

# THE WORK OF THE SIXTH COMMITTEE OF THE UNITED NATIONS GENERAL ASSEMBLY IN 2014 AND 2015

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## Introduction

At the sixty-ninth and seventieth sessions of the General Assembly of the United Nations, held in 2014 and 2015, respectively, the Sixth (Legal) Committee continued its consideration of a broad range of legal issues of international concern. As described previously,<sup>1</sup> its work can be broadly organised into three main types of activities: 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 further category, namely the review of requests for observer status in the General Assembly, has also become of particular interest. This third in a series of summaries covers the activities undertaken during the period under review.<sup>2</sup>

## Substantive topics on the agenda of the Sixth Committee

During the period under review the Sixth Committee had six substantive topics on its agenda, all of which had been considered at its prior sessions. In contrast to the substantive debate on several topics held on the basis of the annual reports of several subsidiary bodies, the following items were before the Sixth Committee itself for its consideration and decision.

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<sup>1</sup> 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 A Pronto 'The work of the Sixth Committee of the United Nations General Assembly in 2011' (2011) 36 *South African Yearbook of International Law* 237. See also A Pronto 'The work of the Sixth Committee of the United Nations General Assembly 2012–2013' (2013) 38 *South African Yearbook of International Law* 144.

<sup>2</sup> More information is available on the website of the Sixth Committee (<http://www.un.org/en/ga/sixth/>). All official United Nations documents cited herein are available at <http://documents.un.org/>.

*Measures to eliminate international terrorism*

The question of the adoption of legal measures to contribute to the elimination of the scourge of international terrorism continued to be a key topic of consideration in the Sixth Committee during both sessions under review.<sup>3</sup> The delegations again affirmed their strong condemnation of terrorism in all its forms and manifestations. Perhaps differently from the previous session, such condemnation was coupled with expressions of serious concern regarding the increasing, multifaceted and rising character of terrorist acts in several parts of the world. The member states of the United Nations further renewed their commitment to contribute to the international fight against terrorism, which was characterised as a flagrant violation of international law and a grave threat to international peace and security. It was also stated that regardless of the considerations or factors invoked by their perpetrators, terrorist acts were unjustifiable. At the same time some delegations maintained the view that terrorism should not be equated with the legitimate struggle of people under colonial or alien domination and foreign occupation. They indicated that neither terrorism nor counter-terrorism measures, including the profiling of terror suspects and intrusion on individual privacy, should be associated with any religion, culture, ethnicity, race, nationality or civilisation. Several members of the delegations emphasised that the fight against terrorism included the need to give proper support to victims and protection from terrorist attacks. The human suffering caused by terrorism was highlighted by several members of delegations, and many referred to recent and local examples of terrorist acts. Most of the members of the delegations called for all states to fulfil their obligations under international law in preventing the organisation, instigation or financing of terrorism. States that had not yet done so were called upon to ratify or accede to the universal and regional instruments to counter terrorism, as well as to take the necessary measures to implement them domestically.

Among other measures required to prevent terrorism, the delegations highlighted the need to take into account all elements leading to its emergence and spread, such as social exclusion, uneven access to education, lack of employment and opportunities, increased migration and religious fanaticism. The delegations called for a multidimensional approach, and identified the protection of fundamental freedoms and the rule of law as essential elements in the fight against terrorism. The need

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<sup>3</sup> For the debates in 2014, see A/C.6/69/SR.1–4, 28 and 29; and for 2015, see A/C.6/70/SR.1–5, 27 and 29. The Sixth Committee had before it the respective reports of the Secretary-General. See documents A/69/209 and A/70/211.

for strict observance of the Charter of the United Nations and international law, including human rights, humanitarian and refugee law, as well as due process in countering terrorism was also emphasised. Additionally, the delegations called upon the Security Council to further improve the implementation of its sanction regime. The necessity of addressing the threat of nuclear terrorism was identified as an important element in the comprehensive effort to counter terrorism. Some delegations expressed their firm opposition to the unilateral establishment of lists of countries involved with terrorism, a practice they viewed as unacceptable and contrary to international law. Reference was made to the adoption of United Nations Security Council (UNSC) resolutions 2133 (on kidnapping for ransom), 2170 (to counter terrorist groups) and 2178 (on foreign terrorist fighters). The last was considered as constituting a significant step towards the suppression of terrorism, but a concern was expressed that new legal concepts were being defined by the Security Council and not the General Assembly. Nonetheless, most of the delegations highlighted the problem posed by the phenomenon of ‘foreign terrorist fighters’ and the use of social media and the Internet by terrorist organisations to recruit new adherents and spread propaganda.

Reference was also made to the need to consider the underlying economic and political conditions from which terrorism arises. It was indicated that international and internal conflict, foreign occupation, state failure, as well as the lack of development, are important root causes of terrorism. In 2015, delegations stressed the need to address the question of the paying of ransom money, which they considered to constitute a key source of income for terrorist groups and called for international action: Benin, in particular, suggested that a resolution be adopted on an international ban on the payment of ransom money.

