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## International Organizations: The Work of the United Nations in 2014

JAVIER ETCHEVERRY BONEO, CINDY G. BUYS, JEFFREY LING AND LUCÍA REPETTO\*

### I. The United Nations Security Council Resolutions of 2014: The Necessity to Properly Enforce Current Security Council Regulatory Framework

Some of the most important issues that the world faced in terms of international affairs in 2014 were arguably the annexation of Crimea by Russia, the Ukrainian Eastern Provinces conflict, the rise of the Islamic State (“IS”), the Ebola epidemic, and the Syrian conflict. However, a review of the United Nations Security Council (hereinafter, “SC” or “the Security Council”) Resolutions of 2014<sup>1</sup> may lead one to think otherwise, as such issues generated very few or limited resolutions, if any.

Our review of the Resolutions of 2014 suggests that the SC exercises a form of self-censorship when it comes to sensitive issues, especially those involving the interests of the five permanent members of the SC (“P5”). This behavior leads to a disconnect between the formal power and the actual power of the SC, as such issues are eventually dealt with by another group of States outside the UN framework.

This first section will analyze under paragraph A the Resolutions of 2014 in an attempt to classify them first from a geographical perspective, and then from a content perspective. Paragraph B will take a look at the major issues of the international agenda in 2014 and the overlap (or lack thereof) between the SC Resolutions of 2014 and the international agenda. Paragraph C will analyze the application of the UN Charter and the SC’s rules of procedure in 2014 and how self-censorship, the exaggerated presence of invited Member States to the SC meetings, and the lack of a reasonable understanding of the only exemption to the concurring vote provided by the UN Charter undermine the authority of the SC.

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1. *Security Council Resolutions*, UN, <http://www.un.org/en/sc/documents/resolutions/2014.shtml> (last visited Mar. 30, 2015). This article reviews all sixty-three United Nations (“UN”) Security Council resolutions for 2014 (the “Resolutions” or the “Resolutions of 2014”), except S.C. Res. 2195, U.N. Doc. S/RES/2195 relating to threats to international peace and security, which was unavailable at the time of the writing of this article (Dec. 19, 2014).

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A. OUTLINE OF SECURITY COUNCIL RESOLUTIONS IN 2014

Of all of the meetings convened by the Security Council in 2014, 239 were open (on the record), and twenty-two were closed (off the record).<sup>2</sup> Only sixty-three meetings resulted in resolutions being issued, the majority of which were passed by vote unanimously.<sup>3</sup>

1. *Geographical Perspective*

Looking at the Resolutions of 2014, the great majority of them concern issues relating to Africa.<sup>4</sup> Specifically, of the sixty-three Resolutions of 2014, twenty-three were related to sub-Saharan Africa and twenty-six were related to Central Asia, the Middle East and Northern Africa.<sup>5</sup> The rest of the resolutions consisted of: seven that were not region-specific, five related to Europe, and one resolution each for East Asia and the Caribbean, respectively.<sup>6</sup> While these issues are obviously important, the scarcity of resolutions related to Ukraine, for both the Crimean Annexation<sup>7</sup> (0) and the Ukrainian Eastern Provinces conflict<sup>8</sup> (1), Ebola<sup>9</sup> (2), Syria<sup>10</sup> (5) and the IS<sup>11</sup> (2), issues that dominated the international agenda in 2014, is glaring. Aside from the geographical distribution of Resolutions, the length of the Resolutions is also telling. While the resolutions pertaining to Africa and Central Asia are quite lengthy (some of them up to seventeen pages long),<sup>12</sup> resolutions related to more controversial issues were considerably shorter.<sup>13</sup> This pattern seems to suggest that the SC has a tendency to thoroughly engage only when it comes to issues that do not involve a P5 member's interests or main strategic concerns.

