The work of the Sixth Committee of the United Nations General Assembly 2012-2013

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1 Introduction

The following is a review of the activities of the Sixth Committee of the General Assembly of the United Nations at the sixty-seventh and sixty-eighth sessions of the Assembly, held in 2012 and 2013 respectively. As described previously,[1] the work of the Committee can be organised broadly into three types of activity: the substantive consideration of certain legal issues; the review of the annual work of expert legal bodies; and the discharge of certain oversight functions. A fourth function may be added: the review of requests for observer status in the General Assembly. During the period under review, the Committee dealt with a broad range of legal issues of international concern. As with any overview, depth of analysis is sacrificed on the altar of breadth of coverage.[2]

2 Substantive topics on the agenda of the Sixth Committee

2.1 Measures to eliminate international terrorism

At both sessions under review, the debate in the Sixth Committee on this agenda item followed the pattern of earlier sessions with a combination of general comments and discussion on specific activities undertaken during the preceding years.[3]

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[1]For a description of the functions and work of the Sixth Committee at the sixty-sixth session of the General Assembly in 2011, as well as the history of a number of items on the agenda of the Committee see Pronto 'The work of the Sixth Committee of the United Nations General Assembly in 2011' (2011) 36 *SAYIL* 237.

[2]More information is available on the website of the Sixth Committee, at http://www.un.org/en/ga/sixth/. All official UN documents cited herein are available at http://documents.un.org/.

[3]For the debates in 2012 see UN doc A/C.6/67/SR 1-3, 23-25; and for 2013 see UN docs A/C.6/68/SR 2-5, 19, 28. For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 3,

As in past sessions, there was general agreement in the Sixth Committee that the scourge of international terrorism constitutes one of the most serious threats to global peace and security, and holds the potential to undermine democracy, peace, freedom, and human rights. Delegations reiterated their longstanding condemnation of terrorism *in all its forms and manifestations*. For some, no cause could justify terrorism. Concern was expressed as to the deleterious effects of terrorist acts, including the erosion of law and order, the destabilisation of structures of governance and the negative impact on economic growth. Reference was also made to the need to strike a balance between security considerations and the respect for human rights, as well as strict adherence to the Charter of the United Nations and international law. A common theme, as in the past, was the perceived need for a clearer definition of terrorism, with some reiterating the view that it be distinguished from the exercise of the right to self-determination of peoples under foreign occupation, colonial or alien domination.

General themes in the debate included the need for increased ratification, and implementation at the national level, of the various universal counter-terrorism instruments; the question of the implementation of a global 'extradite or prosecute' (*aut dedere, aut judicare)* regime to facilitate prosecutions of terrorist acts and to end impunity; the centrality of the role of the United Nations in counter-terrorism efforts and the continuing support for the United Nations Global Counter-Terrorism Strategy;[4] the possibility of the establishment of a United Nations Coordinator for Counter-Terrorism; the continued scrutiny of the actions and working methods of the Security Council in relation to the implementation of its various anti-terrorism sanction regimes with a view to ensuring the respect for due process and the rule of law; and the need to provide support and protection to *victims* of terrorist attacks. Several delegations alluded to the need to address the root causes of terrorism and to prevent and eliminate the conditions conducive to its emergence and spread, as well as to address the dangers and destabilising effects of terrorism in all its forms and manifestations.

Particular concern was expressed regarding the possible acquisition by terrorists of weapons of mass destruction; the close links between terrorism and transnational organised crime, including money laundering, arms smuggling, trafficking in illicit drugs, the proliferation of small arms and light weapons, piracy, and activities of armed separatist groups. Cyber-terrorism was also highlighted as a matter of growing international concern requiring concerted action. Reference was made to the increase in incidents of

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pars 30-32; and, in 2013, see UN doc A/C.6/68/SR 3, pars 12-14.
[4]GA res 60/288 of 8 September 2006.

kidnapping and hostage-taking with the aim of raising funds for terrorist purposes. The importance of cooperation with international partners, including the Financial Action Task Force (FATF), in order to leverage expertise and technical assistance to prevent money laundering and the transmission of funds to terrorist actors, was highlighted. Recognition was given to the importance of cooperating through international, regional, and sub-regional arrangements in efforts to combat terrorism.

Delegations commented on specific events which took place during the preceding years. These included the Third Biennial Review of the United Nations Global Counter Terrorism Strategy, held in the General Assembly in June 2012, and the High-Level Meeting on Countering Nuclear Terrorism, with a Focus on Strengthening the Legal Framework, which was convened by the Secretary-General of the United Nations on 28 September 2012. Reference was made to the establishment of the United Nations Centre for Counter-Terrorism, as well as the work of the Global Counterterrorism Forum and of regional and subregional initiatives, such as the ASEAN Comprehensive Plan of Action on Counter Terrorism, the SCO Regional Anti-Terrorism Structure, the Southeast European Cooperative Initiative, and the establishment of early warning mechanisms within SADC. In connection with these initiatives, reference was made to the work of the United Nations Counter-Terrorism Implementation Task Force (CTITF), as well as that of the Counter Terrorism Committee (CTC) and the Counter-Terrorism Executive Directorate (CTED).

Regarding the ongoing work of the Ad Hoc Committee established by General Assembly resolution 51/210, which met in early 2013, there was continued general support for the conclusion of a draft comprehensive convention on international terrorism. The purpose of the treaty would be to enhance the existing legal framework, including by filling lacunae, so as to assist states in their counter-terrorism efforts. This would include facilitating cooperation and mutual legal assistance and establishing a consensus definition of terrorism so as to ensure universal criminalisation. The difference of opinion regarding the 2007 proposal of the Coordinator[5] relating to the scope of the proposed convention, particularly as regards the exclusion of the activities of military forces inasmuch as those activities are governed by other rules of international law (particularly international humanitarian law) continued. Some delegations maintained the view that the draft convention should address *all* forms of terrorism, including 'state terrorism' committed by the military forces of a state.[6] Discussions on the possibility of convening a high-level conference on terrorism under the auspices of the United Nations, continued.

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[5]Proposal for draft art 3 reproduced in 2010 in A/C.6/65/L 10 Annex II.
[6]For a detailed summary of the various positions see A/68/37 Annex III.

At each session, the Sixth Committee adopted draft resolutions, which were later adopted by the General Assembly as resolutions 67/99 and 68/119, respectively.[7] These resolutions referred, in detail to the actions, and positions, of the United Nations with regard to the measures taken to eliminate international terrorism during the years under review.

2.2 Criminal accountability of United Nations officials and experts on mission

The debate on the item,[8] held at both sessions, by and large reflected the same themes from previous years. Delegations continued to emphasise the need to guard against impunity and to ensure that all United Nations personnel perform their functions in a manner consistent with the Charter of the United Nations and which preserves the image, credibility, impartiality and integrity of the organisation. An important element of this was the zero tolerance policy of the United Nations, particularly in respect to sexual exploitation and abuse. One of the practical difficulties referred to was the fact that not all states assert jurisdiction over their nationals in the context of serious crimes committed while serving as United Nations officials or experts on mission, and while respecting the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations.[9] States were encouraged to take the necessary steps to prosecute their nationals for any offence committed while on mission, if necessary by adapting their national legislation to include the active personality principle. Other ideas included applying a more flexible approach to the requirement of dual criminality.

Many delegations continued to take the view that the situation could be ameliorated by taking practical measures such as the strengthening of cooperation mechanisms between states, particularly with respect to extradition, mutual assistance in matters such as investigations, the exchange of information, and the collection of evidence. States could also implement preventive measures including pre-deployment and in-mission training. In that regard, reference was made to the adoption of the United Nations 'Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by the United Nations Staff and Related Personnel'.[10] Another measure related to the reporting mechanism established in earlier General Assembly resolutions. In this instance, the Secretary-General, in his annual reports,[11] provided

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[7]On 14 December 2012 and 16 December 2013, respectively.
[8]For the debates in 2012 see UN docs A/C.6/67/SR 8-9, 24-25; and for 2013 see UN docs A/C.6/68/SR 10-11, 28-29. For the views of South Africa, in 2013, see A/C.6/68/SR 10, pars 64-65.
[9]United Nations, *Treaty Series*, vol 1, p 15.
[10]GA res 62/214 of 21 December 2007.
[11]UN docs A/67/213 and A/68/173, respectively.

information, *inter alia*, on cases that had been referred by the Organisation to the state of nationality of the alleged perpetrators. It was also suggested that the problem could be adequately addressed through the adoption of appropriate national legislation, and that, accordingly, efforts at the United Nations could be focused on developing model national legislation.

