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United Nations and International Organizations

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United Nations and International Organizations

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

United Nations and International Organizations

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This article reviews developments in 2017 relating to the United Nations Security Council, the United Nations General Assembly, the United Nations Commission on International Trade Law (UNCITRAL), the Sixth Committee, the International Law Commission, select UN specialized agencies, the International Court of Justice and other international courts and tribunals, and the World Bank Group and other multilateral financial institutions.

I. United Nations Security Council

The UN Security Council in 2017¹ primarily focused on persistent country and regional-specific conflicts, which represented more than three-fourths of the resolutions, and, secondarily, on thematic issues,² including adopting the first resolutions specific to cultural heritage³ and landmines.⁴ With 65 million refugees and displaced people worldwide,⁵ the Security Council faced new and increasingly complex situations of armed conflict, unconventional and digital warfare, mass migration, human trafficking and smuggling, ethnic cleansing, genocide, and terrorism.

A. MAJOR ISSUES OF 2017

1. *Nonproliferation of Nuclear, Biological, and Chemical Weapons*

The Security Council strongly condemned North Korea's nuclear tests and ballistic missile launches as violations of Security Council resolutions,

1. The Security Council consisted of five permanent members – China, France, Russia, the United Kingdom, and the United States – and ten nonpermanent members: Bolivia, Egypt, Ethiopia, Italy, Japan, Kazakhstan, Senegal, Sweden, Ukraine, and Uruguay. United Nations Security Council, Permanent and Non-Permanent Members, <http://www.un.org/en/sc/members/>.

2. See *Security Council Resolutions*, U.N. SEC. COUNCIL, <http://www.un.org/en/sc/documents/resolutions/2017.shtml>. (The Security Council adopted 52 resolutions of the 57 resolutions that were considered this year at the time of writing this article on November 30, 2017).

3. See S.C. Res. 2347 (Mar. 24, 2017).

4. See S.C. Res. 2365 (June 30, 2017).

5. See Adrian Edwards, *Forced Displacement Worldwide at Its Highest in Decades*, UNHCR (June 19, 2017), <http://www.unhcr.org/afr/news/stories/2017/6/5941561f4/forced-displacement-worldwide-its-highest-decades.html>.

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imposed additional sanctions, and called for North Korea to abandon any weapons of mass destruction (WMD) programs.⁶ The Security Council also continued to monitor the implementation of the Iran nuclear agreement, pursuant to Resolution 2231.⁷ A ministerial-level briefing on WMD nonproliferation considered a U.S. concept note on ways to strengthen compliance with Security Council resolutions.⁸

2. *Counterterrorism and Preventing Violent Extremism*

Resolutions reinforced the need to combat terrorism,⁹ implement the United Nations Global Counter-Terrorism Strategy,¹⁰ address threats posed to critical infrastructure,¹¹ prevent and eliminate the supply of weapons to terrorists,¹² and counter terrorist narratives used to recruit supporters and foreign terrorist fighters.¹³ The Security Council extended the sanctions monitoring team for ISIL, Al-Qaida, and the Taliban until 2021.¹⁴ The Security Council also called for intensified peace efforts in Iraq¹⁵ and a new independent team to support domestic efforts to hold ISIL accountable for international crimes committed in Iraq.¹⁶

The Security Council's Counter-Terrorism Committee organized a special meeting on international judicial and law enforcement cooperation.¹⁷ The findings will help inform a report requested by the Security Council identifying major gaps in international cooperation and providing recommendations on how the Counter-Terrorism Committee may address those gaps.¹⁸

3. *Human Trafficking*

The Security Council unanimously adopted a resolution calling for greater cooperation to combat human trafficking, increased enforcement, and increased training of peacekeeping and other UN personnel on how to

6. See S.C. Res. 2375, ¶ 1 (Sept. 11, 2017); S.C. Res. 2371, ¶ 1 (Aug. 5, 2017).

7. U.N. SCOR, 72nd Sess., 7990th mtg., at 2, U.N. Doc. S/PV.7990 (June 29, 2017) (remarks by Under-Secretary-General for Political Affairs).

8. See U.N. SCOR, 72nd Sess., 7990th mtg., U.N. Doc. S/PV.8053 (Sept. 21, 2017).

9. See S.C. Res. 2368, pmb. (July 20, 2017).

10. See S.C. Res. 2370, pmb. (Aug. 2, 2017).

11. See S.C. Res. 2341 (Feb. 13, 2017); Press Release, U.N., Security Council Holds Meeting on Terrorist Threats to Aviation Security (Sept. 27, 2017), <https://www.un.org/sc/ctc/news/2017/09/27/security-council-holds-meeting-terrorist-threats-aviation-security/>.

12. See S.C. Res. 2370 (Aug. 2, 2017).

13. See S.C. Res. 2354 (May 24, 2017).

14. See S.C. Res. 2368, ¶ 94 (July 20, 2017).

15. See S.C. Res. 2367 (July 14, 2017).

16. See S.C. Res. 2379 (Sept. 21, 2017).

17. See Press Release, U.N., #UnitedAgainstTerror: Special Meeting of the UN Counter-Terrorism Committee on International Judicial and Law Enforcement Cooperation (June 21, 2017), <https://www.un.org/sc/ctc/news/2017/06/21/unitedagainstterror-special-meeting-un-counter-terrorism-committee-international-judicial-law-enforcement-cooperation/>.

18. See S.C. Res. 2322, ¶ 21 (Dec. 12, 2016).

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address trafficking situations.¹⁹ The resolution builds on the Security Council's first-ever resolution specific to human trafficking adopted at the end of 2016,²⁰ and this year's General Assembly's Political Declaration on the implementation of the UN Global Plan of Action to Combat Trafficking in Persons.²¹

4. *Cyber and Digital Technologies*

Despite the rise of cyber threats, a UN Group of Governmental Experts was unable to agree on how international law and international humanitarian law apply to cyber conflicts.²² The deadlock, after thirteen years of negotiations, leaves legal uncertainty as to states' use of force and right of self-defense and as to the UN Security Council's Chapter VII powers to maintain international peace and security.

