

3rd Meeting  
18 October 2007  
3:00 p.m.  
Trusteeship Council Chamber

Working Group of the Sixth Committee  
on Measures to Eliminate International Terrorism

**Statement by Ms. Maria Telalian (Greece) on the bilateral contacts  
concerning outstanding issues relating to the draft comprehensive  
convention on international terrorism**

Thank you very much Mr. Chairman.

Following my statement on Monday, 15 October, further bilateral contacts with delegations were held this week, on Tuesday, 16 October, and Wednesday, 17 October.

The purpose of these bilateral contacts was to provide delegations with further opportunities to discuss the text containing elements of a package to the outstanding issues surrounding the draft comprehensive convention, which were presented in February during the last session of the Ad Hoc Committee. In particular, it was hoped to ascertain whether those elements could help to move the process forward.

In the consultations and soundings, the Chairman and the Coordinator sought to further clarify how these elements ought to be contextualized in the scheme under the draft convention, in the light of views expressed, both during the Sixth Committee debate on measures to eliminate international terrorism and the bilateral contacts. These issues revolved around a number

of certain considerations, including: the importance not to affect the exercise of the right of peoples to self-determination, the need to capture concerns relating to "State terrorism", the satisfactory resolution of matters concerning potential impunity of military forces of a State and the necessity to clearly delineate between activities falling under the scope of the draft convention and those governed by international humanitarian law

In the overall scheme of the draft comprehensive convention all these aspects are addressed in draft article 18. It is, however, important to emphasize at the outset that an appreciation of draft article 18, whose constituent elements have to be read as a whole, would be incomplete without relating it to the other articles of the draft convention, in particular draft article 2, which provides, for the purpose of the draft convention, the criminal law definition of acts of terrorism. Paragraph 1 of draft article 2 is first and foremost concerned with "unlawful" conduct by "any person". These are key terms. In reading draft article 2, together with draft article 18, the latter only carves out from the scope of the convention certain activities that are regulated by other fields of law.

In seeking to provide exclusionary elements, it is understood that the draft convention will have to operate in the context of an overall international legal framework where other rules of international law are also applicable. To the extent possible, there is an attempt in draft article 18 to safeguard the application of that other law. It does so by not rendering unlawful otherwise lawful acts under such law. At the same time it seeks to close any loopholes that may invite possibilities for impunity for certain categories of persons. Our efforts in the past several years have been to seek

to fine-tune the provisions in ways that close the concerns for gaps of possible impunity.

It would be essential to stress three points that embrace the issues that were raised in the bilateral contacts. First, paragraph 1 of draft article 18, which states that nothing in the convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter and international humanitarian law, has not been contentious. It sets out the overarching principles that underpin what is excluded from the scope of the draft convention, including any concerns that relate to the right of peoples to self-determination. This is negotiated language that has stood the test of time, since the adoption of the Terrorist bombings convention.

Secondly, as pointed out earlier, the definition of acts of terrorism in draft article 2 includes acts undertaken by "any person". By excluding certain activities of armed forces of a State in paragraph 2 of draft article 18 the clear understanding has always been that such activities are governed by other rules of international law. It was nevertheless found useful to also address the question of "military forces of a State", that is to say activities of "armed forces of a State" in peacetime and other persons captured by the definition of "military forces of a State" in article 1 of the draft convention. It was also clear from the very beginning that there was a need to close the gap in relation to activities of military forces of a State acting in the exercise of their official duties. As is well known, paragraph 3 of draft article 18, provides that activities undertaken by military forces of a State in the exercise of their official duties inasmuch as they are governed by other rules

of international law are not governed by this Convention. As has been noted at previous occasions in practically all jurisdictions military forces of a State are subject to a code of conduct separate from civilians, including the possibility of being tried through a court martial. That reality has therefore been reflected in this paragraph. The phrase "inasmuch as they are governed by other rules of international law" embraces both conduct that may be lawful and unlawful under international law. As read with paragraph 4, it should be understood that such carve-out does not make lawful otherwise unlawful acts. It simply recognizes that other laws would apply and does not preclude prosecution under such laws. The addition that was proposed to paragraph 4, in the text submitted during the 2007 session of the Ad Hoc Committee, namely the reference to the fact that "acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws", together with the new preambular language based on the Nuclear terrorism convention, seeks to buttress the fact that there is an inner core of conduct which if committed would constitute an offence which should remain punishable irrespective of the regime that would apply.

Thirdly, paragraph 2 of draft article 18 already established a demarcation between what is covered by the draft convention and activities of armed forces during armed conflict, "as those terms are understood under international humanitarian law", a phrase which is not without significance. However, in order to provide further clarity a new paragraph 5, framed as a "without prejudice clause" was added during the 2007 session of the Ad Hoc Committee. This paragraph consists of a general "without prejudice" statement which is subsequently elucidated with regard to rules of international law applicable for certain acts which would be lawful under

international humanitarian law. The term "lawful" in this context should, from an international humanitarian law perspective, properly be understood with its double negative connotation, i.e., "not unlawful acts" since international humanitarian law does not in a literal sense define which acts are "lawful", but which acts are prohibited. However, in view of the need to distinguish those acts that are "unlawful" under paragraph 1 of draft article 2, which provides that the convention only covers "unlawful activities", (which proximate to acts also "unlawful" under international humanitarian law) the term "lawful" in paragraph 5 was used as being more appropriate in the circumstances. This paragraph, together with draft article 18 as a whole, is drafted in such a way as to provide the necessary direction to those that will be responsible for the implementation of the draft convention. Indeed, it will be for the parties and consequently the judicial authorities to make interpretations in the light of the circumstances in specific cases. What is key to this element is the principle that international humanitarian law is not prejudiced by this convention. If it is not a clean delineation it is precisely because in matters of this nature there is a potential overlap, and as I stated on Monday, if there is a certain overlap, the solution may lie, in fact, in recognizing that such overlap exists.

During the bilateral contacts, some delegations, without delving into the substance of the text, expressed support for the elements and considered that they constitute a step in the right direction towards a compromise solution and serve as a useful basis for our future deliberations. It was also noted that at the sunset it might be useful to contemplate possibilities of offering the parameters within which the convention has been negotiated in the accompanying resolution. It is hoped that these additional clarifications

which were provided during the bilateral contacts offer additional insights into the issues implicated by the text. It is realized that delegations may need more time to study and reflect upon the proposal and on the clarifications offered. Delegations are urged to consider these elements carefully and view them as a good faith attempt to find a compromise solution that may be acceptable to all.

Let me conclude by noting that the issue of the procedure of deliberations was also raised during the informal meetings. Some delegations considered that the format of bilateral contacts, as combined with the other interventions within the structure of the negotiations, provided a satisfactory informal framework for advancing the process of negotiations.

Thank you.