The delegations of the Committee commented on the Fourth Biennial Review of the United Nations Global Counter-Terrorism Strategy held in June 2014. A number of delegates spoke favourably of the work of the United Nations Counter-Terrorism Implementation Task Force (CTITF). Some delegates expressed support for the continued work of the United Nations Centre for Counter-Terrorism (UNCCT) in fostering international co-operation to combat terrorism and in supporting the implementation of the strategy. The delegations also lauded the work of the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Executive Directorate (CTED) for their significant co-operation and expertise in assisting states to combat international terrorism. Reference was made to the importance of the Sanctions Committees, established by Security Council resolutions 1267 (1999), 1989 (2011) and 1540 (2004), in countering the threat of terrorists and other non-state actors gaining

access to nuclear, radiological, and biological weapons, as well as to their means of delivery.

The delegations reiterated the importance of the early conclusion of the draft comprehensive convention on international terrorism. It was noted that the draft convention would enhance the achievement as well as fill the *lacunae* in the existing legal framework, address terrorism in a holistic manner and provide states with an effective tool in their counter-terrorism efforts, including by facilitating co-operation and mutual legal assistance. The importance of overcoming the impasse in negotiations and reaching compromises was stressed. The need for a clear legal definition of terrorism, which distinguished terrorism from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination, was reaffirmed. It was highlighted that the draft convention should be consistent with international humanitarian law. Some delegates expressed the view that the draft convention should address all forms of terrorism, including state terrorism.

In both years the Sixth Committee established a working group with a view to finalising the process on the draft comprehensive convention on international terrorism, as well as the proposal to convene a high-level conference under the auspices of the United Nations. A number of delegates reiterated their support for the proposal made by the Coordinator at the 2007 session of the Ad Hoc Committee, which had become a proposal of the Bureau of the Sixth Committee, and considered that it constituted a viable compromise solution. Some delegates recalled their preference for earlier proposals relating to the scope of the convention. It was noted at the 2015 session that the divergent positions on the outstanding issues continued to be strongly held.

Several delegations reiterated their support for the proposal to convene a high-level conference under the auspices of the United Nations. It was pointed out that the conference, *inter alia*, could assist in providing a definition of terrorism, as well as address the root causes of terrorism.

In both years the Sixth Committee adopted, by consensus, draft resolutions on the Committee's recommendations, which subsequently were adopted by the Plenary of the General Assembly as resolutions 69/127, of 10 December 2014 and 70/120, of 14 December 2015, respectively.

*Criminal accountability of United Nations officials and experts  
on mission*

The Sixth Committee considered the agenda item<sup>4</sup> at both sessions during the period under review on the basis of successive reports of the Secretary-General.<sup>5</sup> The work was carried out both in the plenary of the Sixth Committee and in the framework of a Working Group chaired by the representative of South Africa, Mr Thembile Joyini. General support was reaffirmed for the zero-tolerance policy of the United Nations in respect of criminal acts committed by its officials and experts on mission. While emphasising the importance of the respect for the privileges and immunities of United Nations officials and experts on mission, the need to respect international and national law and to avoid impunity for those crimes and to ensure justice for victims was raised. It was stressed that any type of misconduct, especially criminal behaviour, could not go unpunished, since it had a detrimental effect on the fulfilment of the organisation's mandate. As such, it was the responsibility of both the United Nations and of its member states to ensure the criminal accountability of United Nations officials and experts on mission. Reference was made to the need for further measures to be developed in order to close any jurisdictional gaps and all states were encouraged to implement appropriate legislation and take relevant concrete action, if necessary. Some representatives reiterated the need to respect international as well as the national legislation of the host state. It was suggested that the International Criminal Court should exercise its jurisdiction where the preconditions for exercising its jurisdiction were present and national authorities were unable or unwilling genuinely to prosecute the most serious crimes.

Delegates generally welcomed the recent referrals, by the United Nations in accordance with a prior resolution of the General Assembly, of cases of alleged criminal conduct to the state of nationality of the officials or experts on mission concerned for investigation and possible prosecution. The states in question were urged to report back to the organisation with full details of the measures undertaken.

Reference was further made to the need for enhanced co-operation among states with respect to mutual assistance, including in areas of criminal investigation, the exchange of information, the collection of evidence and judicial processes, as well as between states and the United Nations. Delegates welcomed the preventive measures implemented

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<sup>4</sup> For the debates in 2014, see A/C.6/69/SR.17, 27 and 28; and for 2015, see A/C.6/70/SR.9 and 29.

<sup>5</sup> See documents A/69/210 and A/70/208.

by the United Nations, including regarding pre-deployment training on United Nations standards of conduct and the provision of technical advice and support to member states. The need to address the concerns of victims was emphasised by a number of delegations, and reference was made to the adoption of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel.<sup>6</sup>

Different views continue to exist concerning the potential negotiation of a convention on the topic. A number of states are of the view that a discussion on a convention was premature if even advisable. It was suggested that a draft model law for national legislation could be a viable alternative. The view was expressed that the definitions of terms used, the scope of application, the limitation to the types of offences and the principle of dual criminality would have to be further deliberated in the event that it was seen as timely and appropriate to pursue a draft convention.