5. *Peacekeeping Reforms*

Confronted with overstretched field operations and reduced budgets, the Security Council sought to strengthen and align its strategic and operational peacekeeping priorities to more effectively address the changing nature, complexity, and scale of existing and emergent peace and security responses. The Security Council unanimously endorsed new structural peacekeeping reforms led by the Secretary-General's office²³ and reiterated the critical importance of preventing and combatting sexual exploitation and abuse.²⁴ The Security Council requested the Secretary-General to provide a report in 2018 on strengthening UN Policing²⁵ and an annual briefing on peacekeeping reforms.²⁶

B. COUNTRY AND REGIONAL SITUATIONS

The Security Council continued to address volatile crises in the Middle East, the Mediterranean, Asia, Africa, and Latin America. UN peacekeepers, acting under authorization of the Security Council, deployed to sixteen operations at the start of 2017,²⁷ closed missions in Haiti²⁸ and

19. See S.C. Res. 2388 (Nov. 21, 2017).

20. See S.C. Res. 2331 (Dec. 20, 2016).

21. See G.A. Res. 72/1 (Sept. 27, 2017); cf. G.A. Res. 71/287 (May 4, 2017); G.A. Res. 71/322 (Sept. 8, 2017) (to prevent trafficking in human organs).

22. Cf. Developments in the Field of Information and Telecommunications in the Context of International Security, <https://www.un.org/disarmament/topics/informationsecurity/> (last visited Nov. 30, 2017) (stating that the UN Group of Governmental Experts (GGE) in 2016-2017 did not reach consensus on a final report).

23. See S.C. Res. 2378 (Sept. 20, 2017).

24. See *id.* ¶¶ 7, 19 (Sept. 20, 2017); cf. S.C. Res. 2272 (2016); G.A. Res. 71/278 (Mar. 10, 2017) (extending zero-tolerance policy throughout UN system).

25. See S.C. Res. 2382, ¶ 4 (Nov. 6, 2017).

26. See S.C. Res. 2378, ¶ 10 (Sept. 20, 2017).

27. See U.N., Fact Sheet on United Nations Peacekeeping Operations (Dec. 31, 2016), <http://www.un.org/en/peacekeeping/documents/bnote1216.pdf>.

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Côte d'Ivoire,²⁹ prepared to close Liberia,³⁰ and downsized in the Democratic Republic of the Congo³¹ and Sudan.³² The Security Council extended the peacekeeping mission in Afghanistan³³ and the verification mission in Colombia.³⁴ It addressed ongoing situations in Africa, including in the Central African Republic,³⁵ Gambia,³⁶ Guinea-Bissau,³⁷ the Lake Chad Basin region (Cameroon, Chad, Niger, and Nigeria),³⁸ Libya,³⁹ Mali,⁴⁰ South Sudan,⁴¹ and Somalia and Eritrea.⁴²

The Security Council, through non-legally binding presidential statements, called on states to comply with international humanitarian law to aid suffering civilians in the Rakhine State of Myanmar,⁴³ Burundi,⁴⁴ and the famine-threatened areas of Yemen, Somalia, South Sudan, and northeast Nigeria,⁴⁵ among other situations worldwide. Conflict situations impeded efforts to address a polio outbreak in Syria⁴⁶ and a cholera epidemic in Yemen.⁴⁷ The Security Council recognized the UN's "New Approach to Cholera in Haiti."⁴⁸

28. See S.C. Res. 2350 (Apr. 13, 2017).

29. See S.C. Res. 2284 (Apr. 28, 2016).

30. See S.C. Res. 2333 (Dec. 23, 2016).

31. See S.C. Res. 2360 (June 21, 2017); S.C. Res. 2348 (Mar. 31, 2017).

32. See S.C. Res. 2386, ¶ 3 (Nov. 15, 2017); *cf.* S.C. Res. 2363 (June 29, 2017); S.C. Res. 2353 (May 24, 2017).

33. See S.C. Res. 2344 (Mar. 17, 2017).

34. See S.C. Res. 2381 (Oct. 5, 2017) (expanding scope to include monitoring compliance with the ceasefire); S.C. Res. 2366 (July 10, 2017).

35. See S.C. Res. 2387 (Nov. 15, 2017); S.C. Res. 2339 (Jan. 26, 2017).

36. See S.C. Res. 2337 (Jan. 19, 2017).

37. See S.C. Res. 2343 (Feb. 23, 2017).

38. See S.C. Res. 2349 (Mar. 31, 2017) (expressing concern with ongoing attacks by Boko Haram and ISIL).

39. See S.C. Res. 2376 (Sept. 14, 2017); S.C. Res. 2362 (June 29, 2017); S.C. Res. 2357 (June 12, 2017).

40. See S.C. Res. 2374 (Sept. 5, 2017); S.C. Res. 2364 (June 29, 2017).

41. See S.C. Res. 2386 (Nov. 15, 2017); S.C. Res. 2363 (June 29, 2017); S.C. Res. 2353 (May 24, 2017) (extending sanctions until May 2018).

42. See S.C. Res. 2385 (Nov. 14, 2017) (extending the arms embargo); S.C. Res. 2383 (Nov. 7, 2017); S.C. Res. 2372 (Aug. 30, 2017); S.C. Res. 2358 (June 14, 2017); S.C. Res. 2355 (May 26, 2017); S.C. Res. 2346 (Mar. 23, 2017).