The prospect of the work on the topic leading to the negotiation of an international instrument remained slim. A significant number of states continued to be unconvinced of the wisdom, or, in fact, the necessity, of such a course of action. This and other matters were discussed in greater detail in a working group of the Sixth Committee which met in 2012, chaired by the South African delegate, Dr D Tladi, who, in his report to the Committee,[12] noted the extent of the differences of opinion and views on the proposed convention and on other measures that could be taken in lieu thereof, including, for example, making adjustments to the 'Revised Model Memorandum of Understanding with Troop-contributing Countries'.

This seeming lack of progress is understandable when seen as a consequence of the ambiguity that continues to pervade the debate on the topic. On the one hand, while reference is made to the actions of peacekeepers or to solutions (such as amending the 'Revised Model Memorandum of Understanding', or undertaking 'pre-deployment' training) which imply that such individuals are the subject of scrutiny; on the other hand, it was accepted from the outset that the position of military contingents, serving as peacekeepers for the United Nations, lies outside of the scope of the topic, since the activities of that class of individual are governed by the separate legal regimes established under the respective status of forces/mission agreements. As a result, strictly speaking the topic covers only the actions of United Nations 'officials', such as staff, and 'experts on mission', including Special Rapporteurs and members of expert bodies, etcetera. However, statistically speaking, the number of cases (both accused and proven) of criminal conduct by the covered category of individuals is, on the whole, relatively low. This has lent credence to the view that the issue is about a few 'bad apples', for which negotiating an entire treaty would be an unnecessary and inappropriate response.

On the recommendation of the Sixth Committee in each year, the General Assembly adopted resolutions 67/88 and 68/105,[13] respectively, which, with a few technical improvements, confirmed the various measures, adopted in previous resolutions, aimed at ensuring the criminal accountability of United Nations officials and experts on mission, and continued the reporting

[12]UN doc A/C.6/67/SR 24, pars 1-2.
[13]On 14 December 2012 and 16 December 2013, respectively.

mechanisms set out in those resolutions. The agenda item was scheduled to be considered next at the sixty-ninth session, in 2014.

2.3 The scope and application of the principle of universal jurisdiction

At both sessions, the Sixth Committee undertook its consideration of the topic in the plenary[14] and in a working group chaired by Mr E Ulibarri of Costa Rica. The Committee also had before it the annual reports of the Secretary-General,[15] reproducing comments received from certain governments, and observers, on the scope and application of the principle of universal jurisdiction on the basis of relevant domestic legal rules, applicable international treaties, and judicial practice, as well as providing, *inter alia*, a synopsis of possible issues for discussion and information on relevant applicable treaties, national rules, and judicial practice.

While there was general agreement among the governments that universal jurisdiction was an important principle in the fight against impunity, there were continuing divergent views as to its nature and purpose, as well as on the advisability of developing a common standard or approach at the international level. Much of the controversy, as before, centered on the definition of universal jurisdiction, including the extent to which it ought to be distinguished from other concepts such as international criminal jurisdiction, and the obligation to extradite or prosecute (*aut dedere aut judicare*). A further point of dispute was the continuing debate on the link between universal jurisdiction and the question of immunity of state officials, in particular that of heads of state and government. While some governments focused on the need to prevent impunity, others were of the view that the exercise of criminal jurisdiction over high-ranking officials who enjoy immunity under international law violated the sovereignty of states, and called for a moratorium on all pending arrest warrants filed against certain heads of states. Reference was made to recent decisions of the Assembly of Heads of State and Government of the African Union criticising the alleged abuse of the principle of universal jurisdiction. Different views were expressed as to which crimes were covered by the principle: some preferred a narrower limitation to the most serious or heinous crimes of concern to the international community, while others took a more expansive approach. The Committee also continued to explore the question of the conditions for the application of universal jurisdiction, and its relationship to the exercise of territorial jurisdiction.

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[14]For the debates in 2012 see UN docs A/C.6/67/SR 12-13, 24-25; and for 2013 see UN docs A/C.6/68/SR 12-14, 23, 28-29. For the views of South Africa, in 2012, see A/C.6/67/SR 13, pars 3-4; and, in 2013, see UN doc A/C.6/68/SR 13, pars 11-13.

[15]UN docs A/67/116 and A/68/113. See also the prior reports of the Secretary-General, UN docs A/65/181, and A/66/93 and Add 1.

The general view of the Committee emanating from the debate at both sessions was that more discussion was required, and that such discussion ought to continue in the context of the working group. While the idea of referring the topic to the International Law Commission was mooted, the proposal still did not enjoy general support in the Sixth Committee.

On the recommendation of the Sixth Committee, the General Assembly subsequently adopted resolutions 67/98 and 68/117,[16] respectively, under which the Assembly decided to continue the consideration of the topic at the following sessions, including in a working group of the Sixth Committee, and called on states to continue to transmit their views in writing to the Secretary-General.

2.4 Administration of justice at the United Nations

The machinery for the administration of justice at the United Nations has been subjected to a major overhaul over the last decade, with much of the new institutional arrangements having been adopted on the basis of recommendations made by the Fifth and Sixth Committees of the General Assembly. With most of the new arrangements, including a new dispute tribunal and an appeals tribunal in place, during the period under review the bulk of the consideration of the item was undertaken in the Fifth Committee. Nonetheless, the Sixth Committee considered some of the legal aspects at both sessions.[17] In particular, the Sixth Committee considered proposals for several ancillary arrangements as well as for improvements and further streamlining of the new system. The Committee had before it several reports of the Secretary-General, including those on the activities of the Office of the United Nations Ombudsman and Mediation Services,[18] on the administration of justice at the United Nations,[19] on amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal,[20] as well as the report of the Internal Justice Council on the 'Administration of Justice at the United Nations'.[21]

The key issues considered during the debate on the agenda item at both sessions included: the possibility of developing expedited arbitration procedures for consultants and individual contractors, as well as specific

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[16]On 14 December 2012 and 16 December 2013, respectively.
[17]For the debates in 2012 see UN docs A/C.6/67/SR 10, 14; and for 2013 see UN docs A/C.6/68/SR 27, 28.
[18]UN docs A/67/172 and A/68/158, respectively.
[19]UN docs A/67/265 and Corr 1 and A/68/346, respectively.
[20]UN doc A/67/349.
[21]UN docs A/67/98 and A/68/306, respectively.

measures concerning other non-staff personnel not covered under existing dispute resolutions mechanisms (and subject to the existing obligations of the United Nations, including under the 1946 Convention on the Privileges and Immunities of the United Nations and agreements that the Organisation had concluded with host states); developing a code of conduct for legal representatives appearing before the Dispute Tribunal and Appeals Tribunal; the question of a procedure for enforcing the code of conduct of judges which had been approved by the General Assembly;[22] proposals for the further amendment of the rules of procedure of the Dispute Tribunal and of the Appeals Tribunal; the need to expedite the resolution of cases which remained from the prior system of the administration of justice; the possibility of introducing punitive damage awards; the promotion of informal dispute resolution mechanisms, including mediation through the Office of the Ombudsman; the question of the privileges and immunities of judges; consideration of proposals pertaining to abuse of proceedings; resort to *ad litem* judges; and the approach of the Appeals Tribunal to moral damages. Reference was also made to the role of the Internal Justice Council in the system to help ensure its independence, professionalism and accountability, as well as to the activities of the Office of Staff Legal Assistance (OSLA) and of the Office of the Ombudsman and Mediation Services.

No draft resolution was adopted in the Sixth Committee at either session. Instead, on both occasions the Sixth Committee opted for sending a letter,[23] addressed from its Chairperson to the President of the General Assembly, drawing attention to the views of the Sixth Committee on certain specific issues relating to the legal aspects of the reports submitted under the agenda item as discussed in the Committee, and requesting that such information be brought to the attention of the Fifth Committee.

