

Seventy-second session

Sixth Committee

Agenda item 109

Measures to eliminate international terrorism

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Oral report of the Chairperson of the Working Group

Chairperson: Ambassador Rohan Perera (Sri Lanka)

I. Introduction

1. Pursuant to General Assembly resolution 71/151 of 13 December 2016, on 2 October 2017, at its 1st meeting, the Sixth Committee decided 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 General 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 Chairperson 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, Mr. Petr Válek (Czech Republic), Mr. Thembile Joyini (South Africa) and Mr. Angel Horna (Peru) 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). 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 16, 20 and 31 October 2017. At its 1st meeting, on 16 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 and Mr. Angel Horna (Peru), in his capacity as Coordinator of the outstanding issues on the draft comprehensive convention, reported on discussions that had taken place intersessionally, including an informal retreat that was held on 9 September in New York. Informal consultations on the draft comprehensive convention were also held on 16, 20 and 31 October 2017, including on the on the way forward. The Chairperson, Mr. Horna, as Coordinator, and the other Friends of the Chair were also engaged in informal consultations and bilateral contacts with interested delegations and groups of delegations on the outstanding issues relating to the draft comprehensive convention between 16 and 31 October. The Coordinator held further informal consultations with delegations on 20 and 31 October. 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. At its 3rd meeting, on 31 October 2017, the Working Group considered proposed recommendations of the Working Group to the Sixth Committee.

6. The Working Group considered various proposals aimed at acknowledging the constructive engagement that had occurred in the context of the Working Group during the current session and intersessionally, while encouraging further efforts in the coming intersessional period. As there was no agreement on the specific wording of the recommendation to be made by the Working Group to the Sixth Committee, the Working Group concluded its work on 31 October 2017 without making any recommendation but with the understanding that the mandate of the Working Group, taking into account the proposal made to acknowledge work accomplished at this session and in the intersessional period, would be addressed in the context of the negotiations on the draft annual resolution.

7. 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 Chairperson 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

8. Delegations commented on the outstanding issues concerning the draft comprehensive convention during the informal consultations held on 16, 20 and 31 October 2017.

9. At the outset of the informal consultations on 16 October, the Chairperson 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 Chairperson (A/C.6/70/SR.27) and the Coordinator at the time, 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). Work proceeded on the general understanding that further consideration would be given to all written amendments and proposals that are on the table, together with all other written and oral proposals, in future discussions, including on outstanding issues. Indeed, some delegations reiterated the continuing relevance of their proposals.

10. During the informal consultations on 16 October, the Coordinator, Mr. Angel Horna, gave an account of the efforts to advance the consultations concerning the completion of the draft comprehensive convention that had taken place during the intersessional period upon request of the Chairperson of the Sixth Committee of the seventy-first session. He described the programme of an informal retreat on the outstanding issues of the draft comprehensive convention that took place in New York on 9 September 2017. Such retreat included a keynote address by Ambassador Rohan Perera, a session on international law on anti-terrorism and another session on the interplay between such body of law and international humanitarian law at which experts, including from academia, made presentations. The retreat also featured an informal reading of draft article 3 of the draft comprehensive convention in the context of which several views were expressed particularly on the possible way forward.

11. Delegations generally reaffirmed their commitment to the negotiating process. They expressed their general positive assessment of the usefulness of the retreat that had taken place in September and their interest in further opportunities to meet informally during the intersessional period.

12. Some delegations expressed the view that the input of the International Law Commission could be useful on certain technical issues. Other delegations, however, expressed the need for further consideration of which, if any, of the issues would be susceptible to being usefully referred to the International Law Commission. Other delegations considered that the issues to be resolved were

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.

political in nature and thus the International Law Commission would not be the appropriate forum.

