

Sixty-ninth session

Sixth Committee

Agenda item 107

Measures to eliminate international terrorism

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Oral report of the Chairman of the Working Group

Chairman: Mr. Rohan Perera (Sri Lanka)

Introduction

1. Pursuant to General Assembly resolution 68/119 of 16 December 2013, the Sixth Committee decided, at its 1st meeting, on 7 October 2014, to establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on the item included in its agenda by 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 Chair of the Working Group. Pursuant to paragraph 9 of General Assembly resolution 51/210 and consistent with past practice, the Working Group was open to all States Members of the United Nations or members of 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, to the extent of their availability, would continue to act as Friends of the Chair during the meetings of the Working Group. Since Mr. Dire Tladi (South Africa) was no longer available to serve in that capacity, the Working Group was informed that the Group of African States had appointed Mr. Thembile Joyini (South Africa) replacing Mr. Tladi. Accordingly, Ms. Maria Telalian (Greece), Ms. Ana Cristina Rodríguez-Pineda (Guatemala), Mr. Petr Válek (Czech Republic) and Mr. Thembile Joyini (South Africa) served as Friends of the Chair.
4. The Working Group had before it the report of the Ad Hoc Committee on its sixteenth session (A/68/37), which contains the preamble and articles 1, 2 and 4 to 27 of the draft comprehensive convention on international terrorism (hereinafter the “draft convention”), prepared by the Bureau, incorporating the various provisions contained in A/C.6/65/L.10, annex I, for discussion (annex I); written proposals relating to the outstanding issues surrounding the draft convention (annex II); and an informal summary prepared by the Chair on the exchange of views during the plenary debate and the informal consultations, including the text of the proposed accompanying draft resolution (annex III). The Working Group also had before it the letter from the Permanent Representative of Egypt to the United Nations addressed to the

Secretary-General, dated 1 September 2005 (A/60/329), and the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chair of the Sixth Committee (A/C.6/60/2).

II. Proceedings of the Working Group

5. The Working Group held three meetings, on 24 October and on 4 and 5 November 2014. At its 1st meeting, on 24 October, the Working Group adopted its work programme and decided to hold its discussions in the framework of informal consultations. At that meeting, the Working Group discussed outstanding issues relating to the draft convention. At its 2nd meeting, on 4 November, the Working Group considered the question of convening a high-level conference under the auspices of the United Nations. Informal consultations on the draft convention, chaired by Ms. Maria Telalian, the Coordinator of the outstanding issues, were also held on 4 November. At its 3rd meeting, on 5 November, the Working Group held informal consultations on the way forward and concluded its work. The Chair and Ms. Telalian, as Coordinator, were also engaged in bilateral contacts with interested delegations on the outstanding issues relating to the draft convention between 24 October and 6 November.

III. Recommendations

6. At its 3rd meeting, on 5 November 2014, the Working Group, noting that more time was required to achieve substantive progress on the outstanding issues, decided to recommend that the Sixth Committee, at the seventieth session of the General Assembly, establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on 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.

7. The Working Group recognized the efforts of Member States towards resolving any outstanding issues, and encouraged all Member States to redouble their efforts during the intersessional period.

8. It is the understanding of the Chair that the recommendations of the Working Group will be taken up further in the context of informal consultations on the draft resolution on measures to eliminate international terrorism.

9. The following section of the oral report constitutes an informal summary of the exchange of views. It is for reference purpose only and is not an official record of the proceedings.

Informal summaries prepared by the Chair of the Working Group on the results of the informal consultations on the draft comprehensive convention and on the question of the convening of a high-level conference

A. Draft comprehensive convention on international terrorism

1. Delegations commented on the outstanding issues concerning the draft convention during the informal consultations held on 24 October and on 4 November 2014.

1. Informal consultations held on 24 October 2014

2. At the outset of the informal consultations on 24 October, the Chairman of the Working Group, who chaired the informals, provided detailed background information on the work thus far undertaken in the context of the Working Group and the Ad Hoc Committee established pursuant to resolution 51/210. He also provided an update on the status of the negotiations regarding the outstanding issues surrounding the draft convention, including the attempts made over the years to overcome the differences among delegations. In the course of the discussions, the Coordinator on the outstanding issues surrounding the draft convention, Ms. Maria Telalian (Greece), also offered clarifications and responded to the comments made by delegations. Attention is drawn to previous clarifications made by the Coordinator, in particular as most recently contained in documents A/68/37, annex III, paras. 10 to 18; A/C.6/67/SR.23, paras. 42 to 47; A/66/37, annex I, paras. 16 to 20 and annex II, paras. 1 to 10; and A/C.6/66/SR.28, paras. 81 to 103.¹