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2. See generally *Meetings Record*, UN, <http://www.un.org/en/sc/meetings/records/2014.shtml>. The authors reviewed all 261 SC Meeting Minutes for 2014 with the exception of the Meeting Minutes related to Afghanistan (S.C. Meeting Minutes, 7347th meeting, December 18, 2014, U.N. Doc. S/PV.7347) and Non-proliferation (S.C. Meeting Minutes, 7350th meeting, December 18, 2014, U.N. Doc. S/PV.7350) because they were unavailable at the time of the writing of this article (Dec. 19, 2014), and the ones related to the International Tribunals of Yugoslavia and Rwanda (S.C. Meeting Minutes, 7348th meeting, December 18, 2014, U.N. Doc. S/PV.7348) and the situation in the Central African Republic (S.C. Meeting Minutes, 7349th meeting, December 18, 2014, U.N. Doc. S/PV.7349) because they were under embargo at the time of the writing of this article (Dec. 19, 2014).

3. *Id.*

4. See *supra* note 1.

5. *Id.*

6. *Id.*

7. Note that a draft SC resolution related to the Crimean referendum was vetoed by Russia at the SC meeting on March 15, 2014. S.C. Meeting Minutes, 7138th meeting, March 15, 2014, U.N. Doc. S/PV.7138. Subsequently on March 27, 2014, the UN General Assembly ("GA") adopted a two-page resolution regarding the Crimean Annexation, which unlike Security Council resolutions, are non-binding. G.A. Res. 68/262, U.N. Doc. A/RES/68/262 (Mar. 27, 2014).

8. See S.C. Res. 2166, U.N. Doc. S/RES/2166 (Jul. 21, 2014).

9. See S.C. Res. 2188, U.N. Doc. S/RES/2188 (Dec. 9, 2014) and S.C. Res. 2190, U.N. Doc. S/RES/2190 (Dec. 15, 2014).

10. See S.C. Res. 2139, U.N. Doc. S/RES/2139 (Feb. 22, 2014), S.C. Res. 2163, U.N. Doc. S/RES/2163 (Jun. 25, 2014), S.C. Res. 2165, U.N. Doc. S/RES/2165 (Jul. 14, 2014), S.C. Res. 2191, U.N. Doc. S/RES/2191 (Dec. 17, 2014) and S.C. Res. 2192, U.N. Doc. S/RES/2192 (Dec. 18, 2014).

11. S.C. Res. 2170, U.N. Doc. S/RES/2170 (Aug. 15, 2014) and S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sep. 24, 2014).

12. The resolution that is 17 pages long actually pertains to Afghanistan.

13. See *supra* note 1.

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2. *Doctrinal vs. Substantive Perspective*

Another way to classify the Resolutions is from a content perspective. They can be placed in two categories: substantive and doctrinal. The first type of resolution refers to one that addresses State-specific issues and in some way require follow up (e.g. action from a government or other UN-designated body) or that executes some sort of active conduct (e.g. decides to extend a mandate or applies sanctions).<sup>14</sup> The second refers to a resolution addressing a more general issue (e.g., threats to international security, terrorism, or UN peacekeeping operations in general).<sup>15</sup> Reviewing the Resolutions of 2014, it is interesting to note that of the Resolutions relating to Europe, only one is a State-specific—a condemnation of the tragic downing of Malaysian Airlines flight MH17 in Ukraine—and the rest of them are continuations of peacekeeping operations already in place.<sup>16</sup> On the other hand, the majority of those relating to Africa, the Middle East, and Central Asia are substantive and much more dynamic in their requests and language.<sup>17</sup>

B. MAJOR ISSUES OF 2014

1. *Ukraine*

A list of the key 2014 international affairs issues should prioritize the Crimean Annexation,<sup>18</sup> the Ukrainian Eastern Provinces conflict, and the downing of Malaysia Airlines Flight 17 in Ukraine.<sup>19</sup> However, there is limited discussion of Ukraine in the Resolutions.<sup>20</sup> For example, the only mention of the Ukrainian conflict was in the two-page long Resolution 2166, in which the Security Council “[stressed] the need for a full, thorough and independent international investigation into the [downing of flight MH17]. . .”<sup>21</sup> The Security Council issued no resolution with regard to the Crimean Annexation or the Ukrainian Eastern Provinces conflict.<sup>22</sup> There was also no mention of Crimea and Ukraine in any of the SC Presidential statements in 2014.<sup>23</sup> There was, however, a clear attempt to issue a resolution on March 15, 2014 rejecting the validity of the Crimean referendum, the draft of which was vetoed by Russia (the “7138 Meeting”).<sup>24</sup>

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14. See, e.g., S.C. Res. 2188, U.N. Doc. S/RES/2188 (Dec. 9, 2014).

