

Sixty-seventh session
Sixth Committee
Agenda item 105
Measures to eliminate international terrorism

Oral report by the Chairman of the Working Group

Introduction

1. Pursuant to General Assembly resolution 66/105 of 9 December 2011, the Sixth Committee decided, at its 1st meeting, on 8 October 2012, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to continue to discuss the item included in its agenda by the Assembly in its resolution 54/110 of 9 December 1999, in which the Assembly addressed 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. It 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 Chair during the meetings of the Working Group. Accordingly, Ms. Maria Telalian (Greece), Ms. Ana Cristina Rodríguez-Pineda (Guatemala), Mr. Dire David Tladi (South Africa) and Mr. Petr Válek (Czech Republic) served as Friends of the Chair.

4. The Working Group had before it the report of the Ad Hoc Committee on its fifteenth session (A/66/37), the report of the Working Group in 2011 (A/C.6/65/L.10) and oral report of the Chairman of the Working Group in 2011 (A/C.6/66/SR.28). It 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).

Proceedings of the Working Group

5. The Working Group held three meetings, on 22 and 24 October and on 6 November 2012. At its 1st meeting, on 22 October, the Working Group adopted its work programme and decided to hold its discussions in the framework of informal consultations. The Working Group first discussed outstanding issues relating to the draft comprehensive convention on international terrorism and, thereafter, considered the question of convening a high-level conference under the auspices of the United Nations. The Chair and the Coordinator of the draft comprehensive convention, Ms. Maria Telalian, engaged in bilateral contacts

with interested delegations on the outstanding issues relating to the draft comprehensive convention.

6. At its 3rd meeting, on 6 November, the Working Group held informal consultations on the draft comprehensive convention and concluded its work.

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 exchange of views in the Working Group.

Informal summaries prepared by the Chairman of the Working Group of 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

8. Delegations commented on the outstanding issues concerning the draft comprehensive convention during the informal consultations held on 22 and 24 October and on 6 November 2012. In the course of the discussions, the Coordinator on the outstanding issues surrounding the draft convention, Ms. Maria Telalian (Greece), also responded to the comments made by delegations and offered clarifications.

1. (a) Comments of delegations

9. During the informal consultations on 22 and 24 October, delegations reiterated their strong condemnation of terrorism in all its forms and manifestations and generally stressed the importance they attached to the conclusion of the draft comprehensive convention. Some delegations expressed their conviction that, with the necessary political will, the remaining outstanding issues could be resolved. Reference was made to the call contained in the 2005 Outcome document, and other appeals to step up efforts to conclude work made during the current session in the context of the work of the General Assembly and the Security Council. Several delegations, in stressing the importance of concluding negotiations, asserted that they were ready to proceed on the basis of the 2007 proposal, observing that it still had not been rejected by any delegation. The point was also made, however, that it would not be beneficial to proceed hastily in the negotiations, and that the remaining issues should not be minimized or resolved on the basis of competing interpretations. Some delegations asserted that the outstanding issues were not only political but also legal. Those delegations stressed that the 2007 proposal did not resolve all of the problems raised during the course of the negotiations and that, while it should not be rejected, a true compromise solution on the draft convention might require additional elements and concessions.

10. Some delegations emphasized that the negotiations had been going on for many years and that the 2007 proposal made by the Coordinator, as a compromise text, had been on the table for five years.

11. Concerning the outstanding issues surrounding the draft convention, several delegations reaffirmed their support for the 2007 proposal made by the Coordinator and considered that it constituted a viable, legally sound compromise solution, and should be accepted without further change. They further stressed that the proposal constituted a carefully balanced compromise text that effectively sought to address the various concerns raised throughout the negotiations. It was reiterated that the draft convention should be viewed as a criminal law instrument, dealing with individual criminal responsibility. Moreover, it was noted that the proposal properly respected the integrity of international humanitarian law; it did not prejudice any of the norms of international humanitarian law applicable to terrorist acts committed during armed conflict, but rather sought to reinforce that body of law.