3. In the course of the informal consultations, delegations reiterated their strong condemnation of terrorism in all its forms and manifestations and stressed the importance of concluding the draft convention, which would strengthen the collective efforts to combat international terrorism in a globally coordinated manner. Several delegations referred to current events and the increase in terrorist acts worldwide and emphasized the need to step up efforts and make a renewed push towards concluding the draft convention. They expressed their conviction that, with the necessary political will, the remaining outstanding issues could be resolved and affirmed their commitment to remaining engaged in the negotiating process. Some delegations emphasized that the negotiations had been going on for far too long and that it was time to agree on compromise solutions on the text. In this regard, it was noted that nine years had passed since the World Summit in 2005, during which the Heads of State and Government had “stressed the need to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism at the sixtieth session of the General Assembly”. It was also pointed out that the ongoing negotiations provided an opportunity for the Sixth Committee to show its relevance in the fight against terrorism.

¹ See also: A/C.6/65/L.10, annex III, paras. 16-24; A/C.6/64/SR.14, paras. 12-24; A/C.6/63/SR.14, paras. 41-51; A/65/37, annex I, paras 16-17 and annex II, paras. 1-17; A/64/37, annex II, paras. 1-11; A/63/37, annex II, paras. 1-12; and A/62/37, annex II, paras. 6-23.

4. Concerning the outstanding issues surrounding the draft convention, delegations appealed for flexibility in order to overcome the impasse in the negotiations. Several delegations reaffirmed their support for the proposal by the Bureau for discussion (A/68/37, annex II), as originally presented by the Coordinator in 2007 (hereinafter “the proposal by the Bureau”). The proposal by the Bureau was described as a balanced compromise text that sought to address the various concerns raised throughout the negotiations, while also preserving the integrity of international humanitarian law. It was also observed that concerns that could not be appropriately addressed in the draft convention itself could be dealt with in the accompanying resolution (for the text, see A/68/37, annex III, para. 34). Accordingly, it was suggested that work on the draft convention and the accompanying resolution could be undertaken in parallel. Nonetheless, some other delegations, recalling proposals that had been made in the past (see A/68/37, annex II), expressed the view that the concerns of all delegations were not being sufficiently taken into account and urged delegations to work creatively to bridge the different positions. While reserving their positions on the previously made proposals, it was pointed out by some delegations that the proposal by the Bureau should not be seen as a “take it or leave it” proposal but rather should serve as a basis for further negotiations. The willingness to consider the proposal by the Bureau, without modification, was also expressed by some other delegations on the condition that that would result in the successful conclusion of the negotiations.

5. Some delegations stressed that no cause can legitimize terrorist acts, and that it was thus improper to draw a dichotomy between self-determination and terrorism. Some other delegations underscored the need to distinguish between acts of terrorism and the legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination. In this regard, it was clarified that acts undertaken in the context of the struggle for the right to self-determination, including in situations of occupation, were regulated under international humanitarian law. This was recognized by the proposal by the Bureau in paragraphs 1 and 2 of draft article 3, as well as through the additional “without prejudice clause” contained in paragraph 5 of draft article 3, which states that the draft convention is without prejudice to the rules of international law applicable in armed conflict, and in particular those rules that are applicable to acts lawful under international humanitarian law. It was recalled that the use of “acts lawful under international humanitarian law” ought to be understood with its double negative connotation to mean acts not prohibited. It was also recalled that the principles of distinction and proportionality underpinned international humanitarian law.

6. Concerning the issue of State terrorism, the view was expressed that terrorism had to be addressed in a holistic manner and that the draft convention should cover State terrorism. In the same vein, it was argued that acts undertaken by the armed forces of a State or irregular paramilitary groups should also fall within the scope of the draft convention when those acts are not covered by international humanitarian law (A/68/37, annex II).

7. It was nevertheless recalled that delegations had opted to elaborate a law-enforcement instrument focussing on the criminal responsibility of individuals early on in the negotiations, an approach followed in all counter-terrorism instruments adopted in the context of the Ad Hoc Committee and Working Group. However, in an attempt to alleviate concerns surrounding the question of State terrorism, provisions addressing the obligations of States had been included in the draft accompanying resolution, also as a way of managing expectations, including renaming the draft convention as the United Nations Convention for the Prevention and Suppression of International Terrorism. Attention was also drawn to article 10 [8] of the draft convention which contains obligations of States (A/68/37, annex I). With regard to acts undertaken by the military forces of a State, it was reiterated that the draft convention not intended to provide impunity to such forces. Such activities remain punishable under other laws. Paragraphs 3 and 4 of draft article 3 of the proposal by the Bureau capture these elements, accentuating in particular that no impunity is intended.