15. See, e.g., S.C. Res. 2185, U.N. Doc. S/RES/2185 (Nov. 20, 2014).

16. See S.C. Res. 2135, U.N. Doc. S/RES/2135 (Jan. 30, 2014), S.C. Res. 2166, U.N. Doc. S/RES/2166 (Jul. 21, 2014), S.C. Res. 2168, U.N. Doc. S/RES/2168 (Jul. 30, 2014) and S.C. Res. 2183, U.N. Doc. S/RES/2183 (Nov. 11, 2014).

17. See *supra* note 1.

18. Slideshow, *The biggest news stories of 2014*, MSN NEWS, Slide 14, Mar. 12: Annexation of Crimea, <http://www.msn.com/en-us/news/featured/the-biggest-news-stories-of-2014/ss-BBgnPrN#image=14>. (last visited Mar. 30, 2015).

19. Slideshow, *The biggest news stories of 2014*, MSN NEWS, Slide 34, July 17: Malaysia Airlines Flight 17 Shot Down, <http://www.msn.com/en-us/news/featured/the-biggest-news-stories-of-2014/ss-BBgnPrN#image=34> (last visited Mar. 30, 2015).

20. See *supra* note 1.

21. See *supra* note 8.

22. See *supra* note 1.

23. *Presidential Statements*, UN, <http://www.un.org/en/sc/documents/statements/>. Note that we reviewed all 28 SC Presidential Statements for 2014.

24. See *supra* note 7.

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2. *The IS and Syria*

Two other important developments were the rise of the IS in Iraq and the Syrian conflict.<sup>25</sup> The intent of the IS to create an Islamic state is of great concern to the global community given its brutal tactics involving high-profile executions of hostages, extortion and robbery.<sup>26</sup> The IS was briefly discussed in Resolutions 2170 and 2178,<sup>27</sup> where the SC resolved to implement financial, travel, and arms sanctions on the Al Qaida splinter group as part of its counter-terrorism initiative.<sup>28</sup> The conflict in Syria, on the other hand, was addressed in Resolutions 2139, 2163, 2165, 2191 and 2192 where the SC “strongly condemned” the human rights violations and violence taking place there, “called on Member States” to help in the resolution of the conflict, and established a monitoring mechanism for the conflict.<sup>29</sup>

The only other example of a lack of a concurrent P5 vote noted in the 2014 meetings is where a draft SC Resolution related to the referral of the Syrian conflict to the International Criminal Court was vetoed by China and Russia at the SC meeting on May 22, 2014.<sup>30</sup> It is also interesting to note that China, the other party that vetoed the draft Resolution on Syria, abstained from voting on the 7138 Meeting.<sup>31</sup>

3. *Ebola*

The Ebola epidemic that hit Western Africa in March of 2014 continues to ravage the region to this date.<sup>32</sup> The first reported case of the epidemic was in Sierra Leone, later spreading to Liberia, and later on to Senegal, Mali, and Guinea.<sup>33</sup> Since the UN health agency declared an “international public health emergency” in August, the global community has been on high alert in a concerted effort to contain the virus.<sup>34</sup> Outside of the African continent, there have been confirmed cases of the virus in the US (10) and in Europe (12).<sup>35</sup> The SC issued a resolution related to the Ebola outbreak only in the context of its effects on the stability of Liberia.<sup>36</sup>

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25. *See Battle for Iraq & Syria in maps*, BBC (Dec. 3, 2014, 12:19 GMT), <http://www.bbc.com/news/world-middle-east-27838034>; *see also ISIS fast facts*, CNN (Nov. 17, 2014, Updated 17:14 GMT), <http://edition.cnn.com/2014/08/08/world/isis-fast-facts/>.

26. *Id.*

27. *See supra* note 11.

28. *Id.*

29. *See supra* note 10.

