Chapter III

International legal questions

In 2015, the International Law Commission continued to examine topics relating to the progressive development and codification of international law. It adopted the final report on the Most-Favoured-Nation clause, thus concluding its work on the topic; provisionally adopted three draft guidelines and four preambular paragraphs on protection of the atmosphere, four draft articles on crimes against humanity and one draft conclusion on subsequent agreements and subsequent practice in relation to the interpretation of treaties; and took note of sixteen draft conclusions on identification of customary international law, one subparagraph and one draft article on immunity of State officials from foreign criminal jurisdiction, and draft introductory provisions and six draft principles on protection of the environment in relation to armed conflicts. The Commission was also informed of three draft guidelines provisionally adopted by its drafting committee on the topic of provisional application of treaties. In December, the General Assembly took note of the final report on the topic of the Most-Favoured-Nation clause and encouraged its widest possible dissemination.

The Assembly’s Sixth (Legal) Committee in October established a working group with a view to finalizing the process on a draft comprehensive convention on international terrorism—on the basis of the work that had been pursued by the Ad Hoc Committee established by Assembly resolution 51/210 to elaborate the draft convention. The Secretary-General in July reported on measures taken by States, UN system entities and intergovernmental organizations to implement the 1994 Declaration on Measures to Eliminate International Terrorism. In December, the Assembly condemned all acts, methods and practices of terrorism as criminal and unjustifiable, and called on Member States to implement the United Nations Global Counter-Terrorism Strategy in all its aspects. Also in December, the Assembly urged States to become parties to the international conventions and protocols against terrorism, and called for continued assistance to Member States for the ratification and implementation of those instruments; it also called on States to strengthen cooperation against the threat of foreign terrorist fighters.

The United Nations Commission on International Trade Law (UNCITRAL) continued its work on arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law, security interests and international trade law aimed at reducing the legal obstacles faced by micro-, small- and medium-sized enterprises throughout their life cycle, and considered possible future work, especially in the area of public procurement and infrastructure development and public-private partnerships. It provisionally approved the draft revised UNCITRAL Notes on Organizing Arbitral Proceedings and parts of a draft Model Law on Secured Transactions.

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization considered, among other subjects, proposals relating to the maintenance of international peace and security, with a view to strengthening the Organization, and the implementation of Charter provisions on assistance to third States affected by the application of sanctions.

The Committee on Relations with the Host Country addressed several issues raised by permanent missions to the United Nations, including delays in issuing visas and activities to assist members of the UN community.

During 2015, the United Nations continued to provide rule-of-law assistance to Member States and ensure system-wide coordination and coherence in strengthening the rule of law at the national and international levels. In December, the Assembly adopted the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation (see p. 000), recognizing the strong interrelationship between sustainable development and the rule of law.

Legal aspects of international political relations

International Law Commission

The 34-member International Law Commission (ILC) held its sixty-seventh session in Geneva in two parts (4 May–5 June and 6 July–7 August) [A/70/10]. During the second part, the International Law Seminar held its fifty-first session, which was attended by 24 participants from all regions of the world. They attended ILC meetings and specially arranged lectures and participated in working groups on specific topics.
Since its inception in 1965, 1,163 participants representing 171 nationalities had taken part in the Seminar, and 713 participants had received fellowships.

Ilc carried out its work with the assistance of various working groups and a drafting committee. The Commission reconstituted the Study Group on the most-favoured-nation (mfn) clause (see p. 000), endorsed the Group’s summary conclusions and commended the final report to the attention of the General Assembly. On the topic of protection of the atmosphere (see p. 000), the Commission provisionally adopted three draft guidelines and four preambular paragraphs, together with commentaries thereto, relating to the use of terms, scope of the guidelines and international cooperation. It also took note of sixteen draft conclusions provisionally adopted by the Drafting Committee on the topic of identification of customary international law (see p. 000), and of one sub-paragraph and one draft article provisionally adopted by the Drafting Committee on the topic of immunity of State officials from foreign criminal jurisdiction (see p. 000). Concerning the topic of subsequent agreements and subsequent practice in relation to the interpretation of treaties (see p. 000), the Commission provisionally adopted one draft conclusion, together with a commentary thereto, relating to constituent instruments of international organizations. On the topic of provisional application of treaties (see p. 000), Ilc was informed of three draft guidelines provisionally adopted by the Drafting Committee.

The Commission considered the first report of its Special Rapporteur on crimes against humanity (see p. 000), and provisionally adopted four draft articles, together with commentaries thereto, relating to the scope, general obligation, definition of crimes against humanity and obligation of prevention. It also examined the second report of its Special Rapporteur on protection of the environment in relation to armed conflicts (see p. 000) and took note of the draft introductory provisions and six draft principles, provisionally adopted by the Drafting Committee.

The Commission included in its programme of work the topic “jus cogens” (see p. 000) and appointed a Special Rapporteur. Among its other decisions and conclusions, pursuant to Assembly resolution 69/123 [YUN 2014, p. 1530], the Commission reiterated its commitment to the rule of law in all its activities and its contribution to the rule of law through consideration of such topics as protection of the atmosphere, crimes against humanity, identification of customary international law, subsequent agreements and subsequent practice in relation to the interpretation of treaties, protection of the environment in relation to armed conflicts, immunity of State officials from foreign criminal jurisdiction, provisional application of treaties and the mfn clause; it also recalled its previous work that had become subject to multilateral treaty processes.

The Planning Group established by the Commission held three meetings and reconstituted the Working Group on the Long-term Programme of Work to consider possible topics for inclusion in the work programme; the Chair of the Working Group presented an oral progress report on 30 July. Ilc decided that its sixty-eighth session would be held in Geneva from 2 May to 10 June and from 4 July to 12 August 2016.


Assistance to special rapporteurs. At its sixty-seventh session, the Commission reiterated its views expressed in its previous reports that Assembly resolution 56/272 [YUN 2002, p. 1402] affected the research work of the Ilc Special Rapporteurs. In December, the Assembly, in its resolution 70/236 (see p. 000), requested the Secretary-General to continue efforts to identify support options for the work of special rapporteurs, additional to those provided under its 2002 resolution.

Casual vacancy. Following the resignation of ilc member Kirill Georgijan (Russian Federation) due to his election to the International Court of Justice, the Secretariat in April issued a note [A/CN.4/684 & Add.1] on filling the vacant seat according to the Commission’s Statute. On 8 May, the Commission elected Roman A. Kolodkin (Russian Federation) to fill the casual vacancy occasioned by this resignation.

Most-favoured-nation clause

The Commission reconstituted the Study Group on the Most-Favoured-Nation (mfn) clause [A/70/10], which completed a substantive and technical review of its draft final report. The final report was divided into five parts: Part I providing the background and an analysis of the Commission’s prior work, as well as an analysis of mfn provisions in other bodies; Part II addressing the contemporary relevance of mfn clauses and issues concerning their interpretation, including in the context of the General Agreement on Tariffs and Trade and the World Trade Organization, other trade agreements and investment treaties, as well as interpretative issues in relation to the mfn clauses in bilateral investment treaties; Part III analyzing policy considerations in investment relating to the interpretation of investment agreements, implications of investment dispute settlement arbitration as “mixed arbitration”, and the contemporary relevance of the 1978 draft articles on the mfn clause [YUN 1978, p. 948] to the interpretation of mfn provisions; Part IV providing guidance on the interpretation of mfn clauses, setting out a framework for the proper application of the principles of treaty interpretation to
Protection of the atmosphere

The Commission [A/70/10] considered the second report by Special Rapporteur Shinya Murase (Japan) on the protection of the atmosphere [A/CN.4/681 & Corr.1], which proposed five revised draft guidelines relating to the use of terms including a definition of the atmosphere, the scope of the draft guidelines and the common concern of humankind, as well as an analysis of the general obligation of States to protect the atmosphere and international cooperation for the protection of the atmosphere.

The Special Rapporteur suggested that common concern of humankind, the general obligation of States to protect the atmosphere and international cooperation were established in State practice and fundamentally interconnected, thereby forming a trinity for the protection of the atmosphere. He also presented a future plan of work estimated to be completed in 2020, following consideration of issues such as the principle of sic utere tuo ut alienum non laedas, the principle of sustainable development (utilization of the atmosphere and environmental impact assessment), the principle of equity, special circumstances and vulnerability, in 2016; prevention, due diligence and precaution, in 2017; principles guiding interrelationships with other fields of international law, in 2018; as well as compliance and implementation, and dispute settlement, in 2019.

Following the debate on the report and a dialogue with scientists organized by the Special Rapporteur, the Commission, on 12 May, referred draft guidelines 1, 2, 3 and 5 to the Drafting Committee, with the understanding that draft guideline 3 be considered in the context of a possible preamble. At the Special Rapporteur’s request, the referral of draft guideline 4 was deferred until 2016. On 2 June, the Commission received the report of the Drafting Committee and provisionally adopted draft guidelines 1, 2 and 5 on the use of terms, scope of the guidelines and international cooperation, as well as four preambular paragraphs. On 5 and 6 August, the Commission adopted the commentaries to the draft guidelines.