On the basis of the respective recommendations of the Sixth Committee, the General Assembly subsequently adopted resolutions 69/114 of 10 December 2014, and 70/114 of 14 December 2015.

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

The Sixth Committee considered the item at both sessions during the period under review<sup>7</sup> on the basis of successive reports by the Secretary-General.<sup>8</sup> The work was undertaken both in the plenary of the Committee and in the framework of a working group chaired by Ms Georgina Guillén-Grillo of Costa Rica.

Delegates generally acknowledged that universal jurisdiction was an important principle of international law aimed at combating impunity and bringing justice to victims. For many representatives, the principle was well established and an important complementary mechanism to hold perpetrators to account for the most serious crimes under international law. Yet, other states remained of the view that the principle should be viewed as a measure of last resort, whose application was optional and not obligatory.

Further issues considered included: the need to respect relevant international law instruments, norms and jurisprudence to guide the scope and application of the principle; the need for and importance of co-

<sup>6</sup> GA res 62/214 (21 December 2007).

<sup>7</sup> For the debates in 2014, see A/C.6/69/SR.11, 12 and 28; and for 2015, see A/C.6/70/SR.12, 13, 27 and 28.

<sup>8</sup> See documents A/69/174 and A/70/125.

operation and mutual legal assistance in any application of the principle; the need to distinguish the principle from other related concepts such as international criminal jurisdiction, the obligation to extradite or prosecute (*aut dedere, aut judicare*) and *jus cogens*; the range of crimes for which universal jurisdiction was applicable; whether the principle was to be viewed merely as a treaty-based exception in exercising criminal jurisdiction; the need to avoid the abuse of the principle through its selective or politically motivated application; the link between universal jurisdiction and the question of immunity of state officials, in particular, heads of state and high-ranking officials; the necessity of establishing conditions for the application of universal jurisdiction; and the question of which state had the primary responsibility for investigating and prosecuting serious international crimes.

Suggestions for the future consideration of the topic included continued discussion within the Sixth Committee and the Working Group, and the possibility of requesting a study on the topic from the International Law Commission (ILC).

On the basis of the respective recommendations of the Sixth Committee, the General Assembly subsequently adopted resolutions 69/124 of 10 December 2014, and 70/119 of 14 December 2015.

### *Administration of justice at the United Nations*

The agenda item was referred to both the Fifth and Sixth Committees of the General Assembly at both sessions during the period under review.<sup>9</sup> The Sixth Committee had before it several reports of the Secretary-General.<sup>10</sup>

The key issues considered during the debate on the agenda item at both sessions included the amendment of the rules of procedure of the

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<sup>9</sup> For the debates in the Sixth Committee in 2014, see A/C.6/69/SR.16 and 20; and for 2015, see A/C.6/70/SR.16 and 18.

<sup>10</sup> See documents A/69/205 (Report of the Internal Justice Council on the administration of justice at the United Nations), A/69/126 (Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services on the administration of justice at the United Nations), A/69/227 (Report of the Secretary-General on the administration of justice at the United Nations), A/70/151 (Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services), A/70/187 (Report of the Secretary-General on the administration of justice at the United Nations), A/70/188 (Report of the Internal Justice Council on the administration of justice at the United Nations), A/70/189 (Report of the Secretary-General on the amendment to the rules of procedure of the United Nations Appeals Tribunal), and A/70/190 (Report of the Internal Justice Council on appointment of judges of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal).

Administrative Tribunals of the organisation to provide that judgments imposing financial obligations on the United Nations were not executable until expiry of the deadline for appeal or conclusion of an appeal, the resort to informal dispute resolution mechanisms to further enable the settlement of disputes, the role of the Office of Staff Legal Assistance, the importance of addressing accountability where violations of rules and procedures had led to financial loss for the organisation, a proposal to accord judges of the tribunals full diplomatic immunities as provided for in section 19 of the Convention on Privileges and Immunities of the United Nations, of 1946,<sup>11</sup> the award of moral damages to claimants without findings of harm, the need to ensure that staff members in all duty stations be afforded access to the system of the administration of justice, the possibility of making further changes to the Statute of the United Nations Dispute Tribunal (UNDT) in order to facilitate the processing of large numbers of appeals against single actions, the preparation of a single code of conduct for all legal representatives appearing before the tribunals, the possibility of assigning one of the appeals judges to serve as a 'duty judge' to handle appeals against interlocutory motions filed outside of the tribunals' annual sessions, the need for mechanisms for the settlement of work-related disputes with non-staff personnel of the United Nations, and the protection of whistle-blowers.

No draft resolution was adopted at either session in the Sixth Committee. Instead, on both occasions the Sixth Committee opted for sending a letter, 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.