43. See S.C. Pres. Statement, U.N. Doc. S/PRST/2017/22 (Nov. 6, 2017).

44. See S.C. Pres. Statement, U.N. Doc. S/PRST/2017/13 (Aug. 2, 2017).

45. See S.C. Pres. Statement, U.N. Doc. S/PRST/2017/14 (Aug. 9, 2017).

46. See, e.g., U.N. Secretary-General, Report of the Secretary-General to the Security Council, U.N. Doc. S/2017/982 (Nov. 16, 2017); *cf.* S.C. Res. 2332 (Dec. 21, 2016) (demanding all parties comply with allowing humanitarian relief in Syria).

47. See Press Release, U.N., Briefers Warn Security Council of 'Appalling' Humanitarian Situation in Yemen, as Country Faces Cholera Outbreak, Intensifying Conflict, U.N. Doc. SC/129078 (July 12, 2017).

48. See S.C. Pres. Statement, U.N. Doc. S/PRST/2017/20 (Oct. 17, 2017).

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C. VETOED RESOLUTIONS

Russia vetoed five resolutions related to the investigations of chemical weapons use in Syria as serious violations of international law, its eleventh veto relating to Syria since 2011.⁴⁹ Russia's pattern of vetoes is not unprecedented. China vetoed one of the five resolutions related to Syria.⁵⁰ The United States used its veto to block resolutions related to settlements by Israel for thirty-five years until it changed its policy in December 2016 by abstaining.⁵¹

D. SECURITY COUNCIL REFORMS

Security Council reform discussions in the UN General Assembly explored proposals to improve the effectiveness and ability of the Council to achieve its mission, yet states continued to differ on reforms of membership composition and the veto powers under Article 27 of the UN Charter.⁵² The United States remained opposed to any expansion or alteration of the veto.⁵³

II. United Nations General Assembly

The UN General Assembly's agenda in 2017 included the implementation of the 2030 Sustainable Development Goals, climate change, ocean conservation and sustainability, human trafficking, protecting against enforced disappearances, nuclear nonproliferation, the prevention of sexual exploitation and abuse within international peacekeeping and throughout the UN system, and UN reform.

49. See U.N. SCOR, 72th Sess., 8107th mtg., at 2, U.N. Doc. S/PV.8107 (Nov. 17, 2017); U.N. SCOR, 72th Sess., 8105th mtg., at 3, U.N. Doc. S/PV.8105 (Nov. 16, 2017); U.N. SCOR, 72th Sess., 8073th mtg., at 3, U.N. Doc. S/PV.8073 (Oct. 24, 2017); U.N. SCOR, 72th Sess., 7992th mtg., at 2, U.N. Doc. S/PV.7992 (Apr. 12, 2017); U.N. SCOR, 72th Sess., 7893th mtg., at 4, U.N. Doc. S/PV.7893 (Feb. 28, 2017); cf. U.N. News, *Both ISIL and Syrian Government Responsible for Use of Chemical Weapons, UN Security Council Told* (Nov. 7, 2017), <https://www.un.org/apps/news/story.asp?NewsID=58051#.WnO1qXIG0qM>.

50. See U.N. SCOR, 72th Sess., 7893th mtg., at 4, U.N. Doc. S/PV.7893 (Feb. 28, 2017).

51. See S.C. Res. 2334 (Dec. 23, 2016); cf. U.N. SCOR, 72th Sess., 7853th mtg., at 4-7, U.N. Doc. S/PV.7853 (Dec. 23, 2017).

52. See, e.g., Press Release, U.N., Negotiations on Security Council Reform Must Remain Transparent, Member State-Driven, Delegates Tell General Assembly, U.N. Doc. GA/11970 (Nov. 8, 2017).

53. See *id.*

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A. MAJOR ISSUES OF 2017

1. *Sustainable Development Goals*

The General Assembly continued its focus on advancing and supporting the implementation of the 2030 Sustainable Development Goals (SDGs).⁵⁴ The seventeen SDGs serve as the guiding framework for international development and relate to a range of bilateral, multilateral, and international agreements. Several high-level events of the General Assembly explored how to advance global cooperation to achieve sustainable peace, development, and prosperity for all. Among the events, a High-Level Event on Public-Private Partnerships examined how private investment and action could be leveraged to achieve the SDGs at the local, national, regional, and international levels.⁵⁵ A High-Level Meeting on Climate Change and the Sustainable Development Agenda highlighted the connections between actions required by states pursuant to the 2015 Paris Agreement and commitments to combatting climate change as part of the goals and targets of the SDGs.⁵⁶ The Oceans Conference in June focused on SDG Goal 14 to conserve and sustainably use the oceans, seas, and marine resources.⁵⁷ A key theme was the implementation of international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) and the conventions of the International Maritime Organization, among others.⁵⁸

2. *United Nations Global Plan of Action to Combat Trafficking in Persons*

The General Assembly adopted a resolution on the implementation of the Global Plan of Action to Combat Trafficking in Persons.⁵⁹ The resolution builds on the 2016 New York Declaration for Refugees and Migrants Statement.⁶⁰ The General Assembly recognized the impacts of deteriorating world conditions and the contributing factors of human migration due to armed conflicts, internal political situations, and inadequate sustainable development.

The resolution reaffirms the legal definition of human trafficking. The “trafficking in persons” shall mean the

54. See U.N. Sustainable Development Goals, <https://sustainabledevelopment.un.org/> (last visited Nov. 30, 2017).

55. See U.N. President of the G.A., Statement at the event on Public Private Partnerships: Member State initiatives to Ensure the Success of the Sustainable Development Goals (SDGs) (May 23, 2017), <https://www.un.org/pga/71/2017/05/23/public-private-partnerships-member-state-initiatives-to-ensure-the-success-of-the-sdgs/>.

56. See U.N. President of the G.A., High-Level Event on Climate Change and the Sustainable Development Agenda (Mar. 23, 2017), <https://www.un.org/pga/71/event-latest/climate-change-and-the-sustainable-development-agenda/>.