Identification of customary international law

Ilc [A/70/10] had before it the third report on identification of customary international law [A/CN.4/682] by Special Rapporteur Michael Wood (United Kingdom), which proposed additional paragraphs to three of the draft conclusions included in the second report [YUN 2014, p. 1509] and five new draft conclusions relating respectively to the relationship between the two constituent elements of customary international law, the role of inaction, the role of treaties and resolutions, judicial decisions and writings, the relevance of international organizations, as well as particular custom and the persistent objector.

The Special Rapporteur indicated that his report sought to cover questions raised in 2014 regarding the two constituent elements (“a general practice” and “accepted as law (opinio juris)”) as well as new issues such as particular custom and the persistent objector, particular form of practice and evidence as well as exceptions to the general application of rules of customary international law. Concerning the relationship between general practice and opinio juris, the Special Rapporteur concluded that it was necessary in every case to verify the existence of each element separately and the presence of both elements rather than their temporal order, and indicated that there could be a difference in application of the two-element approach in different fields of international law. He also stressed that inaction could serve as evidence of opinio juris when the circumstances called for some reaction, although the circumstances in which inaction could be relevant were not always obvious. According to the Special Rapporteur, treaties and resolutions of...
international organizations and conferences constituted particular forms of practice and evidence of *opinio juris*, which related to customary international law in three ways: codification of existing law, crystallization of emerging law or as the origin of new law. Evidence of existing or emerging law could also be provided through resolutions adopted by States at international organizations or conferences as State practice or as evidence of *opinio juris*, while decisions of national and international courts and tribunals and judicial writings—both reflecting existing law (*lex lata*) and put forward as emerging law (*lex ferenda*)—represented two ‘subsidiary’ means for determining rules of customary international law.

The Special Rapporteur emphasized the importance of distinguishing between the practice of States within international organizations and that of international organizations themselves, as well as between the practice of the organization that related to its internal operation from its practice in its relations with States and others, and proposed to address also the conduct of non-State actors other than international organizations. Regarding “particular custom”—a term which covered special, regional, local or bilateral customary rules—it was necessary to determine whether there was a general practice among the States concerned that was accepted by each of them as law (*opinio juris*), the binding nature of particular custom only on a limited number of States. The Special Rapporteur also stressed the importance of addressing the persistent objector rule, whereby a State which had persistently objected to an emerging rule of customary international law, and maintained its objection after the rule had crystallized, was not bound by it.

Members reiterated their support for the two-element approach and agreed that the outcome of the work should be a set of practical and simple conclusions, with a commentary, aimed at assisting practitioners in the identification or rules of customary international law. Support was expressed for the conclusion that each of the two constituent elements was to be separately ascertained, which required an assessment of specific evidence for each element; it was also stated that a uniform standard in application of the two-element approach had to be upheld regarding different fields of international law. There was broad support to the proposed criteria for inaction to serve as evidence of acceptance as law; support was also expressed regarding the role of treaties as evidence of customary international law, and it was suggested to address article 38 of the 1969 Vienna Convention on the Law of Treaties, as well as to establish criteria for determining the relevance of a treaty provision as evidence of a rule of customary international law. Members generally agreed that resolutions of international organizations and conferences could not constitute sufficient evidence of the existence of a customary rule, and welcomed the conclusion that judicial decisions and writings were relevant for the identification of rules of customary international law. They also made comments regarding the relevance of international organizations and non-State actors as well as particular custom, and discussed extensively the conditions of application of the persistent objector rule, as well as its consequences. The Special Rapporteur emphasized that the aim of the work was to assist in determining the existence or not of a rule of customary international law and its content. He recognized the need for further consideration of the role of inaction, acknowledged that the role of resolutions of international organizations and conferences could be expressed more positively, and highlighted the importance of providing practitioners with guidelines on the persistent objector rule. The Special Rapporteur indicated that a first reading of the draft conclusions and commentaries could be completed by the end of the Commission’s next session.

Following the debate, the Commission, on 21 May, referred the draft conclusions to the Drafting Committee. On 6 August, the Commission took note of sixteen draft conclusions provisionally adopted by the Drafting Committee in 2014 and 2015. Also on 6 August, the Commission requested from the Secretariat a memorandum on the role of national courts’ decisions in the case-law of international courts and tribunals of a universal character, for the purpose of determining customary international law.

**Crimes against humanity**

The Commission [A/70/10] considered the first report by Special Rapporteur Sean D. Murphy (United States) on crimes against humanity [A/CN.4/680 & Corr.1], which proposed two draft articles relating respectively to the prevention and punishment of crimes against humanity and to the definition of crimes against humanity. In his report, the Special Rapporteur assessed the potential benefits of developing a convention on crimes against humanity; provided a general background synopsis with respect to crimes against humanity; addressed some aspects of the existing multilateral conventions that promoted prevention, criminalization and inter-State cooperation with respect to crimes; and examined the general obligation that existed in various treaty regimes for States to prevent and punish such crimes, as well as the definition of crimes against humanity. The report also provided information on the future programme of work on the topic.

Following a debate in plenary, the Commission, on 28 May, referred the two draft articles to the Drafting Committee. On 5 June, the Commission considered the report of the Drafting Committee and provisionally adopted four draft articles on the scope, general obligation, definition of crimes against humanity and obligation of prevention. On 3 and 4 August, the
Commission adopted the commentaries to the draft articles. Also on 3 August, the Commission requested from the Secretariat a memorandum on existing treaty-based monitoring mechanisms which could be of relevance to its future work on the present topic.

**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**

ILC [A/70/10] had before it the third report of Special Rapporteur Georg Nolte (Germany) on subsequent agreements and subsequent practice in relation to the interpretation of treaties [A/CN.4/683], which analyzed the role of such agreements and practice in relation to treaties that were the constituent instruments of international organizations and proposed draft conclusion 11 on the issue. The Special Rapporteur addressed in particular Article 5 of the 1969 Vienna Convention on the Law of Treaties dealing with treaties constituting international organizations and treaties adopted within an international organization, and examined the application of the rules of the Vienna Convention regarding treaty interpretation to such constituent instruments of international organizations.

Following a debate in plenary, the Commission, on 4 June, referred the draft conclusion to the Drafting Committee. On 8 July, the Commission received the report of the Drafting Committee and provisionally adopted draft conclusion 11 on constituent instruments of international organizations. On 4 and 6 August, the Commission adopted the commentary to the draft conclusion.

**Protection of the environment in relation to armed conflict**

The Commission [A/70/10] considered the second report of Special Rapporteur Marie G. Jacobsson (Sweden) on the protection of the environment in relation to armed conflicts [A/CN.4/685], which examined the existing rules of armed conflict directly relevant to the protection of the environment, and proposed five draft principles and three preambular paragraphs relating to the scope and purpose of the draft principles as well as the use of terms.

The Special Rapporteur provided an analysis of the directly applicable treaty provisions and relevant principles of the law of armed conflict, such as the principles of distinction, proportionality and precaution in attack, as well as the rules on military necessity, seeking to establish whether the application of those provisions also covered measures aimed at protecting the environment. She noted that the majority of regulations on peacetime military obligations was of recent date and that multilateral operations were increasingly undertaken within a framework of relatively newly adopted environmental regulations, and drew attention to the challenges with regard to the distinction between property, livelihood, nature, land and natural resources, which entailed a clear link to human rights, especially where indigenous peoples were affected. The Special Rapporteur also examined the legal framework with regard to demilitarized zones, nuclear-weapon-free zones and natural heritage zones and areas of major ecological importance, analyzing the relationship between environmental and cultural heritage zones, as well as the right of indigenous peoples to their environment as a cultural and natural resource. She drew attention to further issues to be covered in her future work, including the Martens clause, multilateral operations, the work of the UN Compensation Commission and situations of occupation, as well as the law applicable in post-conflict situations and proposals for post-conflict measures including cooperation, information-sharing and reparative measures.

The debate in plenary addressed, among other issues, scope, methodology and purpose, use of terms, and the five proposed draft principles. The importance was reiterated to achieve a proper balance between safeguarding legitimate rights that existed under the law of armed conflict and protecting the environment, and an in-depth analysis was suggested of the notion of “widespread, long-term and severe damage” as well as of the standards used for those criteria. It was noted that the law of armed conflict applied, in principle, as lex specialis during armed conflict but that legal gaps would be avoided by not ruling out the parallel applicability of international environmental law. While there was broad agreement that both international and non-international armed conflict should be covered, the need to clarify how the differences between those types of conflict were reflected was also noted. Divergent views were expressed whether or not the draft principles would apply, as a matter of existing law, to nuclear weapons and other weapons of mass-destruction, and the importance of differentiating between the human environment and the natural environment was also highlighted. The Special Rapporteur was encouraged to examine further the relevance of other legal fields such as human rights, and to address the relationship between international humanitarian law and human rights law. The Special Rapporteur recognized the need to address further the question of what other rules could apply during an armed conflict, including rules and principles of international environmental law.

