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**United Nations Sixth Committee Working Group on “Measures to eliminate international terrorism” Informal Consultations**

Chair: Dear colleagues, the first round of informal consultations on the draft Comprehensive Convention on International Terrorism is called to order. I propose that we devote our time on the outstanding issues concerning the draft Convention. I draw your attention to Annex I to Document A/68/37. This Annex contains a preamble, Articles 1, 2, and 4 to 27 of the draft Comprehensive Convention, prepared by the Bureau, incorporating the various provisions contained in Document A/C.6/65/L.10 Annex I for discussion.

I also draw attention to Annex II of the Report, which contains a written proposal relating to the outstanding issues surrounding the draft Comprehensive Convention, among them a text relating to the preamble and Article 3, from Article 18 of the draft Comprehensive Convention, prepared by the Bureau for discussion. The proposal represents the proposed elements of an oral package presented by the coordinator in 2007, Document A/C.6/65/L.10 Annex II for discussion, and copies of this document are available at the back of the room.

I’m aware that we have among us delegates that are new to the process. I will, therefore, as in the past, try to provide the context of our work. These negotiations started in the context of an Ad Hoc Committee established, first under General Assembly Resolution 51/210. The first Ad Hoc conversation was in 1997, but of course the General Assembly first took up the issue of terrorism in 1972. There was an earlier Ad Hoc Committee, which was established in 1973, and it concluded its work in 1979.

The impetus to the current work began when the General Assembly adopted the 1994 Declaration on Measures to Eliminate International Terrorism. This was followed two years later in 1996 by the Declaration Supplement, the 1994 Declaration on Measures to Eliminate International Terrorism. It was in the context of the resolution to which that supplement is annexed that the second Ad Hoc Committee on measures to eliminate international terrorism was established. It was mandated with the task of elaborating an international convention for the suppression of terrorism bombings, and subsequently an international convention [indiscernible 20:34] to supplement related existing international instruments, and thereafter to address the means of further developing a comprehensive legal framework of conventions dealing with international terrorism. The mandate in subsequent resolutions has been modified accordingly in order to take up any new subject matter proposed for consideration.

The first Ad Hoc Committee was convened in the spring of 1997, and work continued in the framework of a Working Group of the Sixth Committee in the fall of the same year. This is a pattern that has been followed except where in recent years the General Assembly has elected not to establish an Ad Hoc Committee. The last Ad Hoc Committee was in 2013, but work has continued in the framework of a Working Group of the Sixth Committee. So far our work has led to the adoption by the General Assembly of three counter-terrorism instruments on terrorist bombings in 1997, on financing of terrorism in 1999, and on nuclear terrorism in 2005.

In the elaboration of these instruments, we have followed certain approaches, set benchmarks which have formed the [aqim 22:09] of the counter-terrorism legal framework. Based on an extradite or prosecute regime, these include criminalization of political conduct, which requires domestication; retribution of individual criminal responsibility; assigning certain responsibilities to states, including establishment of jurisdiction on a variety of mandatory and discretionary basis; imposition of penalties commensurate with the [draft offenses 22:41] establish; addressing issues of international cooperation, including extradition and mutual assistance in criminal matters as well as obligations of states on prevention and exchange of information.

When the draft Comprehensive Convention was presented by India, our work has followed a similar pattern. An incremental approach without seeking to reinvent the wheel has thus been followed by the international community in its efforts to develop a comprehensive legal framework for combating international terrorism. The negotiations on the draft Comprehensive Convention commenced in the fall of 2000, even though the initial background proposal was made in 1999 in the context of the Sixth Committee. Our work has proceeded on the basis that nothing is agreed until everything is agreed. However, the bulk of the text was substantially advanced by the end of the year 2001.

As far back as the earlier efforts to elaborate counter-terrorism instruments in the context of the League of Nations, attempts have been made to define particular conduct subject to proscription. These could be considered to be inclusionary elements. An effort has also been made to define those aspects that are not covered by the particular instruments being elaborated. The two would be called the exclusionary elements. The more recent instruments adopted to the work of Ad Hoc Committee have adopted a similar “inclusionary”/“exclusionary” dichotomy beginning with the Terrorism Bombings Convention in 1997.

In relation to the draft Comprehensive Convention, it is exclusionary elements that have been problematic. In fairness, this is also the case in the negotiation of the three prior instruments. The outstanding issues on the draft Comprehensive Convention revolve around what is referred to as Exclusionary draft Article 3, formerly draft Article 18. Since 2001 our work has been focused on these matters.

I must hasten to add that there is a close relationship between draft Article 2 on the scope of offenses and draft Article 3, which is formerly draft Article 18.

One of the reasons for placing the two draft articles sequentially, one following the others, is to acknowledge the close link between the inclusionary and the exclusionary elements. Draft Article 2 provides the inclusionary elements in that it seeks to define the proscribed acts of terrorism for the purposes of the present draft convention. Draft Article 3 addresses the exclusionary elements. The reason why we have such a clause is that it is commonly acknowledged that a draft convention will operate within an international legal system, that there are existing legal rules. Accordingly, it intends in particular to safeguard the continued application of other fields of law, including the Charter of the United Nations, international humanitarian law, and the military law.