30. S.C. Meeting Minutes, 7180th meeting, May 22, 2014, U.N. Doc. S/PV.7180. *See also Russia and China veto UN move to refer Syria to ICC*, BBC NEWS (May 22, 2014 15:59 GMT), <http://www.bbc.com/news/world-middle-east-27514256>. Both China and Russia have historically abstained from voting with regard to issues related to intervention of non-involved states in regional conflicts. *See Saira Mohamed, Shame in the Security Council*, 90 WASH. U.L. REV. 1191, 1196-97 (2013).

31. *See supra* notes 2 and 7.

32. At the time of the writing of this article (Dec. 19, 2014). *See Ebola: Mapping the outbreak*, BBC NEWS (Dec. 16, 2014, 09:41 GMT), <http://www.bbc.com/news/world-africa-28755033>; *see also WEST AFRICA - EBOLA OUTBREAK - FACT SHEET #11 (FY 15)*, USAID (Dec. 10, 2014, Updated 17:14 GMT), <http://www.usaid.gov/ebola/fy15/fs11>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *See supra* note 9.

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C. FLAWED CONSTRUCTION OF PROCEDURAL MATTERS UNDERMINE THE SECURITY  
COUNCIL'S AUTHORITY

2014 witnessed three notable SC behaviors: a trend toward self-censorship with respect to sensitive issues; a continued use of invitations to non-SC members to participate in SC meetings that particularly affect an SC member's interest, and a lack of enforcement of the abstention rule in SC voting.

1. *The Security Council's Self-Censorship*

As can be seen from the above, it appears there is a tendency to sidestep sensitive issues within the SC that seems to be related to what may be called self-censorship to avoid the exercise of the veto power. In 2014, the Security Council was unable to issue a resolution or take any substantive action (e.g. sanctions) with regard to the annexation of Crimea by Russia.<sup>37</sup> After the 7138 Meeting, the issue of Crimea was not materially discussed again in the SC<sup>38</sup> despite actions by the Russian Federation that arguably warranted a SC response, namely, the Russian decree issued on March 21, 2014 finalizing the legal process of annexing Crimea to the Russian Federation.<sup>39</sup> This action probably should have merited an SC response, but instead was discussed in meetings that never led to another draft resolution on the matter.<sup>40</sup>

This is not to say that no international sanctions were imposed on Russia. In fact, the United States and the European Union have both passed a number of sanctions entailing travel bans and asset freezes for certain Russian and Crimean nationals.<sup>41</sup> Collective international action was taken, but it was done so outside of the UN context, and in this way, formal power and actual power drifted apart in 2014.

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37. The goal of this section is not to judge the dispute on Crimea nor the Russian actions in this regard. In fact, this section refers to the Crimean annexation only because it is incidentally one of the most crucial geopolitical bilateral disputes of 2014, but the procedural weakness arising from the conflict of interest in the construction of paragraph 3 of Article 27 of the Charter of the United Nations, the resulting self-censorship and the abuse of invitations of Member States discussed in this article are probably applicable to other past cases related to different P5 members.

38. *Meetings Record*, UN, <http://www.un.org/en/sc/meetings/records/2014.shtml> (last visited Mar. 30, 2015). The authors reviewed all 261 SC Meeting Minutes for 2014 to the extent available at the time of the writing of this article (Dec. 19, 2014), noting some mentions of the Crimean Annexation, but no further SC actions after the 7138 Meeting. The only UN action on the issue was the issuance of a non-binding resolution was passed in General Assembly. Sangwon Yoon, *Crimea Resolution Backed by U.S. Barely Gets UN Majority*, BLOOMBERG NEWS (Mar. 27, 2014), <http://www.bloomberg.com/news/articles/2014-03-27/crimea-resolution-backed-by-west-barely-gets-un-majority>. See also *supra* notes 2 and 7.

39. *Crimea, Sevastopol officially join Russia as Putin signs final decree*, RT (March 21, 2014 09:10), <http://rt.com/news/russia-parliament-crimea-ratification-293/>.

40. See *supra* note 38.

41. See, e.g., *Ukraine crisis: Russia & sanctions*, BBC NEWS (Dec. 19, 2014), <http://www.bbc.com/news/world-europe-26672800>; see also David Francis & John Hudson, *White House on the Fence on New Ukraine Sanctions*, FOREIGN POLICY (Dec. 15, 2014 4:03pm), <http://foreignpolicy.com/2014/12/15/white-house-on-the-fence-on-new-ukraine-sanctions/>.