57. See U.N. President of the G.A., The Ocean Conference (June 5-9, 2017), <https://oceanconference.un.org/>.

58. *Id.*

59. See G.A. Res. 72/1 (Sept. 27, 2017).

60. See G.A. Res. 71/1 (Oct. 3, 2016).

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recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs, as set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁶¹

The General Assembly also expressed its “serious concern” that the international community has not spent enough funds to counter human trafficking operations.⁶² The General Assembly reaffirmed the need for a “voluntary trust fund” for the purpose of assisting states and the international community at large to better combat the problem of human trafficking.⁶³ The General Assembly also recognized the importance of the biennial *Global Report on Trafficking in Persons*, prepared by the United Nations Office on Drugs and Crime, and its role in keeping the General Assembly aware of such developments and the current and future likelihood of implementing the Global Plan of Action.⁶⁴

3. *Enforced Disappearances*

A High-Level Meeting on the Commemoration of the 10th Anniversary of the Adoption of the Convention for the Protection of all Persons from Enforced Disappearances reflected on the achievements of the past decade, provided a platform for lessons learned, and encouraged additional ratifications and accessions.⁶⁵ Some delegates and a representative from civil society expressed concern over new trends in enforced disappearances.

4. *Nuclear Nonproliferation*

The General Assembly adopted a resolution on the report of the International Atomic Energy Agency (IAEA), which addressed strengthening international cooperation in nuclear, radiation, transport, and waste safety and using nuclear energy to help achieve sustainable

61. G.A. Res. 72/1, ¶ 7 (Sept. 27, 2017).

62. *Id.* ¶ 11.

63. *Id.* ¶ 11(a).

64. *See* G.A. Res. 72/1, ¶ 17 (Sept. 27, 2017).

65. *See* U.N. President of the G.A., High-Level Event on the Commemoration of the 10th Anniversary of the Adoption of the Convention for the Protection of all Persons from Enforced Disappearance (Feb. 17, 2017), <https://www.un.org/pga/71/event-latest/high-level-meeting-to-commemorate-the-tenth-anniversary-of-the-adoption-of-the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance/>.

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development.⁶⁶ The General Assembly noted several prior resolutions affirming support for North Korea to abandon its nuclear weapons program and received an update by the IAEA Director General on Iran's implementation of the Joint Comprehensive Plan of Action.⁶⁷ A group of states adopted the Treaty on the Prohibition of Nuclear Weapons, the first of its kind, but the Security Council Permanent Members were among the states that did not participate.⁶⁸

5. *Prevention of Sexual Exploitation and Abuse*

The UN General Assembly remained active in encouraging the UN to take appropriate steps to combat sexual exploitation and abuse in UN peacekeeping through a zero-tolerance policy and for all states to assist in preventing and combating impunity within all non-United Nations forces authorized under a Security Council mandate.⁶⁹ At a High-Level Meeting on the Prevention of Sexual Exploitation and Abuse, the General Assembly recognized states contributing to the UN Secretary-General's Trust Fund for victims and State signatories to a Voluntary Compact with the United Nations that includes specific commitments to protections of peace operations personnel from sexual exploitation and abuse.⁷⁰

6. *UN Reforms*

The United States, in conjunction with other countries, hosted a High-Level Event on UN Reform.⁷¹ More than 120 countries declared their support for a series of reforms outlined in a 10-point declaration.⁷² Some Member States urged modernizing work methods and greater cooperation and harmonization across UN entities, agencies, and other international organizations.⁷³

66. See G.A. Res. 72/5 (Nov. 10, 2017).

67. See Press Release, U.N., Nuclear Energy Could Hold Key to Sustainable Development Gains, Delegates Tell General Assembly, as It Considers International Atomic Energy Agency Report, U.N. Doc. GA/11972 (Nov. 10, 2017).

68. See Rep. of United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, *General and complete disarmament: taking forward multilateral nuclear disarmament negotiations*, Mar. 27-31, June 15-July 7, 2017, U.N. Doc A/72/206 (July 24, 2017).

69. See G.A. Res. 71/297 (June 30, 2017).

70. See U.N. Secretary-General, High-Level Event on the Prevention of Sexual Exploitation and Abuse (Sept. 18, 2017), <https://www.un.org/preventing-sexual-exploitation-and-abuse/>.

71. See U.N. News, More than 120 Countries Back Pledged Reforms to Shape '21st Century UN' (Sept. 18, 2017), <https://www.un.org/apps/news/story.asp?NewsID=57538#.WnPBGHIG0qM>.

72. See *id.*; U.S. Mission to the United Nations, Declaration of Support for United Nations Reform (Sept. 18, 2017), <https://usun.state.gov/remarks/7980>.

73. See Press Release, U.N., Refrain from Using General Assembly for Setting 'Red Lines', 'Static Positions', President Urges, as Delegates Consider Revitalization of Work Methods, U.N. Doc. GA/11973 (Nov. 13, 2017).

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B. U.S. EMBARGO AGAINST CUBA

The General Assembly adopted by vote only one specific resolution regarding the continued U.S. economic embargo against Cuba.⁷⁴ As in previous years, the General Assembly called on the United States to end its economic, commercial, and financial embargo against its Caribbean neighbor, a sanction implemented since 1961.⁷⁵ This resolution was significant in that it was adopted by a vote, 191-2-0, with the United States and Israel voting against.⁷⁶ The previous year, the United States and Israel had voted to abstain. This voting record represented a change in U.S. foreign policy regarding its stance toward Cuba, notwithstanding the normalization of diplomatic relations over the last two-year period.⁷⁷

III. UN Commission on International Trade Law (UNCITRAL)

The United Nations Commission on International Trade Law (UNCITRAL) celebrated its 50th anniversary in July 2017 with a three-day Congress and a series of international colloquia exploring new directions in cross-border commerce. Papers from the colloquia are available on its website.⁷⁸

A. MODEL LAWS

The Commission adopted the UNCITRAL Model Law on Electronic Transferable Records with an Explanatory Note in July 2017.⁷⁹ It is intended to complement the 2007 United Nations Convention of the Use of Electronic Communications in International Contracts, which excluded transferable records from its scope due to issues relating to uniqueness, possession, and the like. In so doing, it followed the general approach of the Convention and earlier UNCITRAL model laws in overlaying electronic commerce provisions over existing law originally written with paper documents in mind. There was some sentiment that the Model Law might prove to be most useful in the bills of lading context, less useful in others.