Following the debate, the Commission, on 14 July, referred the draft preambular paragraphs and the draft principles to the Drafting Committee, with the understanding that the provision on the use of terms was referred to facilitate discussions and to be left pending. On 30 July, the Commission received the report of the Drafting Committee and took note
of the draft introductory provisions on the scope and purpose of the principles and draft principles I-(x) to II-5, provisionally adopted by the Drafting Committee and relating to designation of protected zones, general protection of the [natural] environment during armed conflict, application of the law of armed conflict to the environment, environmental considerations, prohibition of reprisals, and protected zones.

Immunity of State officials

ILC [A/70/10] had before it the fourth report on the immunity of State officials from foreign criminal jurisdiction [A/CN.4/686] by Special Rapporteur Concepción Escobar Hernández (Spain), which examined the remaining aspects of the material scope of immunity ratione materiae and its temporal scope, and proposed a subparagraph to draft article 2 defining an “act performed in an official capacity” as well as draft article 6 on the scope of immunity ratione materiae.

The Special Rapporteur highlighted the basic characteristics of immunity ratione materiae, namely that it was granted to all State officials and only in respect of “acts performed in an official capacity” and that it was not time-limited, and noted that the distinction between “acts performed in an official capacity” and “acts performed in a private capacity” was not equivalent to the distinction between acta iure imperii and acta iure gestionis, or to the distinction between lawful and unlawful acts. Noting that only acts performed by State officials in their official capacity were under the cover of immunity from foreign criminal jurisdiction, the Special Rapporteur provided criteria for identifying such acts based on the analysis of national and international judicial practice; treaty practice and the Commission’s previous work; those criteria included the criminal nature of the act, the attribution of the act to the State, and the exercise of sovereignty and elements of governmental authority when the act was performed. According to the Special Rapporteur, the criminal nature of the act performed in an official capacity could conceivably occasion two different types of responsibility, one criminal in nature attributable to the perpetrator, and another civil in nature attributable to the perpetrator or to a State; this “single act, dual responsibility” model entailed several scenarios relevant for immunity, including (a) exclusive responsibility of the State in cases where the act was not attributable to the individual by whom it was committed; (b) responsibility of the State and the individual criminal responsibility of an individual, when the act was attributable to both; and (c) exclusive responsibility of the individual when the act was solely attributable to such individual, even though he or she acted as a State official. Following those scenarios, a claim of immunity could be invoked based on: (a) State immunity, in the event that the act could only be attributed to the State and only the State alone could be held responsible; (b) State immunity and immunity ratione materiae of a State official, where the act was attributable to both the State and the individual. The Special Rapporteur noted that the immunity of State officials from foreign criminal jurisdiction ratione materiae was individual in nature and distinct from the immunity of the State stricto sensu; according to her, for the exercise of immunity ratione materiae to be justified, there had to be a link between the State and the act carried out by a State official, which implied the possibility of attributing the act to a State. As for the temporal scope, the Special Rapporteur pointed to broad existing consensus on the “indefinite” or “permanent” nature of the immunity ratione materiae.

The debate in plenary focused on methodology and issues related to the concept of an “act performed in an official capacity”. Members generally welcomed the Special Rapporteur’s approach, recognizing the legal complexity and political sensitivity of the subject matter; a view was expressed that it was necessary to strike a balance between fighting impunity and preserving stability in inter-State relations. While some members recognized the differences among the various rules and regimes governing the international legal system, they cautioned that the Commission risked establishing a regime inconsistent with the one under the Rome Statute of the International Criminal Court; some others recalled that the present topic was based on a “horizontal relationship” among States, while the international criminal jurisdiction established a “vertical relationship” among them. According to another view, the proper test for granting the official immunity for an act performed in an official capacity should depend upon the benefit of the act to his or her State and upon ensuring the effective exercise of its function. It was also suggested that certain acts were potentially beyond the benefit of immunity ratione materiae, such as acts involving allegations of serious international crimes, ultra vires acts, acta iure gestionis, or acts performed in an official capacity but exclusively for personal benefit, as well as acts performed on the territory of the forum State without its consent; it was further suggested to address those matters as limitations or exceptions. There was general support for the distinction between “act performed in an official capacity” and “acts performed in a private capacity” and the assertion that the distinction between an “act performed in an official capacity” and an “act performed in a private capacity” had no relation to the distinction between lawful and unlawful acts. Members made further comments with regard to the criminal nature of the act, attribution of the act to the State, sovereignty and exercise of elements of governmental authority, and the scope of immunity ratione materiae. The Special Rapporteur responded to various questions raised by members, and indicated that she would address in her next report the question.
of limitations and exceptions to immunity as well as procedural issues.

Following the debate, the Commission, on 24 July, referred the two draft articles to the Drafting Committee. On 4 August, the Commission received the report of the Drafting Committee and took note of draft articles 2, subparagraph (f), and 6, provisionally adopted by the Drafting Committee.

**Provisional application of treaties**


The Special Rapporteur recalled his assessment that, subject to the specific characteristics of the treaty in question, the rights and obligations of the State which had consented to provisionally apply a treaty were the same as the rights and obligations that stemmed from the treaty itself as if it were in force; and that a violation of an obligation stemming from the provisional application of a treaty activated the responsibility of the State. His analysis of the provisions of the 1969 Vienna Convention focused on articles 11 (Means of expressing consent to be bound by a treaty), 18 (Obligation not to defeat the object and purpose of a treaty), 24 (Entry into force), 26 (Pacta sunt servanda) and 27 (Internal law and observance of treaties). He also addressed three aspects of the provisional application of treaties with regard to the practice of international organizations: (1) international organizations or international regimes created through the provisional application of treaties; (2) the provisional application of treaties negotiated within international organizations, or at diplomatic conferences convened under the auspices of international organizations; and (3) the provisional application of treaties of which international organizations were parties. According to the Special Rapporteur, the task before the Commission was to develop a series of guidelines for States wishing to resort to the provisional application of treaties; he proposed that the Commission could also consider within those guidelines the preparation of model clauses to guide negotiating States.

Members generally agreed that the provisional application of treaties had legal effects and created rights and obligations and endorsed the Special Rapporteur’s assessment that the legal effects of a provisionally applied treaty were the same as those stemming from a treaty in force; a provisionally applied treaty was subject to the *pacta sunt servanda* rule in article 26 of the 1969 Vienna Convention. The need was recognized for further analysis to determine whether acquiescence in the form of silence or inaction could represent agreement for the provisional application of the treaty. It was proposed that the Special Rapporteur focus in his future work on the legal regime and modalities for the termination and suspension of provisional application; seek to identify the type of treaties, and provisions in treaties, which were often the subject of provisional application, and whether or not certain kinds of treaties addressed provisional application similarly; and analyze limitation clauses used to modulate the obligations in order to comply with internal law, or conditioning provisional application on respect for internal law. Some members cautioned against developing model clauses on the provisional application of treaties, which could prove complex due to the differences between national legal systems. It was observed that the provisional application of treaties with the participation of international organizations was different as it was designed to ensure the greatest participation simultaneously of the organization’s members and of the organization itself; it was also observed even if a treaty was negotiated within an international organization, or at a diplomatic conference convened under the auspices of an international organization, the conclusion of the treaty was an act of the States concerned and not of the international organization. Members generally supported the Special Rapporteur’s approach to prepare draft guidelines to provide States and international organizations with a practical tool. The Special Rapporteur indicated his intention to consider in his next report the termination of provisional application and its legal regime, together with a study of other relevant provisions in the 1969 Vienna Convention, including articles 19, 46 and 60.

On 28 July, the Commission referred the six draft guidelines to the Drafting Committee. On 4 August, the Chairman of the Drafting Committee presented for information an interim oral report on draft guidelines 1 to 3, provisionally adopted by the Drafting Committee.

**Jus cogens**

Further to its 2014 decision on its long-term programme of work [YUN 2014, p. 1506], the Commission [A/70/10], on 27 May 2015, included the topic “*Jus cogens*” in its work programme and appointed Dire D. Tladi (South Africa) as Special Rapporteur.
The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations [YUN 1986, p. 1006] had 43 parties, including 12 international organizations. It would enter into force when ratified by 35 States.

Succession of states


The 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts [YUN 1983, p. 1119], which would enter into force when ratified by 15 parties, had 7 States parties.

Jurisdictional immunities of states and their property

The General Assembly, by resolution 59/38 [YUN 2004, p. 1304], adopted the Convention on Jurisdictional Immunities of States and Their Property. As at 31 December, the Convention had 21 States parties, with the accession of the Czech Republic on 12 March, Liechtenstein on 22 April, Mexico on 29 September, Iraq on 2 December and Slovakia on 29 December. The Convention would enter into force when ratified by 30 parties.

International terrorism

Convention on international terrorism

The General Assembly, by resolution 69/127 [YUN 2014, p. 1517], the Sixth Committee [A/70/513], on 12 October, established a working group to finalize the process on a draft comprehensive convention on international terrorism as well as discussions on convening a high-level conference under UN auspices to formulate a collective response to terrorism in all its forms and manifestations. The Working Group held five meetings (26 and 30 October and 9, 11 and 13 November) as well as informal consultations. The Chair of the Working Group provided an oral report to the Sixth Committee on 13 November [A/C.6/70/SR.27].

