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Measures to eliminate international terrorism
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(check against delivery)

Mr. Chairman,

At the outset, allow me to congratulate you and all the members of the Bureau for your appointments. Brazil aligns itself with the statement delivered by El Salvador on behalf of CELAC and takes this opportunity to address some issues from a national perspective.

This agenda item seems to be going through an "identity crisis". Earlier this year, under a different agenda item, the General Assembly consensually adopted the Sixth Review of the UN Counterterrorism Strategy. It was the culmination of an intense consultation process that, for six weeks, involved the active engagement of delegations from all sides of the negotiating spectrum aiming at keeping the GCTS current and balanced. The GCTS reflects the galvanized voice of all Member States of the most inclusive and democratic body of the organization in what relates to the measures to prevent and counter terrorism - in other words, to eliminate terrorism.

Driven by the wish to revitalize the work of the Sixth Committee, Brazil would like to encourage a reflection on how to use the current agenda item more efficiently, avoiding overlap and duplication with the policy discussions held biennially at plenary level at GCTS reviews. This Committee is dedicated to *legal* issues. From our vantage point, the best alternative to rationalize our discussions would be to focus our debates on the outstanding *legal* questions in the realm of counter-terrorism.

Mr. Chairman,

The current absence of a universally agreed-upon definition of terrorism is detrimental to our shared goal of eliminating it. Brazil echoes the call made by CELAC regarding the need to overcome, with a sense of urgency, the stalemate in the processes leading to the adoption of the Comprehensive Convention against International Terrorism. The CCIT would contribute to the harmonization of the legal framework relating to counterterrorism, facilitate mutual legal assistance and strengthen the exchange of information, as well as create improved conditions for ensuring due process and compliance with human rights.

We are conscious that taking the final step of this legal task will require a strong political push. This is why Brazil argues that convening a high-level conference under the auspices of the UN - another collective pending from the 2005 World Summit Outcome Document - could provide the *momentum* needed to build the necessary bridges. In June, the Secretary-General organized the first-ever UN High Level Conference on Counter-Terrorism, generating political attention aimed at strengthening multilateral cooperation. The next conference of this kind should be seized as an opportunity to conclude the CCIT - and the preparatory process could take place in the realm a reconvened Ad Hoc Committee.

Mr. Chairman,

In the context of evolving trends of international terrorism, it is important to properly understand the linkages between "terrorism", "radicalism" and "violent extremism". These phenomena may be linked in certain contexts, such as the recruitment for the so-called "Islamic State", but they are not intrinsically correlated. Racism, xenophobia and homophobia, for example, can lead to expressions of violent extremism that are heinous in themselves, but not necessarily related to the commission of terrorist acts. Conflating these concepts may lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts.

Terrorism does not have universal or automatic linkages with transnational organized crime. Even in the specific circumstances in which a relationship between these phenomena might arise, different spheres of responsibility are involved - to which different remedies should be applied. While terrorism constitutes a threat to international peace and security, transnational organized crime remains an issue within the realm of public security.

Mr. Chairman,

While the goal of eliminating international terrorism brings us together, some of the measures implemented in this realm have been divisive, due to their questionable legality. Counterterrorism will only be effective to the extent that it is consistent with the UN Charter and other norms of international law, including human rights, humanitarian and refugee laws. Any measure taken outside such parameters not only betrays the values it seeks to uphold, but also generates additional extremism conducive to terrorism.

The use of new communication technologies by terrorist organizations illustrates the evolving nature of the challenge. Internet and social media are being misused for inciting hatred and enabling recruitment. While acting against this, we must simultaneously guard against transgressions of the freedom of expression and the right to privacy. Brazil echoes CELAC's concern with the negative impact that State surveillance and/or interception of communications, including extraterritorially, may have on the enjoyment of human rights.

Mr. Chairman,

Given the spread of terrorist organizations and the rise of "Daesh", there have been attempts to depart from the current collective security system towards actions that seem to reflect pre-Charter understandings on the use of force. These attempts have included reinterpretations of the law regarding the content and the scope of self-defense as well as creative readings on the letter of Article 2(4) of the Charter. Some have been arguing that self-defense could be applied as a response to "non-State actors", sometimes adding as conditions the criteria of "unwillingness" or "inability" of the territorial State. Brazil does not agree with such an interpretation. Let me present four assumptions that inform our position.

First, the general principle of law according to which exception to rules must be interpreted restrictively. Article 51 is an exception to Article 2(4). Since the latter does mention "States" and the former must be interpreted in that light, self-defense is a response to an armed attack undertook by or attributable to a State. Second, the case law of the ICJ. In the Nicaragua case, the Court made it clear that the territorial State would have to be "sending" or have "substantial involvement" in the acts of the non-State actor for the conditions for self-defense to arise. In the Wall Advisory Opinion, it stated that "Article 51 of the Charter (...) recognizes the existence of an inherent right of self-defense in the case of an armed attack by one State against another State". Third, the *travaux préparatoires*. The framework conceived in 1945 was a response to World War II and, it is implausible to impute to the drafters the intention to make self-defense applicable outside inter-State conflicts. Fourth, treaty law. The Vienna Convention on the Law of Treaties allows ‘subsequent agreement between the parties regarding the interpretation’ of a treaty or ‘subsequent practice’ to be taken into consideration. However, the threshold for a tacit agreement between the 193 parties to the Charter is distant from being met: the State practice being invoked by those seeking a reinterpretation is erratic and ambiguous.

An expressive amount of States have been cautioning against expansive interpretations of self-defense. The Non-Aligned Movement affirmed that "Article 51 of the UN Charter is restrictive and should not be re-written or re-interpreted". The Community of Latin American and Caribbean States called for an "open and transparent debate on this issue". The conditions for any reinterpretation of Article 51 are very strict. These norms cannot be changed by the practice of a few States. All countries have a stake in the issue of the legality of the use of force.

Thank you.