Since 2001, various proposals have been considered. As pointed out earlier, Annex 2 to the 2013 Report of Ad Hoc Committee, document A/68/37, contains written proposals relating to outstanding issues surrounding the draft Comprehensive convention. These proposed steps represent the stage of consideration reached at the 2013 session of the Ad Hoc Committee.

As pointed out in my letter to permanent representatives in – to the permanent representatives, in 2001 we were close to an agreement, but we ended up with two competing texts. Between 2002 and 2006, efforts were made through informal consultations, bilateral contacts, and informal soundings to find the solution that would lead us to work on the basis of one text.

Since these exclusionary elements were based on prior instruments, there was a general understanding that it was better from the point of view of interpretation of a criminal law enforcement instrument, work on the basis of adding on to prior existing language rather than formulating new language. It was considered useful to come up with compromised language that builds upon already agreed language, which existed in prior negotiated texts. And as a result of these informal consultations, bilateral contacts, and soundings.

But in 2007, Mrs. Maria Telalian of Greece, who was the coordinator on the outstanding issues concerning the draft Convention up to last year, presented the proposal constituting the elements of a package that addresses a possible way to overcome the impasse in our negotiations. The text is contained in the 2013 report of the Ad Hoc Committee as a Bureau proposal. The text is an outcome of our collective efforts.

Distinguished Delegates, allow me to elaborate on this a little bit. In our discussions, delegations have vigorously stressed at least four aspects: A) the need to have a clear definition of acts of terrorism; B) to distinguish such acts from the right of peoples to self-determination, in particular those under foreign occupation, colonial or alien domination; C) to ensure that the integrity of international humanitarian law is safeguarded; and D) that there is no impunity for military forces of the state. Accordingly, the elements of an oral package by the Bureau comprise a preamble, addition to paragraph 4 of the draft Article 3, and a new paragraph 5 to draft Article 3.

Draft Article 3 as a whole needs to be understood together with an integrated plan. The elements represent a delicate balance that hold fidelity the state of the law.

Draft Article 2 provides a proscription of acts of terrorism. We have in that article the general operational definition of terrorism for purposes of the draft Convention. The related concerns to distinguish such acts from acts in the exercises of the right of peoples to self-determination including those under foreign occupation, colonial or alien domination, as well as to ensure the integrity of international humanitarian law are sought to be addressed in draft Article 3 by reading paragraphs 1 and 2 of the draft article with new paragraph 5.

Paragraph 1 is a savings clause, which preserves the right of states, peoples, and individuals under international law. [indiscernible 31:37] It is paragraph 2 that ensures the right [indiscernible 31:45] to bridge the gap and [indiscernible 31:52] to have a clearer definition or delineation between what is covered – between what is covered by the draft Convention and those acts that fall within the province of and are governed by international humanitarian law by having a new paragraph 5.

As pointed out earlier, there was a sense that being a criminal law enforcement instrument existing in this language must be tempered. Accordingly, paragraph 5 wishes to address the important principles also [indiscernible 32:35] of preserving the integrity of international humanitarian law. It is not the aim of the draft Convention to rewrite international humanitarian law, or to rectify any perceived flaws in such law. It may be noted that certain activities do bring armed conflict, as those activities are understood by that law, may not be prohibited under international humanitarian law. Those activities, however, remain governed by that law.

The draft Convention does not attempt to criminalize what is not prohibited under international humanitarian law. It can also be recalled that international humanitarian law prohibits acts of terrorism. Those acts remain prohibited under that law and are governed by that law. The addition of new paragraph 5 is intended to emphasize the sanctity of international humanitarian law.

The preamble and addition to paragraph 4 seeks to address concerns that there should be no impunity in this. They together address the principle that draft Article 3 is premised on recognition that other laws at the national and international levels may be applicable to certain activities during peace time that may correspond to acts proscribed by the draft Convention. The additional preamble is based on the language of the last preamble paragraph of the Terrorism Bombings Convention and the Nuclear Terrorism Convention.

In according deference, the existing applicable law, these provisions are not intended to imply any impunity. Accordingly, it was considered important to indicate the conduct which would meet the characterization of criminal conduct as contemplated in draft Article 2 is subject to prosecution under such other laws irrespective of its characterization under such laws. It is this text that the Bureau has presented for consideration, copies of the Bureau proposal having made available in this room.

Let me also draw attention to Annex 3 of the 2013 report of Ad Hoc Committee containing the informal summary prepared by the Chair on the exchange of views during the preliminary debate and the informal consultations. In paragraph 34 there is a text of the accompanying draft resolution that is proposed by the coordinator in 2011. See document A/C. 6/66/SR.28, para. 89, and was endorsed by the Bureau for inclusion in a 2013 report as a proposal overview for further discussion.

This draft resolution emerged from considerations following soundings with delegations that the coordinator laid out in 2009 as necessary to be born in mind as we seek further economic [negotiations 36:03]. Accordingly, it suggested specific considerations for a possible accompanying resolution, which had to be taken together as a package with the Bureau proposal that I have just described. The resolution has a number of elements that seek to address some of the lingering concerns that have been expressed during the negotiations.