The Working Group had before it the report of the Ad Hoc Committee established by Assembly resolution 51/210 [YUN 1996, p. 1208] at its sixteenth (2013) session [YUN 2013, p. 1331]. Delegations reiterated the importance of concluding the draft convention and emphasized the need for a renewed push towards this objective. Concerning the outstanding issues surrounding the draft convention, several delegations reiterated their concerns over the legal definition of terrorism, the scope of the convention and the need to distinguish between acts of terrorism and the le-
gitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination. The Group discussed a comparative table of the existing proposals, highlighting the differences and similarities between them. While the view was expressed that the way to proceed was for delegations to come to a common understanding as to the meaning of the terms, it was also recalled that it was not for the legislators to provide detailed interpretations of the specific terms used in a convention; rather, that was the task of the judiciary, based on the circumstances at hand. Some delegations reiterated the view that the proposal made by the Bureau of the Ad Hoc Committee was a sound compromise which took into account the concerns expressed by delegations over the years; others stressed that the Bureau’s proposal had not fully met their concerns with regard to the questions of foreign occupation and the right to self-determination.

On the proposed convening of a high-level conference, Egypt, as sponsor delegation, recalled that it had initially submitted the proposal in 1999, more than a decade earlier, and stated that raising negotiations to the level of Heads of State and Government might mobilize the political will needed to reach an agreement on the draft convention. The proposed conference would also provide an opportunity to strengthen coordination in addressing all issues related to the fight against terrorism, and ensure common agreement and understanding among States. Egypt recalled that the proposal had been supported by the Organization of Islamic Cooperation, the Non-Aligned Movement and the African Group.

In his oral report, the Chair of the Working Group noted that the Group had completed its work without adopting any recommendation, and expressed his conviction that work should continue in a different framework that would allow for continuous consultations to bring a fresh impetus to the process. He encouraged delegations to continue exploring ways of overcoming their differences.

On 20 November, the Chair of the Sixth Committee announced that the Committee’s Bureau had decided to hold informal consultations during the intersessional period in 2016.

**Measures to eliminate international terrorism**

In accordance with Assembly resolution 50/53 [YUN 1995, p. 1330] and resolution 69/127, the Secretary-General in July issued his annual report [A/70/211] on measures taken by 20 States and 6 UN system entities and international organizations to implement the 1994 Declaration on Measures to Eliminate International Terrorism, adopted by Assembly resolution 49/60 [YUN 1994, p. 1293]. The report listed 42 international instruments pertaining to terrorism, including 19 universal and 23 regional.

During its twenty-fourth session (Vienna, 5 December 2014, 18–22 May and 10–11 December 2015), the Commission on Crime Prevention and Criminal Justice [E/2015/50 & Add.1] considered the question of ratification and implementation of the international instruments to prevent and combat terrorism. The Commission had before it a report of the Secretary-General on assistance in implementing the international conventions and protocols related to terrorism [E/2015/4], which provided information on the progress made by the United Nations Office on Drugs and Crime (Unodc) in delivering technical assistance on counter-terrorism.

In 2014, legal technical assistance to Member States contributed to 23 new ratifications of the international legal instruments and the drafting or adoption of 12 new counter-terrorism legislation. Legislative drafting sessions were undertaken in Solomon Islands and Vanuatu, and advisory services on incorporating the provisions of the international legal instruments into domestic legislation were provided to Afghanistan, Cambodia, Djibouti, Guatemala, the Lao People’s Democratic Republic, Malaysia, Myanmar, Namibia, the Philippines, Somalia, the United Republic of Tanzania and Yemen. New technical assistance action plans on the legal and criminal justice aspects of counter-terrorism were developed for Afghanistan, Algeria, Colombia, Egypt, Indonesia, Iraq, Morocco, the Philippines and Uzbekistan; Unodc also contributed to the preparation of several regional and country programmes, including for Central Asia and the Lao People’s Democratic Republic. Capacity-building assistance to apply counter-terrorism legislation was provided to 69 Member States through 99 workshops at the national, subregional and regional levels and the training of more than 2,700 criminal justice officials.

Unodc developed capacity-building training and assistance programmes and organized national, regional and international workshops on a broad range of terrorism-related offenses and criminal justice topics such as suppressing the financing of terrorism, countering the Internet use for terrorist purposes, addressing transport-related terrorism offenses, improving the criminal justice response in support of victims of terrorism and countering chemical, biological, radiological and nuclear terrorism, as well as reinforcing the principle of complementarity between counter-terrorism measures and protection of human rights, in accordance with the United Nations Global Counter-Terrorism Strategy [YUN 2006, p. 65], and responding to the emerging challenges of foreign terrorist fighters and kidnapping for ransom by terrorists. Unodc launched three new tools in 2014 to prevent and combat terrorism and its financing, and continued using its technical assistance tools developed since 2003 such as the online Counter-Terrorism Learning Platform launched in 2011 and its Electronic Legal Resources on International Terrorism database con-
taining the national counter-terrorism legislation of over 150 Member States, the texts of international legal instruments and their ratification status, a list of counter-terrorism conventions adopted by regional organizations and relevant case law. It continued strengthening its partnerships with national training institutions and supporting international cooperation among Member States in criminal matters. This work was carried out through the Counter-Terrorism Implementation Task Force, comprising 34 UN entities and INTERPOL, and in partnership with the UN Security Council’s Counter-Terrorism Committee and its Executive Directorate as well as with several regional and international organizations.

The Commission called on UNODC, in cooperation with the Counter-Terrorism Committee Executive Directorate and the Counter-Terrorism Implementation Task Force, to further enhance its technical assistance to Member States in addressing the ongoing and emerging terrorist threats, including the threat of foreign terrorist fighters, the financing of terrorism, the growing links between terrorism and transnational organized crime, the use of the Internet for terrorist purposes, violent extremism and radicalization, trafficking in cultural property as well as kidnapping and hostage-taking for ransom.

**GENERAL ASSEMBLY ACTION**

On 14 December [meeting 75], the General Assembly, on the recommendation of the Sixth Committee [A/70/513], adopted resolution 70/120 (Measures to eliminate international terrorism) without vote [agenda item 108].

On 21 July, the Economic and Social Council, by resolution 2015/22 (see p. 000), recommended to the General Assembly the adoption of a draft resolution on technical assistance for implementing the international conventions and protocols related to counter-terrorism.

On 17 December, in its resolution 70/177 (see p. 000) on that topic, the Assembly called on States to become parties to the international conventions and protocols against terrorism. It requested UNODC to continue providing its technical assistance to Member States for the ratification and implementation of those instruments, as well as enhancing its assistance related to international legal cooperation in combating terrorism and building the Member States’ capacity to implement international conventions, including through targeted programmes and training. The Assembly also requested UNODC to continue developing specialized knowledge, in particular with regard to criminal justice responses to terrorism and the use of Internet for terrorist purposes, and to provide assistance in addressing the threat of foreign terrorist fighters, kidnapping and hostage-taking and the destruction of cultural heritage by terrorists. It further called for stronger cooperation at international level and within the UN system, including with the Security Council’s Counter-Terrorism Committee and its Executive Directorate, and with the Counter-Terrorism Implementation Task Force, in the technical assistance delivery and the implementation of the United Nations Global Counter-Terrorism Strategy.

Also on 17 December, in its resolution 70/178 (see p. 000), the Assembly called on Member States to strengthen cooperation at the international, regional, subregional and bilateral levels to counter the threat posed by foreign terrorist fighters, including through enhanced information-sharing, logistical support and capacity-building activities such as those provided by UNODC, and reiterated its request to UNODC to enhance its technical assistance in preventing and combating terrorism, including the phenomenon of foreign terrorist fighters and its financial sources.

**Diplomatic relations**

**Protection of diplomatic and consular missions and representatives**

As at 31 December, the States parties to the following conventions relating to the protection of diplomatic and consular relations numbered: 190 States parties to the 1961 Vienna Convention on Diplomatic Relations [YUN 1961, p. 512], 51 parties to the Optional Protocol concerning the acquisition of nationality [ibid., p. 516] and 70 parties to the Optional Protocol concerning the compulsory settlement of disputes [ibid.].


**International economic law**

In 2015, legal aspects of international economic law continued to be considered by the United Nations Commission on International Trade Law (UNCITRAL) and by the Sixth Committee of the General Assembly.

**Commission on International Trade Law**

At its forty-eighth session (Vienna, 29 June–16 July) [A/70/177], the Commission continued its work on arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law, security
interests and international trade law aimed at reducing the legal obstacles faced by micro-, small- and medium-sized enterprises throughout their life cycle, and considered possible future work, especially in the area of public procurement and infrastructure development and public-private partnerships. It provisionally approved the draft revised UNCITRAL Notes on Organizing Arbitral Proceedings and parts of a draft Model Law on Secured Transactions.

UNCITRAL reviewed the status of the conventions and model laws emanating from its work [A/CN.9/843] and a bibliography of writings relating to its work [A/CN.9/839]. It also reviewed the implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) [YUN 1958, p. 391] and the work on the collection and dissemination of case law on UNCITRAL texts (clout), as well as training and technical assistance activities.