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2. *The Invitation of other Member States to Participate in SC Meetings*

Rules 37 and 38 of the Provisional Rules of Procedure of the SC<sup>42</sup> provide a mechanism that allows the SC to invite non-SC parties or Member States to participate in SC meetings and draft resolutions. The year 2014 shows significant participation from Member States through invitations to the SC. Such participation is standard and probably is grounded in a desire to promote transparency in the SC. However, it is not always clear that it is advantageous to have a large number of participants at SC meetings. In fact, there is a perception that in certain instances, such as in the 7138 Meeting, the presence of non-SC members was not arranged in good faith.

Of the 261 total SC meetings in 2014, 142 included at least one non-SC member under Security Council Rules of Procedure 37 and 38, generally the State that was the topic of the meeting.<sup>43</sup> Of those 142 meetings, twenty-nine meetings had more than fifteen non-SC members present, including those instances where the veto was used, such as in the 7138 Meeting.<sup>44</sup> However, those instances where the veto was not used can be distinguished from those where it was used in that they addressed very broad issues which truly deserve the presence of invited non-SC members such as the protection of civilians, children and armed conflict, and non-proliferation of weapons of mass destruction. Thus, it can be inferred that in those meetings related to very specific matters where the vetoes were used, the non-SC members were probably invited in order to generate a form of public derision upon the exercise of a given P5 member's veto.<sup>45</sup>

To avoid abuse, use of the mechanism allowing the participation of other member States pursuant to Rule 37 may need to be more restricted in the future. However, it should be retained for its usefulness in incorporating relevant non-SC party opinions in order to make the discussion more thoughtful (e.g. Germany in the context of the 2014 Ukrainian Crisis).

3. *The Right to a Concurring Vote*

Article 27, paragraph 3, of the Charter of the United Nations provides that a party to a dispute under consideration by the SC must abstain from voting on matters relating to that dispute.<sup>46</sup> The Resolutions underline the intrinsic conflict of interest of the veto power in the context of a bilateral conflict between a P5 member and any other Member State, as opposed to a situation when a concurring vote is denied in the context of a global or regional conflict. Looking at the vetoes exercised in 2014, it is notable that there were two of a very different nature: the one used by Russia in the case of the draft resolution on the referendum on Crimean Annexation<sup>47</sup> and the vetoes used by China and Russia on the

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42. *Provisional Rules of Procedure of the Security Council*, R. 37-38, U.N. Doc. S/96/Rev.7 (Dec. 21, 1982), available at <http://www.un.org/Docs/sc/scrules.htm>.

43. See *supra* note 1.

44. *Id.*

45. See Adam Hehir, *World Order, Human Rights, and the Security Council Veto*, E-INTERNATIONAL RELATIONS (Sep. 2, 2014), <http://www.e-ir.info/2014/09/02/world-order-human-rights-and-the-security-council-veto/>.

46. See *supra* note 44 and Draft S.C. Res. 189, U.N. Doc. S/2014/189 (Mar. 15, 2014).

47. *Id.*

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draft resolution related to Syria.<sup>48</sup> Aside from the fact that the Russian Federation was the only P5 member that exercised its veto power twice in 2014, a distinction can be made between the two issues. The first case is clearly one in which Russia has a direct interest, and thus falls into the previously-delineated category of an issue predominantly involving a P5 member's interests, while the second involves the fate of a third party (Syria) in the context of a regional conflict, as well as the jurisdiction of an international court such as the International Criminal Court. The first case deals with the issue of legitimacy<sup>49</sup> since the SC as a whole failed to pass a resolution solely because of an interested veto of a P5.

Reviewing the SC meetings of 2014 and the criticisms of how the SC functions we noted that a lot of time is devoted to discussions on reforms to the right of a concurring vote pursuant to the UN Charter and the expansion of the permanent membership of the SC in order to reform the SC's role within the international community.<sup>50</sup> Rather than focusing on reform, time might be better spent focusing on properly enforcing certain existing regulations within the SC's framework; in particular, the application of the restriction on voting provided under paragraph 3 of Article 27 of the UN Charter and the restraint in the use of Rule 37 of the Provisional Rules of Procedure of the Security Council so as to avoid its abuse that damages the relevance of SC membership.