It was considered important that we manage expectations by taking into account the following aspects. The first was the necessity of recalling Resolution 49/60 of 9th December 1994, by which the General Assembly adopted the declaration on measures to eliminate international terrorism, and Resolution 51/210 of 17 December 1996, and 53/108 of 8 December 1998, which informed the basis of our work.

The second was the possibility of recalling also the declaration on principles of international law concerning trade regulations and cooperation among states in accordance with the Charter of the United Nations, the importance of which in promoting trade regulations on states is thereby recognized.

The third was the necessity of giving consideration for the possibility of reaffirming the duty of every state to refrain from organizing, instigating, assisting, or participating in acts of civil strife or terrorist acts in or out of state, particularly in organized activities which is totally directed towards the commission of such acts, when these acts involve threat or use of force.

The fourth was the usefulness of reaffirming the context of combating international terrorism, the importance of maintaining the integrity of international humanitarian law, as well as the importance of respecting human rights in countering terrorism.

The fifth was the necessity of capturing the element of convening the high-level conference under the auspices of the United Nations. In this regard, some suggestions had been made to initiate exclusive process, which entailed a forced level binding and transparent understanding that we model as a first step the adoption of the draft Convention based on the coordinator's thoughts on such proposal, and subsequently as a second step the convening of high-level conference.

Finally, there was also the possibility of changing the name of the draft Convention from "Comprehensive Convention" to read "United Nations Convention on the Prevention and Suppression of International Terrorism” with a view of managing expectations and addressing certain concerns that there is among some delegations arising from the term "Comprehensive Convention". However, discussions in 2014 covered each of these issues and an informal summary of the discussions is contained in the oral report, which I delivered during that session contained in document A/C.6/69/SR.28.

I think it is important to bear in mind the nature of our exercise. We are in the – for some capacity seeking to give legislative direction focusing on the legal principles. We are not acting as a judicial element rendering a pronouncement based on particular contextual circumstances of the case. I trust that with these clarifications we can begin our discussion of the text. Legally, I believe we are on the right track. What is needed now is the political will.

Distinguished Delegates, I suggest that we now go through the text of the Bureau proposal that is before you for any comments. It would be important to hear the specific views of as many delegations as possible in order to make progress in our work. It probably would be useful to go through the text paragraph by paragraph, even though the Article as a whole is integral. I'm aware that we have had numerous discussions on these matters in the past, and it would certainly be useful for the Chair and the Friends to have a clear indication of what we ought to do next.

The floor is now open for comments.

I give the floor to South Africa. Sorry. Sorry. The Delegation of Saudi Arabia has the floor.

Saudi Arabia: Mr. Chair, I have the honor to speak on behalf of the Organisation of Islamic Cooperation. Mr. Chair, we're seized on the pending issues of the draft Comprehensive Convention on International Terrorism, and the OIC reaffirms its commitment to the process of negotiations and underscores the need for progress in this process.

We reiterate our previous proposals on the scope of the draft convention, and we reaffirm our determination to make every effort to reach a consensus agreement on the draft convention by resolving the outstanding issues, including those related to the legal definition of terrorism, particularly on the distinction between terrorism and the struggle for the rights of people – of self-determination by people under foreign occupation and colonial or alien domination, as well as on the scope of the acts covered by the draft Convention.

We have submitted proposals in this regard. They are in the document that you've referred to. But we feel that there has not been any progress regarding those proposals, and we would like to make it clear that we would like the definition to be very clear and the reference to the term very clear in the Comprehensive Convention, if it is truly to be a Comprehensive Convention.

That being said, we also have the issue of the conference and as proposed by the delegation of Egypt, the OIC group reiterates the call to hold 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 and to conclude on an agreed definition of terrorism and to sort out any political differences. And this would take place before an agreement on the Comprehensive Convention would take place. This would allow senior officials from different nations to come to an agreement on the political differences and also come up with a definition that we can use here in our convention.

Thank you, Mr. Chair.

Chairman: I thank the Delegate of Saudi Arabia for his statement on behalf of the OIC. I now give the floor to South Africa.

South Africa: Thank you very much, Ambassador, in your capacity as the Chair of the Working Group, and good afternoon to everyone in the house.

Chair, I have the honor to speak on behalf of the African group. And the African group, Mr. Chair, will continue supporting all your efforts in an attempt to taking this process forward in the form of addressing the outstanding issues. And we agree with you that there is a need for the political will. And maybe the high-level conference, as proposed by Egypt, under the auspices of the United Nations, which is supported by the African Group, might take the process forward, and it might be a demonstration that there is a political will if it takes place because we will be able to look at how it’s attended and at what level and all that. So then we’ll be able – that’s why I say it might be a demonstration that there’s a political will. And I’m saying that because as an African Group, we are optimistic, and we think that it will be attended, it will be well attended at the level that is required. And we are happy that you – happy that it has been arranged that there will be three meetings discussing this matter, and we hope that we will have achieved something during these three meetings, including this one.