Pursuant to Assembly resolution 69/123 [YUN 2014, p. 1536], the Commission continued to comment on its role in promoting the rule of law, and held a panel discussion on the role of UNCITRAL multilateral treaty processes in promoting and advancing the rule of law. It reiterated its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader UN agenda to promote the rule of law at the national and international levels, and recalled that most treaties developed through its work had been adopted by the General Assembly. The Commission stressed that its treaty processes needed increased participation of all countries in its rule-formulating work, further coordination mechanisms among rule-formulating bodies in international trade law at the international and regional levels, greater representation in its work of professional associations, arbitral institutions and other end users from under-represented regions and groups of countries, as well as increased participation of States in development, implementation and application of treaties; these issues were brought to the General Assembly’s attention.

Arbitration and conciliation


The Commission was informed of the steps taken by the Secretariat to establish and operate a repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, adopted in 2013 [YUN 2013, p. 1337], further to its 2013 opinion that the UNCITRAL Secretariat should fulfill the role of the transparency repository [ibid., p. 1338]. It noted that the Secretariat was formalizing funding arrangements with donors, which would allow it to operate the repository as a pilot project on a temporary basis until the end of 2016, and emphasized that the repository should be fully operational as soon as possible. The Commission reiterated its strong and unanimous opinion that the UNCITRAL secretariat should establish and operate the repository, initially as a pilot project to be funded by voluntary contributions.

Further to its 2014 decision that Working Group II should consider the issue of enforcement of international settlement agreements resulting from conciliation proceedings and report in 2015 on the feasibility of work in that area [YUN 2014, p. 1525], UNCITRAL had before it a compilation of comments by Governments [A/CN.9/866 & Add.1-5] and the Working Group’s report at its sixty-second session [A/CN.9/832] recommending it be given a mandate to work on the issue. During discussion, it was suggested that a possible approach could be to introduce a mechanism to enforce international settlement agreement modelled on article III of the 1958 New York Convention [YUN 1958, p. 391]. The Commission agreed that Working Group II should commence work on the issue of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts, taking into account various approaches and concerns.

UNCITRAL also considered a note [A/CN.9/848] by the Secretariat on concurrent proceedings in investment arbitration, prepared in response to the Commission’s 2014 request [YUN 2014, p. 1525] and outlining various situations that led to concurrent proceedings, options available to address those issues, and a possible form of any instrument to be developed in that area. The Secretariat was requested to explore the issue further and report at a future session with a detailed analysis of possible work. The Commission further considered a proposal by Algeria [A/CN.9/855] on a code of ethics for arbitrators in investment arbitration. The Secretariat was requested to assess the feasibility of work in that area and report to the Commission at a future session. It was noted that work on concurrent proceedings as well as a code of ethics/conducts should be considered in the context of both commercial and investment arbitration.

The Commission noted the coordination efforts of the UNCITRAL Secretariat with organizations active in the field of international arbitration and conciliation in relation to the various types of arbitration to
which UNCITRAL standards were applicable, including a study to determine whether the 2014 United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (the Mauritius Convention on Transparency) [YUN 2014, p. 1525] could provide a model for possible reforms in investor-State arbitration, and requested the Secretariat to report at a future session with an update on that matter. It also took note of the statements made on behalf of the United Nations Conference on Trade and Development (UNCTAD), the International Centre for Settlement of Investment Disputes (ICSIID), the Permanent Court of Arbitration (PCA), the Organization for Economic Cooperation and Development (OECD) and the Energy Charter Secretariat.

At its sixty-third session (Vienna, 7–11 September) [A/CN.9/861], Working Group II commenced work on enforceability of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts. The Working Group discussed the issues of settlement agreements resulting from conciliation, agreement to submit a dispute to conciliation, recognition of settlement agreements, direct enforcement or a review mechanism as a prerequisite for enforcement, defences to enforcement of settlement agreements and a possible form of the instrument. The Secretariat was requested to prepare a document setting out possible draft provisions.

**Implementation of the 1958 New York Convention**

UNCITRAL, at its forty-eighth session [A/70/17], was informed of the progress made by the Secretariat in promoting the uniform application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [YUN 1958, p. 391] by making available details on its judicial interpretation by States parties. A website established in cooperation between the Secretariat of UNCITRAL and international legal scholars provided summaries of 1,137 cases on the Convention’s implementation in different jurisdictions and included 1,051 original-language decisions and 119 English-language translations, as well as briefing notes on 44 countries and various articles of the Convention not yet included in the Guide to the Convention whose preparation was being coordinated by the Secretariat; the database complemented reporting case law on the New York Convention in CLOUT (see p. 000), according to a Secretariat note [A/CN.9/840]. A bibliography on the Convention, providing the database of publications relating to the Convention’s application and interpretation, contained 655 books and articles from over 50 countries in 11 different languages.

The Commission noted with appreciation the performance of the website and its successful coordination with the CLOUT system.

**Security interests**


UNCITRAL had before it two Secretariat notes entitled “Draft Model Law on Secured Transactions” [A/CN.9/852 & A/CN.9/853], which were considered by the Committee of the Whole established by the Commission. On 16 July, the Commission adopted the report of the Committee of the Whole and approved the substance of article 26 of the draft Model Law pertaining to the registry system and articles 1 to 29 of the draft Registry Act. It also referred to Working Group VI the task of preparing the Guide to Enactment, to be considered together with the draft Model Law to ensure consistency between the two texts, and requested that the draft Model Law be submitted for adoption at its forty-ninth (2016) session.

Further to its 2010 decision on the future work programme [YUN 2010, p. 1343], the Commission agreed to consider at a future session the preparation of a contractual guide on secured transactions in particular for small- and medium-sized enterprises and enterprises in developing countries, and a uniform law text on intellectual property licensing, after a colloquium or expert group meeting on those issues.

The Commission noted the coordination efforts of the UNCITRAL Secretariat in the field of security interests, including the revision of the World Bank Insolvency and Creditor Rights Standard, and cooperation with the European Commission to ensure a coordinated approach to the issue of the law applicable to the third-party effects of assignments of receivables that would take into account the United Nations Assignment Convention and the Secured Transactions Guide. It further took note of UNCITRAL cooperation with the International Institute for the Unification of Private Law (Unidroit), the International Finance Corporation and the Organization of American States in the area of security interests. It renewed the Secretariat’s mandate to continue with such efforts.

At its twenty-eighth session (Vienna, 12–16 October) [A/CN.9/865], Working Group VI continued the preparation of the draft Model Law and the draft Guide to Enactment consistent with relevant

Micro-, small- and medium-sized enterprises


It noted the progress made by the Working Group in the analysis of the legal questions surrounding the simplification of incorporation and good practices in business registration, as well as its consideration of possible alternative legislative models to assist msmes and of a draft model law on a simplified business entity. The Commission confirmed the Working Group’s mandate and agreed to include for the Working Group’s consideration observations by Colombia [A/CN.9/WG.III/WP.83] on a new type of business entity known as “simplified corporation”.

At its twenty-fifth session (Vienna, 19–23 October) [A/CN.9/860], Working Group I continued discussing the preparation of legal standards aimed at creating an enabling legal environment for msmes, in particular the simplification of incorporation and related matters. It considered key principles of business registration, based on the Secretariat’s note [A/CN.9/ WG.I/WP.93 & Add.1.2], as well as a draft model law on a simplified business entity.

Online dispute resolution

UNCITRAL [A/70/17] had before it the reports of Working Group III (Online Dispute Resolution) on its thirtieth (Vienna, 20–24 October 2014) [A/ CN.9/827] and thirty-first (New York, 9–13 February) [A/CN.9/833] sessions. It noted that a third proposal for Online Dispute Resolution (odr) Rules before the Working Group, which envisaged a single set of rules, had not yet led to consensus on the issue of whether binding pre-dispute agreements to arbitrate concluded with consumers were to be given effect under the Rules.

The Commission considered a proposal by Israel [A/CN.9/857] to develop a non-binding instrument for use by odr providers and neutrals, aimed at assisting and supporting odr practitioners. Another proposal, submitted by Colombia, Honduras and the United States [A/CN.9/858], envisaged a non-binding descriptive instrument of a technical and explanatory nature. The Commission agreed that any future text should build upon the progress on the third proposal and other proposals, and instructed Working Group III to continue its work towards elaborating a non-binding descriptive document reflecting elements of an odr process. It was also agreed that the Working Group would be given a time limit of one year or no more than two Working Group sessions, after which its work would come to an end.

At its thirty-second session (Vienna, 30 November–4 December) [A/CN.9/862], the Working Group continued its work on draft non-binding descriptive document reflecting elements and principles of an odr process, based on the Secretariat’s note [A/CN.9/ WG.III/WP.137]. It requested the Secretariat to revise the draft outcome document based on the Working Group’s deliberations.

Electronic commerce

UNCITRAL [A/70/17] welcomed the progress made by Working Group IV (Electronic Commerce) in preparing draft provisions on electronic transferable records at its fiftieth (Vienna, 10–14 November 2014) [A/ CN.9/828] and fifty-first (New York, 18–22 May 2015) [A/CN.9/834] sessions. The Commission noted the Working Group’s decision that its work would take the form of a draft model law on electronic transferable records, and its focus on domestic aspects of the use of electronic transferable records equivalent to paper-based transferable documents or instruments, with international aspects of the use of those records as well as the use of transferable records existing only in electronic form to be addressed at a later stage.

