of states, with a view, in particular, to preventing the occurrence of statelessness as a result of a succession of states.²⁴

In 2011, the Sixth Committee took up the issue once again. The debate in the Committee continued to reveal a lack of agreement on the possibility of formally adopting the articles in form suggested by the Commission.²⁵ The Committee adopted a draft resolution largely repeating the language of the previous resolutions adopted by the General Assembly, with the (important) difference that no specific timing was provided for when the item might once again be taken up by the Assembly. Instead, the resolution adopted by the General Assembly provided that it would revert, ‘upon the request of any State, ... to the question of nationality of natural persons in relation to the succession of States at an appropriate time, in the light of the development of State practice in these matters’.²⁶

2.3 *The law of transboundary aquifers*

The International Law Commission adopted the ‘Draft Articles on the Law of Transboundary Aquifers’ in 2008,²⁷ and transmitted them, in accordance with its Statute, to the General Assembly. The draft articles were considered by the Sixth Committee in 2008, in the context of its consideration of the Commission’s annual report. On the basis of the recommendation of the Commission,²⁸ the Assembly took note of the draft articles, the text of which was annexed to its resolution (with the reference to ‘draft’ deleted in the title), and commended them to the attention of governments without prejudice to the question of their future adoption or other appropriate action.²⁹ The Assembly also encouraged the states concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the articles; and, in what has become the standard *modus operandi* for texts proposed by the Commission, the Assembly also decided to inscribe the item on its agenda of a future session (2011) with a view to examining, in particular, the question of the form that might be given to the draft articles.³⁰

²⁴*Id* operative par 2.

²⁵The summary records of the debate in the plenary of the Sixth Committee (including on some of the substantive aspects of the articles on nationality of natural persons in relation to the succession of states) are to be found in UN docs A/C.6/66/SR 15 and 29.

²⁶GA res 66/92 of 9 December 2011 operative par 4.

²⁷ILC Report 2008 UN document A/63/10 par 53.

²⁸*Id* at par 49.

²⁹See 3.1, below, for a discussion of the two-stage procedural mechanism adopted by the Sixth Committee for the texts proposed by the International Law Commission.

³⁰GA res 63/124 of 11 December 2008.

In 2011, the General Assembly considered the item on the basis of a report of the Secretary-General containing comments and observations of governments.³¹ It was, however, clear from the debate and from the views expressed in writing that there remained a difference of views as to whether to proceed to the adoption of a treaty on the basis of the articles. A number of states preferred to view the significance of the articles in terms of their potential usefulness as a (authoritative) point of reference for the negotiation of bilateral and regional arrangements. At the same time, several states were open to the idea of the eventual adoption of an international instrument.³²

The solution found was to, once again, defer any decision on the fate of the draft articles to a future session of the General Assembly. By resolution 66/104 of 9 December 2011, adopted on the basis of the draft resolution proposed by the Sixth Committee, the Assembly decided to revert to the item at its session in 2013, with a view to continuing to examine, *inter alia*, the question of the final form that might be given to the draft articles. The Assembly again encouraged states concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the articles, and also encouraged the International Hydrological Programme of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) to offer necessary scientific and technical assistance.

2.4 Criminal accountability of United Nations officials and experts on mission

The origins of this agenda item can be traced to the ‘Report of the Adviser to the Secretary-General on Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel’ (also known as the ‘Prince Zeid’ report),³³ which, *inter alia*, pointed to some of the legal problems associated with holding United Nations peacekeeping personnel accountable for crimes committed during peacekeeping operations. The legal aspects of that report, and its recommendations,³⁴ were subsequently considered by a group of legal experts, established by the General Assembly on the basis of a recommendation by the Special Committee on Peacekeeping Operations. The group of legal experts issued a report analysing, in greater detail, the legal obstacles to holding United Nations staff and experts on mission accountable for crimes committed during peacekeeping operations.³⁵ The group developed a series of specific

³¹UN doc A/66/116 and Add 1.

³²The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 16 and 29.

³³See UN doc A/59/710.

³⁴See UN doc A/59/19/Rev 1.

³⁵The ‘Report of the Group of Legal Experts on Ensuring the Accountability of United Nations Staff and Experts on Mission with respect to Criminal Acts Committed in Peacekeeping

recommendations, including the possible negotiation of a ‘Convention on the Criminal Accountability of United Nations Officials and Experts on Mission’, a proposed draft text of which was annexed to their report.³⁶ Their report was considered in the context of an agenda item allocated to the Special Political and Decolonization Committee (Fourth Committee) entitled ‘Comprehensive review of the whole question of peacekeeping operations in all their aspects’. In 2006, the General Assembly decided to also allocate that agenda item to the Sixth Committee in order for it to consider the legal aspects of the report of the group of legal experts, including the proposal for a new convention. An Ad Hoc Committee was established, which met in 2007 and 2008, to consider the proposal in more detail, and the agenda item (as renamed with the above title) has been considered in the Sixth Committee every year since 2006, usually on the basis of a more in-depth consideration undertaken in a working group.³⁷