And again with regard to the change of the title or the name, I think that might do something as well that will be – that will take the process forward. So I think it’s worth trying that, Mr. Chair. I think that’s a good idea. But once again as an African Group, we look forward to working with you and other delegations in this process with a view to addressing the outstanding issues.

Thank you very much.

Chair: I thank the delegate of South Africa for his statement on behalf of the African Group and for the assurance of support.

Any other delegations making statements?

European Union.

European Union: Thank you, Mr. Chairman. I have the honor to speak on behalf of the European Union and its Member States. I would like first to thank you, Mr. Chair, for your tireless efforts over the years and for your comprehensive presentation today.

As we have stated in many previous occasions, we remain committed to the development of an additional international legal instrument such as the draft of Comprehensive Convention on International Terrorism, and we also remain firmly engaged in the negotiations process and committed to a successful conclusion by this Working Group.

We would like to commend the Chair and also the former coordinator for their continuous work, including the last report that you mentioned today and briefly – extensively presented A/68/37. The debates in the last years reflect that the 2007 proposal is still on the table; it was not rejected by any delegation.

We would also like to take note of the fact that some delegations, while referring to the 2002 text, have indicated their readiness to consider the 2007 proposal if that text would bring negotiations to a successful conclusion. We would consider the 2007 proposal if others are willing to do so, Mr. Chairman.

And also relating to the method that you’ve briefly commented upon such as the change of the name or title of this instrument, we don’t have a clear position as of now. But we wonder, Mr. Chairman, what is the added value of this change and what would bring that to the substance of the text?

Also regarding the issue of the high-level conference, we continue to believe that such – the question of convening such a conference under the auspices of the UN should be discussed after we have reached an agreement on the convention within the Working Group and not before.

I will end my first statement here, Mr. Chair.

Thank you.

Chair: I thank the Representative of the European Union for her statement and for the commitment to remain engaged in the negotiating process and for the text proposed by the Bureau.

Very briefly respond to one the elements of the package. The change of title as I mentioned, was for the purpose of managing expectations because during these long, drawn-out negotiations we got the sense – the Bureau had the sense that some of the difficulties were accentuated by an expectation that this is the last word – last word on terrorism. That is not so. So it is in that context, that background that the proposal was made but it’s to be seen as part of the overall package – the Bureau text, the [indiscernible 50:11] resolution which I outlined, and then the possible change of title together as a package. That is the context. But these are matters that we can go on discussing both formally and informally as we proceed with our work.

And I now give the floor to the United States. You have the floor, sir.

United States: Thank you very much, Mr. Chair.

Just very briefly, a couple of comments. First, as others, we appreciate the opportunity to discuss the CCIT and share the desire to reinforce the critical principle that acts of terrorism are criminal, inhuman, and unjustifiable, regardless of motivation. As we said in our statement in plenary, we’re ready to listen to the ideas of other delegations regarding how to move forward. I also won’t reiterate here but our position with respect to Article 3 is very well know and we have made it clear in meetings of this Working Group over time.

Two things to highlight, I think. The first is that in order to successfully resolve the outstanding issues, we need to have a shared and clear understanding of certain fundamental principles. And one of those for us is that a comprehensive convention on terrorism cannot provide a pretext for terrorist groups to claim that their criminal acts are excluded from the scope of the convention for any justification or motivation, including claiming that they’re acting in the name of national liberation or resistance to foreign occupation. And this is a view we have expressed repeatedly over time, but I thought it useful to reiterate here.

The other point I would just touch on since it was raised, although I understand we will discuss this further on Friday at our next meeting of the Working Group, but our position remains unchanged that we don’t believe the time is right for the convening of a high-level conference and still have differences of view regarding the substance, but we’re happy to explore that in more detail at the appropriate time and to continue the conversation today in a more detailed format as you deem fit, Mr. Chair.

Thanks.

Chair: I thank the Representative of the United States and now I give the floor to the Representative of the Islamic Republic of Iran. You have the floor.

Islamic Republic of Iran: Thank you, Mr. Chairman.

I want to briefly express the position of NAM countries on this matter. The NAM Member State also supports finalization of the Comprehensive Convention on Terrorism and solving outstanding issues. We also support convening a high-level conference, and we think that convening such a conference could contribute to finalization of the pending matters.

Thank you.

Chair: Thank you, Iran, for your statement on behalf of the non-aligned group of countries.

Any other delegations wishing to make statements of a general nature at this point?

Norway. Norway have the floor.

Norway: Thanks. Thanks very much, Chair. I just wanted to briefly thank you first for the very comprehensive presentation that you gave at the outset of this meeting. I thought that was very informative, and I wanted to thank you for that. I also want to thank you for your tireless efforts and laboring so hard to get us past the finish line with regards to this very important and also very complex issue. So thanks very much.

