

**Measures to eliminate international terrorism**

**Oral report of the Chairman of the Working Group**

*Chairman: Mr. Rohan Perera (Sri Lanka)*

**I. Introduction**

1. On the recommendation of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, the Sixth Committee decided, at its 1st meeting, on 8 October 2007, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

2. At the same meeting, the Sixth Committee elected Mr. Rohan Perera (Sri Lanka) as Chairman of the Working Group. The Committee also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. In keeping with its established practice, the Working Group decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chairman during the meetings of the Working Group. Therefore, Mr. Diego Malpede (Argentina), Ms. Maria Telalian (Greece), Mr. Sabelo Sivuyile Maqungo (South Africa) and Mr. Lublin Dilja (Albania) served as Friends of the Chairman.

4. The Working Group held three meetings, on 11, 15 and 18 October 2007. It had before it the reports of the Ad Hoc Committee on its sixth and eleventh sessions, as well the report made by the Chairman of the Working Group during the sixty-first session of the General Assembly, reproduced in the Summary Records of the Sixth Committee (A/C.6/61/SR.21). It also had before it the letter from the Permanent Representative of Egypt to the Secretary-General, dated 1 September 2005 (A/60/329), and the letter dated 30 September 2005 from the Permanent Representative of Egypt addressed to the Chairperson of the Sixth Committee (A/C.6/60/2).

## **II. Proceedings of the Working Group**

5. At its 1st meeting, on 11 October, the Working Group adopted its work programme and decided to proceed with discussions on the outstanding issues relating to the draft comprehensive convention and, thereafter, consider the question of convening a high-level conference under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Chairman, together with the Coordinator of the draft comprehensive convention, Ms. Maria Telalian, also held bilateral contacts with interested delegations on 16 and 17 October on the outstanding issues relating to the draft comprehensive convention.

6. At its 2nd meeting, on 15 October, the Working Group received a report from the Coordinator on the results of the intersessional bilateral contacts regarding the draft comprehensive convention and, at its 3rd meeting, on 18 October, it received a report on the results of the bilateral contacts held during the current session. This was followed by an exchange of views among delegations. At this meeting, the Working Group also undertook a discussion on the question of convening a high-level conference.

7. The following section of the present report constitutes an informal summary for reference purpose only, not an official record of the proceedings, of the exchange of views, starting with the briefings on the informal bilateral contacts.

**III. Informal summaries by the Chairman of the Working Group concerning the draft comprehensive convention and the question of the convening of a high-level conference**

**A. Summary of briefing on the results of the intersessional informal contacts**

8. In her briefing on the intersessional informal contacts, Ms. Maria Telalian recalled that during the eleventh session of the Ad Hoc Committee, a non-paper relating to the draft comprehensive convention, consisting of a preamble, an addition to article 18, paragraph 4, and a new paragraph 5 to the same article, was presented which sought to capture the concerns of delegations in a way that would facilitate agreement on elements of an overall package. She further recalled that delegations had stressed the need for more time for reflection upon the non-paper and that there was a wish that work should continue intersessionally in an informal setting.

9. Four rounds of informal contacts with delegations were thus organized intersessionally, and they took the form of bilateral contacts and informal meetings with individual or groups of delegations. The bilateral informal contacts, which were announced in the *Journal of the United Nations*, were convened on 29 March, 21 June, 21 September and 4 October. The purpose of the bilateral contacts was to gain further insights into the views of delegations on the elements of the non-paper and to ascertain whether those elements could form the basis of an overall package which would help to move the process forward.

10. During the contacts, delegations declared their commitment in support of the continuing efforts to finalize the draft comprehensive convention as a matter of priority and the discussions focused mainly on draft article 18. While a number of delegations

indicated that the elements seemed to be a step in the right direction, delegates refrained from delving into the substance. In general terms, the need to have a clear delineation between those activities that are governed by international humanitarian law and those covered by the draft convention was emphasized, as well as the need to avoid impunity for military forces acting in their official capacity. There was expression of concern by some members that the use of ambiguous language would leave the implementation of the draft convention open to abuse and that it was not clear to what laws the reference “other laws” in paragraph 4 of the proposal referred. Some members continued to wonder whether the problem posed by paragraphs 2 and 3 would be resolved by their deletion.