The proposal to undertake the negotiation of an international convention has not gained support among the majority of the member states. Instead, the focus has been on elaborating a number of specific measures, contained in a series of General Assembly resolutions,³⁸ to be undertaken both within the organisation and by member states individually, with a view to, inter alia, eliminating potential jurisdictional gaps and enhancing international cooperation among states, and between states and the United Nations, so as to ensure the criminal accountability of United Nations officials and experts on mission. In particular, a mechanism was established in 2010 whereby the Secretary-General could

bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations were made and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions.³⁹

Operations’ was issued in UN doc A/60/980. While the Prince Zeid report focused on peacekeeping generally, the scope of the ‘Report of the Group of Legal Experts’ was limited to the activities of United Nations staff and experts on mission (including United Nations police, military observers, military advisers, military liaison officers and consultants), but excluding military contingents of contributing states since these were typically the subject of the exclusive jurisdiction of the national state under the applicable status of forces or status of mission agreements.

³⁶*Id* at annex III.

³⁷For more information, including links to documentation, see the website of the Ad Hoc Committee (<http://untreaty.un.org/cod/criminalaccountability/>).

³⁸GA res 62/63 of 6 December 2007, 63/119 of 11 December 2008, 64/110 of 16 December 2009 and 65/20 of 6 December 2010.

³⁹GA res 65/20 operative par 9.

In 2011, the Sixth Committee reconvened the Working Group to continue the consideration of the topic. During the debate in the plenary of the Sixth Committee,⁴⁰ delegations focused on the question of establishing criminal jurisdiction over serious crimes committed by United Nations officials and experts on mission, including the possibility of, where necessary, adapting national legislation to extend national criminal jurisdiction. Further points of consideration related to the question of strengthening cooperation among states, as well between states and the United Nations, particularly with respect to extradition and mutual assistance in matters such as investigations, exchange of information, collection of evidence, execution of sentences and forfeiture of property identified as unlawfully acquired; as well as the need to address the plight of victims. The Committee also considered the most recent report of the Secretary-General emanating from the reporting requirements established by the relevant General Assembly resolutions,⁴¹ which included, *inter alia*, relevant information provided by governments on jurisdictional issues as well as information on cases that had been referred by the organisation to the state of nationality of the alleged perpetrators.

The Sixth Committee adopted a draft resolution which, *inter alia*, provided the mandate for the continued consideration of the legal aspects of the report of the group of legal experts at the 2012 session of the General Assembly, in the framework of a working group of the Sixth Committee; as well as for the preparation of a further report of the Secretary-General providing information on the number and types of credible allegations and any action taken by the United Nations and its member states regarding crimes of a serious nature committed by United Nations officials and experts on mission, including information on efforts made to ensure the completeness of incident reporting. The draft resolution was subsequently adopted by the General Assembly as resolution 66/93 of 9 December 2011.

2.5 *The scope and application of the principle of universal jurisdiction*

This agenda item was included in the provisional agenda of the sixty-fourth session of the General Assembly, in 2009, at the request of Tanzania.⁴² Its origins lie in discussions held within the African Union about the scope and application of the principle, and concerns as to its potentially ad hoc and arbitrary application, particularly as regards heads of state. The referral of the matter to the United Nations was specifically envisaged in decisions of the Assembly of Heads of State and Government of the African Union.⁴³ The item

⁴⁰The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 9, 27 and 29.

⁴¹See UN doc A/66/174 and Add 1.

⁴²See UN doc A/63/237/Rev 1.

⁴³*Id* at pars 4-5.

was allocated to the Sixth Committee in 2009, and has been considered each year since. In 2010, the General Assembly requested the Secretary-General to prepare a report reflecting the comments and information, received from member states (and relevant observers), on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their domestic legal rules and judicial practice. In 2011, the work in the Sixth Committee was undertaken within the confines of a working group, and on the basis of the requested report of the Secretary-General.⁴⁴

While there was general agreement as to the significance of the principle of universal jurisdiction, the debate in the plenary nonetheless revealed differences of opinion on several key aspects, including: whether it is exceptional in character or whether it enjoys a solid basis in customary and conventional international law; the extent of its scope of application, including whether it is to be distinguished from other concepts such as international criminal jurisdiction and the obligation to extradite or prosecute (*aut dedere aut judicare*); its relationship with the complementarity principle established in the Rome Statute of the International Criminal Court of 1998; the range and nature of the crimes subject to it; the linkage with the question of immunity of state officials, in particular that of heads of state and government; and the extent to which resort to the application of universal jurisdiction may have been abused.⁴⁵

As to the continued consideration of the topic in the future, a suggestion to refer it to the International Law Commission did not garner sufficient support. Instead, the Sixth Committee adopted a draft resolution, inter alia, mandating the re-establishment of the Working Group at the 2012 session, so as to continue the debate on the item. It is envisaged that the work is to be undertaken on the basis of a further report of the Secretary-General reproducing comments and information received from member states and relevant observers in 2012. The draft resolution was subsequently adopted by the General Assembly as resolution 66/103 of 9 December 2011.