2.5 Responsibility of states for internationally wrongful acts

The 'Draft Articles on the Responsibility of States for Internationally Wrongful Acts' were adopted by the International Law Commission in 2001.[24] In doing so, the Commission recommended that the General Assembly first take note of the Draft Articles in a resolution, and that it annex them to the resolution. The Commission also recommended that the Assembly consider, at a later stage and in light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries with a view to adopting a convention on the basis of the Draft Articles.[25] The General

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[22]GA res 66/106 of 9 December 2011, annex.
[23]UN docs A/C.5/67/9, annex, and A/C.5/68/11, annex, respectively.
[24](2001) II/Part Two *Yearbook of the International Law Commission* 26-30.
[25]As above 25.

Assembly carried out the first part of the recommendation in 2001,[26] but has continued to consider the second leg at three-year intervals, in 2004, 2007, and 2010,[27] respectively; each time in the context of the Sixth Committee.

The question of the fate of the Articles[28] was considered by the Committee in 2013[29], again in the context of a working group, on the basis of two reports by the Secretary-General. The first report contained comments and information received from governments,[30] and the second an update[31] to a compilation of decisions of international courts, tribunals, and other bodies referring to the 'Articles on Responsibility of States for Internationally Wrongful Acts', prepared during earlier sessions.[32]

As in the past, no agreement was forthcoming on how to proceed. While some states continued to oppose the negotiation of a treaty, preferring to leave the Articles as the definitive (re)statement of the law on state responsibility, a sizable number of states indicated (at the 2013 and earlier sessions) that while they were open to the idea of a convention, they preferred to wait and see how the Articles fared over time. A third group of states actively called for the commencement of treaty negotiation forthwith. In a notable difference from prior sessions, the number of states in the third column, *ie,* those expressly calling for a treaty, not only increased in number, but also became increasingly vocal in their support for such an outcome.[33] Significantly, the solution adopted in 2011 for the 'Draft Articles on Nationality of Natural Persons in Relation to the Succession of States', which ended the periodic discussion of the matter in lieu of reverting to it at some undetermined point in the future, in light of the development of state practice,[34] was simply not seen as providing a feasible precedent for dealing with the Articles on State Responsibility.

Following the recommendation of the Sixth Committee, the General Assembly adopted resolution 68/104,[35] in which it acknowledged once again the importance of the Articles, and requested the Secretary-General to prepare

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[26]GA res 56/83 of 12 December 2001.
[27]See GA res 59/35 of 2 December 2004, 62/61 of 6 December 2007, and 65/19 of 6 December 2010.
[28]Upon being annexed to resolution 56/83, the reference to 'draft' was dropped.
[29]For the debates in 2013 see UN docs A/C.6/68/SR 15, 28-29.
[30]UN doc A/68/69 and Add 1.
[31]UN doc A/68/72.
[32]UN docs A/62/62 and Corr 1 and Add 1; and A/65/76.
[33]See Pacht, 'The case for a Convention on State Responsibility' (2014) 83 *Nordic Journal of International Law* 439 at 445-7.
[34]GA res 66/92 of 9 December 2011.
[35]On 16 December 2013.

further updates to his various reports on the topic, for consideration at the seventy-first session, in 2016, at which time the Assembly would again take up the question of the fate of the Articles. It should be noted that, as with the resolution it adopted in 2010,[36] the Assembly indicated that the discussion in 2016 would be undertaken 'with a view to taking a decision'.[37] The matter has become increasingly pressing since, as will be discussed below, the outcome of the work on the Articles has a bearing on the fate of other articles proposed by the Commission, also being considered by the Assembly.

2.6 Diplomatic protection

The 'Draft Articles on Diplomatic Protection' were adopted by the International Law Commission in 2006,[38] on the basis of the proposals developed by the Special Rapporteur on the topic, the then South African member, Prof John Dugard. The Commission recommended the elaboration of a convention on the basis of the Draft Articles.[39] However, the General Assembly has yet to take a decision on that recommendation. The issue was discussed in 2006, 2007, and 2010, without success.[40] Not only was this impasse due to a difference of opinion as to the wisdom of adopting a convention, but can also be ascribed to the fact that it became widely accepted among the governments that the fate of the Diplomatic Protection Articles was linked to that of the Articles on the Responsibility of States for Internationally Wrongful Acts. In fact, from 2007 onwards the consideration of the present agenda item by the Sixth Committee was sequenced with that on the responsibility of states for internationally wrongful acts.

As a result the Sixth Committee reverted to the matter once again in 2013,[41] also in a working-group context. The committee had before it a report prepared by the Secretary-General reproducing comments received from governments, on both the articles and their fate.[42] As in the case of the Articles on State Responsibility, the focus of the debate was less on the substance of the Articles on Diplomatic Protection,[43] and more on the procedural question of what to do with them. Although a significant number of governments were favorably disposed to the negotiation of an international convention, there

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[36]GA res 65/19 of 6 December 2010, operative par 4.
[37]Operative par 5.
[38](2006) II/ Part Two *Yearbook of the International Law Commission* 24-26.
[39]As above 24.
[40]GA res 61/35 of 4 December 2006, 62/67 of 6 December 2007, and 65/27 of 6 December 2010.
[41]For the debates in 2013 see UN docs A/C.6/68/SR 15, 28-29.
[42]UN doc A/68/115 and Add 1.
[43]Upon the annexing of the draft articles to GA res 62/67 of 6 December 2007, the reference to 'draft' was dropped.

were still some which either did not favour such an outcome, or which preferred to await developments.

Following the recommendation of the Sixth Committee, the General Assembly adopted resolution 68/113, on 16 December 2013, by which it requested the Secretary-General to update his report, for consideration by the Assembly at the seventy-first session, in 2016, at which time the Sixth Committee would revert back to the question of the fate of the Articles.

2.7 Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

The origin of this agenda item lies in the work of the International Law Commission on the topic 'International liability for injurious consequences arising out of acts not prohibited by international law', which, in the late 1990s, was subdivided into two parts, the first dealing with prevention, and the second with liability. In 2001, the Commission adopted a set of 'Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities',[44] and recommended to the General Assembly the elaboration of a convention.[45] That year, the Assembly decided to request the Commission to continue its consideration of the liability aspect.[46] In 2006, the Commission adopted the 'Draft Principles on the Allocation of Loss in the case of Transboundary Harm arising out of Hazardous Activities',[47] and recommended to the Assembly that it endorse them by a resolution and urge states to take national and international action to implement them.[48] The Assembly followed suit that year, in resolution 61/36 of 4 December 2006, in which it took note of the principles,[49] and commended them to the attention of governments. The Assembly also decided to return to both sub-topics at its 2007 session, under the joint agenda item 'Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm'. The item was considered by the Assembly in 2007 and 2010.[50]

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[44](2001) II/Part Two *Yearbook of the International Law Commission* 146-148.
[45]As above 145.
[46]GA res 56/82 of 12 December 2001, operative par 3. In 2010, the GA annexed the text of the 'Articles on Prevention of Transboundary Harm from Hazardous Activities' to res 65/28 of 6 December 2010.
[47](2006) II/Part Two *Yearbook of the International Law Commission* 58-59.
[48]As above 57.
[49]Upon annexing the 'draft principles' to the resolution, the reference to 'draft' was dropped.
[50]GA res 62/68 of 6 December 2007 and res 65/28 of 6 December 2010.

The General Assembly again took up the agenda item at its session in 2013,[51] on the basis of a report of the Secretary-General reproducing the comments and observations of governments on the topic,[52] as well as a compilation of decisions from international courts, tribunals and other bodies pertaining to the topic, respectively.[53] As in the case of the Articles on the Responsibility of States for Internationally Wrongful Acts, and those on diplomatic protection, the purpose of the consideration of the item was to take a decision on the final form of the draft articles and the draft principles. Again, no agreement was forthcoming in the Sixth Committee. Suggestions ranged from not proceeding with the negotiation of a binding instrument at all, to seeking to combine the articles and the principles into a single international instrument.