### *Effects of armed conflicts on treaties*

In 2011 the ILC adopted the draft articles on the effects of armed conflicts on treaties. Further, and in accordance with article 23 of its statute, the ILC recommended that the General Assembly take note of the draft articles in a resolution and annex them to the resolution, and consider at a later stage the elaboration of a convention on the basis of the draft articles. The Assembly undertook the first two parts of the recommendation by taking note of the articles in resolution 66/99 of 9 December 2011 and annexing the text of the articles to the resolution. It was decided to revert to the topic at the sixty-ninth session, in 2014,

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<sup>11</sup> 1 UNTS 15.



with a view to examining, inter alia, the question of the form that might be given to the articles.<sup>12</sup>

In 2014 the Sixth Committee reverted to the agenda item.<sup>13</sup> During the debate, some differences of opinion were expressed regarding the definition of armed conflict in article 2. There was concern expressed regarding the inclusion of an indicative list of types of treaties that should be presumed not to be susceptible to termination or suspension as a consequence of an armed conflict.

A range of views were expressed regarding the eventual form of the articles. Some delegates opposed the adoption of the articles in the form of a convention; others suggested that they could serve as guidelines for states. Other representatives were open to the possibility of adoption in the form of a convention, if not in the near future.

On the basis of the respective recommendations of the Sixth Committee, the General Assembly subsequently adopted resolution 69/125 of 10 December 2014, in which the Assembly decided, inter alia, to revert to the question of the final form of the articles at its session in 2017.

### *Responsibility of international organisations*

In 2011 the ILC adopted the draft articles on the responsibility of international organisations. In line with article 23 of its statute, it recommended that the General Assembly take note of the draft articles in a resolution and annex them to the resolution and consider at a later stage the elaboration of a convention on the basis of the draft articles. That year the Assembly undertook the first two parts of the recommendation by taking note of the articles in resolution 66/100 of 9 December 2011 and annexing the text of the articles to the resolution. It also decided to revert to the topic at the sixty-ninth session in 2014, with a view to examining, inter alia, the question of the form that might be given to the articles.<sup>14</sup>

In 2014 the Sixth Committee accordingly reverted to the agenda item.<sup>15</sup> During the debate there was support expressed for linking the articles, both in terms of their content and final form, to those on the responsibility of states for internationally wrongful acts adopted in 2001.<sup>16</sup> Other delegates preferred to view the 2011 articles as independent from

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<sup>12</sup> See A Pronto 'An introduction to the articles on the responsibility of international organisations' (2011) 36 *South African Yearbook of International Law* 94.

<sup>13</sup> For the debates in 2014, see A/C.6/69/SR.18, 27 and 28.

<sup>14</sup> See Pronto (note 12 above).

<sup>15</sup> For the debates in 2014, see A/C.6/69/SR.18, 27 and 28.

<sup>16</sup> GA res 56/83 annex (12 December 2001).

those developed in 2001. The prevailing view in the Sixth Committee was that the time was not yet ripe for a decision to be taken on the eventual form of the articles. It was suggested that it was preferable to allow them to crystallise through the practice of tribunals and States.

On the basis of the respective recommendations of the Sixth Committee, the General Assembly subsequently adopted resolution 69/126 of 10 December 2014, in which the Assembly decided, *inter alia*, to revert to the question of the final form of the articles at its session in 2017.

## Consideration of reports of expert legal bodies

### *Report of the International Law Commission*<sup>17</sup>

The reports of the ILC on its sixty-sixth (2014)<sup>18</sup> and sixty-seventh (2015)<sup>19</sup> sessions were considered by the Sixth Committee during the period under review.<sup>20</sup> The main achievement of the 2014 session of the ILC<sup>21</sup> was the adoption of the draft articles on the expulsion of aliens<sup>22</sup> on second reading. The Commission recommended, in accordance with article 23 of its statute, that the General Assembly take note of the draft articles on the expulsion of aliens in a resolution, annex the articles to the resolution and encourage its widest possible dissemination, and consider, at a later stage the elaboration of a convention on the basis of the articles. The Commission also adopted at its 2014 session the draft articles on the protection of persons in the event of disasters on a first reading.<sup>23</sup> It further decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles through the Secretary-General to governments, competent international organisations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2016. It also indicated that it would

<sup>17</sup> See also D Tladi 'Progressively developing and codifying international law: The work of the International Law Commission at its sixty-seventh session' (2015) 40 *South African Yearbook of International Law* 205.

<sup>18</sup> See document A/69/10 (ILC Report, 2014).

<sup>19</sup> See document A/70/10 (ILC Report, 2015).

<sup>20</sup> For the debates in 2014, see A/C.6/69/SR.19–27 and 29; and for 2015, see A/C.6/70/SR.17–25 and 29.

<sup>21</sup> For a more detailed summary of the work of the ILC in 2014, see the statement of its Chairman, summarised in document A/C.6/69/SR.19 paras 2–59; A/C.6/69/SR.21 paras 79–111; A/C.6/69/SR.25 paras 40–71.

<sup>22</sup> See document A/69/10 para 44.