My delegation fully shares your assessments both on substance but also on what is required now to move this agenda item forward. We agree that political will is extremely important if we want to be able to succeed in this regard. And in this regard we just wanted to convey to you and to colleagues our commitment to see the process going forward and underscore our willingness to assist you in any way possible to move this forward, and we look forward to working with you and with other colleagues to see if we can come to a conclusion on this very important issue. So thanks again, and we look forward to the work that lies ahead.

Thank you.

Chair: I thank the delegate of Norway for his statement and his assurance of support and your commitment to remain engaged in the process.

I now give the floor to the delegate of Brazil. You have the floor, sir.

Brazil: Thank you, Ambassador; good afternoon, colleagues. I would like, of course, to start by thanking you for your comprehensive presentation at the beginning of this session. And I take this opportunity to reiterate the call that the Community of Latin American and Caribbean States made in the plenary session on this agenda item regarding the need to overcome, with a sense of urgency, the current stalemate of the process leading to the adoption of the CCIT and to the convening of a high-level conference under the auspices of the UN. It is our national and regional views that both initiatives would contribute to direct or joint efforts in a more coordinated way and to improve conditions for ensuring due process and compliance with human rights in the realm of countering terrorism.

Ambassador, as we are all aware in the last years, we have been witnessing a proliferation of concepts associated to the concept of terrorism. We have been talking about radicalism, we have been talking about extremism, we have been talking about violent extremism, and I think that this debate points to the need for us to finally reach an agreement on the definition of terrorism because, as we see, these proliferation of concepts do not create the best scenario for ensuring that the rule of law is respected in the context of countering terrorism. So we pledge our support to you, to the friends of the Chair, and to this process in contributing to building the necessary bridges to move this discussion ahead.

Thank you.

Chair: I thank Brazil for his statement and for his commitment of support.

And I now give the floor to the delegate of Peru. You have the floor.

Peru: Thank you very much, Mr. Chair. Also, very briefly, the delegation of Peru would like to join others, both general delegations, Friends of Chair, and in particular with the last iteration of Brazil, the Group of Latin American and Caribbean States in expressing our commitment with the process and our wish that it comes to a successful result in a short – or within a short time frame. We indeed in our regional statement even indicated a time frame that we believe is possible within the circumstances. So with that, I would like to start by saying that.

And then the other thing that I would like to mention is, you recalled in your statement that the importance of recalling that the Sixth Committee as a main – one of the main committees of the General Assembly has this normative mandate, a broad normative framework, that is our work. And I think that I would like to highlight that aspect of your statement in the sense that the work we are undertaking now falls within that important aspect of the work of the General Assembly and we should consider that in order to move forward.

The other issue that you perhaps have not mentioned today, but you have included in some of your recent statements as Chair, is that we are also even though creating a general framework for the combat on terrorism, there is much that remains within the domestic legislation to cope with, and that is also something that I believe delegations here should take into account in order to move forward.

Thank you.

Chair: I thank the delegate of Peru for his intervention, for his commitment of support, and indeed for reminding us that – of the mandate of the Sixth Committee in the [long-creating 59:27] process, at a time when we are talking of strengthening of the General Assembly, revitalizing its work, it’s important that the Sixth Committee and its working groups bear that responsibility in mind and exert the necessary will to complete the task that is at hand.

Yes. Thank you. And any other delegations?

El Salvador.

El Salvador: Thank you, Mr. Ambassador. Permit me to congratulate you on your election to head this working group. I know that from our consultations, the Republic of El Salvador wishes to echo what was said by my colleague from Brazil. We support any action, activity aimed at finalizing this draft agreement. There is no doubt that with the passing of time, every time we take longer to reach a decision of this very important matter, important for mankind, we are allowing the major problems, which affect our nationals, we’re the ones who suffer from these problems.

The government of El Salvador in the last year alone has condemned various attacks, which have taken place in the world. And to mention some, I would say the one in Turkey unfortunately, Belgium, Bangladesh, Indonesia, and so forth. And I believe that we would not have to recall that last year on the 13th of November 2015, we concluded the 70th session with a minute of silence given the regrettable terrorist attack in France. So the question that arises is, how much longer would we have to wait for all of us here together to be able to reach a solution to this very major problem?

In this regard, the government of El Salvador offers its full support and hopes that as soon as possible we may move toward a conference on the subject, and at the same time reach agreement on the various obstacles that remain.

Thank you.

Chair: I thank the delegate of El Salvador for his statement, for his commitment for support, and for reminding all of us, as I mentioned at the beginning, the need to summon the necessary will to bring our work to a closure in a background of unrelenting acts of terrorism across all parts of the world. So thank you very much once again.

And I give the floor now to the delegate of India. You have the floor, sir.

India: Thank you, Mr. Chairman. Thank you, Ambassador, for your tireless efforts. We fully support your efforts, and like our colleague from El Salvador said, that the unrelenting assault – unrelenting terrorist attacks should make us to propel us to come to some understanding and finalize the CCIT.

In this regard, we fully support you, we support efforts [indiscernible 63:15] convening of a high-level conference. I heard some of the colleagues, but our point is what do we do with high-level conference? As you’ve said, it’s a two-step approach in your opening statement. Like that – unless there’s some kind of understanding, some semblance of agreement on the CCIT text, we don’t see there is any merit or any usefulness of convening the high-level committee or high-level conference. Already we had a conference in 2005, which mandated us in 2005 [indiscernible 63:55] to complete the process, but we haven’t done it, and this is what I mentioned in my statement also.

