

Seventieth session
Sixth Committee
Agenda item 108
Measures to eliminate international terrorism

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Oral report of the Chairman of the Working Group

Chairman: Ambassador Rohan Perera (Sri Lanka)

I. Introduction

1. Pursuant to General Assembly resolution 69/127 of 10 December 2014, the Sixth Committee decided, at its 1st meeting, on 12 October 2015, 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 re-elected Ambassador 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 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, to the extent of their availability, would continue to act as Friends of the Chair during the meetings of the Working Group. Accordingly, and as per last year, 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. At its meeting on 13 November, the Working Group was informed that Ms. Maria Telalian, who also served as Coordinator on the outstanding issues concerning the draft comprehensive convention, would no longer be available to serve in that capacity. The Working Group paid tribute to Ms. Telalian for her outstanding contribution to the work of the Working Group and for her tireless efforts.

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 five meetings, on 26 and 30 October and on 9, 11 and 13 November 2015. At its 1st meeting, on 26 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 30 October, 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 were also held on 30 October. At its 3rd, 4th and 5th meetings, on 9, 11 and 13 November, the Working Group held informal consultations on the way forward. The Chairman and Ms. Telalian, as Coordinator, were also engaged in informal and bilateral contacts with interested delegations and groups of delegations on the outstanding issues relating to the draft convention between 26 October and 13 November.

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 26 and 30 October.

1. Informal consultations held on 26 October 2015

2. At the outset of the informal consultations on 26 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. (Attention is also drawn to previous clarifications made by the Chairman (A/C.6/69/SR.28) and 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 the importance of concluding the draft convention. 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. In this respect, many delegations affirmed that momentum was building up to bring the negotiation process to a successful conclusion during the 70th session of the General Assembly. Delegations generally 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 ten 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”. Some delegations, in particular, affirmed that the outstanding issues were mostly political, rather than legal, in nature, and that they could only be resolved through political will. While some delegations underlined the importance of concluding work on a consensual basis, it was also observed that consensus could not be a goal in and of itself if this meant that the discussions could not move forward.

4. Concerning the outstanding issues surrounding the draft convention, some delegations reiterated that these concerned the legal definition of terrorism, the scope of the convention, and 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.

5. Delegations intervening in the debate reiterated their positions. Some delegations reaffirmed their support for the Bureau proposal, as originally presented by the Coordinator in 2007, including the accompanying draft resolution. Some other delegations, recalling proposals that had been made in the past (see A/68/37, annex II), expressed the view that the Bureau proposal might well act as a basis of negotiations, but that the concerns of all delegations had to be sufficiently taken into account in the discussion. While reaffirming their preference on previously made proposals, some delegations pointed out that the Bureau proposal should not be seen as a “take it or leave it” proposal but rather should serve as a basis for further negotiations. Some delegations expressed the willingness to accept the 2007 text, without modification, as a compromise, on the condition that that would result in the successful conclusion of the negotiations. The view was also expressed that consensus on the text should not come at the expense of having different interpretations on key terms. Some delegations

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.

expressed concern that the consensus that was supposed to coalesce around the Bureau proposal was simply not forthcoming.

2. Informal consultations held on 30 October 2015

6. At the request of many delegations, the informal consultations held on 30 October were conducted in a less formal setting with a view to facilitating a more interactive exchange of views among delegations. Delegations exchanged views by considering a comparative table that had been prepared by the Chair, to serve as a visual aid, and which sought to highlight both the differences and the similarities between various texts and proposals to facilitate the discussions. The comparative table attempted to illustrate how the various texts on the key outstanding issues relating to the scope of the draft convention had progressed over the years, from the point where there was one text by the former coordinator, thereafter two texts relating to the same issues, and subsequently, after numerous soundings with delegations, to the present point where there was one text again for discussion. Using the comparative table as a basis, the Chairman explained once more the approach that had been taken in attempting to bridge the differences that existed and in reaching the compromise text presented by the Bureau.

7. Some delegations expressed concern over the narrow approach used to elaborate the table. It was particularly pointed out that the sole focus on draft article 3 might give the misleading impression that proposals currently on the table on other provisions of the draft convention had been withdrawn. Furthermore, in the view of some delegations, the table was methodologically flawed since it seemed to put undue emphasis on the differences between the Bureau proposal and the proposal of one other group, thereby giving a skewed impression of the negotiations. In response to these concerns, the Chair clarified that the comparative table had been created simply to serve as a tool in order to facilitate the discussions and was not to be considered a negotiating text. It had no standing on its own. The table had been put forward in response to requests from several delegations for a working document that would provide them with a better overview and understanding of the various proposals concerning the scope of the draft convention. The Chair also reassured delegations that all proposals remained on the table and recalled the working method of the Working Group that nothing is agreed until everything is agreed. He nevertheless also reminded delegations that the Bureau proposal had been the basis for negotiations for the last few years.

8. While the view was expressed that the way to proceed was for delegations to come to a common understanding as to the meaning of the terms used in draft article 3, it was also pointed out that such a common understanding might be unrealistic in practice. It was also recalled that it was not for the legislators to provide detailed interpretations of the specific terms used in a convention; that was the task of the judiciary based on the circumstances at hand.