2.5 Administration of justice at the United Nations

This topic has been on the agenda of the General Assembly since 2000, and, occasionally, before the Sixth Committee since 2003. It has its origins in a series of reviews of the internal justice system within the United Nations, undertaken at the beginning of the decade. The item was allocated, in part, to the Sixth

⁴⁴See UN doc A/66/93 and Add 1.

⁴⁵The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 12, 13, 17 and 29.

Committee for the purpose of considering the question of an amendment to the Statute of the United Nations Administrative Tribunal. In 2007, the General Assembly decided to overhaul the existing system by establishing: (a) a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal; (b) the Office of Administration of Justice, comprising the Office of the Executive Director and the Office of Staff Legal Assistance and the Registries for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; (c) a single integrated and decentralised Office of the Ombudsman for the United Nations Secretariat, funds and programmes with branches in several duty stations and a new mediation division; (d) the Internal Justice Council; and (e) the Management Evaluation Unit in the Office of the Under-Secretary-General for Management.⁴⁶ The Assembly adopted the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal the following year, both of which became operational as of 1 July 2009.⁴⁷

In 2011, the Sixth Committee considered the outstanding legal aspects of the item, including the question of effective remedies for non-staff personnel, as well as the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal,⁴⁸ in the framework of a working group.⁴⁹ The General Assembly subsequently adopted two resolutions,⁵⁰ on the recommendation of the Sixth Committee: (1) approving the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in the annex to the resolution; and (2) approving the amendments to the rules of procedure of the United Nations Appeals Tribunal, as set out in the annex to the resolution, but not approving the amendment to the rules of procedure of the United Nations Dispute Tribunal.⁵¹

3 Consideration of reports of expert legal bodies

One of the main functions of the Sixth Committee is to receive and consider the annual reports of subsidiary bodies, established by the General Assembly to examine legal issues. The consideration of each such report is included as a separate item on the agenda of the Sixth Committee.⁵² The reports typically

⁴⁶GA res 62/228 of 22 December 2007.

⁴⁷GA res 63/253 of 24 December 2008.

⁴⁸See UN doc A/65/86.

⁴⁹The summary records of the subsequent debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 11, 17, 25, 26 and 27.

⁵⁰GA res 66/106 and 66/107 of 9 December 2011, respectively.

⁵¹Adopted on 14 December 2010 in accordance with art 37, par 1, of the 'Rules of Procedure of the United Nations Dispute Tribunal, concerning article 19 (Case management).' See UN doc A/66/86 annex I.

⁵²The reports of subsidiary bodies established on an ad hoc basis, such as those of Ad Hoc Committees, are considered under the substantive agenda item in question. For example, the

describe the work undertaken, and progress made, at the session of the body in question that year. On occasion, the reports of the legal expert bodies (particularly those of the International Law Commission and the United Nations Commission on International Trade Law (UNCITRAL)) provide the vehicle through which proposals for new international instruments are transmitted to the General Assembly for further action. Some subsidiary bodies, such as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (the ‘Special Committee on the Charter’), are made up of representatives of governments. Although less frequent, they also develop proposals for new instruments to be adopted by the Assembly, which are transmitted to the Sixth Committee via their reports.

The debate on the reports provides governments with the opportunity to place on record their views as to substantive matters, as well as to provide information (and sometimes responses) to facilitate the future work of the body in question. It is on the basis of the prevailing trends emerging from the debate on the reports that draft resolutions providing, inter alia, for the continuing mandates of the bodies, are negotiated and proposed to the Assembly for adoption.

In 2011, the Sixth Committee had before it the report of four subsidiary bodies: the International Law Commission, UNCITRAL, the Special Committee on the Charter, and the Committee on Relations with the Host Country.

3.1 Report of the International Law Commission on the work of its sixty-third session

The International Law Commission, which was established by the General Assembly in 1947, is the main subsidiary body of the Assembly responsible for promoting the progressive development of international law and its codification, in accordance with article 13, paragraph 1(a), of the Charter of the United Nations. The Commission, which functions in accordance with its Statute, has met on an annual basis since 1949, and has been responsible for the development of a number of draft international instruments which have subsequently been adopted (by states) in the form of major multilateral treaties, or which have been referred to by the International Court of Justice as authoritative restatements of the law. The Commission has worked primarily in the area of general international law and has developed specific instruments on the law pertaining, inter alia, to: the sea; international crimes; diplomatic and consular relations; treaties; succession of states; non-

report of the Ad Hoc Committee established by GA res 51/210 is considered under the item ‘measures to eliminate international terrorism’. See 2.1 above.

navigational uses of international watercourses; jurisdictional immunities of states; nationality (in the context of succession of states); state responsibility; and diplomatic protection.⁵³