So as we go along, we are ready to work with you and other delegations, and also we have some concerns about some of the issues raised by the – in the general debate – that how the process, whether the issue of terrorism should be on table and whether it is a forewarning, biannual kind of sort of things which we would like to discuss with our colleagues, some of our friends who make the statement. So we would like to have some clear understanding as to how the process should go. I mean, I’m not talking about the present process; the present process you have clearly put forth what we are going to discuss at the next two weeks, three weeks, until 2nd of November. So these are the things which we have to discuss informally and with the colleagues. Thank you, Ambassador.

Thank you, Ambassador.

Chair: Thank you, India, for your statement and assurance of continuing support for our work to bring this exercise to a closure. As for the other issues, I’m sure you’ll have the necessary opportunities to discuss the procedural aspects as the work progresses.

I now give the floor to Islamic Republic of Iran. You have the floor, sir.

Islamic Republic of Iran: Thank you, Chairman. Just a brief comment on the iteration of that delegation that – about the national liberation movement in my national capacity.

My delegation think that – and believe that the definition of terrorism should be clear enough to close any door for competing intervention and interpretations, and our understanding is that the situation of the national liberations is falling within the international humanitarian law because according to first article of additional protocol – the first additional protocol – people which are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and declaration of principle of international law concerning friendly relation and cooperation among states in accordance with the Charter formed within the purview of international humanitarian law. And these factors should be clearly specified in any exclusionary element that we are trying to design in our Convention. Because we believe that this body of law now reflect integrity international law and therefore any attempt to diluting this factor would undermine the integrity of international humanitarian law and would not be acceptable.

Thank you.

Chair: Thank you, Iran, for your statement. And these are all aspects that we will certainly examine further as we go through the text, as I mentioned, in my opening statement. Would be inclusionary and exclusionary aspects need to be. They are intertwined. We will have proper – we will try to reach a proper understanding of how these in that structure, the integrated structure of the proposal presented by the Bureau with [indiscernible 67:38] beginning.

Now I give the floor to Egypt.

Egypt: Thank you very much, Mr. Chairman. And at the beginning I would like to congratulate you for assuming the chairmanship of this important working group, and you are going to have our full support in order to reach our common objective.

Mr. Chairman, what I noticed from the comments and interventions of states and groups of states that there is a repetition to the traditional positions, and it is not a surprise for me to see that Member States are repeating their traditional positions because nothing happened in order to make them change their opinions or to show flexibility regarding the draft Convention. We believe that we are not in a drafting process; we are facing – we are dealing with a matter and Member States have different political positions regarding this draft convention.

So responding to our – the question raised by our friend and colleague from India regarding the high-level conference, on the contrary we believe that it is extremely important at that stage taking into consideration, as I mentioned, that we are facing political differences. So the solution to the pending issues will not ever be taken on the expert level. And when I say expert level, I mean even the ambassadorial level here in New York. We need to have politicians sitting together to see whether we are going to be capable of reaching an agreement, a consensus on all the pending issues which are staying as an obstacle in front of reaching an agreement on this draft. Or to say once and for good that there is no need to continue having this annual discussion because we are not going ever to reach a consensus. So this is what we have in mind regarding the international conference.

On the other hand, our distinguished colleague from the USA, he gave us a very important point which could be the starting point this session if we are thinking of trying to act out of the box, as they say. He raised a very important legal point that their interpretation in the USA here, they are considering that this Convention should not give any cover to or consider any – I mean that the national liberation movements will not get the legal cover by this Convention. This is a point of view; it has to be discussed.

So if we are going to think in an un-traditional way, what I propose to you, Mr. Chairman, if we are aiming to get a different outcome that we got in the previous years, maybe this year we can use the allocated time to speak about certain points, not to go again to the draft.

For instance, this idea raised by our colleague from the USA could be a very valid point that could be discussed in the coming meeting: what is the relation between the Convention or the draft Convention that we are having and the international humanitarian law? And what is considered terrorism and what is not considered terrorism compared to or related to the national liberation movements. This could be a matter that could be discussed in a separate meeting. And I think that this could be an un-traditional way, again as I said, to try to have an outcome compared to last years. Thank you.

Mr. Chairman: Thank you, Egypt, for your statement. As I mentioned, we will have another discussion on Friday on my lower conference. Once again, delegations will have the opportunity of – to express their positions.

On the second aspect which you just touched on, as you would recall the draft presented by the Bureau, as I described a little while ago, all seemed to express the full council which I outlined, that emerged in our meetings and through our consultations. So we know what the specific issues are, and as they go through the text we will [indiscernible 1:12:21] how the text seeks to address that.

Of course if delegations feel that [indiscernible 1:12:27] focused on the issues that we have time to engage in that discussion. So the starting point I think is once again to draw attention to the text that is before you, and then we isolate the issues that pertain to a more intensive discussion, which you – I think which you flagged just now.

