

Seventy-first 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 70/120 of 14 December 2015, the Sixth Committee decided, at its 1st meeting, on 3 October 2016, to establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussing 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. Since Ms. Maria Telalian (Greece) and Ms. Ana Cristina Rodríguez-Pineda (Guatemala) were no longer available to serve in that capacity, the Working Group was informed that the Western European and Others Group had appointed Mr. Andreas Kravik (Norway), replacing Ms. Telalian, and that the Latin American and Caribbean Group had appointed Mr. Angel Horna (Peru), replacing Ms. Rodríguez-Pineda. Accordingly, Mr. Petr Válek (Czech Republic) and Mr. Thembile Joyini (South Africa), Mr. Angel Horna (Peru) and Mr. Andreas Kravik (Norway) served as Friends of the Chair.

4. The Working Group had before it the report of the Ad Hoc Committee on its sixteenth session (A/68/37), which contains the preamble and articles 1, 2 and 4 to 27 of the draft comprehensive convention on international terrorism (hereinafter the “draft comprehensive 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 comprehensive convention (annex II); and an informal summary prepared by the Chair on the exchange of views during the plenary debate and the informal consultations, including the text of the proposed accompanying draft resolution (annex III). The Working Group also had before it the letter from the

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

II. Proceedings of the Working Group

5. The Working Group held three meetings, on 17 and 20 October and on 1 November 2016. At its 1st meeting, on 17 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 comprehensive convention. At the conclusion of the same meeting, Mr. Angel Horna (Peru) was designated the coordinator of the outstanding issues on the draft comprehensive convention, replacing Ms. Telalian (Greece). Informal consultations on the draft comprehensive convention were also held on 17 and 20 October and on 1 November, including on the way forward. The Chairman, Mr. Horna, as Coordinator, and the other Friends of the Chair were also engaged in informal and bilateral contacts with interested delegations and groups of delegations on the outstanding issues relating to the draft comprehensive convention between 17 October and 1 November. Such meetings were held both at the expert level, with the assistance of the Friends of the chair, and at the ambassadorial level, under the auspices of the Chairman of the Working Group. At its 2nd meeting, on 20 October, the Working Group considered the question of convening a high-level conference under the auspices of the United Nations.

III. Recommendation of the Working Group

6. At its 3rd meeting, on 1 November 2016, the Working Group decided to recommend that the Sixth Committee, at the seventy-second session of the General Assembly, establish a working group with a view to finalizing the process on the draft comprehensive convention on international terrorism as well as discussions on the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

7. The Working Group also recommended that the General Assembly recognize the efforts of Member States towards resolving any outstanding issues and that it encourage all Member States to redouble their efforts during the intersessional period.

8. 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

9. Delegations commented on the outstanding issues concerning the draft comprehensive convention during the informal consultations held on 17 October, 20 October and 1 November.

10. At the outset of the informal consultations on 17 October, the Chairman of the Working Group, who chaired the informal consultations, 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 comprehensive 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.6/70/SR.27) and the Coordinator, in particular as most recently contained in documents A/68/37, annex III, paras. 10 to 18; A/C.6/69/SR.28, 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 103¹). The Chairman also drew attention to the letter addressed to Ambassadors and Permanent Representatives to the United Nations dated 7 October 2016 conveying the importance of completing the draft comprehensive convention.

11. During the informal consultations on 17 October, delegations generally reaffirmed their commitment to the negotiating process and mentioned the outstanding issues which remained unresolved. In particular, some delegations reiterated the need for all proposals to be fully taken into account so that the definition of terrorism is as clear and comprehensive as possible. Other delegations affirmed that there is a need for a political will to overcome the remaining differences. In that regard, the view was expressed that changing the name of the draft comprehensive convention might help in managing expectations as to the scope of the convention, thus taking the process forward. Other delegations expressed doubts as to whether such a change in name would achieve such purpose.

12. Some delegations affirmed that the 2007 proposal contained in the report of the Ad Hoc Committee on its sixteenth session (A/68/37) still constituted a valid departing point which had not been rejected outright by any delegations. In particular, some delegations, despite preferring the text as had previously arisen from negotiations in 2002, were ready to consider the text of 2007 as a possible way forward.