The Commission also noted cooperation in the field of paperless trade, including legal aspects of electronic single window facilities, carried out with the United Nations Economic and Social Commission for Asia and the Pacific (escap), as well as technical assistance and coordination activities in the field of electronic commerce, including through the uncitrals Regional Centre for Asia and the Pacific (see p. 000).

With regard to possible future work, the Commission expressed support for proposals by Austria, Belgium, France, Italy and Poland on legal issues related to identity management and trust services [A/
CN.9/854); by Canada on contractual issues in the provision of cloud computing services [A/CN.9/856]; and by Colombia on issues relating to mobile commerce and payments effected with mobile devices [A/CN.9/WG.IV/WP.133]. It was indicated that the work on identity management and trust services could deal with the use of public trust frameworks for commercial relations; work in the field of cloud computing could take the form of guidance material and covered the perspectives of service providers, users and concerned third parties; while matters relating to payments with electronic means had great relevance for international trade and it might be desirable to update existing UNCTIRAL texts in that field; any work proposal required further illustration given the complexity of the subject. The Commission instructed the Secretariat to conduct preparatory work in those areas, including through the organization of colloquia and expert group meetings, and to share the results with Working Group IV, for consideration by the Commission at its forty-ninth (2016) session.

Noting that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission encouraged the Working Group to finalize its work and submit the results at the Commission’s forty-ninth session. It was also proposed to consider at a later stage the possibility of supporting the effective use of a model law on electronic transferable records by providing additional guidance for its implementation in the fields of carriage of goods and of financing.

At its fifty-second session (Vienna, 9–13 November) [A/CN.9/863], Working Group IV engaged in discussions on a draft Model Law on Electronic Transferable Records, based on the Secretariat’s note [A/CN.9/WG.IV/WP.135 & Add.1]. The Secretariat was requested to revise the draft provisions on electronic transferable records based on the Working Group’s deliberations and decisions. The Secretariat was also asked to explore the possibility of holding a colloquium on legal issues related to identity management and trust services.

**Insolvency law**

UNCTIRAL [A/70/17] noted the progress made by Working Group V (Insolvency Law) at its forty-sixth (Vienna, 15–19 December 2014) [A/CN.9/829] and forty-seventh (New York, 26–29 May) [A/CN.9/835] sessions with regard to facilitating cross-border insolvency of multinational enterprise groups, obligations of directors of enterprise group companies in the period approaching insolvency, and recognition and enforcement of insolvency-related judgements. It observed that reaching consensus on a text on enterprise groups would be a significant step in the development of cross-border insolvency law that could assist in maximizing value for creditors around the world. The Commission also noted the steps to facilitate close coordination with the Hague Conference on Private International Law regarding recognition and enforcement of insolvency-related judgements.

The Commission also considered a Secretariat note on insolvency treatment of financial contracts and netting and sovereign debt restructuring [A/CN.9/851], providing information on recent developments of relevance to the provisions of the UNCTIRAL Legislative Guide on Insolvency Law [YUN 2010, p. 1341]. It agreed that Working Group V should focus on the issues currently before it and that work on updating the Legislative Guide in relation to the insolvency treatment of financial contracts should not be taken up at this time.

At its forty-eighth session (Vienna, 14–18 December) [A/CN.9/864], Working Group V commenced its deliberations on the texts concerning key principles of a regime to address insolvency in the context of enterprise groups [A/CN.9/WG.V/WP.135], revised draft legislative provisions on the cross-border insolvency of enterprise groups [A/CN.9/WG.V/WP.134] as well as the cross-border recognition and enforcement of insolvency-related judgements [A/CN.9/WG.V/WP.135].

**Procurement and public-private partnerships**

The Commission [A/70/17] had before it a Secretariat note on procurement and infrastructure development [A/CN.9/850], which addressed suspension and debarment in public procurement and public-private partnerships (PPPs) as two possible areas of legislative development. The Commission supported the proposal that the Secretariat should engage in preparatory work towards the possible development of a legislative text in the area of procedural rules for supplier exclusion (suspension and debarment) in public procurement, noting that it could support the use of the UNCTIRAL Model Law on Public Procurement [YUN 2011, p. 1291]; the Secretariat was instructed to report to the Commission at its 2016 session on the results of its exploratory work on the question.

Further to its 2014 decision [YUN 2014, p. 1531], UNCTIRAL discussed further the possibility of future work in PPPs, in the light of the recommendation of the 2014 colloquium [ibid.] to develop a Model Law and accompanying Guide to Enactment on PPPs and based on the Secretariat’s proposal further to its preparatory work in the area of privately-financed infrastructure projects. The Commission decided to keep the topic on its agenda and asked the Secretariat to continue following the situation and report further to the Commission in 2016.

**International contract law**

Further to its 2014 decision [YUN 2014, p. 1532] to hold a colloquium to recognize the thirty-fifth an-

During an expert panel discussion organized at the forty-eighth session, it was recognized that the United Nations Sales Convention had been the model for a number of legislative texts at the regional and national level, and the desirability of coordinating the preparation of treaties and other texts on international sales law at the global and regional level was stressed. It was added that further work might be possible in some areas on which consensus could not be achieved at the time of the conclusion of the Convention, but which were dealt with in subsequent uniform texts. It was further noted that the Convention was particularly suitable as a model for national law since it compiled provisions that might otherwise be scattered in different texts and made reference to the desirability of taking into account the developments in legal thinking and business practice since the Convention’s adoption, including the importance of enabling the use of new technologies.

The Commission asked the Secretariat to report at its forty-ninth (2016) session on further activities to celebrate the thirty-fifth anniversary of the United Nations Sales Convention, and to report periodically on promotional and capacity-building activities aimed at supporting the Convention implementation.

Case law on UNCITRAL texts

The Commission [A/70/17] considered a Secretariat note [A/CN.9/837] describing technical cooperation and assistance activities undertaken since 2014. The Commission noted that the number of activities remained limited due to the lack of resources, and reiterated its appeal for either multi-year or specific-purpose contributions to the UNCITRAL Trust Fund for Symposium to enable the Secretariat to meet the increasing number of requests from developing countries and economies in transition. The Secretariat was requested to continue exploring alternative sources of extrabudgetary funding, and was encouraged to seek cooperation with international organizations and bilateral partners in the provision of technical assistance.

In response to its 2010 request to consider ways of better integrating its technical cooperation and assistance into UN activities conducted on the ground, the Commission had before it a note by the Secretariat [A/CN.9/845] proposing draft guiding principles on strengthening UN support to States to implement sound commercial law reforms as well as an operational framework. After discussion, the Secretariat was requested to revise the draft guidance note based on comments to be received from States.

The Commission also considered a Secretariat note [A/CN.9/842] on the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific. The Regional Centre ensured coordination and cooperation with regionally-based institutions such as ESCAP, the Association of Southeast Asian Nations (ASEAN), the Asia-Pacific Economic Cooperation (APEC) and the Asian Development Bank, and instituted subregional and national seminars promoting several international trade law topics, enhancing regional engagement with the Commission’s current work, stimulating exchange of implementation...
uncitral activities in legislative development, implementation, use and understanding of uncitral texts, as well as proposed prioritization and allocation of uncitral resources. It took note of the progress of its Working Groups, confirmed their mandates and requested the Secretariat to continue support activities to the extent that its resources permitted.

The Commission agreed to hold a third uncitral Congress to commemorate its fiftieth anniversary in 2017 and requested the Secretariat to make proposals to the Commission at its forty-ninth (2016) session. uncitral approved the holding of its forty-ninth session in New York from 27 June to 15 July 2016. It also approved the schedule of meetings for its working groups up to and after its forty-ninth session.

GENERAL ASSEMBLY ACTION

On 14 December [meeting 75], the General Assembly, on the recommendation of the Sixth Committee [A/70/507], adopted resolution 70/115 (Report of the United Nations Commission on International Trade Law on the work of its forty-eighth session) without vote [agenda item 81].

Other questions

Rule of law at the national and international levels

In July, pursuant to General Assembly resolution 69/123 [YUN 2014, p. 1536], the Secretary-General submitted his annual report [A/70/206] on strengthening and coordinating UN rule-of-law activities. The report analyzed the role of multilateral treaty processes in advancing the rule of law at the international level, highlighting the development and promotion of the international framework of norms and standards, and summarized activities to foster the rule of law relating to action by international and hybrid courts and tribunals as well as non-judicial dispute resolution and accountability mechanisms such as commissions of inquiry or fact-finding missions. The Secretary-General noted that UN assistance to strengthen the rule of law at the national level sought to enhance Member States’ capacities in implementing international norms and standards, in particular through the Rights up Front initiative to prevent or respond to human rights or humanitarian law violations; support for constitution-making and law reform; strengthening judicial systems and improving access to justice; reforming security sector, police services and prison systems; and supporting transitional justice processes and action against impunity, with special attention to the problem of statelessness and the right to a nationality, refugees and internally displaced persons, gender-based violence and conflict-related sexual
violence, protection of children, combating corruption and transnational organized crime, countering terrorism as well as fighting human trafficking and the smuggling of migrants. The rule of law was also in the centre of UN activities to ensure sustainable urbanization and protection of the environment.