The Commission finalized and adopted the Guide to Enactment of the UNCITRAL Model Law on Secured Transactions.⁸⁰ The Commission also

74. See G.A. Res. 72/4 (Nov. 10, 2017).

75. *Id.*

76. See Press Release, U.N., As General Assembly Adopts Annual Resolution Urging End to United States Embargo on Cuba, Delegates Voice Concern About Possible Reversal of Previous Policy, U.N. Doc. GA/11967 (Nov. 1, 2017).

77. See *id.*

78. See U.N. Comm'n on Int'l Trade Law [UNCITRAL], 50th Anniversary Colloquia, <http://www.uncitral.org/uncitral/en/commission/colloquia/50th-anniversary-papers.html> (last visited Nov. 30, 2017).

79. See UNCITRAL, Model Law on Electronic Transferable Records (July 13, 2017), http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2017model.html.

80. See Rep. of the U.N. Comm'n on Int'l Trade Law, 50th Sess., July 3-21, 2017, U.N. Doc. A/72/17; GAOR, 72d Sess. Supp. No. 17, ¶¶ 129-229 (2017).

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endorsed the Uniform Rules for Forfeiting of the International Chamber of Commerce.⁸¹ Forfeiting is a means of financing used by exporters, generally in markets with higher levels of credit risks and implied volatility.

**B. UN CONVENTION ON TRANSPARENCY IN TREATY-BASED
 INVESTOR-STATE ARBITRATION**

The United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency) entered into force on October 18, 2017.⁸² It further harmonizes the legal framework for the fair and efficient settlement of disputes between investors and host governments. The Convention's provisions on third-party submissions, public hearings, and publication of key documents from proceedings are similar to those in eleven recently concluded U.S. international investment agreements.⁸³

C. OTHER BUSINESS

The Commission's Regional Centre for Asia and the Pacific, located in South Korea, reported progress in capacity-building and technical assistance in the region.⁸⁴ The governments of Cameroon and Bahrain announced proposals to open additional Regional Centres.⁸⁵

D. UNCITRAL WORKING GROUPS

UNCITRAL's six working groups (WGs) perform the substantive work in drafting, vetting, and recommending modern guides, model laws, and international agreements.

WG I (micro-, small-, and medium-sized enterprises) continued its consideration of a Draft Legislative Guide addressing the legal issues surrounding the simplification of incorporation and on key principles in business registration.

WG II (international dispute settlement) continued its efforts to develop an instrument to enable the enforcement of international commercial settlement agreements resulting from mediation and conciliation, inspired by the successful 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

81. *See id.* ¶¶ 277-79.

82. *See* U.N. Convention on Transparency in Treaty-based Investor-State Arbitration, Dec. 10, 2014 (registered with UN Secretariat and entry into force Oct. 18, 2017) [hereinafter *Mauritius Convention on Transparency*].

83. *See* Message to the Senate – Convention on Transparency in Treaty-based Investor-State Arbitration, 2016 Daily Comp. Pres. Docs., Doc. 00841 (Dec. 9, 2016).

84. *See* Press Release, U.N., Taking Up International Trade Commission Report, Sixth Committee Speakers Applaud Adoption of Texts on Electronic Commerce, Secure Transactions, U.N. Doc. GA/L/3547 (Oct. 8, 2017), <https://www.un.org/press/en/2017/gal3547.doc.htm>.

85. *See id.*

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WG III (investor-State dispute settlement) continued its consideration of a framework for and possible reform of investor-State dispute settlement (ISDS).

WG IV (electronic commerce) conducted preparatory work on the topics of identity management and trust services as well as of cloud computing, with a mandate to report back to the Commission at a future session. In the area of cloud computing, the WG identified as a preferred project the creation of a checklist of contractual issues relating to cloud computing. With respect to identity management and trust services, the WG recognized the importance and ambition of such a project but continued to have difficulty defining its scope and goals.

WG V (insolvency law) continued its consideration of a model law on the recognition and enforcement of insolvency-related judgments, including a guide to enactment, legislative provisions on facilitating the cross-border insolvency of multinational enterprise groups, the obligations of directors of enterprise group companies in the period approaching insolvency, and insolvency of micro-small and medium-sized enterprises.

WG VI (security interests) took up preparation of a Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions, to provide guidance to potential users of the Model Law with respect to contractual issues (such as the types of secured transactions that were possible under the Model Law), transactional issues (such as the valuation of collateral), and regulatory issues related to secured transactions (such as the conditions under which movable assets were treated as eligible collateral for regulatory purposes), as well as financing of micro-businesses (such as the enforcement of security interests).

IV. Sixth Committee

The Sixth Committee is the primary forum for the consideration of legal questions in the UN General Assembly. At a meeting on the topic of “Rule of Law Intervention,” the United States commended the work of the American Bar Association for its “significant contribution to education and assistance in the international legal field, not to mention the numerous U.S. law schools with strong and robust international law programs.”⁸⁶ The United States also commended the “excellent work” of the Office of Legal Affairs to strengthen the rule of law worldwide.⁸⁷

V. International Law Commission

The International Law Commission (ILC), which promotes the development and codification of international law, held its sixty-ninth

⁸⁶ U.S. Mission to the United Nations, Remarks by Minister Counselor Mark Simonoff, Sixth Comm. on Agenda Item 84: Rule of Law Intervention (Nov. 30, 2017), <https://usun.state.gov/remarks/8021>.