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.

13. The view was expressed that the definition of terrorism must be broad enough to encompass acts of all terrorist groups, wherever and by whomsoever committed. Other delegations expressed the view that the preeminence of international humanitarian law must be respected at all times, including in situations of foreign occupation, so as not to render unlawful acts which are lawful and are governed by that law.

14. Delegations also exchanged views in relation to draft article 3 [18] of the text of the 2007 proposal. Concerning paragraph 1 of draft article 3, a proposal was advanced to refer explicitly to the definition of national liberation movements as contained in Additional Protocol I in order to add clarity to the text (“peoples ... fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”). The question was also raised as to the interpretation of paragraph 2 of draft article 3, specifically whether the meaning of “armed forces” would include both State and non-State actors. In particular, the question was raised as to whether the potential inclusion of non-State actors in that provision might entail that attacks from terrorist organizations would not be governed by the convention in certain circumstances. In this regard, the Chairman invited delegations to avoid conflating the legislative process with that of adjudicating context-specific cases on the basis of a potentially drafted text.

15. Concerning the way forward in the negotiations, the view was expressed that the timing of the discussions might be reassessed, and that perhaps deciding to hold consultations biennially was now called for. The view was also expressed that, in the absence of political agreement, the time had perhaps come to acknowledge that consensus is unattainable at present, and consultations should thus be suspended.

16. During the informal consultations on 20 October and 1 November, the Coordinator, Mr. Angel Horna, gave account of the efforts to advance the consultations concerning completion of the draft comprehensive convention. On 20 October, he referred to consultations that had taken place during the intersessional period upon request of the Chair of the Sixth Committee of the seventieth session, as well as bilateral contacts held with delegations, while expressing the hope such contacts would pave the way for more informed negotiations during the present session. Both on 20 October and on 1 November, he described the negotiating efforts at the bilateral and small group level that occurred, and reiterated the necessity for further informal consultations. He noted that there was a willingness that had emerged to continue redoubling efforts during the intersessional period.

17. The Coordinator further noted regarding the future process that although some delegations had proposed to have a formal intersessional meeting where the output of such informal processes would be reported, the preponderant view was that a more informal setting would be more conducive to the detailed discussion which was necessary to advance in the negotiations. With that in mind, the

Coordinator expressed the willingness to hold bilateral contacts, starting in late January 2017, to prepare for a fruitful and substantial intersessional dialogue.

18. Concerning the substance of the outstanding issues which would be considered during such dialogue, the Coordinator referred to some general questions which remained to be addressed concerning the scope of the draft comprehensive convention, including an appreciation of the reference to “armed forces” and the question of conduct which is “not unlawful”. In general, it appeared that the questions which required further consideration concerned the relationship between the law of counter-terrorism and the law of armed conflict.

B. Question concerning convening of a high-level conference

19. During the informal consultations held on 17 and 20 October, 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.

20. During the informal consultations on 20 October, the sponsor delegation of Egypt recalled that its proposal to convene an international conference had been made more than a decade earlier. It reiterated its view that in light of the political stall reached in the negotiations of the draft comprehensive convention on terrorism, it was important to clearly assess whether political agreement was possible or not.

21. During the informal consultations held on 17 and 20 October, several delegations reiterated their support for the convening of a high-level conference, expressing the view that the differences in opinion concerning the draft comprehensive convention on terrorism were of a political nature, and they could thus be resolved only at such level. Some other delegations expressed the view that the convening of such a conference would be premature until agreement was reached at the technical level.

22. The Chairman of the Working Group, the Friends of the Chair and the Coordinator have been heartened to note that there appears to be fresh interest to engage among delegations and explore other potential avenues. The issues of concern revolve around draft article 3 [18] of the draft convention, in particular a clear understanding and compromise on the scope of the exception reflected as a “choice of law” clause. Throughout the informal consultations and contacts, positive ideas were raised that could be the subject of further exploration. These efforts give us hope for guarded optimism. To move ahead, we look forward to a continuing willingness among Member States to show flexibility and the necessary political will.