Efforts continued to enhance coordination and coherence within the UN system both at Headquarters and at country levels, within the framework [YUN 2013, p. 1349]. The Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit, facilitated the sharing of Member States’ experiences in advancing specific areas of the rule of law. In addition to the Group, a number of inter-agency working groups and task forces also fostered coordination around specific issues. The Department of Peacekeeping Operations (DPKO) and the United Nations Development Programme (UNDP) continued to support joint planning efforts in eight countries. The global focal point benefited from co-located partners from the Office of the UN High Commissioner for Human Rights (OHCHR) and UN-Women and the engagement of other United Nations rule of law entities.

Since its inception in September 2012, the global focal point had provided support in 19 crisis-affected situations, including those in Afghanistan, Burundi, the Democratic Republic of Congo, Guinea-Bissau, Haiti, Jamaica, Liberia, Libya, Mali, Sierra Leone, Somalia, South Sudan, Sri Lanka and Yemen; between August 2014 and May 2015, it supported 14 joint visits and nine technical experts, as well as joint planning efforts in eight countries. The global focal point also made progress in operationalizing deployment across entities, such as using the DPKO Standing Police Capacity for non-mission settings in Chad, Mozambique, Sierra Leone and Sri Lanka. In Mali, it deployed experts from the DPKO, UNDP, OHCHR, UN-Women and UNODC to develop a joint programme to support the reform of the criminal justice chain. At the country level, joint strategies developed with the assistance of the global focal point, such as in Mali and Darfur, enabled a more unified approach to response to locally identified priorities; a rule-of-law framework implemented in the Central African Republic mobilized funding in excess of $20 million to support national prosecutors and investigative judges; and in a number of settings, funds raised by the global focal point contributed to increased community security, such as through a joint project in countries affected by the Ebola crisis and by providing support to the Narcotics Brigade in Bamako.

**GENERAL ASSEMBLY ACTION**

On 14 December [meeting 75], the Assembly, on the recommendation of the Sixth Committee [A/70/511], adopted **resolution 70/118** (The rule of law at the national and international levels) without vote [agenda item 85].

On 21 July, the Economic and Social Council, by **resolution 2015/19** (see p. 000), recommended to the General Assembly the adoption of a draft resolution on the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, containing the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation.

On 17 December, the Assembly adopted **resolution 70/174** (see p. 000) on that topic, which contained the Doha Declaration acknowledging that sustainable development and the rule of law were strongly interrelated and mutually reinforcing and recognizing the importance of crime prevention and criminal justice systems as a central component of the rule of law. The Assembly requested UNODC, in the development and implementation of its technical cooperation programmes, to aim for sustainable and long-lasting results when assisting Member States in rebuilding, modernizing and strengthening criminal justice systems as well as promoting the rule of law. Also on 17 December, in its **resolution 70/178** (see p. 000), the Assembly further requested UNODC to continue providing technical assistance to Member States to strengthen the rule of law, taking also into account the work undertaken by other UN entities, and to ensure coordination and coherence, including through the Rule of Law Coordination and Resource Group.

**Strengthening the role of the United Nations**

**Special Committee on United Nations Charter**

In accordance with General Assembly resolution 69/122 [YUN 2014, p. 1340], the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its seventieth session (New York, 17–25 February) [A/70/33], considered proposals relating to the maintenance of international peace and security; the peaceful settlement of disputes; the status of the publications Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council; and working methods of the Committee and identification of new subjects.

Regarding the maintenance of international peace and security, the Committee considered the question of the implementation of the Charter provisions relating to assistance to third States affected by sanctions. Many delegations stated that the issue of sanctions remained of concern and reiterated that sanctions
should not be used as blunt instruments designed to punish the population of the target country; sanctions were not applicable as a response to all violations of international obligations. Concern was also expressed over the imposition of unilateral sanctions in violation of international law. For several delegations, sanctions applied in accordance with the UN Charter and in a targeted fashion had reduced the possibility of adverse consequences for civilian populations and third parties; other delegations noted that targeted sanctions might still have unintended effects on civilian populations and on third States. Several delegations emphasized that sanctions should be applied in conformity with the UN Charter and international law, and imposed as a last resort when there existed a threat to international peace and security, a breach of peace or an act of aggression; the Security Council’s power to implement sanctions should not exceed its own authority under the UN Charter and there should be a mechanism for the Council to promptly lift all sanctions when there were no grounds for having them. The view was expressed that sanctions should have clearly defined objectives and a specified time frame, should be held under continuous review and should be lifted as soon as their objectives had been achieved; their imposition must be based on tenable legal grounds.

Some delegations expressed support for providing possible compensation to targeted or third States for damage caused by unlawfully imposed sanctions and reiterated that the International Law Commission consider the legal consequences of sanctions imposed arbitrarily by the Security Council. Several delegations noted that none of the sanctions committees had been approached by Member States with regard to special economic problems arising from the implementation of sanctions since 2003. They also noted that in 2014, neither the Assembly nor the Economic and Social Council had found it necessary to take any action relating to that matter. Therefore, the question of assistance to third States affected by the application of sanctions should not be a matter of priority for the Committee and did not merit further discussion.

The Special Committee had before it Libya’s revised proposal on strengthening the role of the United Nations in the maintenance of international peace and security [YUN 1998, p. 1233]. Libya reiterated its willingness to engage in a discussion on the proposal, recalling that it recommended considering ways and means to bolster the role of the General Assembly and to enhance the relationship between the Assembly and the Security Council, elaborating criteria to ensure that the Council’s composition reflected the UN membership and an equitable geographical distribution, and formulating a definition of what constituted a threat to international peace and security under Chapter VII of the Charter.

The Special Committee also discussed a further revised working paper 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”, submitted by Venezuela in 2011 [YUN 2011, p. 1301]. Several delegations reiterated their concern that the Security Council had encroached on the functions and powers of the General Assembly and the Economic and Social Council by addressing issues that fell within their competence; there was a need to establish the right balance of functions and powers among each principal organ of the United Nations. Some delegations expressed support for the proposal and maintained that the Special Committee was a proper forum to consider it; others maintained that the responsibilities of the principal UN organs were adequately defined in the UN Charter and that the proposal duplicated other efforts aimed at revitalizing the Organization. Venezuela announced that it would continue to hold bilateral discussions on the proposal.

The Special Committee considered the further revised working paper submitted by Belarus and the Russian Federation in 2014 [YUN 2014, p. 1538], in which it was recommended that an advisory opinion be requested from the International Court of Justice (ICJ) as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. The co-sponsors pointed out that the advisory opinion would contribute to the clarification of the provisions of the Charter regarding the use of force and to the strengthening of the principle of the non-use of force. Several delegations expressed their support for the proposal; some others reiterated that they could not support it.

The Special Committee also considered a working paper entitled “Strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations”, submitted by Cuba in 2012 [YUN 2012, p. 1324]. Cuba underlined that the objective of the working paper was to look for formulas to achieve the balance envisaged in the Charter between the mandates of the principal organs, in particular those of the General Assembly and of the Security Council. It reiterated that the working paper included five recommendations for consideration, including a study of Chapter IV of the Charter and of its Articles 10 to 14, which pertained to the functions and powers of the Assembly. While some delegations voiced support for the proposal, clarification was sought as to the content and purpose of the recommendations. The view was also expressed that the Special Committee should not pursue activities duplicating or inconsistent with the roles of the principal organs as set forth in the Charter, and that a legal study was not needed. Cuba indicated that it would present a revised working paper at a future session of the Special Committee.

The Special Committee considered the question of an appropriate commemoration of the seventieth
anniversary of the Charter, based on a document entitled “Full validity of the Charter of the United Nations on its seventieth anniversary” [A/AC.182/L.139] presented by Cuba. Following an exchange of views and comments by several delegations, it was proposed that the commemoration should also include an intergovernmental component, taking into account the steps and activities already carried out or planned by the Organization, and that the Chair should transmit the section of the Special Committee’s report on the item to the President of the General Assembly.

On the item entitled “Peaceful settlement of disputes”, delegations reiterated the central role of the ICJ in the peaceful settlement of disputes and the significance of the Manila Declaration on the Peaceful Settlement of International Disputes approved by the Assembly in 1982 and annexed to its resolution 37/10 [YUN 1982, p. 1372]. The Russian Federation recalled its 2014 proposal [YUN 2014, p. 1539] for establishing a website on the peaceful settlement of disputes and updating the United Nations’ 1992 Handbook on the Peaceful Settlement of Disputes between States. Several delegations expressed the view that such endeavours would be beneficial to Member States in providing access to the latest information on mechanisms for the peaceful settlement of disputes, while others questioned the added value and feasibility of those proposals.