11. During the contacts, some delegations also expressed the wish to discuss the outstanding issues relating to the comprehensive convention in the framework of informal consultations in addition to bilateral contacts.

12. Ms. Telalian clarified that the proposed elements sought to bridge the different views that existed among delegations by recognizing that an overlap would exist and that significant direction, without reading specific situations into the text, was given to those that would be responsible for the implementation of the Convention. She stressed the importance of realizing that the draft convention was a law enforcement instrument which would operate in the context of other existing legal regimes.

13. Ms. Telalian concluded her briefing by informing delegations of her participation in a high-level seminar entitled “Towards a Comprehensive Convention on International Terrorism” that took place on 11 and 12 September in Berlin, organized by the German Institute for International and Security Affairs – Stiftung Wissenschaft und Politik (SWP), with the support of the Federal Foreign Office. She noted that such meetings offered different perspectives and might assist in promoting understanding of the intricate issues involved.

**B. Summary of briefing on the results of the informal bilateral contacts held during the current session**

14. In her statement on 18 October, Ms. Telalian noted that the purpose of the informal bilateral contacts had been to clarify how the elements of the non-paper sought to be contextualized in the scheme under the draft convention, in the light of views expressed, both during the Sixth Committee debate on measures to eliminate international terrorism and the bilateral contacts. These issues revolved around a number of certain considerations, including: the importance not to affect the exercise of the right of peoples to self-determination, the need to capture concerns relating to "State terrorism", the satisfactory resolution of matters concerning potential impunity of military forces of a State and the necessity to clearly delineate between activities falling under the scope of the draft convention and those governed by international humanitarian law.

15. It was explained that in the overall scheme of the draft comprehensive convention all these aspects were addressed in draft article 18. It was emphasized that an appreciation of draft article 18, whose constituent elements had to be read as a whole, would be incomplete without relating it to the other articles of the draft convention, in particular draft article 2, which provides, for the purpose of the draft convention, the criminal law definition of acts of terrorism. It was further clarified that paragraph 1 of draft article 2 was first and foremost concerned with "unlawful" conduct by "any person" and that these were key terms. In reading draft article 2, together with draft article 18, the latter only carves out from the scope of the convention certain activities that are regulated by other fields of law.

16. Ms. Telalian further pointed out that in seeking to provide exclusionary elements, it had to be understood that the draft convention would have to operate in the context of an overall international legal framework where other rules of international law are also applicable. It was noted that to the extent possible, there was an attempt in draft article 18 to safeguard the application of such other law and that it did so by not rendering unlawful otherwise lawful acts under such law. At the same time it sought to close any loopholes that may invite possibilities for impunity for certain categories of persons. She recalled

that the efforts in the past several years had been to seek to fine-tune the provisions in ways that close the concerns for gaps of possible impunity.

17. Ms. Telalian also considered it essential to stress three points that embraced the issues that were raised in the bilateral contacts. She first noted that paragraph 1 of draft article 18, which states that nothing in the convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter and international humanitarian law, was not contentious. The paragraph sets out the overarching principles that underpin what is excluded from the scope of the draft convention, including any concerns that relate to the right of peoples to self-determination.

18. Secondly, she explained that the definition of acts of terrorism in draft article 2 includes acts undertaken by “any person”. By excluding certain activities of armed forces in paragraph 2 of draft article 18, the clear understanding had always been that such activities were governed by other rules of international law. It was nevertheless found useful to also address the question of “military forces of a State”, that is to say activities of “armed forces of a State” in peacetime and other persons captured by the definition of “military forces of a State” in article 1 of the draft convention. She recalled that it had been clear from the very beginning that there was a need to close the gap in relation to activities of military forces of a State acting in the exercise of their official duties. Delegations were further reminded that paragraph 3 of draft article 18, provides that activities undertaken by military forces of a State in the exercise of their official duties inasmuch as they are governed by other rules of international law are not governed by this Convention. It was pointed out that in practically all jurisdictions military forces of a State were subject to a code of conduct separate from civilians and that that reality had therefore been reflected in this paragraph. Ms. Telelian emphasized that the phrase “inasmuch as they are governed by other rules of international law” embraced both conduct that may be lawful and unlawful under international law. As read with paragraph 4, it was to be understood that such carve out did not make lawful otherwise unlawful acts. It simply recognized that other laws would apply and did not preclude