2. Informal consultations held on 4 November 2014

8. During the informal consultations on the outstanding issues held on 4 November, which were chaired by the Coordinator, delegations exchanged views by undertaking an informal reading of the proposal by the Bureau.

(a) Summary of the statement of the Coordinator

9. The Coordinator recalled that the proposal by the Bureau was introduced to overcome the impasse in the negotiations. She highlighted that the elements of the package were the result of many years of intense consultations and informal soundings with delegations. It was stressed that the text reflected the collective efforts of delegations and still offered the best prospect for reaching an agreement. The Coordinator stressed the need to move beyond political statements and reach common ground on the outstanding issues. She therefore urged that the informal reading of the text should focus on legal aspects concerning the outstanding issues on the draft convention.

10. The Coordinator reiterated the close link between draft article 2 (definition of acts of terrorism and inclusionary scope of application) and draft article 3 (formerly draft article 18) (exclusionary scope of application). It was recalled that, whereas the former draft article defines acts of terrorism, the latter seeks to define those activities that should be excluded from the scope of application of the draft convention by safeguarding the continued application of other fields of law, including the Charter of the United Nations, international humanitarian law and military law.

11. The proposed preambular paragraph and paragraphs 1 to 5 of draft article 3, read with draft article 2, were highlighted as aiming to address calls of various delegations to distinguish between acts of terrorism from the right of peoples in the exercise of the right to self-determination, calls to ensure the integrity of international humanitarian law as well as calls to ensure that there would be no impunity for military forces of States.

12. Commenting on the actual text, the Coordinator recalled that the preamble is based on the language of the last preambular paragraph of the International Convention for the Suppression of Terrorist Bombings and of the International Convention for the Suppression of Acts of Nuclear Terrorism. In the present text, the reference to “peoples” was added to emphasize the importance of the right of peoples to self-determination.

13. The Coordinator further reiterated that the terms used in the draft convention that are related to the law of armed conflict should be interpreted as those terms are understood under international humanitarian law. Consequently, “armed forces” and “armed conflict” are terms that are governed by international humanitarian law and not by the draft convention. It was further stressed that this point was critical to understanding situations in which international humanitarian law applied. In that regard, it was noted that Additional Protocol 1 to the Geneva Conventions determines that an international armed conflict also includes an armed conflict in which peoples are fighting against colonial domination, alien occupation and racism in the exercise of their right to self-determination. The additional without-prejudice clause in paragraph 5 was proposed to make the demarcation between the draft convention and international humanitarian law even clearer.

14. The Coordinator further recalled that the “justness” of a cause cannot legitimize an act which is otherwise prohibited by international humanitarian law, stressing that this lies at the very heart of the distinction between *jus in bello* and *jus ad bellum*. It was further recalled that civilians and non-combatants may not be targeted since the primary purpose of international humanitarian law is to protect civilians. Since the draft convention is without prejudice to those acts which are lawful or are not prohibited under international humanitarian law, then, it was explained that the draft convention does not attempt to criminalize what is not prohibited thereunder.

15. The preamble and the addition to paragraph 4 (relating to the activities of military forces of a State in peacetime), sought to address concerns that there should be no impunity gap. In this regard, it was also noted that, while the activities of the military forces of a State are excluded from the scope of application of the draft convention, where they nonetheless correspond to acts proscribed by the draft convention, paragraph 4 underlines that it is other laws (at the national and international levels) that may be applicable to such activities. In this regard, it was recalled that under military law, for instance, the law followed the soldier. The Coordinator further noted that according deference to existing applicable law did not intend to imply any impunity. Rather, it was important to indicate that conduct which would meet the characterization of criminal conduct as contemplated in draft article 2 would be subject to prosecution under other laws irrespective of its characterization under such laws.

16. It was further recalled that, as a way to move the negotiating process forward, there was, previously, support among some delegations to address certain outstanding issues in an accompanying resolution as part of the overall package. The Coordinator introduced elements of the draft resolution as

proposed by the Coordinator in 2011 and endorsed by the Bureau in 2013 (A/68/37, annex III, para. 34). She noted that the second and third preambular paragraphs of the draft resolution recalled and tracked the provisions of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). The Coordinator further emphasized that the International Court of Justice, in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, has stated that those provisions of the Declaration, part of which are referred to in the third preambular paragraph of the draft resolution, are declaratory of customary international law.