⁸⁷ *See id.*

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session at the UN Office in Geneva from May through August of 2017.⁸⁸ The ILC also adopted a draft preamble, articles and annex on Crimes Against Humanity, which the ILC will transmit to governments, international organizations, and others for comments and observations to the UN Secretary-General by December 1, 2018.⁸⁹

The ILC considered four guidelines on the “Protection of the atmosphere” proposed in the fourth report of the Special Rapporteur, which examined the interrelationship with other relevant rules of international law, including the rules of international trade and investment law, the law of the sea, and international human rights law. The ILC provisionally adopted three preambular paragraphs and draft guideline nine on the principle of interrelationship as a means to protect against atmospheric pollution and degradation.⁹⁰

The ILC considered the fifth report of the Special Rapporteur on the immunity of State officials from foreign criminal jurisdiction and provisionally adopted draft article seven, which prohibits immunity of state officials for specific crimes listed in the draft article.⁹¹

The ILC changed the title of the “*Jus cogens*” topic to “Peremptory norms of general international law (*jus cogens*)” and took note of the interim report on draft conclusions two and four to seven, which cover the criteria for *jus cogens*, the acceptance and recognition of criteria, and the need for acceptance and recognition by a large majority of states, rather than by all states.⁹²

The ILC established a “Working Group on Protection of the Environment in Relation to Armed Conflicts” and appointed a Special Rapporteur.⁹³ The ILC also announced its anniversary commemorative event, with the theme “70 Years of the International Law Commission—Drawing a Balance for the Future,” to be held during its seventieth session in New York in May 2018 and in Geneva in July 2018.

VI. UN Specialized Programmes and Agencies

A. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

The United States notified the United Nations Educational, Scientific and Cultural Organization (UNESCO) that it would withdraw from the organization at the end of the year.⁹⁴ The United States expressed concerns

88. Rep. of the Int’l Law Comm’n, 69th Sess., (May 1-June 2, July 3-Aug. 4, 2017), U.N. Doc A/72/10, ¶ 17; GAOR, 72d Sess. Supp. No. 10 (2017).

89. See *id.* ¶¶ 35-46.

90. See *id.* ¶¶ 57-67.

91. See *id.* ¶¶ 68-141.

92. See *id.* ¶¶ 142-210.

93. See *id.* ¶¶ 253-262.

94. See Press Release, U.S. Dep’t of State, The United States Withdraws from UNESCO (Oct. 12, 2017).

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with “mounting arrears at UNESCO, the need for fundamental reform in the organization, and continuing anti-Israel bias at UNESCO.”⁹⁵

B. INTERNATIONAL MARITIME ORGANIZATION

1. Ballast Water Management Convention

The International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWM Convention) entered into force on September 8, 2017.⁹⁶ Water retention within ballast hulls of ships is crucial for balancing purposes, but water intake brings bacteria, microbes, small invertebrates, eggs, cysts, and larvae of various species. When emptied, these organisms enter new host countries, where they may survive and flourish, become invasive in the new environment, or out-compete native species and multiply into pest proportions. With ever-increasing globalization and trade, a significant ecological, economic, and public health issue has developed. The Convention issued two standards—D1 covering ballast water exchange and D2 covering ballast water treatment. Under these standards, ships need to carry proof of a ballast water management plan (addressing needs under D1, D2, or both), carry a ballast water record book, and carry out all protocol to the prescribed standards.⁹⁷

2. International Code for Ships Operating in Polar Waters

The International Code for Ships Operating in Polar Waters (Polar Code) entered in force on January 1, 2017.⁹⁸ The Polar Code addresses all ship and navigational related matters within the Arctic and Antarctic waters, which require different management per their ecosystems and geography. The Polar Code provides mandatory measures covering safety (part I-A) and pollution prevention (part II-A) and recommendatory provisions for both (parts I-B and II-B). Ships will need to get a Polar Ship Certificate and keep a Polar Water Operational Manual onboard. Prohibitions of certain cargo (e.g., crude oils) will also be enforced.

^{95.} *Id.*

^{96.} See IMO, International Convention for the Control and Management of Ships’ Ballast Water and Sediments, MO Doc. BWM/CONF/36, Feb. 16, 2004 (entry into force Sept. 8, 2017) [hereinafter BWM Convention].

^{97.} See generally *id.*

^{98.} See Int’l Maritime Org. [IMO], Maritime Safety Comm., International Code for Ships Operating in Polar Waters, Nov. 21, 2014, Res. MSC.385(94) (entry into force Jan. 1, 2017) [hereinafter Polar Code].

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C. INTERNATIONAL LABOUR ORGANIZATION

1. *Maritime Labour Convention Amendments on Liability*

Liability amendments to the Maritime Labour Convention entered into force on January 18, 2017.⁹⁹ These amendments require each ship to carry a certificate or other document to demonstrate the financial security of the ship owners to compensate seafarers and families in the event of “death or long-term disability of seafarers due to an occupational injury, illness or hazard.”¹⁰⁰ The amendments tack on to the requirements posed by the 2006 MLC, which required a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance to be on board vessels of and over 500 gross tons, and be presented at time of entry to MLC member-states.¹⁰¹

D. UNITED NATIONS OFFICE ON DRUG AND CRIMES

The United Nations Office on Drug and Crimes launched its *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*.¹⁰² The Handbook sets forth advice on managing violent-extremist prisoners, disengaging extremist violent prisoners from violence during their imprisonment, and promoting and enabling social reintegration upon release of the prisoners into society. The Handbook aims to assist Member States and countries charged with managing extremist criminals under their control. It could also be useful for prison staff and policymakers worldwide.

VII. International Courts

A. INTERNATIONAL COURT OF JUSTICE

In *Certain Activities Carried out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), with the parties unable to reach agreement on a compensation amount, Costa Rica initiated the process for the ICJ to decide the amount to be paid by Nicaragua for the material damages caused by its unlawful actions in Costa Rican territory, pursuant to a 2015 judgement.¹⁰³ A key issue of

99. See ILO, Maritime Labour Convention, Feb. 23, 2006 (entry into force Aug. 20, 2013), *as amended* (June 11, 2014) (entry into force Jan. 18, 2017).