9. Some delegation reiterated the view that the Bureau proposal was a sound compromise, which reflected the work done so far, and which took into account the concerns that had been expressed by delegations over the years. In their view, the Bureau proposal appropriately bridged the differences that existed between the two proposals that had been received in 2002 and provided certain safeguard

clauses. Some other delegations, however, stressed that the Bureau proposal did not fully meet their concerns, in particular with regard to the questions of foreign occupation and the right to self-determination. In the view of these delegations, the fact that the texts under consideration were not very dissimilar did not mean that the small textual difference therein did not reflect serious differences of view.

B. Question concerning convening of a high-level conference

10. During the informal consultations held on 26 and 30 October 2015, delegations commented on 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.

11. During the informal consultations on 30 October, the sponsor delegation of Egypt recalled that its proposal to convene an international conference had been made more than a decade earlier. According to the sponsor delegation, the proposed conference could mobilize the political will necessary to reach agreement on the draft comprehensive convention on international terrorism. It was clear that more than fifteen years of negotiations on the draft convention at the technical level had not led to more than minimal progress, and that raising the level of negotiations to the level of heads of State or Government may garner the necessary political will to overcome the few outstanding difficulties. Eventually, if the impasse remained after such a conference, delegations could acknowledge that agreement on the draft convention was not possible, and consider suspending further deliberations.

12. According to the sponsor delegation, the high-level conference would also provide an opportunity to strengthen the coordination at the international level of the many actions adopted by States in addressing all issues related to the fight against terrorism. It would ensure that there was common agreement and understanding among States and avoid duplication of efforts. It was further recalled that the proposal had been supported by the Organization of Islamic Cooperation, the Non-Aligned Movement, and the African Group.

13. Delegations intervening in the debate reiterated their positions. Several delegations supported the proposal, underlining the need for a forum that could serve to bridge the gap between the divergent views on the outstanding issues on the draft convention. In their view, the high-level conference could serve to harness the political agreement which was lacking at present, and which was a precondition for the conclusion of the convention. However, other delegations underscored that, in their view, the time was not ripe for such a conference and that the outstanding differences regarding the draft convention should be addressed within the framework of the Sixth Committee, not by heads of States or Governments. These delegations also underlined that some important progress in the negotiations had been achieved in the past fifteen years, and that the Bureau proposal was a good starting point to build upon. Some delegations underlined that the conference should only be discussed once agreement is reached on the draft convention, and could rather serve as a final adopting moment.

C. Informal consultations on the way forward on 9, 11 and 13 November

14. During the informal consultations on the way forward, held on 9 and 11 November, the Chairman recalled the various efforts to engage delegations in a constructive dialogue on the outstanding issues surrounding the draft convention, during past sessions and also at the current session. It was recognized however that those efforts had not generated the kind of discussions that would be necessary to overcome the current impasse. Instead, delegations, particularly those that were considered key to the process, had merely repeated their preferred positions. The Chairman urged all delegations to remain engaged in the negotiations and continue to consider the text proposed by the Bureau in a constructive spirit.

15. The Chairman also recalled the mandate of the Working Group, which envisaged bringing the process to a closure and signaled a sense of finality. That mandate had been repeated for several years. He reiterated that the general debate on this item and his interactions with many Ambassadors had provided him with a renewed optimism that this goal was within reach. Indeed, there had seemed to be a common desire and a sense of urgency among delegations to complete the draft convention in light of the increase in terrorist attacks worldwide. Delegations had also expressed a desire to embrace the momentum generated by the 70th Anniversary of the Organization to overcome the last hurdles. The Chairman recognized, however, that despite the efforts, positions of delegations were not coalescing towards that common goal. Several delegations had during the discussions pointed out that the outstanding issues were of a political, rather than a legal, nature, which the Chairman believed to be true.

16. The Chairman observed that there seemed to be a strong desire among delegations to complete work on the draft convention before the end of the 70th session. This had also been emphasized by the President of the General Assembly in his address to the Sixth Committee. He doubted the feasibility of achieving that goal and to overcome the impasse within the current negotiating framework and expressed the belief that the Working Group, with the limited time at its disposal, had done as much as was possible to advance work. The Chairman expressed his conviction that it was now appropriate to continue the process in a different framework that would allow for continuous consultations aimed at bringing a fresh impetus to the process. In this context, he suggested that the Working Group follow the precedent that had been used during the negotiations of the International Convention for the Suppression of Acts of Nuclear Terrorism to overcome similar hurdles.

17. During the informal consultations, on 11 November, the Chairman presented a proposal on behalf of the Friends of the Chair for the Working Group to adopt a recommendation. The recommendation was considered during the informal consultations on 11 and 13 November. After considering various proposals, and given that there was no agreement, the Working Group completed its work without adopting any recommendation.

Let me conclude my report by thanking all delegations for their continued engagement in the issues before the Working Group. Even though progress remains elusive I encourage delegations to continue to explore possibilities of overcoming differences.