17. It was also envisaged as part of the overall package to change the name of the draft convention to the “United Nations Convention on the Prevention and Suppression of International Terrorism”. This aspect is reflected in the draft resolution.

(b) Summary of the discussions

18. In their general remarks, delegations thanked the Coordinator for her very useful presentation of the proposal by the Bureau.

19. Some delegations expressed their support for the proposal by the Bureau and reiterated their willingness to consider it, without modification, if that resulted in the successful conclusion of the negotiations. Given the impasse reached in 2002, it was also pointed out that it appropriately addressed all concerns that had been expressed during the negotiations, either in the text or in the proposed accompanying resolution, and provided a valuable compromise on key issues of concern and various differences that existed. It was noted that a flexible approach was needed to resolving the impasse among delegations. The point was made that the proposal had the merit of not having been rejected by any delegation.

20. Some other delegations called for clarification on the other previous proposals made, and resisted the notion that the proposal by the Bureau be treated as an “agreed package”. Since such proposals remained on the table, they considered that a holistic approach was required. In this regard, while affirming a readiness to consider the proposal by the Bureau, they pointed to the proposal made by the Organization of Islamic Cooperation (formerly the Organization of the Islamic Conference) (OIC) in 2002 (A/68/37, annex II).

21. Some delegations recalled the serious attempts that had been made over the years to seek to accommodate the various viewpoints that had been expressed. It was noted that, in 2002, neither the proposal by the former Coordinator nor the proposal by the OIC had generated sufficient support among delegations. It was because of the lack of consensus on those texts that efforts were undertaken in the ensuing years with a view to finding a compromise, leading to the proposal by the Bureau. That proposal, together with the accompanying resolution, had to be seen as elements of an overall package on which agreement to resolving the outstanding issues could be based.

22. In the course of the reading of the text of draft article 3, some delegations sought clarification on the scope of paragraphs 1, 4 and 5 of the draft convention. In response, the Coordinator reiterated that the intention of those provisions was to safeguard the rights and obligations of individuals and States in accordance with the Charter, international humanitarian law and human rights law. It was noted in particular that the reference to “other rights, obligations and responsibilities of States” was based on prior negotiated language contained in adopted counter-terrorism conventions. It may be noted that “other” was used because those conventions contain obligations of States.

23. Further, the Coordinator stressed that the proposal by the Bureau encompasses all situations of armed conflict, including those of foreign occupation, and that its purpose was not in any way to criminalize activities which are not prohibited by international humanitarian law.

24. Following an inquiry by a delegation on the difficulties posed by the 2002 proposal by the OIC, it was observed that the language used in that proposal essentially deviated from the *acquis* of previous conventions negotiated within the context of the Ad Hoc Committee. The option that was found feasible was to add new texts rather than alter already agreed language. Additionally, an exchange of views ensued regarding the textual differences in the various texts and why certain words like “armed forces” and “parties” were preferred options for paragraph 2 of draft article 3. It was notably underlined that the term “armed forces”, as understood under international humanitarian law, was not restricted to the armed forces of a State. The Coordinator recalled that there was a broad understanding of the meaning of “armed forces” and “armed conflict” within the context of developments in international humanitarian law, as reflected in the 1949 Geneva Conventions and the 1977 Additional Protocols, and the commentaries thereto. For some delegations, the term “parties” was unclear even though it was also recognised under international humanitarian law.

25. Regarding whether the term “armed conflict” in paragraph 2 should be qualified by explicit reference to “including in situations of foreign occupation”, as contained in the OIC proposal, some delegations observed that the substantive meaning of the text of paragraph 2, on this point, was essentially the same in all of the proposals on the table. As understood in international humanitarian law, “armed conflict” already included situations of occupation. Since the explicit inclusion of that phrase to previously agreed language had not been accepted by some delegations in the course of the negotiations, paragraph 5 was an attempt to overcome the differences and had the advantage of safeguarding the integrity of international humanitarian law.

26. On the question of impunity, the difference in paragraph 3 of draft article 3 and paragraph 3 of the OIC proposal was acknowledged by some delegations. It was stressed in this regard that there was a nuanced difference between the terms “inasmuch as they are governed by other rules of international law” and “inasmuch as they are in conformity with international law”. However, the point was made that the addition to paragraph 4 in the proposal by the Bureau addressed the question of the impunity gap in a satisfactory manner. Moreover, it was observed that, in practice, the conceivable cases in which the military forces of a State would be implicated in a case

of international terrorism would not be substantial. The provision had to be read together with draft article 5.