On the recommendation of the Sixth Committee,[54] the General Assembly adopted resolution 68/114 on 16 December 2013, in which it commended both texts again to governments, and requested the Secretary-General to update both reports with a view to their being discussed at the seventy-first session, in 2016, at which time the Assembly will again take up the question of the fate of the two texts.

2.8 The law of transboundary aquifers

In 2013, the Sixth Committee reverted to its consideration of the eventual form of the 'Draft Articles on the Law of Transboundary Aquifers' which had been adopted by the International Law Commission in 2008,[55] and considered by the Sixth Committee in 2008 and 2011.[56] The Committee had before it a report of the Secretary-General reproducing comments and observations of governments on the Articles.[57] The debate revealed continuing differences of opinion among governments as to the eventual form of the Draft Articles.[58] A range of options was proposed, including adoption in the form of a declaration of principles on the law of transboundary aquifers, to serve as guidelines for states in their negotiation and conclusion of bilateral or regional agreements; transformation of the Articles into an international framework convention; or simply taking no further action, so that the Draft Articles would continue to serve as a voluntary guide for concluding bilateral or regional arrangements. Others

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[51]For the debates in 2013 see UN docs A/C.6/68/SR 16, 28-29. For the views of South Africa see A/C.6/68/SR 16, par 3.
[52]UN doc A/68/170.
[53]UN doc A/68/94.
[54]UN doc A/68/466.
[55]ILC Report 2008, UN doc A/63/10, par 53.
[56]See GA res 63/124 of 11 December 2008, and 66/104 of 9 December 2011.
[57]UN doc A/68/172.
[58]For the debates in 2013 see UN docs A/C.6/68/SR 16, 29.

preferred to defer a decision on the eventual form of the Articles so as to allow for the further development of state practice.

On the recommendation of the Sixth Committee, the General Assembly adopted resolution 68/118 on 16 December 2013, in which it commended the Articles (which were once again annexed to the resolution) to the attention of governments as guidance for bilateral or regional agreements and arrangements for the proper management of transboundary aquifers; encouraged the International Hydrological Programme of UNESCO to continue its contribution through offering further scientific and technical assistance to the states concerned; and decided to revert to the topic in 2016.

3 Consideration of reports of legal bodies

3.1 Report of the International Law Commission[59]

The reports of the International Law Commission (ILC) on its sixty-fourth (2012)[60] and sixty-fifth (2013)[61] sessions were considered by the Sixth Committee in 2012 and 2013, respectively.[62] The main development at the 2012 session of the Commission was the conclusion of the first reading of the Draft Articles on the Expulsion of Aliens,[63] which postulate a set of international rules applicable to the expulsion by a state of aliens who are lawfully or unlawfully present in its territory. The Draft Articles contain a definition, for purposes of international law, of the concepts of 'expulsion' and 'alien'. The Draft Articles recognise the basic right of a state to expel an alien from its territory,[64] subject to the requirement that such expulsion be undertaken in accordance with international law, in particular human rights law,[65] and that it be undertaken only in pursuance of a decision reached in accordance with law.[66] The Draft Articles proceed to lay down the grounds upon which a decision to expel may be taken,[67] as well as a series of cases of prohibited expulsions.[68] A number of articles are also dedicated to the protection of the rights of aliens subject to expulsion generally.[69] The Draft Articles were developed over several years on the basis of the reports of the

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[59]See also the website of the ILC, available at http://www.un.org/law/ilc.
[60]ILC Report 2012, UN doc A/67/10.
[61]ILC Report 2013, UN doc A/68/10.
[62]For the debates in 2012, see UN docs A/C.6/67/SR 18-25; and in 2013, see UN docs A/C.6/68/SR 17-26, 29.
[63]ILC Report 2012, UN doc A/67/10 par 45.
[64]Article 3.
[65]As above.
[66]Article 4.
[67]Article 5.
[68]Articles 6-7, 10-13.
[69]Articles 14-16.

Special Rapporteur of the Commission on the topic, Mr M Kamto, of Cameroon. Since many of the articles were adopted for the first time at the 2012 session of the Commission, the debate in the Sixth Committee that year[70] provided the first opportunity for governments to comment on the entire set. A wide range of views were expressed, ranging from praise for the Commission's efforts, to doubts as to the usefulness of the endeavor. A number of governments proposed that greater emphasis be placed on the promotion of voluntary departure, as well as on dignified detention conditions, including the procedural rights of aliens subject to expulsion. Specific suggestions included clarifying the conditions under which diplomatic assurances could be legally sufficient in order to allow for the expulsion of an alien to a state that applies the death penalty; drawing a clearer distinction between the position of aliens lawfully present in the territory of the state and those unlawfully so; establishing exceptions to the provision recognising the suspensive effect of an appeal against an expulsion decision (draft article 27), on the grounds of public order and safety considerations; further clarifying the definition of expulsion, including that of disguised expulsion; reconsidering references to the law of extradition (which typically applied in the context of lawful presence); and making it clear that the procedural rights recognised in the Draft Articles were minimum guarantees which were without prejudice to other rights that the expelling state might grant to aliens subject to expulsion. Some governments were lukewarm in their reaction to the inclusion of a prohibition on the expulsion of refugees. Others doubted whether the limitation on expulsion to a state that applied the death penalty was in line with customary international law.

While the work on the topic was still to be finalised, some governments already took a position on the final form of the Draft Articles. As is common with texts developed by the Commission, which do not necessarily have to be transformed into a treaty, arguments were expressed in the Sixth Committee both in favour of and against the adoption of the Draft Articles in the form of a law-making treaty. In accordance with the established procedure following the adoption of a text on first reading, the Commission was expected to take a break from the topic during 2013 in order to allow governments time to submit detailed comments in writing by the end of that year. It was on the basis of the comments made in the Sixth Committee and in writing, together with the proposals of the Special Rapporteur on amendments, that the Commission was to undertake the second reading of the Draft Articles, commencing in 2014.

As regards the topic 'Protection of persons in the event of disasters', the

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[70]For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 19 pars 78-81.

Commission considered the fifth and sixth reports of the Special Rapporteur at the 2012[71] and 2013[72] sessions, respectively. In the fifth report,[73] the Special Rapporteur further developed the specifics of the international legal duty to cooperate in the context of disaster response. The report also covered the question of conditionality for the provision of assistance and the termination of assistance. A further five draft articles (5*bis*, and 12 to 15) were developed by the Drafting Committee that year, and subsequently adopted by the Commission in 2013.[74] In his sixth report,[75] the Special Rapporteur took on certain aspects of prevention in the context of the protection of persons in the event of disasters, including disaster risk reduction, prevention as a principle of international law, and international cooperation on prevention. A further two draft articles (5*ter* and 16) were adopted by the Commission in 2013.[76]

The Commission's work on the topic was debated in the Sixth Committee at both sessions. The question of conditionality was the main issue of debate in 2012. For some states, any conditions imposed by an affected state had to comply with international human rights law and core humanitarian obligations, and could not be imposed unilaterally, but had to be based on consultations with assisting actors. At the same time, many delegations favoured an approach which sought to strike a balance between state sovereignty, the legal obligation of conduct of assisting states, and the relevance and limits of disaster relief assistance. For many, the issue was best not framed in terms of 'rights' and 'obligations: some delegations reiterated their view that the duty to cooperate should not be interpreted as a duty to provide assistance. Likewise, others maintained that no legal obligation could be imposed on an affected state to request assistance. A number of delegations, including South Africa,[77] called for express language that the 'right to offer assistance' should not amount to interference in the internal affairs of the affected state. During the debate in 2013, many delegations generally welcomed the draft articles relating to disaster risk reduction, while some cautioned against drawing the conclusion that there existed a general 'duty' to reduce the risk of disasters. South Africa recommended placing greater emphasis on the importance of domestic legislation for disaster risk reduction, and called on the Commission to take into account the activities and views of other entities working in the field of disaster risk reduction.[78]

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[71]ILC Report 2012, UN doc A/67/10 Ch V.
[72]ILC Report 2013, UN doc A/68/10 Ch VI.
[73]UN doc A/CN 4/652.
[74]ILC Report 2013, UN doc A/68/10, par 61.
[75]UN doc A/CN.4/662.
[76]ILC Report 2013, UN doc A/68/10, par 61.
[77]For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 19 pars 82-84.
[78]UN doc A/C.6/68/SR 24, pars 9-19.