The Special Committee also considered a proposal entitled “Pacific settlement of disputes and its impact on the maintenance of peace” [A/AC.182/L.138], submitted by Iran on behalf of the Non-Aligned Movement and aimed at assessing the current use of peaceful means for the settlement of disputes. Iran suggested that an annual review of the issue by the Special Committee would contribute to the more efficient and effective use of such peaceful means, in accordance with Chapter VI of the Charter, and pointed out that the proposal was intended to ensure that the Security Council exhausted the measures set out in Chapter VI, while avoiding the resort to Chapter VII in the absence of an actual threat to international peace and security. Several delegations expressed their support for the proposal, while others requested more time for reflection and consultation. Concern was expressed that the proposal overlapped with discussions under way in other forums of the Organization and that the Special Committee should avoid considering questions relating to the recourse to force, which were already dealt with in the Charter. Following the discussions, Iran stated that the Non-Aligned Movement would present a revised proposal at the Committee’s next session.

Delegations commended ongoing Secretariat efforts to update the Repertoire of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council and eliminate the backlog in the preparation of those publications. Concerning the Repertoire, progress had been made in preparing studies pertaining to volume III, Supplements 7 to 9 covering the period from 1985 to 1999 as well as Supplement 10 for the period from 2000 to 2009. With regard to the Repertoire, Supplement 17 covering the years 2010 and 2011 has been completed, and work continued on Supplement 18, covering the period from 2012 to 2013. The Special Committee recommended that the Assembly call on the Secretary-General to continue efforts to update the two publications and make them available in all language versions, and to address, on a priority basis, the question of the backlog in the preparation of volume III of the Repertoire.

Regarding the identification of new subjects, some delegations suggested examining legal matters relating to the Organization’s reform and revitalization; others called for the consideration of the proposals submitted at previous sessions. It was also suggested that no new proposals should be considered that might envisage amendments to the Charter without the express mandate of the General Assembly; any new subjects should be practical and non-political. The Special Committee considered a proposal entitled “Concept paper by Ghana on strengthening the relationship and cooperation between the United Nations and regional organizations or arrangements in the peaceful settlement of disputes” [A/AC.182/L.137], introduced by Ghana and aimed at filling existing gaps between the United Nations and regional organizations with regard to the coordination of their activities, for example in such areas as regional security, preventive diplomacy, peacekeeping and post-conflict peacebuilding. Several delegations voiced support for the proposal; others stressed the importance of avoiding duplication with discussions pertaining to the relationship between the United Nations and regional organizations being held in other forums of the Organization, Ghana indicated that it would submit a revised proposal at the Committee’s next session.

Reports of Secretary-General. In response to Assembly resolution 69/122 [YUN 2014, p. 1540], the Secretary-General in June submitted a report [A/70/119] on implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions. The report highlighted operational changes that occurred due to the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions; and Secretariat arrangements related to assistance to such States.

Also in response to Assembly resolution 69/122, the Secretary-General reported in August [A/70/295] on progress made in updating the Repertoire of Practice of United Nations Organs and Repertoire of the Practice of the Security Council.
With respect to the Repertory, the Secretary-General recommended that the Assembly note the progress made in the preparation of Repertory studies and their posting on the Internet in English, French and Spanish; consider the recommendations of the Special Committee—including the increased use of the UN internship programme, expanded cooperation with academic institutions for the preparation of the studies and the sponsoring, on a voluntary basis and with no cost to the United Nations; note the progress made towards the elimination of the backlog of the Repertory through use of the trust fund; and strongly encourage States to make additional contributions to it.

With regard to the Repertoire, the Secretary-General recommended that the Assembly note the progress made towards updating the publication and posting it in electronic form in all language versions on the UN website; call for voluntary contributions to the trust fund for the updating of the Repertoire; note with appreciation the sponsoring by Switzerland, on a voluntary basis, of an associate expert to assist in the preparation of the Repertoire, and encourage other States to consider providing such assistance.

GENERAL ASSEMBLY ACTION

On 14 December [meeting 75], the General Assembly, on the recommendation of the Sixth Committee [A/70/510], adopted resolution 70/117 (Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization) without vote [agenda item 84].

UN Programme for the teaching and study of international law

In response to General Assembly resolution 69/117 [YUN 2014, p. 1542], the Secretary-General submitted an October report [A/70/425] on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which covered implementation of the Programme in 2015. Activities included the holding of the fifty-first session of the International Law Seminar (Geneva, 6–24 July) and the convening of the International Law Fellowship Programme (The Hague, 22 June–31 July). The Hamilton Shirley Amrasinghe Memorial Fellowship on the Law of the Sea (see p. 0000) was also awarded in 2015, with funding provided by voluntary contributions.

Lectures, seminars and study visits were organized by the UN Office of Legal Affairs (ola). The Office organized regional courses in international law, including one for African lawyers (Addis Ababa, 2–27 February), and prepared an International Law Seminar for Arab States (Cairo, 15–19 November). Due to the increasing demand for international law training, host country agreements were concluded with Ethiopia, Thailand and Uruguay as permanent venues for regional courses in international law for, respectively, Africa, Asia-Pacific and Latin America and the Caribbean. In response to Assembly resolution 69/117, ola provided guidance to the African Institute of International Law in Arusha in building its research library for African scholars and practitioners as well as for its training seminars on specific topics of international law and African Union law for government officials and practitioners, and cooperated in launching in February a training course on bilateral investment treaties and arbitration. The United Nations Audiovisual Library of International Law had been accessed by more than 1.3 million individuals and institutions in 193 Member States since its creation in 2008; it offered almost 400 lectures by more than 300 eminent international law scholars and practitioners on a broad range of subjects relating to international law, archival materials on almost 100 legal instruments, as well as an extensive online collection of treaties, jurisprudence, publications, scholarly writings, training materials and law journals. Ola provided UN legal publications and training materials on CD-ROMs and USB flash drives and was preparing a handbook on international law in English and French, with legal materials for its training courses, for distribution to academic institutions and government training centres. It continued disseminating materials through the Internet and maintained 24 websites.

The report also provided guidelines and recommendations for the execution of the Programme of Assistance for the 2016–2017 biennium, and outlined administrative and financial implications of UN participation in the Programme during 2015 and 2016–2017.

The Advisory Committee on the Programme held its fiftieth session on 13 October.

GENERAL ASSEMBLY ACTION

On 14 December [meeting 75], the General Assembly, on the recommendation of the Sixth Committee [A/70/508], adopted resolution 70/116 (United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law) without vote [agenda item 82].

Host country relations

At five meetings held in New York (11 February, 1 May, 30 July, 5 and 30 October), the 19-member Committee on Relations with the Host Country considered the following aspects of relations between the UN diplomatic community and the United States, the host country: entry visas issued by the host country; host country activities to assist members of the UN community; and other matters. The recommendations and conclusions on those items, approved by the Committee at its 30 October meeting, were in-
corporated into its report [A/70/26]. The Committee expressed appreciation for the host country’s efforts to maintain appropriate conditions for delegations and missions accredited to the United Nations and anticipated that all issues raised at its meetings would be settled in a spirit of cooperation and in accordance with international law.

Noting the importance of the observance of privileges and immunities, the Committee emphasized the need to solve, through negotiations, problems that might arise in that regard for the normal functioning of accredited delegations and missions. It urged the host country to continue to take appropriate action, such as the training of police, security, customs and border control officers, with a view to maintaining respect for diplomatic privileges and immunities. In case of violations, the Committee urged the host country to ensure that such cases were investigated and remedied, in accordance with applicable law. Considering that the security of missions and the safety of their personnel were indispensable for their effective functioning, the Committee appreciated the host country’s efforts to that end and anticipated that the host country would continue to take all measures necessary to prevent any interference with the missions’ functioning.

The Committee noted that the missions continued to implement the Parking Programme for Diplomatic Vehicles, in force since 2002 [YUN 2002, p. 1338]. It would remain seized of the matter to ensure its proper implementation in a manner that was fair, nondiscriminatory, effective and therefore consistent with international law. It also requested that the host country continue to bring to the attention of New York City officials reports about other problems experienced by permanent missions or their staff, in order to improve the conditions for their functioning and to promote compliance with international norms concerning diplomatic privileges and immunities.

The Committee anticipated that the host country would enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States to travel to New York on official UN business, and noted that a number of delegations had requested shortening the time frame applied by the host country for issuance of entry visas, since the existing time frame posed difficulties for the full-fledged participation of Member States in UN meetings. It remained seized of particular entry visa-related issues raised at its meetings and anticipated that these issues would be duly addressed in a spirit of cooperation and in accordance with international law. The Committee urged the host country to remove the remaining travel restrictions for personnel of certain missions and staff members of the Secretariat of certain nationalities. It also stressed the importance of permanent missions, their personnel and Secretariat personnel meeting their financial obligations.

The Committee expressed concern over the difficulties experienced by some permanent missions in obtaining suitable banking services, which affected those missions’ ability to perform their functions, and welcomed the host country’s efforts to facilitate the opening of bank accounts for permanent missions with other financial institutions.

GENERAL ASSEMBLY ACTION

On 14 December [meeting 75], the General Assembly, on the recommendation of the Sixth Committee [A/70/515], adopted resolution 70/121 (Report of the Committee on Relations with the Host Country) without vote [agenda item 167].