<sup>23</sup> *Id* para 55.

welcome comments and observations on the draft articles from the United Nations, including the Office for the Coordination of Humanitarian Affairs and the United Nations Office for Disaster Risk Reduction by the same date. The Commission also adopted its final report on the topic 'obligation to extradite or prosecute' (*aut dedere aut judicare*).<sup>24</sup>

In 2015 the Commission considered the final report of the Study Group on the topic 'the most-favoured-nation clause'<sup>25</sup> and endorsed the summary conclusions of the Study Group.<sup>26</sup> The Commission commended the final report to the attention of the General Assembly and encouraged its widest possible dissemination, and thereby concluded its consideration of the topic.<sup>27</sup>

The Commission further continued at both sessions its work on the topics of 'immunity of State officials from foreign criminal jurisdiction', 'subsequent agreements and subsequent practice in relation to the interpretation of treaties', 'provisional application of treaties', 'identification of customary international law', 'protection of the environment in relation to armed conflicts' and 'protection of the atmosphere'. In 2014 the Commission decided to include the topic 'crimes against humanity' in its programme of work and to appoint Mr Sean D. Murphy of the United States of America as Special Rapporteur for the topic. The work on the topic commenced at the 2015 session. In 2015 the Commission decided to include the topic '*jus cogens*' in its programme of work and appointed Mr Dire D. Tladi of South Africa as Special Rapporteur for the topic.

The debate in the Sixth Committee in 2014 focused on the texts adopted by the Commission that year. The most striking was a difference of opinion as to whether the draft articles on the expulsion of aliens drew an appropriate balance between states' sovereignty and the rights of aliens subject to expulsion. It was noted in the Committee that the Commission itself had acknowledged that some of the draft articles constituted progressive development of international law. While delegates generally welcomed the adoption on first reading of the draft articles on the protection of persons in the event of disasters, a number of suggestions for improvement (during the second reading) were made. Some key issues for discussion were the provision in draft article 14(2) that the consent of the affected state to external humanitarian assistance

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<sup>24</sup> Id para 65.

<sup>25</sup> See document A/70/10 annex.

<sup>26</sup> See document A/70/10 para 42.

<sup>27</sup> For a more detailed summary of the work of the ILC in 2015, see the statement of its Chairman, summarised in document A/C.6/70/SR.17 paras 2–26; A/C.6/70/SR.19 paras 55–80; A/C.6/70/SR.23 paras 75–104.

should not be arbitrarily withheld and article 21 on the relationship of the draft articles to international humanitarian law. Delegations welcomed the decision to include the topic 'crimes against humanity' in the programme of work of the Commission. Support was expressed for the Commission's decision to request the Secretariat to review the list of possible topics for the long-term programme of work. In 2015 the debate in the Sixth Committee focused on the final report of the Study Group on the most-favoured-nation clause. This report was generally welcomed in the Sixth Committee as it complemented the Commission's 1978 draft articles on the same topic. The Sixth Committee held extensive debates during the period under review on the progress made on other topics in the programme of work of the ILC.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolutions 69/118 of 10 December 2014 and 70/236 of 23 December 2015. In 2014 the Assembly adopted a further resolution, 69/119 of 10 December 2014, in which it welcomed the conclusion of the work on the expulsion of aliens and the Commission's adoption of the draft articles and a detailed commentary on the subject. The Assembly further took note of the recommendation of the International Law Commission and decided that the consideration of the recommendation be continued in 2017.

### *Report of the United Nations Commission on International Trade Law*

The Sixth Committee considered the report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its forty-seventh<sup>28</sup> and forty-eighth sessions<sup>29</sup> held in 2014 and 2015, respectively.<sup>30</sup> The main achievement in 2014<sup>31</sup> was the finalisation and approval of a draft convention on transparency in treaty-based investor-state arbitration, which was submitted to the General Assembly for adoption. The Convention extended the application of the 2013 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to arbitrations arising under almost 3 000 investment treaties concluded before 1 April 2014 (the effective date of application of the

<sup>28</sup> Document A/69/17 (UNCITRAL Report, 2014).

<sup>29</sup> Document A/70/17 (UNCITRAL Report, 2015).

<sup>30</sup> For the debates in 2014, see A/C.6/69/SR.8, 22 and 24; and for 2015, see A/C.6/70/SR.10, 23 and 26.

<sup>31</sup> For a detailed summary of the work of UNCITRAL in 2014, see the statement of its Chairman, summarised in A/C.6/69/SR.8 paras 20–41.

UNCITRAL Rules).<sup>32</sup> In 2015<sup>33</sup> the highlight of the session was the consideration and provisional approval of the draft revised UNCITRAL Notes on Organizing Arbitral Proceedings and of parts of a model law on secured transactions.<sup>34</sup> The Notes had been adopted in 1996 and initially designed to assist arbitration practitioners by providing an annotated list of matters on which an arbitral tribunal might wish to formulate decisions during the course of arbitral proceedings, including on a set of arbitration rules, language and place of arbitration, administrative support, cost and confidentiality, conduct of hearings, the taking of evidence, and possible requirements for the filing or delivering of an award.