100. *Id.*, sec. A4.2.2.

101. See ILO, MLC, 2006: What It Is and What It Does, 2017, <http://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/> (last visited Nov. 30, 2017).

102. See U.N. News, New UN Manual Aims to Address Management of Violent Extremists in Prison Settings (Nov. 7, 2017), <http://www.un.org/apps/news/story.asp?NewsID=55977#.WnPXX3IG0qN>; U.N. Office on Drugs & Crime, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016), https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf.

103. See *Certain Activities Carried out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua) and *Construction of a Road in Nicaragua along the San Juan River* (Nicaragua v.

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dispute is the methodology to determine compensation for the environmental harm.¹⁰⁴

In *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua), Costa Rica disputed a maritime delimitation in the Caribbean and Pacific Ocean with Nicaragua.¹⁰⁵ In a continuing trend of the Court using technical experts in delimitation cases, the ICJ requested input from independent experts based on their site visits of the relevant coastline.¹⁰⁶ Due to contested issues with a related land boundary, this case was joined with the *Isla Portillos* case, as described next.¹⁰⁷

In *Land Boundary in the Northern Part of Isla Portillos* (Costa Rica v. Nicaragua), Costa Rica disputed the precise land boundary separating the two countries at the Los Portillos/Harbor Head Lagoon sandbar from Isla Portillos.¹⁰⁸ Costa Rica asserts that Nicaragua's establishment of military bases on the Isla Portillos beach violated the sovereignty and territorial integrity of Costa Rica, and was in breach of the ICJ's December 2015 judgment in the *Certain Activities* case.¹⁰⁹ The outcome of these two joined cases could impact Costa Rica's maritime and land borders.

B. INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA

The International Criminal Tribunal for the Former Yugoslavia (ICTY) officially closed in 2017.¹¹⁰ Since its establishment in 1993, the ICTY indicted 161 persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1991 and 2001.¹¹¹ The final decisions in the *Ratko Mladic and the Prlic et al.* cases in November 2017 marked the last judgments before the closure.¹¹² After the Appeals Chamber upheld the conviction for Slobodan Praljak, one of six defendants in the *Prlic et al.* case, he drank a liquid in the courtroom,

Costa Rica), Joined Cases Order, 2017 I.C.J. (Feb. 2), Joined Cases Judgment, 2015 I.C.J. Reports 665 (Dec. 16).

104. See *Certain Activities Carried out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua) and *Construction of a Road in Costa Rica along the San Juan River* (Nicaragua v. Costa Rica), Order, 2017 I.C.J. (July 18).

105. See *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua), 2014 I.C.J. (Feb. 25).

106. See *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua), Order, 2016 I.C.J. Reports 235 (May 31).

107. See *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua) and *Land Boundary in the Northern Part of Isla Portillos* (Costa Rica v. Nicaragua), Joined Cases Order, 2017 I.C.J. (Feb. 2).

108. See *Land Boundary in the Northern Part of Isla Portillos* (Costa Rica v. Nicaragua), Application, 2017 I.C.J. (Jan. 16).

109. See *id.*

110. See, e.g., U.N. Secretary-General, Note of the Secretary-General to the General Assembly on the Report of the International Tribunal for the Former Yugoslavia, at 5, U.N. Doc. A/72/266-S/2017/662 (Aug. 1, 2017).

111. See *id.* at 5.

112. See *id.*

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referring to it as “poison,” and later died.¹¹³ The ICTY’s contributions to international criminal law are remarkable.¹¹⁴ The Tribunal was the first international criminal tribunal since the World War II Nuremberg and Tokyo war crime trials, the first tribunal established by the UN Security Council under its Chapter VII powers of the UN Charter, the first to indict a sitting head of state or government, and, at one point, to have women as the three Principals.¹¹⁵

C. PERMANENT COURT OF ARBITRATION

The Permanent Court of Arbitration (PCA) at The Hague, as of November 2017, acted as the registry in five inter-state proceedings, seventy-nine investor-state arbitrations, and forty-seven cases under contracts involving a state or other public entity.¹¹⁶ In another high-profile territorial and maritime boundary case, Croatia refused to accept the Tribunal’s final award in its dispute with Slovenia, alleging a “compromised” arbitration.¹¹⁷ The year before, China similarly rejected the final decision in its South China Sea dispute with the Philippines.¹¹⁸ Among the Tribunal’s highly watched proceedings for whether arbitration can resolve contentious inter-state disputes are the several interrelated boundary and investment disputes between Ukraine and Russia, particularly as related to Crimea and energy activities.¹¹⁹

113. See U.N., Int’l Criminal Tribunal for the Former Yugoslavia [ICTY], Statement on Passing of Slobodan Praljak (Nov. 29, 2017), <http://www.icty.org/en/press/statement-on-passing-of-slobodan-praljak>.

114. Cf. generally ICTY Legacy Dialogues, <http://www.icty.org/en/features/icty-legacy-dialogues> (last visited November 30, 2017).

115. See U.N., President of the ICTY, Letter Dated Oct. 18, 2017 from the President of the Int’l Criminal Tribunal for the Former Yugoslavia to the U.N. General Assembly (Oct. 18, 2017), <http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/171018-president-agius-address-unga.pdf>.

116. See Permanent Court of Arbitration, Cases, <https://pca-cpa.org/en/cases/> (last viewed Nov. 21, 2017).

117. Republic of Croatia, Ministry of Foreign and European Affairs, Termination of the Arbitration Process between Croatia and Slovenia: Causes and Consequences, <http://www.mvep.hr/en/other/termination-of-the-arbitration-process/> (last visited Nov. 30, 2017).