The Commission held the last session of its most recent quinquennium during 2011,⁵⁴ at which time it concluded work on three topics on its work programme, resulting in the adoption of three new draft instruments, with commentaries: the ‘Draft Articles on the Responsibility of International Organisations’,⁵⁵ which followed from the work on state responsibility concluded in 2001; the ‘Draft Articles on the Effects of Armed Conflicts’,⁵⁶ dealing with a matter specifically set aside in the Vienna Convention on the Law of Treaties of 1969;⁵⁷ as well as a ‘Guide to Practice on Reservations to Treaties’.⁵⁸ The adoption of the latter text represented the culmination of sixteen years of work. The Commission also continued its consideration of several other items on its work programme, namely: expulsion of aliens; the obligation to extradite or prosecute (*aut dedere aut judicare*); the protection of persons in the event of disasters; immunity of state officials from foreign criminal jurisdiction; treaties over time; and the most-favoured-nation clause.⁵⁹

The consideration of the Commission’s annual report is generally considered to be the highlight of the annual sessions of the Sixth Committee, and typically takes place over two weeks, in late October, the first of which is designated ‘international law week’ by the General Assembly.⁶⁰ Given the length of the report (which, in 2011, exceeded one thousand pages), the debate in the Sixth Committee is structured around three ‘clusters’ of chapters of the report. A number of delegations made statements *in extenso*, laying out their respective views and

⁵³For more information see: *The Work of the International Law Commission* (2012) (8 ed), as well as the website of the Commission (<http://www.un.org/law/ilc/>).

⁵⁴A new Commission, which consists of 34 members from the five regions of the world serving in their individual capacities, was elected in November 2011 (including a new member from South Africa, Dr Dire Tladi). The new quinquennium will be from 1 January 2012 to 31 December 2016.

⁵⁵2011 ILC Report UN doc A/66/10 and Add 1 par 87. See Pronto ‘An introduction to the Articles on the Responsibility of International Organisations’ (2011) 36 *SAYIL* at 94.

⁵⁶2011 ILC Report UN doc A/66/10 and Add 1 par 100.

⁵⁷Article 73.

⁵⁸2011 ILC Report UN doc A/66/10 and Add 1 par 75.

⁵⁹It is anticipated that the Commission will decide to supplement its work programme by selecting topics from among those presently on its long-term programme of work, namely: ownership and protection of wrecks beyond the limits of national maritime jurisdiction; extraterritorial jurisdiction; protection of personal data in trans-border flow of information; jurisdictional immunity of international organisations; formation and evidence of customary international law; protection of the atmosphere; provisional application of treaties; the fair and equitable treatment standard in international investment law; and protection of the environment in relation to armed conflicts. See *id* at pars 365-369.

⁶⁰For the 2011 session, see GA res 65/26 of 6 December 2010 operative par 13.

positions on the topics on the Commission's agenda, as well as on the texts finalised in 2011. An opportunity was also given to those Special Rapporteurs of the Commission in attendance to respond to the statements made.⁶¹

The General Assembly subsequently adopted three resolutions, on the recommendation of the Sixth Committee. In the first (omnibus) resolution, the Assembly addressed a number of organisational matters relating to the work of the Commission planned for 2012, and also decided to defer its consideration of the 'Guide to Practice on Reservations to Treaties' to its 2012 session.⁶² In the second resolution, the General Assembly took note of the 'Draft Articles on the Effects of Armed Conflicts', the text of which was annexed to the resolution (and renamed 'Articles on the Effects of Armed Conflicts'), and commended them to the attention of governments without prejudice to the question of their future adoption or other appropriate action.⁶³ It further decided to consider the question of the form that might be given to the articles at its session in 2014. The Assembly adopted the same action, in the third resolution,⁶⁴ in connection with the 'Draft Articles on the Responsibility of International Organisations', which were also annexed to the resolution (as the 'Articles on the Responsibility of International Organisations'). It will also revert to the question of the form of those articles at its session in 2014.

Such double-step action (taking note, followed by a postponement of a decision on the final form), adopted for both sets of articles, follows a pattern established in the Sixth Committee, most recently in 2000, in connection with the consideration of the 'Articles on Nationality of Natural Persons in Relation to the Succession of States'.⁶⁵ Every international instrument developed by the Commission since 2000, for which the possibility of adopting a normative instrument existed, has been treated in the same manner⁶⁶ (in most cases on the recommendation of the Commission itself⁶⁷). Other than the decision taken, in 2011, on the nationality articles, the Sixth Committee has not yet reached agreement on the fate of a number of other instruments developed by the International Law Commission. At the time of writing, a decision as to whether to proceed to the adoption of an international convention, or not, is outstanding on the following seven instruments: the 'Articles on the Responsibility of States

⁶¹The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 18 to 28 and 30.

⁶²GA res 66/98 of 9 December 2011.

⁶³GA res 66/99 of 9 December 2011.

⁶⁴GA res 66/100 of 9 December 2011.

⁶⁵See the discussion in 2.2, above.

⁶⁶The 'Draft Articles on the Jurisdictional Immunities of States and their Property' which were finally adopted, in revised form, as a convention in 2004, were proposed by the Commission in the early 1990s.