During the debates in the Sixth Committee delegates welcomed the approval by the Commission of the draft convention on transparency in treaty-based investor-state arbitration. There was support expressed for the establishment of the online repository for the publication of information and documents in treaty-based investor-state arbitration at the UNCITRAL Secretariat. In 2015 delegates also recalled the 35<sup>th</sup> anniversary of the conclusion of the United Nations Convention on Contracts for the International Sale of Goods.<sup>35</sup> Delegates commented on the progress made in the various Working Groups of the Commission.

On the basis of the respective recommendations of the Sixth Committee, the General Assembly subsequently adopted resolutions 69/115 of 10 December 2014, and 70/115 of 14 December 2015. In 2014 the Assembly also adopted resolution 69/116 on 10 December 2014, which resulted in the adoption of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration.

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

At its 2014 and 2015 sessions<sup>36</sup> the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization focused once again on the themes of the maintenance of international peace and security and the peaceful settlement of

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<sup>32</sup> The Commission further decided to publish the *UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, an online database that was freely accessible and contained the most comprehensive resources currently existing, including case law and bibliographic references.

<sup>33</sup> For a more detailed summary of the work of UNCITRAL in 2015, see the statement of its Chairman, summarised in document A/C.6/70/SR.10 paras 1–38.

<sup>34</sup> See document A/70/17.

<sup>35</sup> 3 UNTS 1489.

<sup>36</sup> See *Report of the Special Committee on the Charter A/69/33* (2014) and *Report of the Special Committee on the Charter A/70/33* (2015).

disputes.<sup>37</sup> Under the maintenance of international peace and security, the Special Committee considered the question of the 'implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions'. The Special Committee had 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; 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'; 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 and a working paper submitted by Cuba on 'the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations', which had been submitted at the 2012 session. At the 2015 annual session the Special Committee considered the question of an appropriate commemoration of the 70<sup>th</sup> anniversary of the Charter, also on the basis of a suggestion by Cuba. At that session, under the rubric of the peaceful settlement of disputes, the Special Committee considered a proposal submitted by the Russian Federation that the Secretariat be requested to establish a website on the peaceful settlement of disputes and update the *Handbook on the Peaceful Settlement of Disputes between States*, including a proposal submitted on behalf of the Non-Aligned Movement entitled 'Pacific settlement of disputes and its impact on the maintenance of peace'.

The annual debate in both the Special Committee and in the Sixth Committee continued to reveal a fundamental difference of opinion on almost all of the proposals, particularly those seeking a modification of the powers of the Security Council. As regards the question of the imposition of sanctions, a number of delegates recalled that sanctions should be implemented in accordance with international law and the Charter of the United Nations, used as a last resort, implemented in a manner which minimised their adverse humanitarian effects, that their objectives should be clearly defined, based on tenable legal grounds,

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<sup>37</sup> The Special Committee 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*. Both publications are available online at: <http://legal.un.org/repertory/> and <http://www.un.org/en/sc/repertoire/>, respectively.

imposed for a specified time frame and subject to periodic review. The General Assembly was called upon to consider the question of the implementation of the provisions of the Charter of the United Nations relating to assistance to third states affected by the application of sanctions. However, some delegations maintained that the issue had largely been addressed through the institution of ‘targeted’ sanctions, which minimised the possibility of adverse consequences for third states.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolutions 69/122 of 10 December 2014 and 70/117 of 14 December 2015.

### *Report of the Committee on Relations with the Host Country*

The annual reports of the Committee on Relations with the Host Country were considered by the Sixth Committee at each session during the period under review.<sup>38</sup> The main issues that were debated, as reflected in the annual reports of the Committee on Relations with the Host Country,<sup>39</sup> related to the efforts of the host country in seeking to accommodate the needs and concerns of the diplomatic community in New York in various areas, including: the timely issuance of visas and obtaining suitable banking services necessary for the effective functioning of the permanent missions; the fulfilment by the host country of its obligations, inter alia, under the Convention on the Privileges and Immunities of the United Nations and the Headquarters Agreement; restrictions on movement of certain diplomats and international civil servants accredited to the United Nations; responding to concerns over alleged irregularities in the issuance of visas to certain missions; and the importance of enhancing the training of police and security personnel, with the aim of guaranteeing diplomats’ privileges and immunities.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolutions 69/128 of 10 December 2014 and 70/121 of 14 December 2015.

## **Oversight activities**

### *The rule of law at the national and international levels*

During the period under review the Sixth Committee considered the item ‘the rule of law at the national and international levels’<sup>40</sup> on the basis

<sup>38</sup> For the debates in 2014, see A/C.6/69/SR.29; and for 2015, see A/C.6/70/SR.28 and 29.

<sup>39</sup> *Report of the Committee on Relations with the Host Country* A/69/26 (2014) and *Report of the Committee on Relations with the Host Country* A/70/26 (2015).