Regarding the topic 'Immunity of States officials from foreign criminal jurisdiction', in 2012[79] the Commission appointed its first female Special Rapporteur, Ms C Escobar Hernández of Spain. In 2012 the Commission had before it the preliminary report of the Special Rapporteur which analysed the work previously undertaken by the Commission.[80] The report also addressed the issues on which there was no consensus and which should be considered during the quinquennium of the Commission, focusing in particular on the distinction and the relationship between and basis for immunity *ratione materiae* and immunity *ratione personae*; the distinction and the relationship between the international responsibility of the state and the international responsibility of the individual and their implications for immunity; the scope of immunity *ratione personae* and immunity r*atione materiae* including possible exceptions; and the procedural issues related to immunity. Given the preliminary nature of the report, and that of the subsequent debate in the Commission, statements by governments in the Sixth Committee[81] later in the year, were mostly limited to explanation of general positions on the question of the scope of immunity for state officials under international law. As is usually the case with most Commission topics, delegations emphasised those aspects of the topic of greatest interest to them. For example, while some delegations were open to the possibility of broadening the reach of immunity *ratione personae* beyond the so-called 'troika' (Head of State, Head of Government and Minister for Foreign Affairs), other delegations were more cautious, preferring to emphasise the exceptional nature of the grant of immunity. A further strand of discussion pertained to the possibility of exceptions, under international law, to the grant of immunity – for example, in the context of specific categories of crime (with a view to safeguarding against impunity). Other states called on the Commission further to clarify the concept of 'official capacity'.

In 2013,[82] the Commission had before it the second report of the Special Rapporteur,[83] which addressed the scope of the topic and of the draft articles; the concepts of immunity and jurisdiction; the difference between immunity *ratione personae* and immunity *ratione materiae*; and the identification of the normative elements of the regime of immunity *ratione personae*. On the basis of the consideration of that report, the Commission subsequently adopted three draft articles, one on the overall scope and two on immunity immunity *ratione personae*. In general, the debate in the Sixth Committee later that year was

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[79]ILC Report 2012 Ch VI.
[80]UN doc A/CN.4/654.
[81]For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 21, pars 120-123.
[82]ILC Report 2013, UN doc A/68/10 Ch V.
[83]UN doc A/CN.4/661.

positive.[84] A number of delegations emphasised the procedural nature of immunity as a bar to criminal proceedings, and pointed out that the underlying substantive individual criminal responsibility remained unaffected; and as such, immunity should not be viewed as a loophole in the fight against impunity. Caution was also advised against embarking on the progressive development of the law, as well as against maintaining too strict a distinction between immunity *ratione personae* and immunity *ratione materiae.*

The Commission's consideration of the topic 'The obligation to extradite or prosecute (*aut dedere aut judicare*)' reached a cross-roads in 2012.[85] The Special Rapporteur on the topic was not re-elected for the new quinquennium, and instead of appointing a successor, the Commission established a working group, under the Chairmanship of Mr K Kittichaisaree, of Thailand, to consider the feasibility of continuing work on the subject. During that discussion, a significant number of the membership admitted to harbouring doubts as to the continued pursuit of the topic. The reasons offered varied: it was felt that any attempt at harmonisation would run counter to the fact that obligation to extradite or prosecute clauses tended to operate differently across treaty regimes; and that there did not appear to be any serious systemic 'problem' in the existing treaty regimes which required clarification by the Commission. It was also noted that the Commission had already included in article 9 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind an extradite or prosecute provision in the context of core crimes under international law (genocide, war crimes and crimes against humanity). Later that year, some delegations in the Sixth Committee shared the doubts expressed in the Commission, especially in light of the decision of the International Court of Justice in the *Questions relating to the obligation to extradite or prosecute between Belgium and Senegal (Belgium v Senegal)* case.[86] Others called on the Commission to proceed with its work, and suggested avenues of enquiry including: analysing state practice so as to determine the existence of any customary law obligations; seeking to establish to which grave crimes the obligation applied; and considering the relationship with the concept of universal jurisdiction.

In 2013,[87] the Commission reconstituted the Working Group in order to continue to evaluate the work on the topic. The Commission subsequently took note of a detailed report prepared by the Working Group which sketched the

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[84]For the views of South Africa, in 2013, see UN doc A/C.6/68/SR 18, pars 46-50.
[85]ILC Report 2012, UN doc A/67/10 Ch IX.
[86]2012 ICJ Reports 422, Judgment of 20 July 2012.
[87]ILC Report 2013, UN doc A/68/10 Ch X.

main issues for consideration.[88] During the subsequent debate in the Sixth Committee,[89] delegations were divided on whether the Commission ought to continue pursuing the topic. Some emphasised its continued relevance in the prevention of impunity. While the analysis by the Working Group of the judgment of the International Court of Justice in the *Belgium v Senegal* case was acknowledged, some delegations doubted whether any broad implications could be derived from the specific circumstances presented in the judgment.[90] There were also continuing differences of opinion on a number of aspects of the topic, including: the customary international law basis of the principle of *aut dedere aut judicare*; the advisability of attempting to harmonise treaty provisions containing the obligation to extradite or prosecute; and whether an analysis of the concept of universal jurisdiction was merited. Suggestions for further enquiry included: identifying common features and gaps in treaties containing extradite or prosecute clauses; analysing the question of the relative weight of the obligation to prosecute and the obligation to extradite; the procedural aspects of the obligation to prosecute; and consideration of the question of the surrender of accused persons to international tribunals as a means of implementing the obligation.[91]

In 2012,[92] the Commission continued its consideration of the topic 'Treaties over time' in the context of a study group which examined several questions regarding the legal consequences of subsequent practice, including: whether, in order to serve as a means of interpretation, such practice must reflect a position regarding the interpretation of the treaty; the extent to which subsequent practice would need to be specific; the necessary degree of active participation in a practice and the significance of silence by one or more parties to the treaty with respect to the practice of one or more other parties; the possible effects of contradictory subsequent practice; the question of possible treaty modification through subsequent practice; and the relationship between subsequent practice and formal amendment or interpretation procedures. In addition to formulating a series of preliminary conclusions, the Study Group made a procedural recommendation that the Commission change the format of the work on the topic and appoint a Special Rapporteur. The Commission agreed, and appointed the Chairman of the Study Group, Prof G Nolte, of Germany, as Special Rapporteur for the topic which it renamed 'Subsequent agreements and subsequent practice in relation to the interpretation of treaties'. Both the appointment of a Special Rapporteur on the topics, as well as the narrowing of the scope of the topic, were

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[88] Above annex A.
[89] For the views of South Africa, in 2013, see UN doc A/C.6/68/SR 24, pars 29-32.
[90] See A/CN.4/666, par 59.
[91] As above, pars 61-62.
[92] ILC Report 2012, UN doc A/67/10 Ch X.

generally well-received in the Sixth Committee in 2012. The prevailing sentiment in the Committee was that the Commission should focus its work on developing guidelines or conclusions, with some normative content, which could supplement the provisions of the Vienna Convention on the Law of Treaties1969 (VCLT 1969).