So thank you. And any other delegations?

Distinguished Delegates, I believe at this stage there are no further delegates to take the floor for general comment on the draft, so in the context of what we just heard I suggest that we once again go through the Bureau text paragraph by paragraph, and I will attempt to once again reiterate the context and the objective of each of the paragraphs.

As I mentioned, the way the text is structured there is a juxtaposition of the criminal law definition of terrorism, which are the inclusionary elements, elements that are thought to be covered or included within the scope of the Convention in Article 2.

Why we brought up former Article 18 as new Article 3 was to sharpen the exclusionary elements, again following the [aqim 1:14:25] of previous conventions. And it consists of a preamble and five paragraphs.

So if we go step-by-step the preamble, as I mentioned, is built on the language of previous conventions, particularly the Nuclear Terrorism and the Bombings Conventions, to highlight the fact that activities of military forces of states in peacetime are governed by a specific legal regime, governed by rules of general international law outside the framework of the Convention and to address a possible interpretation that by exclusion one could infer impunity. And that is not the intention. And the preamble read with the draft Article – the draft paragraphs that follow makes it clear that no impunity is intended through exclusion of certain activities from the scope of the Convention.

And preamble must be of course read along with paragraph 3 of Article 3, activities undertaken by military forces of a state in the exercise of their official duties, as much as they're governed by other rules of international law, are not governed by the present Convention. And paragraph 4, nothing in the present Article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws. Acts which would amount to an offense as defined in Article 2 of the present Convention remain punishable under such other laws.

So to set the context to the fact to what is set out in 3 and 4, that exclusion, paragraph 3 on exclusion of certain activities, and paragraph 4 that through exclusion no impunity is intended; these two paragraphs together with the preamble address that specific aspect.

Any comments on that package? Preamble and 3 and 4? Any delegation wishing to comment?

If not, let me draw attention to paragraph 5. Sorry, paragraph 1 of Article 3, which is a standard without prejudice clause found in all the previous sectoral conventions. Nothing in the present convention shall affect other rights, obligations, and responsibilities of states, peoples, and individuals under international law, in particular the purposes and principles of charter United Nations and international humanitarian law.

There are very clear recognizers that the Convention does not prejudice existing legal regimes. It recognizes that the Convention operates alongside other legal regimes; it is not intended to affect either the Charter or other legal regimes that would apply to specific activities. Very important element here is the specific reference to peoples, rights of peoples. It's not only states, but peoples, the points that have been raised on national liberation movements and so on. This has a bearing on those concerns that delegations have expressed over the years before this committee, that it does not affect other rights, obligations, and responsibilities of states and peoples.

Para 2 is a paragraph which has given rise to much discussion: activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law which are governed by that law are not governed by the present convention. So very clearly a carve-out for certain situations, situations of armed conflict which are governed by international humanitarian law.

So you would appreciate in all these paragraphs what is being – what is sought to be done is to point to the applicable law, applicable law in specific situations. Here it points – in the situations of armed conflict, it points to the applicable law, namely international humanitarian law. And very clear it says that matters which are governed by international humanitarian law are not governed by the present convention. And these terms are understood in the context of that law.

So when you read that paragraph you may appreciate this is essentially the choice of law provision; a choice of law provision, pointing to the applicable law. And paragraph 2 must be read with paragraph 5. The present Convention is without prejudice. The rules of international law, applicable in armed conflict, in particular if those rules applicable to acts lawful under international humanitarian law.

While paragraph 2, as I said a choice of law provision, clearly carves out the province of application of this convention and the activities to which this convention does not apply because there is [elect 1:20:46] specialist, namely international humanitarian law, which governs situations of armed conflict. Paragraph 5 provides an additional layer of conflict in the form of without prejudice clause. The without prejudice rules of international law in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.

So basically it provides that the convention, the intention is to make it very clear, the convention does not seek to criminalize anything that is not prohibited under IHL. It does not seek to add, to provide an additional layer of criminality to anything that is not prohibited under international law.

So paragraphs 2 and 5 must be read together as carving out the province of application of the convention, and clearly pointing to the applicable law which will govern situations of armed conflict, namely IHL, and that nothing in this Convention seeks to prejudice the application of IHL in those situations, to be the most important provision which has attracted much discussion, and I'm sure in the coming days this will – you will pay particular attention to these two elements and the objective behind these provisions.

I have already referred to paragraphs 3 and 4 dealing with activities of military forces of states in peacetime, pointing to the applicable law, general rules of international law. And that paragraph 4, to make it clear, that exclusion from certain acts from the scope of this convention does not mean impunity.

So as I mentioned at the beginning, it's a carefully balanced package. And this article points to applicable law in given situations, recognizing that the comprehensive convention, once adopted, does not operate in isolation, does not operate in a vacuum, and it recognizes the continuing applicability of other regimes to specific situations.

So that is the context of the Bureau proposal. Every paragraph is interlinked and the entire proposal must be read as an integrated whole. So with that additional explanation, may I seek any further views you may wish to express at this stage?