B. Question concerning convening of a high-level conference

27. During the informal consultations held on 24 October and on 4 November 2014, delegations commented on the question of convening a high-level international 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.

28. During the informal consultations on 24 October, some delegations expressed their support for convening a high-level conference, while questions were also raised about what consequences such a conference would have on the work on the draft convention.

29. During the informal consultations on 4 November, the sponsor delegation of Egypt recalled that a proposal to convene an international conference had first been made in 1999. Despite all the efforts made at the national, regional and international levels, there was still a pressing need to set up an action plan within the United Nations, containing both legal and procedural aspects, which would ensure active international cooperation to achieve the common goal of eliminating international terrorism. According to the sponsor delegation, the proposed conference could facilitate negotiations and mobilize the political will necessary to reach agreement on the draft convention. The high-level conference would also be an opportunity to adopt an action plan and provide a forum to address all issues related to the fight against terrorism, including a discussion on the definition of terrorism, the conditions conducive to its spread, as well as the outstanding issues relating to the draft convention. It was further recalled that the proposal had been supported by the OIC, the Non-Aligned Movement, the African Union and the League of Arab States. It was stressed that the issue should be discussed on its own merits and should not be linked to the discussions on the draft convention.

30. Some delegations expressed support for the proposal, agreeing with the sentiments of the sponsor delegation, in particular that it should be considered without any linkage to the ongoing discussions on the draft convention. It was noted that the current working methods had not yet yielded a positive outcome. Accordingly, some delegations stressed the need to move out of entrenched positions, and suggested that a political discourse by a high-level conference could have a catalytic impact on discussions on outstanding issues. It was further noted that such a conference could be an opportunity to overcome the current impasse in deliberations on the draft convention, arrive at a definition of terrorism and address the root causes of terrorism.

31. Other delegations reiterated their previous positions on the matter. While not necessarily opposed to a high-level conference in principle, it was felt that the question of such conference should be considered after completion of the negotiations on the draft convention. The view was also expressed that a conference would be premature at this stage.

32. The practicality of the convening of such a conference at the Head of State or Foreign Minister level was doubted by some delegations, given the preparatory work involved. A suggestion was made that a conference at the level of Permanent Representatives to the United Nations could be considered in order to decide on how to proceed with ongoing negotiations on the draft convention. The point was also made that on the substance, it would be appreciated that the proposal on the high-level conference be updated to take into account the latest developments, including the adoption of the United Nations Counter-terrorism Strategy and the work undertaken by the Ad Hoc Committee, as well as the current needs of the international community. Such an update would build on the existing synergies and avoid duplication of efforts.

33. Let me conclude my oral report by acknowledging the contributions of delegations to the discussions. During both the informals and bilateral contacts I sensed a positive attitude among delegations. However, as was rightly observed in the course of consultations, next year will be the tenth anniversary of the urgent call to conclude the draft convention made by World leaders in the World Summit Outcome in 2005. They gave us one year within which to do so and yet here we are at an impasse year in, year out. Instead of moving forward we seem to be retracing our way back. A year has become nine years. The whole exercise seems to have become routine. Despite overwhelming support for the conclusion of the draft convention, reiterated by delegations every year, this support has unfortunately not been matched by the necessary political will.

34. We of course know that those who want to commit terrorist acts are not waiting idle. Terrorism remains a world threat and a menace. It is not that the draft convention will stop acts of terrorism, but it will assist in countering it through enhanced measures of international cooperation provisions and its clear definition of acts of terrorism that is contained in draft article 2; that will be the first time we would have such a definition in a binding instrument. It is my hope that further work can be done between now and the next working group. I urge delegations, particularly those here in New York, to remain engaged and generate the necessary momentum to conclude our task. In our bilateral contacts we met with some Ambassadors who are willing to be involved and engaged. Let us use all the available experience and diplomatic skills to find solutions to issues standing in the way of the completion of our work.

35. I thank the Friends of the Chair for their wise counsel and advice. Those remaining in New York will surely continue to play an important role in monitoring the situation and consulting with delegations given our recommendation for delegations to remain engaged intersessionally. I also wish to thank the Coordinator for her indefatigable efforts. Her knowledge of the issues helps us all to better understand where problems still exist. And they are not many. I am also most grateful to the Staff of our Secretariat, the Codification Division and all the interpreters and conference officers who always greatly facilitate our work.