12. While some delegations reiterated their preference for the 2002 proposal of the Organization of Islamic Cooperation, they stated their continuing willingness to continue to consider the Coordinator's 2007 proposal. They nevertheless stressed that it was essential to address the pending substantive legal issues, which, in their view, were not satisfactorily addressed by the 2007 proposal. In this context, the need for a clear legal definition of terrorism, which distinguished terrorism from the legitimate struggle of peoples fighting in the exercise of their right to self-determination, as enshrined in the Charter of the United Nations, was emphasized. It was further asserted that the draft convention could, if it was properly conceived, address elements that to date had not been sufficiently addressed in efforts to eliminate international terrorism without necessarily relegating them to an accompanying resolution. These elements included the root causes of terrorism, such as poverty, the double-standards adopted by some States in their counterterrorism laws and policies, and the violations of human rights that often accompanied counterterrorism efforts. In order to take account of these elements in the draft convention, it was emphasized that the negotiations on the instrument should not be rushed.

13. The view was also expressed that the draft convention should cover acts by individuals that effectively control armed groups, whether during armed conflict or in peacetime, when those acts are not covered by international humanitarian law, and previous proposals on this point were recalled (A/C.6/65/WG.2/DP.1 and A/AC.252/2005/WP.2). The necessity of including activities undertaken by military forces of a State in peacetime, as well as the need to address the issue of State terrorism, was also underlined.

14. Some delegations reiterated their preference for the 2002 proposal submitted by the previous Coordinator (A/57/37, annex IV), which was based on previously accepted language drawn from the International Convention on the Suppression of Terrorism Bombings and other recent counterterrorism instruments. They nonetheless indicated that they would be willing to consider the 2007 proposal, without modification, if that proposal would result in the successful conclusion of the negotiations. It was noted that what was needed was a flexible approach to solving the impasse among delegations. A meeting of minds at the conceptual level was necessary, and this meant tackling the misconceptions that had served to bog down the negotiations, particularly those concerning the scope of the draft convention. It was also stressed that no cause

can legitimize terrorist acts, and thus it was improper to draw a dichotomy between self-determination and terrorism

15. Concerning future work, some delegations were of the view that if the current impasse in the negotiations continued throughout the current session and into the meetings of the Ad Hoc Committee envisaged for 2013, then it may be time to reconsider the working methods and the overall framework of the negotiation processes. Some delegations expressed frustration that, despite the continued calls of the international community for the conclusion of the draft convention, the necessary political will for its conclusion did not seem to exist. Given this impasse and an apparent reticence to engage in substantive discussions on outstanding issues, it was suggested that delegations needed to think seriously about whether to continue in the current manner. The view was also expressed that a clear plan of action on how to move forward was necessary at this stage.

(b) Summary of comments by the Coordinator

16. The Coordinator noted that the statements made by delegations during the meeting indicated that political agreement on the draft convention remained elusive. Disagreement continued to centre on the exclusionary elements of the draft convention covered by draft article 3. In this connection, the Coordinator recalled the rationale behind the elements of an overall package that she had presented in 2007 during the eleventh session of the Ad Hoc Committee (A/62/37). She further reminded delegations that she had presented, on numerous occasions, the explanations behind the elements of an overall package, which consisted of an additional preambular paragraph, an addition to paragraph 4 and a new paragraph 5 of draft article 3 (former draft article 18) (see A/62/37; A/C.6/62/SR.16; A/63/37; A/C.6/63/SR.14; A/64/37; A/C.6/64/SR.14; A/65/37; A/C.6/65/L.10; A/66/37; and A/C.6/66/SR.28). The elements of an overall package had been the outcome of intensive deliberations among delegations spanning several years, and emerged from an effort to find consensus. The Coordinator further reminded delegations that draft article 3 had to be read as a whole and together with the other provisions of the draft convention, in particular draft article 2.

17. The Coordinator noted that the draft convention was intended to fill gaps in the law and enhance cooperation in the prevention and prosecution of terrorist acts. The definition of acts of terrorism contained in draft article 2 would represent the first time such a comprehensive definition had been included in an international legal instrument. Despite the substantial attention that had been paid to the issue of terrorism by the international community, agreement on what exactly constituted terrorism still did not exist, and the draft convention would add considerable value in this regard.