Egypt have the floor.

Egypt: Thank you, Mr. Chairman, for your explanation. I have a question regarding paragraph 2. I want to know what is the scope of application of this paragraph? And what is the exact legal definition of armed forces? Thank you.

Mr. Chairman: Thank you, Egypt, for that question. Activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law. Now the term armed forces has a fairly wide connotation on IHL, according to my understanding. And if we juxtapose that paragraph 2 with paragraph 3 where it speaks of activities undertaken by military forces of states, the word armed forces is intended to cover here both organized state forces as well as non-state actors. That would then be my response.

United States.

United States: Thanks very much, Mr. Chair. Just picking up on the colloquy that you just had, I’d make one comment and then a further question. I think the comment is I really do think we should think about the – as I said before – the principles that we want to advance here because I do want to say I think we should not have ambiguity on certain key points, so this is a useful exchange that we're having here.

But I wanted to follow up since you were discussing the wide understand of paragraph 2 and the fact that IHL, issues covered by IHL would, in your view, be excluded. But let me ask, would in your view this paragraph exclude the activities of ISIL, for instance, which is engaged in armed conflict? I appreciate any clarification on that. Thanks.

Mr. Chairman: Thank you, United States, for that question. As I flagged in my presentation, we are really here as a legislative body of the United Nations. I would be somewhat reluctant to get into judicial interpretation on the application of a convention to very, very specific situations which will ultimately depend on the specificities, circumstances of each situation. It's a matter for the national courts or international tribunals, courts or tribunals, to interpret the application of a convention to a given situation, be it ISIL or otherwise. Because what you are doing here it to provide the broad normative framework.

So if we are to – if we are to make progress I think it's important to keep in mind as to the task force to provide that normative framework, and leave it to the applicable laws and to the tribunals who will be judicially interpreting to determine such situations in the context of surrounding circumstances.

United States has the floor.

United States.: Thanks very much, Mr. Chair. Just to come back, having asked the question, to offer our view, which is that we do not think that ISIL attacks should be excluded by any interpretation from the scope of the proposed Convention. Thanks.

Mr. Chairman: Thank you, United States. Egypt?

Egypt: Yes. Thank you very much, Mr. Chairman. And actually this is a very good debate and our [esteemed colleague 1:28:08] is raising a very important point; definitely ISIL is a terrorist group and it is designated by the Security Council on the 1267 list. So it is a terrorist group, so whatever they are doing, any – either ISIL or any of those who are on the list, will be considered as a terrorist act. So this is my response to this question. Thank you.

Mr. Chairman: Thank you, Egypt, for your response. Iran?

Iran: Thank you, Chairman. For us also ISIL is definitely excluded from the scope of IHL because IHL applies to the conflict between a state, state parties, plus as I read from the Article 1 of the additional protocol on the liberation movements.

Also on the first paragraph, you referred to the peoples and the individuals. We think that the phrase of the people and individual is vague and too broad to be placed as an exclusionary element. Our preference is to mention exact term as specified in the first additional protocol of the Geneva Convention, as I read in my previous intervention. Thank you.

Mr. Chairman: Thank you, Iran, for your comments. Any other delegations wishing to take the floor at this stage?

I do not think that is the case, but I believe this was a useful debate and exchange that will help us to proceed with our work and to sharpen our focus to the issues, particular last number of interventions that came up on very, very specific issues. we will explore ways and means of making further progress in the coming days and weeks.

And as you recall, our previous coordinator for the outstanding issues on the draft Convention, Mrs. Maria Telalian, in a letter to the – addressed to me at the end of our work last year indicated her inability to continue to serve in that capacity.

As you are also aware, the Chairman of the Sixth Committee last year tasked Mr. Angel Horna to engage delegations intercessionally on matters related to the outstanding issues. Now that Mr. Horna is among the Friends of the Chair, I have asked him to continue his work on the draft Convention; and he has kindly agreed to serve in that capacity as coordinator. And I thank him for having agreed to my request.

As I mentioned earlier, our next meeting will be on Friday. We will begin with the consideration of the question of convening a high-level conference under the auspices of the United Nations. Thereafter we shall resume discussions on the outstanding issues on the draft Convention.

In the intervening period, the Chair, along with Friends, will be available for informal contacts with interested delegations. And may I also, since we are still around 4:40 p.m., that we utilize the remaining time for bilateral contacts, particularly to discuss on some of the issues that surfaced during our debate.

I understand India has asked for the floor. You have the floor, sir.

India: Thank you, Ambassador. The issues raised by our distinguished colleagues from Egypt and USA, it is also my understanding and also everyone's understanding the terrorist organizations are groups which are identified in the Security Council Resolutions and otherwise. How could they, even if they engaged in the so-called "armed conflict", how could they be considered to be excluded from the CCATR interpretations of this idea? We really don't understand.

So my sense is that there's no point in saying – asking you or somebody that ISIL is excluded. That is excluded. There's no doubt about it. That's what we want, to make it clear. Thank you.

Mr. Chairman: Thank you, India. If there are no further interventions, the informal consultations are now adjourned.