⁶⁷See, eg the discussion on the 'Articles on the Law of Transboundary Aquifers' in 2.3 above.

for Internationally Wrongful Acts' (adopted by the Commission in 2001),⁶⁸ the 'Articles on Prevention of Transboundary Harm from Hazardous Activities' (adopted by the Commission in 2001),⁶⁹ together with the 'Principles on the Allocation of Loss in the case of Transboundary Harm arising out of Hazardous Activities' (adopted by the Commission in 2006);⁷⁰ the 'Articles on Diplomatic Protection' (adopted by the Commission in 2006);⁷¹ the 'Articles on the Law of Transboundary Aquifers' (adopted by the Commission in 2008);⁷² the 'Articles on the Effects of Armed Conflicts on Treaties' (adopted by the Commission in 2011); and the 'Articles on the Responsibility of International Organisations' (adopted by the Commission in 2011).

The Sixth Committee's consideration of these instruments, over the last decade, has revealed a general reluctance on the part of governments to proceed to the stage of adoption in treaty form (which was done on a number of occasions in the past, and which is one of the principal outcomes envisaged in the Statute of the Commission⁷³). The 2000-2010 decade was the first since the creation of the United Nations in which the Sixth Committee did not recommend the convening of a diplomatic conference to negotiate a multilateral treaty on the basis of a text proposed by the International Law Commission. Nor is there any indication that such inclination might change anytime soon. If anything, the outcome of the Sixth Committee's 2011 consideration of the 'Articles on Nationality of Natural Persons in relation to the Succession of States'⁷⁴ (*ie* deferral of a decision to the future, without stipulating a specific date) may have provided a way forward when it comes to deciding the fate of the other instruments and texts listed above.

3.2 *Report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its forty-fourth session*

The General Assembly established UNCITRAL in 1966 to promote the progressive harmonisation and unification of the law of international trade, and requested it to submit an annual report (which has traditionally been

⁶⁸See GA res 56/83 of 12 December 2001; 59/35 of 2 December 2004; 62/61 of 6 December 2007; and 65/19 of 6 December 2010.

⁶⁹See GA res 56/82 of 12 December 2001; 61/36 of 4 December 2006; 62/68 of 6 December 2007; and 65/28 of 6 December 2010.

⁷⁰See GA res 61/36 of 4 December 2006; 62/68 of 6 December 2007; and 65/28 of 6 December 2010.

⁷¹See GA res 61/35 of 4 December 2006; 62/67 of 6 December 2007; and 65/27 of 6 December 2010.

⁷²See section 2.3 above.

⁷³Article 23. The exception to this trend is the adoption of the United Nations Convention on Jurisdictional Immunities of States and their Property, in 2004. See also Pronto 'Some thoughts on the making of international law' 2008 (19) *EJIL*601609-613.

⁷⁴See the discussion in 2.2 above.

considered by the Sixth Committee).⁷⁵ Since commencing its work in 1968, UNCITRAL has become the main legal body within the United Nations system in the field of international trade law. Over the years, UNCITRAL's output has been prolific, with a number of instruments, both of a 'hard' and 'soft' nature, having been adopted or approved by the General Assembly on the basis of its recommendations. Its main areas of focus have included: international commercial arbitration and conciliation; international sale of goods; security interests; cross-border insolvencies; international payments; international transport of goods; electronic commerce; as well as procurement and infrastructure development.⁷⁶

In 2011, the Sixth Committee had before it the report on the forty-fourth session of UNCITRAL.⁷⁷ Highlights of that session included: the adoption of a revised UNCITRAL 'Model Law on Public Procurement', which updated its predecessor adopted in 1994,⁷⁸ as well as the adoption of a substantive text entitled the UNCITRAL 'Model Law on Cross-Border Insolvency: the Judicial Perspective', intended as an interpretative aid to the Model Law. Work was also undertaken in the areas of: cross-border insolvencies, in particular in relation to the notion of 'centre of main interests' and the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases; arbitration and conciliation, in connection with the preparation of a legal standard on transparency in treaty-based investor-state arbitration; online dispute resolution, in relation to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions; security interests, particularly as regards the preparation of a guide on registration of security rights in movable assets; as well as electronic commerce, specifically on issues related to electronic transferable records. UNCITRAL further identified the need for a regulatory and legal framework for microfinance as a possible topic for future work.

Following the debate on the agenda item, which revealed general support for UNCITRAL's work,⁷⁹ the Sixth Committee proposed three draft resolutions, which were subsequently adopted by the General Assembly. Under resolution 66/94 of 9 December 2012, the Assembly, *inter alia*, welcomed the decisions of UNCITRAL to prepare a guide to enactment of the UNCITRAL 'Model Law on Public Procurement', a study on possible future work in the area of

⁷⁵GA res 2205 (XXI) of 17 December 1966.

⁷⁶See the UNCITRAL website for more information on its activities (<http://www.uncitral.org>).

⁷⁷UN doc A/66/17.

⁷⁸The revised Model Law is to be accompanied by a 'Guide to Enactment', which will be considered at the 2012 session of UNCITRAL.