118. See People’s Republic of China, Ministry of Foreign Affairs, South China Seas, Statement on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines (July 12, 2016), <http://www.fmprc.gov.cn/nanhai/eng/>.

119. See NJSC Naftogaz of Ukraine (Ukraine), PCA Case No. 2017-16, <https://pca-cpa.org/en/cases/151/>; Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), PCA Case No. 2017-06, <https://pca-cpa.org/en/cases/149/>; <https://www.pcacases.com/web/view/121>; Stabil LLC, (ii) Rubenor LLC, (iii) Rustel LLC, (iv) Novel-Estate LLC, (v) PII Kirovograd-Nafta LLC, (vi) Crimea-Petrol LLC, (vii) Pirsan LLC, (viii) Trade-Trust LLC, (ix) Elefteria LLC, (x) VKF Satek LLC, and (xi) Stenv Group LLC v. The Russian Federation, PCA Case No. 2015-35, <https://pca-cpa.org/en/cases/122/>.

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VIII. International Financial Institutions

International financial institutions continued to focus on improving economic stability and progress toward achieving the 2030 Sustainable Development Goals.

A. WORLD BANK

In 2017, the World Bank advanced two primary goals—to end extreme poverty by 2030 (SDG Goal 1) and to boost shared prosperity through income growth worldwide.¹²⁰ Over the past year, the World Bank provided \$61.8 billion in loans, grants, equity investments, and guarantees.¹²¹ Specifically, the bank pursued investments in low-carbon energy, safe water and sanitation, digital technology, transport connectivity, public-private sector partnerships to improve infrastructure, agriculture to create jobs, protections for natural resources, and risk reduction reforms, among others. The World Bank also took up issues related to governance, transparency, accountability, corruption, and illicit financial flows in its *World Development Report 2017 on Governance and the Law*.¹²²

B. INTERNATIONAL MONETARY FUND

Thirty-five members contributed approximately \$400 billion to support the operations of the International Monetary Fund (IMF).¹²³ Its International Monetary and Financial Committee advised the IMF to use accommodative monetary policy and growth-friendly fiscal policy to invigorate growth prospects, safeguard financial stability by addressing legacy issues in advanced economies and vulnerabilities in emerging economies, promote inclusion and build trust by implementing domestic policies to develop an adaptable, skilled workforce, and engage in widespread cooperation to tackle shared challenges and support efforts toward reaching the 2030 Sustainable Development Goals.¹²⁴ The IMF's Annual Report reflected these priorities and highlighted that low levels of productivity growth underscore the need for inclusive growth, gender equality, and helping members manage debt.¹²⁵

120. See *World Bank Annual Report 2017*, World Bank (2017), <https://openknowledge.worldbank.org/bitstream/handle/10986/27986/9781464811197.pdf>.

121. See *id.* at 4.

122. See *World Development Report 2017, Governance and the Law*, World Bank (2017), <http://www.worldbank.org/en/publication/wdr2017>.

123. See IMF, Int'l Monetary & Fin. Comm. [IMFC], Communique of the Thirty-Fifth Meeting of the International Monetary and Financial Committee (Apr. 22, 2017).

124. See *id.*

125. See *IMF Annual Report 2017*, IMF (2017), <https://www.imf.org/external/pubs/ft/ar/2017/eng/pdfs/IMF-AR17-English.pdf>.

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C. INTER-AMERICAN DEVELOPMENT BANK

The Inter-American Development Bank (IDB) issued research focused on the persisting economic uncertainty in the Latin America and Caribbean region.¹²⁶ Policy suggestions for improving regional integration and overall economic health included the following: allowing extended accumulation of the rule of origin between existing trade agreements; negotiating new trade agreements to fill in gaps within the region; improving trade facilitation and logistics; and consolidating existing preferences and rules of origin into a region-wide free trade agreement (FTA).¹²⁷ Additionally, the IDB issued a report studying the role of digital technology in economic development and how such technology could be used to improve the less favorable outlook currently facing Latin America and the Caribbean compared to other regions competing in global markets.¹²⁸ This report underscores the need for policies that encourage competitiveness and directly capitalize on e-commerce technologies.¹²⁹ A separate report commissioned by the IDB found that Chile and Colombia are the best-prepared countries in Latin America and the Caribbean to mobilize private investments in infrastructure through public-private partnerships (PPPs) but that domestic laws are needed to improve implementation.¹³⁰

C. EUROPEAN INVESTMENT BANK

The European Investment Bank (EIB) issued its Operational Plans for 2017–2019.¹³¹ These targets focus on four public policy areas. First, the EIB aims to build efficient infrastructure focusing on key improvements to the energy, transportation and mobility, and health sectors.¹³² Second, the EIB seeks to support SMEs and midcaps.¹³³ Third, the EIB aims to prioritize protecting the environment, with a focus on water, waste reduction, and rural infrastructure.¹³⁴ Finally, the EIB aims to promote economic and social cohesion and to take action on climate change adaptation and mitigation.¹³⁵

126. See *Latin American and Caribbean Macroeconomic Report 2017*, Inter-American Development Bank, (2017), <https://publications.iadb.org/bitstream/handle/11319/8805/2018-Latin-American-and-Caribbean-Macroeconomic-Report-A-Mandate-to-Grow.pdf?sequence=1&isAllowed=y>.

127. See *id.* at 75.

128. See Paolo Giordano et al., *Inter-American Development Bank, Trade and Integration Monitor 2017: Beyond the Recovery: Competing for Market Share in the Digital Era* (2017).

129. See *id.*

130. See The Economist, *Evaluating the Environment for Public-Private Partnerships in Latin America and the Caribbean*, 7-8 (2017).

131. See *The EIB Group Operational Plan 2017-2019*, European Investment Bank, (2017), http://www.eib.org/attachments/strategies/operational_plan_2017_2019_en.pdf.

132. See *id.* at 42-45.

133. See *id.* at 40-41.

134. See *id.* at 47.

135. See *id.* at 49-50.

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