<sup>40</sup> For the debates in 2014, see A/C.6/69/SR.4–8 and 29; and for 2015, see

of several reports by the Secretary-General.<sup>41</sup> Delegations once again affirmed the core role of the rule of law to ensure and support peace and a secure international system. They stressed the link between the rule of law and the purposes and principles of the Charter of the United Nations and the rules of international law. Reference was made to several relevant national and regional activities. They also emphasised the role of the rule of law as an essential factor in achieving the three pillars of the United Nations, namely, the maintenance of international peace and security, sustainable economic development and the protection of international human rights. Reference was further made to its critical role in achieving socio-economic development and delegations observed that it was an important foundation for the universal respect of the principles of justice in accordance with the Charter of the United Nations and the fulfilment of its purposes, including the sovereign equality of states, the peaceful settlement of disputes and territorial integrity. Some delegates stated that the concept of the rule of law should not be used as a pretext to reform the constitutional order of states.

Regarding the rule of law at an international level, a number of representatives recognised the role of the codification and progressive development of international law as part of the rule of law and expressed support for the activities of the ILC. Reference was made to the importance of the peaceful settlement of disputes as laid out in article 33 of the Charter of the United Nations.

Delegates further recognised the important role played by international courts and tribunals and hybrid courts in upholding the rule of law and combating impunity, and the significance of the work of the International Court of Justice, in particular, in working to maintain or restore peaceful relations between parties to disputes, was acknowledged. Some delegations emphasised the vital role played by the International Criminal Court in the fight against impunity for serious international crimes, and stressed the key role played by the principle of complementarity.

Some delegates emphasised the need to avoid the use of coercive unilateral measures, while others stated that selectivity and double standards in the application of law must be rejected. Some delegates emphasised the need for reform of the United Nations, specifically the Security Council, and respect for the respective responsibilities of the principal organs of the United Nations, specifically of the General Assembly. Concerns were further expressed about the threat of erosion of the international order especially with regard to the use of force, and it was maintained that no state was above the law.

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A/C.6/70/SR.5-8 and 29.

<sup>41</sup> See documents A/68/213/Add.1, A/69/181 and A/70/206.



A number of delegates stressed the need to strengthen and increase support to states in the domestic implementation of their international obligations through enhanced technical assistance and capacity-building, taking into account national priorities and strategies.

In 2014, further to General Assembly resolution 68/116, delegates focused their debate on the sub-topic of ‘sharing states’ national practices in strengthening the rule of law through access to justice’, with several representatives underlining the importance of access to justice in order to make the rule of law apply in reality. Several delegates highlighted elements that were vital to secure access to justice for all, including the provision of effective and affordable legal aid where necessary, the improvement of judicial institutions, non-discrimination and equal protection of the law, transparency, accountability and independence of judicial institutions, fighting impunity, increasing citizens’ awareness of the laws and their rights, and ensuring access for vulnerable groups in society. Many delegates referred to measures addressing women’s access to justice.

In 2015 the delegations welcomed the adoption of the 2030 Sustainable Development Goals, in particular Goal 16. They called for their implementation and underlined that sustainable development could not be realised without the rule of law and good governance. Furthermore, in accordance with General Assembly resolution 69/123, the 2015 debate in the Sixth Committee focused on the sub-topic of ‘the role of multilateral treaty processes in promoting and advancing the rule of law’. Reference was made to the vital importance of multilateral treaties to the development of a comprehensive international legal framework and ensuring the rule of law throughout the international system. Delegates set out a number of areas within which treaties had played a prominent role, including the environment and human rights. It was noted that multilateral treaties had facilitated the peaceful settlement of disputes and enhanced global peace and security by consolidating international consensus and had provided certainty on the rights and obligations of states thereby providing structure, predictability and legitimacy to the international legal framework. Several delegates highlighted the inclusive role of the multilateral treaty process to enable all states, including small states, to contribute on an equal, inclusive and transparent platform to the development of international law.

Reference was further made to the role of the ILC and UNCITRAL in the codification and progressive development of international law. There was a sense in the Committee that the processes of codification needed improvement.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolutions 69/123 of 10 December 2014 and 70/118 of 14 December 2015.

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

The agenda item was considered by the Sixth Committee in 2014<sup>42</sup> on the basis of a report by the Secretary-General.<sup>43</sup> Delegations voiced their support for the full implementation of international humanitarian law (IHL) and recalled the importance of the Geneva Conventions and the Protocols Additional thereto and highlighted the need for those states that had not already done so to ratify the Protocols as well as to accede to other relevant instruments and to comply with their norms. The issues raised in the debate included: whether the United Nations should play a more significant role with respect to the implementation of IHL; the need for more regular dialogue for enhancing compliance with IHL; the need to ensure that the law of armed conflict was capable of meeting the challenges of asymmetric warfare; the concern that international norms were being redefined in order for states to escape their international responsibilities; concerns over the increasing numbers of civilians, including humanitarian workers and medical workers, being targeted in armed conflicts; and the need to apply IHL and the recently-held International Conference on the Montreux Document relating to the legal obligations and good practices of private military and security companies during times of armed conflict.