⁷⁹The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 10, 22, 25 and 30.

public-private partnerships and privately financed infrastructure projects, to undertake work in the field of electronic transferable records, to prepare, in cooperation with the World Bank, draft principles on effective secured transactions regimes, and to include microfinance as an item for the future work of the Commission. Under resolution 66/95, the Assembly recommended that all states use the UNCITRAL 'Model Law on Public Procurement' in assessing their legal regimes for public procurement and give favourable consideration to the Model Law when they enact or revise their laws; and by resolution 66/96 the Assembly recommended that the UNCITRAL 'Model Law on Cross-Border Insolvency: The Judicial Perspective' be given due consideration, as appropriate, by judges, insolvency practitioners and other stakeholders involved in cross-border insolvency proceedings.

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

The Special Committee on the Charter has its origins in an item included in the agenda of the General Assembly in 1969, on the request of Colombia, entitled 'Need to Consider Suggestions Regarding the Review of the Charter of the United Nations'.⁸⁰ Furthermore, another item, entitled 'Strengthening of the Role of the United Nations with Regard to the Maintenance and Consolidation of International Peace and Security, the Development of Cooperation among all Nations and the Promotion of the Rules of International Law in Relations between States', was included in the agenda of the 1972 session of the General Assembly at the request of Romania.⁸¹ Two years later the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider any specific proposals that governments might make with a view to enhancing the ability of the United Nations to achieve its purposes, as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.⁸² The following year, in 1975, the General Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.⁸³ The Special Committee on the Charter has met on an annual basis since 1976, and its annual report has traditionally been considered by the Sixth Committee.

⁸⁰See UN doc A/7659.

⁸¹See UN doc A/8792.

⁸²See GA res 3349 (XXIX) of 17 December 1974.

⁸³See GA res 3499 (XXX) of 15 December 1975.

Since its establishment, the Special Committee has negotiated several texts resulting, *inter alia*, in the adoption by the General Assembly of the following instruments:⁸⁴ the Manila Declaration on the Peaceful Settlement of International Disputes;⁸⁵ the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field;⁸⁶ the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security;⁸⁷ the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security;⁸⁸ the United Nations Model Rules for the Conciliation of Disputes between States;⁸⁹ the Decision on Resort to a Commission of Good Offices, Mediation or Conciliation within the United Nations;⁹⁰ the Conclusions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization concerning the Rationalization of existing United Nations Procedures;⁹¹ the Resolution on Prevention and Peaceful Settlement of Disputes;⁹² and the document entitled 'Introduction and Implementation of Sanctions imposed by the United Nations'.⁹³

In 2011, the Special Committee had three main issues on its agenda: (1) the maintenance of international peace and security; (2) peaceful settlement of disputes; and (3) the 'Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council'.⁹⁴ The main focus of its work was on the first category, under which a number of issues and proposals have been under consideration for several years. These included the question of the implementation of the provisions of the Charter relating to assistance to third states affected by the application of sanctions. The consideration of this sub-topic provided the opportunity for states to make general comments, *inter alia*, about the activities of the sanctions committees established by the Security Council, and for reviewing the actions of the United Nations Secretariat in implementing several resolutions adopted by the General

⁸⁴For more information, see the website of the Special Committee on the Charter (<http://untreaty.un.org/cod/chartercomm/>).

⁸⁵See GA res 37/10 of 15 November 1982 annex.

⁸⁶See GA res 43/51 of 5 December 1988 annex.

⁸⁷See GA res 46/59 of 9 December 1991 annex.

⁸⁸See GA res 49/57 of 9 December 1994 annex.

⁸⁹See GA res 50/50 of 11 December 1995 annex.

⁹⁰See GA decision 44/415 of 4 December 1989 annex.

⁹¹See GA res 45/45 of 28 November 1990 annex.

⁹²See GA res 57/26 of 19 November 2002.

⁹³See GA res 64/115 of 16 December 2009 annex.

⁹⁴See the 2011 report, UN doc A/66/33.

Assembly on the topic.⁹⁵ No specific proposals were before the Special Committee as regards the topic ‘peaceful settlement of disputes’.

One of the functions of the Special Committee is to review the activities of the Secretariat in preparing the ‘Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council’. These publications were started in the early 1950s, with a view to providing an analysis of the practice of the organisation to aid the review conference envisaged in article 109 of the Charter. Although the conference was never held, the Secretariat of the United Nations has continued to update the publications, most recently to cover the period up until the early 2000s, on the request of the General Assembly.⁹⁶

The debate in the Sixth Committee on the agenda item revealed a difference of opinion as to the significance of the work of the Special Committee. It nonetheless provided the opportunity for states to comment, inter alia, on legal questions pertaining to the implementation of sanctions, and more generally on several legal aspects of the maintenance of international peace and security.⁹⁷

The General Assembly subsequently adopted a resolution, as proposed by the Sixth Committee, renewing the mandate of the Special Committee for 2012.⁹⁸

3.4 Report of the Committee on Relations with the Host Country

The Sixth Committee also considered⁹⁹ the report of the Committee on Relations with the Host Country, which was established by the General Assembly in 1971.¹⁰⁰ The Committee, which has a limited membership, was established to provide a forum for the consideration of issues arising out of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. In 2011, the issues considered related, inter alia, to: the question of the security of missions and the safety of their personnel; the implementation of the Headquarters Agreement, including, entry visas issued by the host country, acceleration of immigration and customs procedures, and exemption from taxes; the question of the responsibilities of permanent missions

⁹⁵An annual report on the issue, by the Secretary-General, is considered by the Sixth Committee under the present agenda item. The 2011 report is to be found in UN doc A/66/213.