The following year, the Commission had before it the first report of the Special Rapporteur,[93] which addressed the scope, aim and possible outcome of the work on the topic. The report further considered the general rule and means of treaty interpretation; subsequent agreements and subsequent practice as means of interpretation; the definition of subsequent agreement and subsequent practice as means of treaty interpretation; and attribution of a treaty-related practice to a state. The Commission subsequently provisionally adopted five draft conclusions on: general rule and means of treaty interpretation (conclusion 1); subsequent agreements and subsequent practice as authentic means of interpretation (conclusion 2); interpretation of treaty terms as capable of evolving over time (conclusion 3); definition of subsequent agreement and subsequent practice (conclusion 4); and attribution of subsequent practice (conclusion 5).[94] The substance and formulation of the five draft conclusions were generally welcomed by governments in the debate in the Sixth Committee held later in the year.[95]

The Sixth Committee further considered the Commission's work on the Most-favoured-Nation clause (MFN), in particular the discussions in the Study Group, which was established to seek ways to attain greater coherence in the approaches taken in the arbitral decisions in the area of investment, particularly in relation to MFN provisions. In 2012,[96] the Study Group considered two working papers on the 'Interpretation of MFN Clauses by Investment Tribunals', prepared by its Chairman, Mr D McRae, and on the 'Effect of the Mixed Nature of Investment Tribunals on the Application of MFN Clauses to Procedural Provisions' prepared by Mr M Forteau, respectively. In 2013,[97] the Working Group considered a working paper entitled 'A BIT on Mixed Tribunals: Legal Character of Investment Dispute Settlements', by Mr S Murase, as well as a working paper entitled 'Survey of MFN language and Maffezini-related Jurisprudence' by Mr MD Hmoud. The Study Group also continued to examine contemporary practice and jurisprudence relevant to the interpretation of MFN clauses.[98]

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[93]UN doc A/CN.4/660.
[94]ILC Report 2013, UN doc A/68/10 Ch IV, par 38.
[95]For the views of South Africa, in 2013, see UN doc A/C.6/68/SR 18, pars 38-45.
[96]ILC Report 2012, UN doc A/67/10 Ch XI.
[97]ILC Report 2013, UN doc A/68/10 Ch XI.
[98]For the views of South Africa, expressed in the Sixth Committee in 2012, see UN doc A/C.6/67/SR 21 pars 128-129.

In 2012, the Commission decided to include the topics 'Provisional application of treaties' and 'Formation and evidence of customary international law' on its programme of work.[99] In 2013,[100] the Special Rapporteur for the topic 'Provisional application of treaties', Mr J Gomez-Robledo of Mexico, submitted his first report[101] which laid out the principal legal issues that arose in the context of the provisional application of treaties, including a brief review of state practice. The Commission also had before it a study by the Secretariat[102] on the legislative history of article 25 of the VCLT 1969[103]. The prevailing view in the Sixth Committee, later that year, was that the primary aim of the Commission's task should be to examine the mechanism of provisional application of treaties and its legal effects.

In 2013, the Commission also commenced its consideration of the topic 'Formation and evidence of customary international law', on the basis of the first report of the Special Rapporteur for the topic, Sir M Wood of the United Kingdom.[104] The report provided a brief overview of the previous work of the Commission relevant to the topic, as well as of views expressed by delegates in the context of the Sixth Committee the previous year.[105] It also discussed the scope and possible outcomes of the topic, and considered some issues concerning customary international law as a source of law. The Commission also had before it a study by the Secretariat on the topic.[106] The Commission decided to further refine the title of the topic to 'Identification of customary international law'. During the debate in the Sixth Committee,[107] later in the year, governments concurred in general with the approach proposed by the Special Rapporteur and with the Commission's decision to amend the title of the topic.

In 2013, the Commission decided to include two new topics on its programme of work, namely 'Protection of the environment in relation to armed conflict',[108] and 'Protection of the atmosphere'.[109] As regards the first topic, preliminary consultations within the Commission, chaired by the Special Rapporteur, Ms M Jacobsson of Sweden, revealed a preference for approaching the topic through a temporal-phase perspective, as opposed to

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[99]For the views of South Africa in 2012 see UN doc A/C.6/67/SR 21 pars 124-125.
[100]ILC Report 2013, UN doc A/68/10 Ch VIII.
[101]UN doc A/CN.4/664.
[102]UN doc A/CN.4/658.
[103]United Nations, *Treaty Series*, vol 1155, p 331.
[104]UN doc A/CN.4/663.
[105]For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 21 pars 126-127.
[106]UN doc A/CN.4/659.
[107]For the views of South Africa, in 2013, see UN doc A/C.6/68/SR 24 pars 20-23.
[108]ILC Report 2013, UN doc A/68/10 Ch IX.
[109]As above Ch XII.A.1.

approaching it from the perspective of specific fields of international law, such as international environmental law, the law of armed conflict, and international human rights law. The temporal phases would address legal measures taken to protect the environment before, during, and after an armed conflict. The Commission appointed Mr S Murase for the second topic. The Commission also decided to include the topic 'Crimes against humanity' in its long-term programme of work.[110] The inclusion of the new topics in the programme (and long-term programme) of work was generally welcomed by governments in the Sixth Committee that year.[111]

In each year, on the recommendation of the Sixth Committee, the General Assembly adopted an omnibus resolution on the report of the Commission in which it took note of the work undertaken that year and addressed a number of organisational matters relating to the work of the Commission planned for the following year.[112]

In 2012, the Sixth Committee was also scheduled to consider the chapter on the topic 'Reservations to treaties' in the Commission's report on its 2011 session, which had been carried over to 2012 in order to allow governments more time to analyse the 'Guide to Practice on Reservations to Treaties'[113] developed by the Commission. However, the debate in the Sixth Committee that year did not take place owing to the unprecedented closure of the United Nations Headquarters in New York in the wake of Hurricane Sandy. The consideration of the Guide was postponed, once again, to the 2013 session. The debate on the Guide, held at the 2013 session,[114] revealed the extent of the complexity of the topic, with a number of delegations, while congratulating the Commission for completing its work, nonetheless alluding to several points of continuing disagreement. The Assembly, on the recommendation of the Sixth Committee, adopted resolution 68/111 on 16 December 2013, taking note of the Guide, including the guidelines on reservations to treaties, the text of which was annexed to the resolution, and encouraging its widest possible dissemination.

3.2 Report of the United Nations Commission on International Trade Law

The Sixth Committee considered the report of the United Nations Commission

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[110]As above Annex B.
[111]For the views of South Africa on the topic 'protection of the environment in relation to armed conflict', see UN doc A/C.6/68/SR 24 pars 24-28. For the views of South Africa on the inclusion of the topic 'crimes against humanity' see UN doc A/C.6/68/SR 18, pars 51-58.
[112]GA res 67/92 of 14 December 2012, and 68/112 of 16 December 2013.
[113]ILC Report 2011, UN doc A/66/10, pars 51-75, and Add.1
[114]UN docs A/C.6/68/SR 19-22.

on International Trade Law (UNCITRAL) on the work of its forty-fifth[115] and forty-sixth sessions,[116] held in 2012 and 2013, respectively. The main achievement of 2012[117] was the adoption of the 'Guide to Enactment of the UNCITRAL Model Law on Public Procurement', which had been prepared to assist states in developing modern public procurement laws using the Model Law as a template for their domestic legislation. The Commission also adopted recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the 2010 UNCITRAL Arbitration Rules. The recommendations had originally been adopted in 1982 to assist arbitral institutions administering arbitrations under the 1976 UNCITRAL Arbitration Rules. The 2012 revision of the recommendations was initiated in order to take into account the changes to the UNCITRAL Arbitration Rules, adopted in 2010, in particular with regard to the role granted to appointing authorities.

In 2013,[118] the Commission adopted the UNCITRAL 'Rules on Transparency in Treaty-based Investor-State Arbitration'. The UNCITRAL Arbitration Rules had become popular with ad hoc investor-state arbitrations. However, over the years, *in camera* arbitration had come to be considered less and less suited to the settlement of investment disputes, particularly when they involved issues of public interest and public governance. The newly adopted Rules on Transparency provided that arbitration proceedings, including the hearing before the arbitrators, would generally be open to the public, and that the notice of arbitration and the arbitral award would be published. The Commission also adopted the UNCITRAL 'Guide on the Implementation of a Security Rights Registry', to provide guidance on the establishment and operation of such registries; revisions to the 'Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency', to address uncertainties that had arisen in a number of states in cross-border insolvency decisions, and to provide guidance on the application and interpretation of certain key concepts of the Model Law; and part four of the UNCITRAL 'Legislative Guide on Insolvency Law', which addressed the obligations of directors in the period approaching insolvency.