Several delegates encouraged states to accept the competence of the International Humanitarian Fact-Finding Commission pursuant to article 90 of the First Additional Protocol. Reference was made to the important role played by the International Criminal Court and the international criminal tribunals in promoting respect for IHL. The representatives commended the International Committee of the Red Cross on its role in the promotion of IHL and monitoring and enhancing its mechanisms of compliance.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolution 69/120 of 10 December 2014.

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<sup>42</sup> For the debates in 2014, see A/C.6/69/SR.14, 15 and 29.

<sup>43</sup> See document A/69/184 and Add.1.

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

The Sixth Committee considered the agenda item in 2014<sup>44</sup> on the basis of a report by the Secretary-General.<sup>45</sup> Delegates condemned the continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives and urged states to respect their obligations under international law and to take all the necessary measures in order to protect the diplomatic and consular missions and the representatives within their territories. The issues raised in the debate included: the need for those states that had not already done so to become parties to the relevant instruments; the special obligations and responsibilities that host countries had in protecting diplomatic and consular missions; the difficulties that developing countries face with respect to the financial costs of protecting their diplomatic missions; the need for and the responsibility of receiving states to take preventive measures before attacks on diplomatic missions occurred; the need to hold perpetrators of attacks on diplomatic and consular missions and representatives accountable; and concerns about the effects that state surveillance and the interception of the communications of states had on their diplomatic functions.

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolution 69/121 of 10 December 2014.

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

During the period under review the Sixth Committee considered<sup>46</sup> the consecutive reports of the Secretary-General<sup>47</sup> detailing the various activities undertaken in the context of the Programme of Assistance. At both sessions delegates highlighted the role of the Programme in capacity-building and in enhancing the knowledge and understanding of international law, particularly for developing countries. There was a concern expressed regarding the financial position of the Programme, in particular concerning the Regional Courses in International Law, and support was expressed for placing the Programme on a more sustainable

<sup>44</sup> For the debates in 2014, see A/C.6/69/SR.15 and 19.

<sup>45</sup> See document A/69/185 and Add.1.

<sup>46</sup> For the debates in 2014, see A/C.6/69/SR.13, 14, 22 and 24; and for 2015, see A/C.6/70/SR.15, 16, 22 and 26.

<sup>47</sup> See documents A/69/516 and Add.1, and A/70/243.

financial footing. In addition to the regional course, there was support expressed for the International Law Fellowship Programme and the Audiovisual Library of International Law.<sup>48</sup>

On the basis of the respective recommendations of the Sixth Committee the General Assembly subsequently adopted resolutions 69/117 of 10 December 2014 and 70/116 of 14 December 2015.

### Requests for observer status

In 2014 and 2015 the Sixth Committee considered proposals for the grant of observer status in the General Assembly to ten entities. Three requests, namely, those relating to the International Chamber of Commerce (in 2014), the International Conference of Asian Political Parties (in 2015) and the Cooperation Council of Turkic-speaking States had been carried over from previous sessions. There was continued opposition in the Sixth Committee to the grant of observer status to those entities. In 2015 opposition was also expressed against the grant of observer status to the Eurasian Economic Union in the General Assembly and the Community of Democracies in the General Assembly.

In previous sessions, opposition to the grant of observer status had been based largely on technical grounds involving lack of clarity as to the intergovernmental nature of the entities in question, as in the case of the International Chamber of Commerce (in 2014) and the International Conference of Asian Political Parties (in 2015) (for both of which such doubts continued to be expressed). The opposition to the grant of observer status to the other entities mentioned above primarily was based on political considerations. In other words, in addition to fulfilling the technical requirements, established by the General Assembly in 1994,<sup>49</sup> of the entity constituting an intergovernmental organisation as understood under international law, whose activities cover matters of interest to the Assembly, the political acceptability of the entity in question has increasingly come to play a role in the decision-making process. In effect this represents the *de facto* emergence of a third criterion for granting observer status.

In 2014 and 2015 the General Assembly, on the recommendation of the Sixth Committee, decided to grant observer status to the following entities: the Developing Eight Countries Organization for Economic Cooperation,<sup>50</sup> the Pacific Community,<sup>51</sup> the International Civil Defence

<sup>48</sup> For more information see: <http://legal.un.org/poa/>.

<sup>49</sup> GA decision 49/426 (9 December 1994).

<sup>50</sup> GA res 69/129 (10 December 2014).

<sup>51</sup> GA res 69/130 (10 December 2014).

Organization,<sup>52</sup> the Indian Ocean Rim Association,<sup>53</sup> and the Union for the Mediterranean.<sup>54</sup>

## **Conclusion**

The Sixth Committee was scheduled to revert to its consideration of the above topics at the 2016 session (or future sessions) of the General Assembly.

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<sup>52</sup> GA res 70/122 (14 December 2015).

<sup>53</sup> GA res 70/123 (14 December 2015).

<sup>54</sup> GA res 70/124 (14 December 2015).