⁹⁶See the website of the ‘Repertory of Practice of United Nations Organs’ (<http://www.un.org/law/repertory/>) and that of the ‘Repertoire of the Practice of the Security Council’ (<http://www.un.org/en/sc/repertoire/>).

⁹⁷The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 7, 8, 27 and 29.

⁹⁸GA res 66/101 of 9 December 2011.

⁹⁹The summary record of the debate in the plenary of the Sixth Committee is to be found in UN doc A/C.6/66/SR 30.

¹⁰⁰GA res 2819 (XXVI) of 15 December 1971.

to the United Nations and their personnel, in particular the problem of claims of financial indebtedness and procedures to be followed with a view to resolving the issues relating thereto; housing for diplomatic personnel and for Secretariat staff; and questions of privileges and immunities.¹⁰¹

The General Assembly subsequently adopted a resolution, on the recommendation of the Sixth Committee, endorsing a number of the recommendations made by the Committee, and renewing its mandate for 2012.

4 Oversight activities

The Sixth Committee is further responsible for providing oversight in connection with a number of activities of the United Nations Secretariat. In 2011, this arose in relation to two agenda items: The rule of law at the national and international levels; and the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. This is not to say that there was no substantive component to the Committee's consideration (the debate on the rule of law topic typically includes an exchange of views on substantive aspects), but rather that the task of the Sixth Committee was to consider reports on activities undertaken in 2011, and recommend a mandate for further actions in 2012.

4.1 The rule of law at the national and international levels

This item was added to the agenda of the General Assembly in 2006, at the request of Liechtenstein and Mexico,¹⁰² and has been considered by the Sixth Committee at every session of the General Assembly since then. At the 2011 session, the Committee reviewed the latest annual report of the Secretary-General describing recent activities by the United Nations related to the rule of law,¹⁰³ prepared under the auspices of the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General. As decided at the 2010 session, the debate in the Sixth Committee focused on the sub-topic 'Rule of Law and Transitional Justice in Conflict and Post-conflict Situations'.¹⁰⁴ The Committee also discussed the practical arrangements for the holding of a special meeting on the topic during the high-level segment of the General Assembly in 2012.

On the recommendation of the Sixth Committee, the General Assembly subsequently adopted a resolution,¹⁰⁵ *inter alia*: calling for enhancing dialogue

¹⁰¹For a complete list see the 2011 report of the Committee, in UN doc A/66/26.

¹⁰²See UN doc A/61/142.

¹⁰³UN doc A/66/133.

¹⁰⁴The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 5, 6, 7 and 30.

¹⁰⁵GA res 66/102 of 9 December 2011.

among all stakeholders with a view to placing national perspectives at the centre of rule of law assistance in order to strengthen national ownership; requesting the Secretary-General to submit a further report on United Nations rule of law activities, to be considered at the 2012 session; and deciding to hold a one-day plenary on the rule of law at the national and international levels during the high-level segment of the sixty-seventh session of the General Assembly, on 24 September 2012. It is anticipated that the high-level plenary will result in a concise outcome document. The Assembly also invited member states and the Secretary-General to suggest possible sub-topics for future Sixth Committee debates for inclusion in his forthcoming annual report, with a view to assisting the Sixth Committee in choosing future sub-topics.

4.2 United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was established by the General Assembly in 1965, to encourage and coordinate existing international law programmes carried out by states, organisations and institutions, and with a view to having the United Nations Secretariat provide direct assistance in the form of seminars, training courses and fellowships in international law.¹⁰⁶ Such activities are overseen by an Advisory Committee whose members are appointed by the General Assembly from among the member states. Up until 2009, the Sixth Committee considered the item on a biennial basis. In line with the revitalisation of the programme in recent years, the item has been allocated to the Committee on an annual basis.

Recent activities undertaken under the aegis of the Programme of Assistance,¹⁰⁷ primarily by the Codification Division of the United Nations Office of Legal Affairs, have included the awarding of fellowships to qualified candidates from developing countries to attend the International Law Fellowship Programme in The Hague; the holding of several regional courses in international law; and the establishment and continued expansion of the online United Nations Audiovisual Library of International Law.¹⁰⁸ The Programme of Assistance also includes a number of other dissemination activities, including the preparation of publications and websites related to topics of international law as well as the activities of the United Nations in the progressive development and codification thereof.

¹⁰⁶GA res 2099 (XX) of 20 December 1965.

¹⁰⁷For more information on the Programme of Assistance see <http://www.un.org/law/programmeofassistance/>.