The debate in the Sixth Committee once again revealed general support for the Commission's work.[119] In 2012, the Committee adopted two draft resolutions,

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[115]UNCITRAL Report 2012, UN doc A/67/17.
[116]UNCITRAL Report 2013, UN doc A/68/17.
[117]For a more detailed summary of the work of UNCITRAL in 2012 see the statement of its Chairman, summarised in document UN doc A/C.6/67/SR 9 pars 17-40.
[118]For a detailed summary of the work of UNCITRAL in 2013 see the statement of its Chairman, summarised in UN doc A/C.6/68/SR 9 pars 70-88.
[119]For the debates in 2012, see UN docs A/C.6/67/SR 9, 23-24; and for 2013 see UN docs A/C.6/68/SR 9-10, 28-29.

which were subsequently adopted by the General Assembly. In resolution 67/89 of 14 December 2012, the Assembly, *inter alia*, commended the Commission for the finalisation and adoption of the 'Guide to Enactment of the United Nations Commission on International Trade Law Model Law on Public Procurement' and the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under its Arbitration Rules, as revised in 2010. In resolution 67/90, adopted on the same day, the General Assembly expressed its appreciation to the Commission for having formulated and adopted the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as revised in 2010, and recommended their use in the settlement of disputes arising in the context of international commercial relations.

In 2013, on the recommendation of the Sixth Committee, the General Assembly on 16 December 2013, adopted four resolutions arising from the work of UNCITRAL: an omnibus resolution reviewing the work undertaken in 2013 and providing the mandate and guidance for work to be undertaken in 2014;[120] a resolution on the 'Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency' and part four of the 'Legislative Guide on Insolvency Law' of UNICITRAL;[121] a resolution concerning UNICITRAL 'Guide on the Implementation of a Security Rights Registry';[122] and a resolution on UNICTIRAL 'Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules' (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013).[123]

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

At its 2012 and 2013 sessions,[124] the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation resumed work on the issues of the maintenance of international peace and security and the peaceful settlement of disputes. It also considered the efforts of the United Nations Secretariat in updating the *Repertory of Practice of United Nations Organs* and the *Repertoire of Practice of the Security Council*. Under the maintenance of international peace and security, the Special Committee considered the question of the 'implementation of the provisions

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[120]GA res 68/106.
[121]GA res 68/107.
[122]GA res 68/108.
[123]GA res 68/109. The various texts adopted by UNCITRAL during the period under review, can be found on the website of the Commission, available at http://www.uncitral.org/.
[124]See UN docs A/67/33 and A/68/33.

of the Charter of the United Nations related to assistance to third States affected by the application of sanctions'.[125] The Special Committee also had before it a revised proposal submitted in 1998 by the Libyan Arab Jamahiriya (now Libya) on strengthening the role of the United Nations in the maintenance of international peace and security; as well as a working paper submitted by the Bolivarian Republic of Venezuela in 2011 entitled 'Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs'; and a proposal by Belarus and the Russian Federation submitted in 2005, that the General Assembly request an Advisory Opinion from the International Court of Justice as to the legal consequences of the resort to the use of force by states without prior authorisation by the Security Council, except in the exercise of the right to self-defence. A fundamental difference of opinion continued to exist on almost all of the proposals, particularly those seeking a transfer of some of the powers of the Security Council to the General Assembly. In 2012, under the chapeau of 'Peaceful Settlement of Disputes', the Special Committee recommended to the General Assembly a draft resolution commemorating the adoption in 1982 of the Manila Declaration on the Peaceful Settlement of Disputes, which had been negotiated in the Special Committee.

The debate in the Sixth Committee on the report of the Special Committee continued to reveal a difference of opinion as to the appropriateness of the proposals before the Special Committee.[126] Nonetheless, it once again provided an opportunity for states to comment on the legal aspects pertaining to the implementation of sanctions, and more generally on several legal aspects of the maintenance of international peace and security. The General Assembly subsequently adopted a resolution at each session,[127] as proposed by the Sixth Committee, renewing the mandate of the Special Committee for the following year. In 2012, the General Assembly also adopted a resolution commemorating the thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes,[128] on the basis of the proposal of the Special Committee.

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[125]The Special Committee also had before it in 2012, a revised working paper submitted by the then Libyan Arab Jamahiriya in 2002, on the strengthening of certain principles concerning the impact and application of sanctions. See UN doc A/57/33, par 89. The proposal was, however, withdrawn.

[126]For the debates in 2012 see UN docs A/C.6/67/SR 7-8, 16, 23-25; and for 2013 see UN docs A/C.6/68/SR 8-9 and 28-29.

[127]GA res 67/96 of 14 December 2012 and 68/115 of 16 December 2013.

[128]GA res 67/95 of 14 December 2012.

3.4 Report of the Committee on Relations with the Host Country

In 2012,[129] the main issues for consideration by the Committee on Relations with the Host Country related to the question of entry visas issued by the host country, and that of the security of missions and the safety of their personnel. The Committee also considered the various activities undertaken by the host country to assist members of the United Nations community, in particular as regards difficulties experienced by certain permanent missions to the United Nations in opening and maintaining bank accounts in New York. Particular attention was focused on the Permanent Representative of Saint Vincent and the Grenadines who had been arrested and handcuffed by a member of the New York City Police Department. In resolution 67/100 of 14 December 2012, the General Assembly, on the recommendation of the Sixth Committee, *inter alia*,

> …request[ed] the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions, and urge[d] the host country to continue to take appropriate action, such as training of police, security, customs and border control officers, with a view to maintaining respect for diplomatic privileges and immunities and if violations occur to ensure that such cases [we]re properly investigated and remedied, in accordance with applicable law.[130]

In 2013,[131] the main issue of contention before the Committee on Relations with the Host Country concerned the non-issuance of a visa to two Heads of State (President of the Bolivarian Republic of Venezuela, Nicolás Maduro, and President of the Sudan, Omar Hassan Ahmad Al-Bashir) to attend the high-level segment of the sixty-eighth session of the General Assembly. The Committee also considered questions concerning: exemption from taxation; the security of missions and the safety of their personnel; the inability of certain missions to maintain bank accounts in New York; and matters pertaining to the use of vehicles and parking. On the recommendation of the Sixth Committee, the General Assembly adopted resolution 68/120 on 16 December 2013 in which the Committee on Relations with the Host Country was mandated to remain seized of the various matters brought to its attention by member states.[132]

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[129]Report of the Committee on Relations with the Host Country, UN doc A/67/26.
[130]For the debate in the Sixth Committee in 2012 see UN doc A/C.6/67/SR 25.
[131]Report of the Committee on Relations with the Host Country, UN doc A/68/26.
[132]For the debate in the Sixth Committee in 2012 see UN doc A/C.6/68/SR 29.

4 Oversight activities

4.1 The rule of law at the national and international levels

During the period under review, the main activity on the topic 'The rule of law at the national and international levels' took place in the General Assembly, in the form of the high level meeting of the Assembly on the rule of law at the national and international levels, held on 24 September 2012,[133] and the subsequent adoption of the Declaration on the Rule of Law at the National and International Levels.[134] During the debate in the Sixth Committee on the agenda item that year, most statements focused on the outcome of the high level meeting.[135] The Committee had before it two reports by the Secretary-General.[136] On the recommendation of the Sixth Committee, the Assembly adopted resolution 67/97 of 14 December 2012, in which it, *inter alia*, recalled the high-level meeting of the Assembly and the Declaration adopted at that meeting; reiterated the request to the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients; and called upon the Secretary-General and the United Nations system to systematically address, as appropriate, aspects of the rule of law in relevant activities, including the participation of women in rule of law-related activities, recognising the importance of the rule of law to virtually all areas of United Nations engagement. The Assembly further identified sub-themes to be debated in the Sixth Committee at the following sessions.