prosecution under such laws. She further explained that the addition that was proposed to paragraph 4, in the text submitted during the 2007 session of the Ad Hoc Committee, namely the reference to the fact that “acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws”, together with the new preambular language based on the nuclear terrorism convention, sought to buttress the fact that there was an inner core of conduct which, if committed, would constitute an offence which should remain punishable irrespective of the regime that would apply.

19. Thirdly, Ms. Telalian stressed that paragraph 2 of draft article 18 already established a demarcation between what was covered by the draft convention and activities of armed forces during armed conflict, “as those terms are understood under international humanitarian law”, a phrase which she considered to be not without significance. However, in order to provide further clarity a new paragraph 5, framed as a “without prejudice clause” had been added during the 2007 session of the Ad Hoc Committee. It was recalled that this paragraph consisted of a general “without prejudice” statement which was subsequently elucidated with regard to rules of international law applicable for certain acts which would be lawful under international humanitarian law. It was clarified that the term “lawful” in this context should, from an international humanitarian law perspective, properly be understood with its double negative connotation, i.e., “not unlawful acts” since international humanitarian law does not in a literal sense define which acts are “lawful”, but defines which acts are prohibited. However, in view of the need to distinguish those acts that are “unlawful” under paragraph 1 of draft article 2, which provides that the convention only covers “unlawful activities”, (which proximate also to acts which would be “unlawful” under international humanitarian law) the term “lawful” in paragraph 5 was used as being more appropriate in the circumstances. This paragraph, together with draft article 18 as a whole, had been drafted in such a way as to provide the necessary direction to those that would be responsible for the implementation of the draft convention. It was stressed that it would be for the parties and consequently the judicial authorities to make interpretations in the light of the circumstances in specific cases. What was key to this element was the principle that international humanitarian law was not prejudiced by the convention. It was

further pointed out that if it was not a clean delineation it was precisely because in matters of this nature there is a potential overlap and that if there is a certain overlap, the solution may lie in recognizing that such overlap exists.

20. During the bilateral contacts, some delegations, without delving into the substance of the text, expressed support for the elements and considered that they constituted a step in the right direction towards a compromise solution and served as a useful basis for future deliberations. It was also noted that at the sunset it might be useful to contemplate possibilities of offering the parameters within which the convention had been negotiated in the accompanying resolution. Ms. Telalian expressed the hope that the clarifications she had provided offered additional insights into the issues implicated by the text. It was recognized that delegations might need more time to study and reflect upon the proposal and on the clarifications provided. Delegations were urged to consider the elements carefully and view them as a good faith attempt to find a compromise solution that may be acceptable to all.

21. Ms. Telalian concluded her statement by noting that the issue of the procedure of deliberations had also been raised during the informal meetings. Some delegations considered that the format of bilateral contacts, as combined with the other interventions within the structure of the negotiations, provided a satisfactory informal framework for advancing the process of negotiations.

### **C. Exchange of views in the Working Group**

#### **1. Draft comprehensive convention on international terrorism**

22. As regards the draft comprehensive convention, delegations reiterated their commitment to continue the ongoing efforts aimed at finalizing the draft comprehensive convention on international terrorism. In this context, some delegations expressed support for the proposal made by the Coordinator during the last session of the Ad Hoc Committee, and considered that it constituted a good basis for reaching a compromise

solution on the text. It was noted that the elements, together with the explanations provided by the Coordinator, offered a satisfactory clarification that the draft comprehensive convention did not interfere with the regime of international humanitarian law. In particular, the point was made that the explanation provided by the Coordinator regarding the term “unlawful” in draft article 2, read together with the proposed preambular text and the new paragraph 5 of article 18, made it clear that the convention only covered “unlawful activities”, that the term should be understood in the context of international law and not domestic law, and that such “unlawful activities”, were thus distinguished from acts “not prohibited” under international humanitarian law. The point was also made that this clarification provided by the Coordinator, offered a breakthrough in the deliberations and that it should be part of the *travaux préparatoires* of the draft convention.