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. Some delegations also 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. During the informal consultations on 31 October, the Coordinator gave an account of the discussions that had taken place following the adjournment of the Working Group on 20 and 31 October. The Coordinator had circulated an informal non-paper at the outset of such discussions on 20 October. He emphasized that the non-paper was without prejudice to all existing proposals under consideration and that it was intended purely to stimulate further discussion, including intersessionally. He explained that delegations had previously expressed the view that paragraphs 2 and 5 of draft article 3 [18] of the draft comprehensive convention could, when read separately, result in possible misinterpretation. Accordingly, the informal circulated text contained proposed changes intended to merge paragraphs 2 and 5 and streamline their formulation. Specifically, a new combined paragraph 2 would set out upfront the general principle that rules of international humanitarian law in armed conflict are unprejudiced and their integrity is safeguarded, and then clarify further that the activities of armed forces during armed conflict, as those terms are understood under that law, are governed by that law.

15. The Coordinator noted that during the consultations on the circulated informal text on 20 October, a number of delegations had reserved their comments awaiting instructions from the respective capitals. Other delegations had provided preliminary comments, including in particular on the exact meaning of certain terms used in the text, its scope, as well as its potential focus towards “activities” rather than the “actors”. During the informal consultations that took place on 31 October, some delegations had provided further preliminary views. Some delegations had expressed the view that the formulation of the proposed combined paragraph 2 of article 3 [18] maintained a degree of ambiguity that could lead to differing interpretations as to key concepts relating to the applicability of the draft comprehensive convention. Some delegations, in particular, sought further clarity as to the meaning of the terms “armed forces” as well as “inasmuch as” as used in the draft convention. Some comments were also made on procedures and processes by which work was conducted in the framework of the Working Group.

16. With respect to the meaning of “armed forces”, the Coordinator observed that it would not be useful to reopen for definition in the context of the current negotiations, terms employed in the draft comprehensive convention that were already understood under international humanitarian law and are governed by that law. The Coordinator noted that most outstanding issues related to the way in which references to international humanitarian law were used in the draft comprehensive convention, which issues, the Coordinator proposed, could be the

subject of further informal consultations intersessionally. In his conclusion, the Coordinator noted that, throughout the consultations, delegations had been generally appreciative of the initiative of the coordinator in stimulating debate before and during the session. In this regard, he encouraged the Working Group to consider including a recommendation to the Sixth Committee that would facilitate the conduct of robust activities during the intersessional period.

B. Question concerning convening of a high-level conference

17. During the informal consultations held on 16 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.

18. 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 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. Accordingly, the conference would help to advance the process.

19. During the informal consultations held on 16 and 20 October, a number of delegations reiterated their support for the convening of a high-level conference. However, some other delegations expressed the view that the convening of such a conference, before agreement was reached on the draft comprehensive convention at the technical level, would be premature. Other delegations recommended that, given the current impasse, the focus should be on implementing existing treaties.

20. At the outset of the session of the Working Group, the Chairperson of the Working Group called upon delegations to provide specific proposals to address outstanding issues with the existing proposed text of the draft comprehensive convention. The Chairperson of the Working Group, the Friends of the Chair and the Coordinator are encouraged by the work done intersessionally and the attention shown to the informal text circulated by the Coordinator intended to provoke concrete discussions on difficult issues on which progress has remained elusive. Indeed, during the current session, possible avenues for further exploration were considered, building upon some of the issues discussed during the retreat held intersessionally. The Chairperson is encouraged by these developments. The Chairperson and the Friends of the Chair look forward to continued effort on the part of delegations to engage on these issues, including particularly during the intersessional period. The Chairperson notes that despite the absence of agreement on the recommendation, there was a general appreciation of the usefulness of intersessional efforts, including in informal settings where the process may be advanced. Indeed, it is crucial for Member States, working together with the Coordinator, to redouble efforts during such time. The tragic events that occurred earlier this week (soon after the conclusion of our work on 31st October) have unfortunately brought to the fore for New York once more the

heinous nature of terrorism. They are a poignant reminder, if at all we needed one, of the importance and relevance of our work in the efforts of the international community to combat international terrorism. For more than 17 years we have been discussing these outstanding issues. I am sure we have within us the ability and the will to overcome the differences that exist. The imperative to complete our work is a lingering one.