18. The Coordinator reiterated that the draft convention was a law enforcement instrument, ensuring individual criminal responsibility based on the obligation to extradite or prosecute (*aut dedere aut judicare*). Accordingly, the individual and not the State was the focus of the draft convention, an approach followed consistently in the sectoral counter-terrorism instruments. The

Coordinator nevertheless noted that other fields of law, including the Charter of the United Nations, international humanitarian law, and the law of the responsibility of States for internationally wrongful acts, addressed the obligations of States. Moreover, the draft convention contained some provisions concerning the obligations of States. The Coordinator also pointed out that paragraph 1 of draft article 2 was concerned with any person who commits an offence unlawfully and intentionally. The phrase *any person*, together with the term *unlawfully*, was the key to the understanding of the scope *ratione personae* of the draft convention.

19. The Coordinator also recalled that draft article 3 was aimed at carving out from the scope of the draft convention certain activities essentially because they were already regulated by other fields of law. It was a safeguard clause framed as an applicable law clause. In this context, the Coordinator emphasized that the draft convention would not operate in a vacuum but would be implemented in the context of an overall legal framework. It was thus essential to respect the integrity of those other fields of law and there was case law supporting this approach. The additional elements to the overall package were intended to fortify the understanding that no impunity was intended and that the integrity of other fields of law, including international humanitarian law, was safeguarded. The Coordinator also recalled an important understanding regarding which no dispute existed, namely that civilians would under no circumstances constitute a legitimate target, either during armed conflict or in peacetime.

24. With reference to the draft resolution proposed during the 2011 session of the working group (A/C.6/66/SR.28, para. 89), the Coordinator indicated a willingness to discuss the matter with delegations at any time. The draft resolution, which would accompany the legal instrument and should be considered part of the overall compromise package, was presented in order to capture the remaining outstanding issues that seemed intractable and, hopefully, to facilitate consensus.

25. During the informal consultations on 6 November, it was reported that the engagement during the bilateral contacts revealed that positions among delegations were not yet gravitating towards a possible compromise despite a lull of one year of reflection. Unless there is a demonstration of political will among delegations the impasse that currently exists would be difficult to overcome. It would certainly seem of little purpose to continue convening meetings when there did not seem to be any demonstration of the requisite will to seriously compromise. The continuing efforts in seeking to find a solution to the outstanding issues concerning the draft convention were constrained by a seeming absence of interest to engage as interested delegations maintain their preferred positions despite repeated attempts to explain the rationale of the elements of the overall package. This position however stood in marked contrast to the declared desire to engage in open and constructive dialogue on the difficult questions concerning the draft comprehensive convention. The Chair and the Friends registered an optimistic disposition that the process was not far away from resolving the issues legally. It was, however, important for the process to muster the necessary political will to surmount the final hurdle.

B. Question concerning a high-level conference

26. During the informal consultations, on 24 October 2012, the sponsor delegation, Egypt, reiterated its proposal, originally made in 1999, concerning the convening of a high-level conference under the auspices of the United Nations. It again explained that a plan of action was needed in order to effectively address the legal and procedural aspects of the fight against terrorism. The conference would provide a forum to address all relevant issues, including the root causes of terrorism, and could contribute effectively to the negotiations on the draft convention. It also reemphasized its position that the convening of a conference should be considered on its own merits and should not be linked to the conclusion of the draft comprehensive convention. The sponsor delegation further recalled that the proposal had been endorsed by the Movement of Non-Aligned Countries, the African Group, the Organization of Islamic Cooperation and the League of Arab States.

27. Some delegations reiterated their support for the proposal. They reinforced the position that the conference should be considered on its own merits and should not be linked to the conclusion of the draft convention. It was nonetheless mentioned that the conference could provide an opportunity to address outstanding issues and facilitate the conclusion of the draft convention. It was pointed out that the proposal for a high-level conference represented a new way forward, and for that reason it deserved support. Some delegations noted that the time had come to hold the high-level conference, and that it should be convened as soon as possible without any preconditions.

28. Some other delegations, while supporting the convening of the conference in principle, questioned its timing and effectiveness. It was suggested that the draft convention should continue to be the priority, and that the Working Group of the Sixth Committee and the Ad Hoc Committee established pursuant to General Assembly resolution 51/210 were the appropriate forums to continue negotiations on the outstanding issues. Accordingly, it was reiterated that the convening of a high-level conference should be discussed only following the conclusion of the draft convention, and that the convening of a high-level conference at this point was premature.