23. Some other delegations expressed doubt whether the proposal sufficiently addressed their concerns, in particular the necessity to clearly delineate between activities falling under the scope of the draft convention and those governed by international humanitarian law. It was also pointed out that the proposal still contained ambiguous language that might leave the implementation of the draft convention open to uncertainties. In this context, the need to further study the proposal to understand it better was emphasized, noting that the clarifications provided by the Coordinator during the briefing would be considered together with the proposal. It was reiterated that notwithstanding the difficult elements, delegations remained committed to the on-going process and supported the efforts for the early conclusion of the draft comprehensive convention.

24. Several delegations expressed support for the procedure of deliberations and considered that the format of informal bilateral contacts constituted a constructive and satisfactory mechanism for advancing the process. They encouraged the continuation of these efforts with a view to maintaining the momentum created.

## **2. Question of the convening of a high-level conference**

25. At its 3rd meeting, on 18 October 2007, the Working Group considered the question of the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, as mandated by the General Assembly in resolution 61/40, against the background of the proposal for the convening of a special session of the General Assembly to examine and adopt an action plan for cooperation against terrorism.

26. The representative of Egypt recalled that despite the fact that many international and regional conventions aiming to fight terrorism had been adopted, the number of terrorist acts have continued to increase, particularly in the most recent past. It was also observed that the comprehensive convention had not been yet finalized. Accordingly, it was felt that it was still necessary to reinforce the international cooperation in order to fight terrorism and to address all the aspects of this phenomenon. In order to strengthen the international legal framework to combat terrorism, to act legally as well as politically, at the international and national levels, it was urgent to deal with the question of terrorism in all its aspects and not only from the security angle. In order to better address the problem, it was required to make the link between political, legal, social and economic aspects of the issue. It was also noted that the required balanced approach between all the aspects had unfortunately been lost in the discussion within the United Nations system.

27. The key element of the fight against terrorism would be to send a clear and strong message from the international community, which could take the form of an action plan and a declaration adopted during the high-level conference. The sponsor delegation recalled that it had made some preparatory work, as presented in the working paper circulated to Member States. It concluded by noting that it was timely and relevant to convene such a high-level conference to study the question of terrorism in all its aspects.

28. Some delegations expressed their support for the proposal by Egypt and recalled the importance of convening such a conference, as it would offer an opportunity to look

at the issue from a global perspective, as well as to define terrorism. In this context, it was noted that only a holistic approach to the phenomenon permits the adoption of the proper tools to combat terrorism. Some delegations stated that the convening of the conference should not be linked with, and deferred until, the adoption of the comprehensive convention. On the contrary, the view was expressed that such a conference would be a good opportunity to foster discussion on resolving issues pending in the negotiation of the comprehensive convention.

29. Some other delegations, while not opposed in principle to the proposal, recalled that such a conference or the modalities of its convening would have to take place after the adoption of the comprehensive convention. Some delegations reiterated that they remain to be convinced of the proposal and expressed their concern that efforts should focus on the negotiation of the comprehensive convention. It was also pointed out that the adoption of the United Nations counter-terrorism strategy now pointed to the need for more time and resources to be devoted to its implementation than the convening of another conference.

30. Finally Mr. Chairman, I wish to underline the sense of momentum that has been generated during the current session on the need for the early conclusion of the draft comprehensive convention. I remain convinced that delegates will do their utmost with the requisite political will to pursue every possibility of reaching a compromise solution on the outstanding issues. I am confident that the text proposed by the Coordinator at the last session of the Ad Hoc Committee, together with the very useful additional clarifications presented during the Working Group, contains the potential to facilitate agreement on the elements of an overall package.