¹⁰⁸See <http://www.un.org/law/avl/>.

The General Assembly adopted a resolution,¹⁰⁹ on the recommendation of the Sixth Committee,¹¹⁰ renewing the mandate of the Secretary-General to continue to carry-out the activities under the Programme of Assistance planned for 2012.

5 Requests for observer status

No provision is made in the Charter of the United Nations (or in the rules of procedure of the General Assembly) for the grant of observer status to non-member states and other entities. Nonetheless, a practice has developed over the years whereby the General Assembly has, through the adoption of a resolution, granted observer status¹¹¹ to several entities (at last count, numbering in the hundreds). Such status typically means that the entity can attend (but not take part in) the public meetings of the General Assembly. In some cases, the grant of observer status has even included limited participation rights (as specified in the relevant Assembly resolutions).¹¹² Observer status in the General Assembly of the United Nations may also provide the basis for the entities concerned to be able to observe the work of other entities within the United Nations system. In 1994, the General Assembly decided that the granting of observer status in the Assembly should in the future be confined to states and to those intergovernmental organisations whose activities cover matters of interest to the Assembly.¹¹³ In 1999, the General Assembly further decided that requests by organisations for the grant of observer status had to be first considered by the Sixth Committee.¹¹⁴ Since then, the Sixth Committee has routinely had such requests (which are made by member states usually in the form of a written communication addressed to the President of the General Assembly) allocated to it. Each request is considered as a separate item on the agenda of the Sixth Committee.

In 2011, several such requests were considered by the Sixth Committee with a view to deciding whether to recommend the grant of observer status to the following organisations: the Cooperation Council of Turkic-speaking States;¹¹⁵ the Union of South American Nations;¹¹⁶ the International Renewable Energy

¹⁰⁹GA res 66/97 of 9 December 2011.

¹¹⁰The summary records of the debate in the plenary of the Sixth Committee are to be found in UN docs A/C.6/66/SR 14 and 30.

¹¹¹The grant of observer status by the General Assembly is to be distinguished from the grant of consultative status by the Economic and Social Council (ECOSOC).

¹¹²See, for example, the participation rights granted to the Holy See, in GA res 58/314 of 1 July 2004; as well as those granted to the European Union, in GA res 65/276 of 3 May 2011. See too UN doc A/65/856.

¹¹³GA decision## 49/426 of 9 December 1994.

¹¹⁴GA res 54/195 of 17 December 1999.

¹¹⁵See UN doc A/66/141.

¹¹⁶See UN doc A/66/144.

Agency;¹¹⁷ the Central European Initiative;¹¹⁸ the United Cities and Local Governments;¹¹⁹ the Intergovernmental Authority on Development;¹²⁰ the Parliamentary Assembly of Turkic-speaking Countries;¹²¹ the International Conference of Asian Political Parties¹²²; and the West African Economic and Monetary Union.¹²³ A further request (for the grant of observer status to the International Emergency Management Organisation) was withdrawn before being allocated to the Sixth Committee.¹²⁴ Such requests have, on occasion, engendered some controversy, especially as regards entities whose intergovernmental nature was not immediately apparent.¹²⁵ Such was the case with four requests, two of which were withdrawn (observer status for: the United Cities and Local Governments; and the Parliamentary Assembly of Turkic-speaking Countries) and another two deferred to the 2012 session of the General Assembly (observer status for: the Cooperation Council of Turkic-speaking States; and the International Conference of Asian Political Parties). The General Assembly subsequently adopted several resolutions, on the recommendation of the Sixth Committee, extending observer status to the remaining entities.¹²⁶

6 Conclusion

The Sixth Committee is scheduled to revert to its consideration of the above (and other) topics at the 2012 session (or future sessions) of the General Assembly. Such cyclical nature of the Committee's work helps to set the 'rhythm' of the work on the international legal agenda, undertaken both at the level of the United Nations, and by the legal advisers of the governments of the member states in their respective capitals.¹²⁷

¹¹⁷See UN doc A/66/145.

¹¹⁸See UN doc A/66/191.

¹¹⁹See UN doc A/66/192.

¹²⁰See UN doc A/66/193.

¹²¹See UN doc A/66/193.

¹²²See UN doc A/66/198.

¹²³See UN doc A/66/193.

¹²⁴See UN doc A/66/250.

¹²⁵The summary records of the debate in the plenary of the Sixth Committee on the various requests for observer status are to be found in UN docs A/C.6/66/SR 4, 8, 16, 17, 29 and 30.

¹²⁶GA res 66/109 of 9 December 2011 (the Union of South American Nations); GA res 66/110 of 9 December 2011 (the International Renewable Energy Agency); GA res 66/111 of 9 December 2011 (the Central European Initiative); GA res 66/112 of 9 December 2011 (the Intergovernmental Authority on Development); and GA res 66/113 of 9 December 2011 (the West African Economic and Monetary Union).

¹²⁷The Sixth Committee provides the context for an annual meeting of the legal advisers of the member states, held in New York during 'international law week' (see sec 3.1 above).