

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

I thank you very much Mr. Chairman.

Following our meeting last Monday, further bilateral contacts with delegations were held on 13 and 14 April 2010. Delegations reiterated the importance that they attached to the conclusion of the draft convention and their continued readiness to remain engaged in the process to resolve the remaining outstanding issues. In particular, I was encouraged by a renewed tone and willingness to work on the basis of the elements of the proposed package as outlined in 2007. The bilateral contacts were also an opportunity for delegations to seek further clarifications, including on the statement that I made on 12 April.

In my statement on Monday, I stated that in the past, beginning in 2007, I have had the opportunity to offer the background and rationale for the elements of an overall package, as well as to provide additional clarifications. I reiterated – and do so once more today – that these observations remain valid. In particular, I wish to underscore that delegations have stressed that the integrity of international humanitarian law should be respected and preserved, and that the draft convention should not prejudice or attempt to modify existing provisions of that law. Moreover, it has been said in the same vein, that the draft convention would not impose on States parties obligations under international humanitarian law by which they were not already bound. It was in the spirit of these considerations that the elements of the overall package were introduced in 2007 and therefore they provide important additional clarifications to the differences that have existed.

In the bilaterals, some delegations also asked me whether I had any ideas regarding the accompanying resolution. What I have said in the past is that the approach of addressing, in an accompanying resolution, some outstanding issues or reflecting particular understandings when negotiating a text has been used elsewhere in previous negotiations on matters of a legal nature. I would encourage delegations to start thinking about these issues so that when the appropriate time comes it will be easy to put ideas on paper.

Mr. Chairman,

I would be remiss if I did not mention also the concerns that delegations have communicated to me about some suggestions or comments which they perceive as attempts to reintroduce proposals based on notions that have not found favour in the past. From 2002, we have been dealing with outstanding issues. I am afraid that somehow we

might be losing sight of the overall picture. Today, I thought that it might be useful to remind delegations of what has so far been achieved. Since we began the work of the Ad Hoc Committee in 1997, we have not shied away from confronting confounding questions arising as a result of the consequent relationship between our exercise and other fields of international law, as well as domestic law.

However, the overarching scheme that was adopted has been to focus efforts on the elaboration of a criminal law enforcement instrument targeted at individual criminal responsibility and based on enhanced international cooperation on the basis of an *aut dedere aut judicare* regime. In the inclusionary elements of draft article 2 and the exclusionary elements of draft article 18, we have a text of a legal definition of acts of terrorism suitable for a criminal law enforcement instrument, which this draft convention is intended to be.

What have we achieved so far? Let me start with draft article 2. The scope *ratione personae* of this draft article covers (a) any person (who unlawfully and intentionally); (b) a person who makes a credible and serious threat; (c) a person who makes an attempt to cause; (d) a person who contributes as a member of a group of persons; (e) a person who participates as an accomplice; and (f) a person who organizes or directs others. In short, the draft article covers a whole range of persons who might plausibly be involved in a criminal enterprise. In addition, in draft article 9, each State Party, in accordance with its domestic legal principles, has a possibility of holding legal entities other than natural persons liable for offences referred to in article 2. Such liability may be criminal, civil or administrative.

The scope *ratione materiae* of draft article 2 links all persons contemplated to a very specific criminal enterprise or activity, namely (a) causing death or serious bodily harm to any person; (b) causing serious damage to public or private property, including a place of public use, a State government facility, a public transportation system, an infrastructure facility or to the environment; and (c) causing damage to property, places or facilities or systems referred to in (b) above, resulting or likely to result in major economic loss.

However, it is not enough that criminal acts as contemplated once consummated would be called acts of terrorism. The purpose of the conduct, by its nature or context should be to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act. This is the essential value added to the scope *ratione materiae*.

On many occasions, it has been stressed that draft article 2 is closely linked to draft article 18, which is exclusionary and formulated as "without prejudice" and applicable law clauses. Indeed, as a result of the informal soundings with delegations I proposed last year in the context of the working group that draft article 18 should eventually be placed closer to draft article 2; thus it would become draft article 3. It has also been stressed that draft article 18 ought to be read and understood as an integral whole.

Paragraph 1 of article 18 generally safeguards other rights, obligations and responsibilities of States, peoples and individuals under international law. This formulation would include the right of peoples to self-determination. This paragraph should be read together with the additional paragraph 5 of the elements of the overall package, which seeks to further clarify these particular aspects in the context of international humanitarian law and projects the clear demarcation that we have sought to make between the draft convention and activities governed by international humanitarian law.

It is common knowledge that an entirely different legal regime, already well established, addresses the activities of armed forces during armed conflict. This is the rationale behind paragraph 2 of draft article 18. I have had the occasion earlier in the week to draw attention to the broad understanding of the meaning of "armed forces" and "armed conflict" within the context of developments in international humanitarian law, as reflected in the relevant commentaries to 1949 Geneva Conventions and 1977 Additional Protocols. International humanitarian law governs these activities, including by prohibiting certain conduct during armed conflict and criminalizing acts which are committed in breach of such law.

Paragraphs 3 and 4 of draft article 18 exclude the activities undertaken by the military forces of a State in the exercise of their official duties. The exclusion of military forces of a State has specific qualifiers to safeguard against impunity and it is understood that other laws would apply. Again, the elements of the overall package offer further clarity as regards the need to address impunity, with an additional preamble and some language to paragraph 4 of article 18.

Draft article 2, read in conjunction with draft article 18, constitute core provisions of our draft instrument. However, it also bears recalling that the draft convention contains additional treaty obligations for States. For instance, draft article 8 of the draft convention provides for specific obligations of prevention for States parties, including the taking of all practicable measures to prevent and counter preparations of offences referred to in article 2, as well as obligations to cooperate, in particular in the exchange of information.

Let me conclude by stating that I firmly believe that there is more which unites us than divides us on these delicate issues. My sense in my contacts with many delegations these past few days is that there is a political will to finalize these negotiations and adopt the draft convention preferably during the next session of the General Assembly. I hope that delegations will seize the opportunity to achieve this objective. The elements of the package and the additional explanations made since 2007 provide us with sufficient information to better understand the context and rationale of our efforts. I wish to recall that the elements of the package emerged from a long and arduous process. They are a result of our collective work. I am confident that on the basis of what we have done we should now be ready to take the necessary decisions and move forward.

Thank you.