Accordingly, in 2013, the debate on the topic in the Sixth Committee was dedicated to the theme 'The rule of law and the peaceful settlement of international disputes'.[137] The Committee had before it a report of the Secretary-General on strengthening and coordinating United Nations rule of law activities.[138] Governments reaffirmed their commitment to settle disputes in accordance with Chapter VI of the United Nations Charter and international law, and referred in particular to the peaceful means for the settlement of disputes contemplated in article 33. The importance of respecting the freedom of states to choose the means of peaceful settlement of international disputes was also emphasised. The important role played by international judicial institutions in

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[133]See UN docs A/67/PV 3-5.
[134]GA res 67/1 of 24 September 2012.
[135]For the debate at the 2012 session, see UN docs A/C.6/67/SR 4-7, 24-25. For the views of South Africa, in 2012, see A/C.6/57/SR.5, pars 89-94.
[136]UN doc A/66/749 entitled 'Delivering justice: Programme of action to strengthen the rule of law at the national and international levels'; and UN doc A/67/290 on strengthening and coordinating United Nations rule of law activities.
[137]For the debate at the 2013 session see UN docs A/C.6/68/SR 5-8, 29. For the views of South Africa, in 2013, see A/C.6/68/SR 6, pars 20-23.
[138]UN doc A/68/213.

upholding the rule of law, ensuring accountability, and combating impunity was also referred to. Subsequently, on the recommendation of the Sixth Committee, the General Assembly adopted resolution 68/116 on 16 December 2013 in which the Assembly recalled the high-level debate, held at the previous session, as well as the ensuing Declaration, and reiterated its previous resolution on the topic. The Assembly further identified the sub-topic 'Sharing states' national practices in strengthening the rule of law through access to justice' as the focus for the debate to be held at the 2014 session of the Sixth Committee.

4.2 Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

The item was included in the agenda of the thirty-seventh session of the General Assembly in 1982 at the request of Denmark, Finland, Norway and Sweden,[139] and has been considered on a biennial basis ever since. In 2012, the Sixth Committee had before it a report by the Secretary-General on the status of the Additional Protocols to the Geneva Conventions of 1949 relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, including with respect to its dissemination and full implementation at the national level, based on information received from member states and the International Committee of the Red Cross (ICRC).[140] Submissions were received from 25 member states and the ICRC. The biennial debate in the Sixth Committee on the agenda item provides the opportunity for states to comment on the Additional Protocols and related matters of international humanitarian law. In 2012,[141] the issues raised included: concerns about the contemporary law of armed conflict being capable of meeting the challenges of asymmetric warfare; the acceptance of the competence of the International Humanitarian Fact-Finding Commission pursuant to article 90 of the First Additional Protocol; the extension of the jurisdiction of the International Criminal Court over certain war crimes achieved at the Rome Statute Review Conference in Kampala in 2010; the entry into force in 2010 of the Convention on Cluster Munitions; and the need to clarify the legal obligations and to define good practices relevant to private military and security companies operating in an armed conflict. The General Assembly subsequently, on the recommendation of the Sixth Committee, adopted resolution 67/93 of 14 December 2012 in which the Assembly, *inter alia*, welcomed 'the universal acceptance of the Geneva Conventions of 1949'

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[139]UN doc A/37/142.
[140]UN doc A/67/182 and Add.1.
[141]UN docs A/C.6/67/SR 15, 24-25. For the views of South Africa, in 2012, see A/C.6/67/SR 15, par 53.

and 'noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977' and called upon all states party to the Geneva Conventions that had not yet done so, to consider becoming parties to the Additional Protocols. The Assembly further decided to take the agenda item up once again in 2014.

4.3 Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly in 1980 at the request of Denmark, Finland, Iceland, Norway and Sweden,[142] and has been considered on a biennial basis since then. It provides an opportunity for states to review, at the level of the United Nations, the prevailing situation concerning the protection of diplomatic and consular missions and representatives. The debate in the Sixth Committee is usually centered around a report, prepared by the Secretary-General, containing information on the state of ratification of and accessions to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives. The report also provides a summary of information received from states on serious violations involving diplomatic and consular missions and representatives and actions taken against offenders, undertaken during the period under review, as well as of the views of states with respect to any measures needed or already taken to enhance the protection, security and safety of diplomatic and consular missions and representatives. The 2012 report[143] was requested by the General Assembly in resolution 65/30 of 6 December 2010. The debate in the Sixth Committee revealed continued concern as to continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives, with specific reference made to the attack on the United States mission and personnel in Libya.[144]

The General Assembly, on the recommendation of the Sixth Committee, subsequently adopted resolution 67/94 on 14 December 2012, in which the Assembly, *inter alia*, strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives to international intergovernmental organisations and officials of such organisations, and emphasised that such acts could never be justified. The Assembly also urged states to 'strictly observe, implement and enforce the

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[142]UN doc A/35/142.
[143]UN doc A/67/126 and Add.1
[144]For the debates in 2012, see UN docs A/C.6/67/SR 15-16, 24-25.

applicable principles and rules of international law governing diplomatic and consular relations, including during a period of armed conflict'.

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

In 2012 and 2013, the Sixth Committee considered consecutive reports of the Secretary-General[145] detailing the various activities undertaken in the context of the Programme of Assistance in those years.[146] The General Assembly, on the recommendation of the Sixth Committee, subsequently adopted resolutions 67/91 of 14 December 2012 and 68/110, respectively, renewing the mandate of the Secretary-General to carry-out the activities planned under the Programme of Assistance.

5 Requests for observer status

In 2012 and 2013, the Sixth Committee considered a total of nine proposals for the grant of observer status in the General Assembly to intergovernmental entities.[147] Two requests, namely those relating to the Cooperation Council of Turkic-speaking States and for the International Conference of Asian Political Parties, had been carried over from 2011. At both sessions, there continued to be opposition in the Sixth Committee to the grant of observer status to either entity.[148] The concerns related, *inter alia*, to their nature and membership. In 2013, the General Assembly, on the recommendation of the Sixth Committee, decided to again defer to its next session the consideration of the grant of observer status to the Cooperation Council of Turkic-speaking States.[149] At the same session, the Chairman of the Sixth Committee announced that the sponsors had decided not to pursue the request for observer status for the International Conference on Asian Political Parties in the General Assembly, while reserving the right to present it at a future session.[150] Similar difficulties plagued the proposal to grant observer status to the International Chamber of Commerce, which was made in 2012. The key stumbling block related to the fact that the Chamber was not an intergovernmental organisation, and,

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[145]UN docs A/67/518 and A/68/521, respectively.

[146]For the debates in 2012 see UN docs A/C.6/67/SR 16-17, 24-25; and for 2013 see UN docs A/C.6/68/SR 11-12, 27-28. For the views of South Africa, in 2012, see UN doc A/C.6/67/SR 17, pars 17-19, and, in 2013, see UN doc A/C.6/68/SR 12, par 35.

[147]The proposal to grant observer status to the State of Palestine, adopted by the General Assembly in res 67/19 of 29 November 2012, was not considered by the Sixth Committee.

[148]For the debates in 2012 see UN docs A/C.6/67/SR 11, 24-25; and for 2013 see UN docs A/C.6/68/SR 11, 22, 29.

[149]GA decisions 67/525 of 14 December 2012 and 68/528 of 16 December 2013.

[150]UN doc A/C.6/68/SR 29, par 23. See too GA decision 67/526 of 14 December 2013.

accordingly, that it did not meet the criteria for attaining observer status in the General Assembly as established by the Assembly in its decision 49/426. In 2013, the General Assembly decided to defer consideration of the proposal to the 2014 session.[151]

In 2012 and 2013, the General Assembly, on the recommendation of the Sixth Committee, decided to grant observer status to the Andean Development Corporation (resolution 67/101 of 14 December 2012); the European Organisation for Nuclear Research (resolution 67/102 of 14 December 2012); the International Institute for the Unification of Private Law (UNIDROIT) (resolution 68/121 of 16 December 2013);[152] the International Anti-corruption Academy (resolution 68/122 of 16 December 2013); the Pan African Intergovernmental Agency for Water and Sanitation for Africa (resolution 68/123 of 16 December 2013); and the Global Green Growth Institute (resolution 68/124 of 16 December 2013).

6 Conclusion

The Sixth Committee was scheduled to revert to its consideration of the above topics at the 2014 session (or future sessions) of the General Assembly.

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[151] See GA decisions 67/572 of 14 December 2012 and 68/530 of 16 December 2013.
[152] For the views of South Africa see UN doc A/C.6/68/SR.11, par 63.