## II. The UN General Assembly

During its 68th and 69th sessions spanning calendar year 2014, the UN General Assembly (GA) adopted resolutions on a wide range of issues. Some of those issues were similar to those under consideration by the SC, such as the Ebola outbreak in West Africa,<sup>51</sup> the territorial integrity of Ukraine,<sup>52</sup> and the human rights situation in Syria.<sup>53</sup> However, the GA's work was naturally far more wide-ranging than that of the SC and included resolutions relating to nuclear weapons and weapons of mass destruction,<sup>54</sup> space activities,<sup>55</sup> migrant children,<sup>56</sup> the death penalty,<sup>57</sup> and the drug problem,<sup>58</sup> among many other issues. It also considered country-specific and regional matters, including the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia,<sup>59</sup> UN operations and peacekeeping missions in Côte d'Ivoire, Cyprus, Congo, Timor-Leste, Haiti, Kosovo, Liberia, Lebanon, Sudan, South Sudan, Syria, Dafur and the Central African Republic,<sup>60</sup> and the peaceful settlement of the

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48. See *supra* note 44 and Draft S.C. Res. 348, U.N. Doc. S/2014/348 (May 22, 2014).

49. See David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 A.J.I.L. 552, 558 (Oct. 2003).

50. See Caron, *supra* at 566-88.

51. See, e.g., A/RES/69/1. UN General Assembly resolutions may be found on its website here: <http://www.un.org/en/ga/69/resolutions.shtml>.

52. See, e.g., A/RES/68/262.

53. See, e.g., A/RES/69/189.

54. See, e.g., A/RES/69/39.

55. See, e.g., A/RES/69/38.

56. See, e.g., A/RES/69/187.

57. See, e.g., A/RES/69/186.

58. See, e.g., A/RES/69/200 and 201.

59. See, e.g., A/RES/68/274.

60. See, e.g., A/RES/68/285-299.

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question of Palestine.<sup>61</sup> Finally, the UN GA approved one new convention in 2014, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration,<sup>62</sup>

### III. The Work of the International Law Commission (ILC)

The International Law Commission (ILC) held its sixty-sixth session in 2014 at the United Nations European Headquarters from May through August. Highlights of the session included: (1) adoption of articles on the expulsion of aliens; (2) adoption of articles on the protection of persons in the event of disasters; and (3) conclusion of the ILC's work on the obligation to extradite or prosecute.<sup>63</sup> In addition, the ILC voted to include the topics of "crimes against humanity" and "jus cogens" in its program of work.<sup>64</sup> The ILC also continued work on the following topics:

- The ILC considered the third report of the Special Rapporteur (A/CN.4/673) on "Immunity of State officials from foreign criminal jurisdiction" and referred two draft articles to the Drafting Committee;
- The ILC provisionally adopted five draft conclusions from the Special Rapporteur's second report (A/CN.4/671) regarding the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties";
- The ILC reconstituted the Study Group on the "Most-favored-nation clause";
- The ILC debated the second report of the Special Rapporteur (A/CN.4/675) on the "Provisional application of treaties";
- After considering the second report of the Special Rapporteur (A/CN.4/672) on "Identification of customary international law," the ILC referred eleven draft conclusions to the Drafting Committee;
- The ILC debated the preliminary report of the Special Rapporteur (A/CN.4/674) on "Protection of the environment in relation to armed conflicts"; and
- The ILC considered the first report of the Special Rapporteur (A/CN.4/667) on the "Protection of the atmosphere," but deferred the draft guidelines until next year.<sup>65</sup>

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61. *See, e.g.*, A/RES/69/23.

62. A/RES/69/116 (Dec. 10, 2014).

63. *Report of the International Law Comm'n, Summary of the work of the Commission at its sixty-sixth session*, Supp. No. 10, A/69/10 (2014), <http://www.un.org/law/ilc/>.

64. *Id.*

65. *Id.*