

AD HOC COMMITTEE ESTABLISHED PURSUANT TO GA RES. 51/210

MEASURES TO ELIMINATE INTERNATIONAL TERRORISM

STATEMENT

BY

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NEW YORK, 25 FEBRUARY 2008

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Mr. Chairman

Once again, we embark upon a session of the Ad hoc Committee facing a daunting task. The General Assembly has failed to come to an agreement on the draft Comprehensive Convention on International Terrorism (CCIT) for several years now, despite intense efforts and renewed determination stemming from the 2005 World Summit. Nevertheless, we see no reason to indulge in self-fulfilling prophecies of pessimism. Our work in the context of this Ad hoc Committee and the Working Group of the Sixth Committee has seen interesting developments in recent years. We have discussed new ideas, we have engaged in more substantive exchanges, and we have seen with ever increasing clarity that what divides us are in essence not insurmountable differences as far as the substance of the law is concerned, but differences of opinion and perception relating more closely to the realm of politics and the intricacies of multilateral negotiations. Once again, therefore, my delegation would like to plead with all colleagues in the room to focus on what is the more promising and also more interesting part of this discussion: the law.

We commend the efforts of our Coordinator, Mrs. Maria Telalian (Greece), during recent months. Her tireless efforts aimed at overcoming the differences by addressing the substance of the issues at stake do not only deserve to be praised, but more importantly, to be taken very seriously. Liechtenstein has declared already during the past session of the Sixth Committee that it considers the substance of her proposal to be a viable basis for a compromise. Many delegations have raised numerous questions about the text, and she has addressed these questions at length, in particular in her statement at the end of the Working Group session on 18 October 2007. In our statement during the Sixth Committee session we have also tried to address a number of legal questions in this regard, and the printed version of this statement contains some excerpts from that statement.

Mr. Chairman,

One of the factors that seem to keep a compromise elusive is the concern of some delegations that compromise language would be vague and unclear. My delegation would be the first to acknowledge that words, in particular when part of a multilaterally negotiated text on a difficult subject, are open to interpretation. However, when negotiating an international treaty such as the draft in front of us, we do have clear guidance provided by international law. Provisions of international treaties, and thus also draft proposals that can become treaty law, must be interpreted according to these rules and in good faith. Our existing arsenal of international treaties in the area of counter-terrorism is fraught with provisions which can be considered ambiguous or open to various interpretations at first sight. But the margin of interpretation narrows considerably when applying the rules of treaty interpretation. Our challenge in this Committee is thus to find the right balance which makes all negotiating parties feel comfortable about the text, while maintaining a reasonable degree of detail in the wording.

Returning to the bone of contention, article 18, it should be mentioned that the wording of the current draft in the Coordinator's text is, as a matter of fact, also rather open to interpretation. At the same time, this article is contentious in substance among the negotiating parties. This gives us a framework for compromise which we must not pass upon. What does draft article 18 of the Coordinator's text really say, and what would be the impact of the suggested additional compromise wording? Following conversations with independent experts and academics in the last months, we have come to the conclusion that the compromise wording suggested by Mrs. Telalian does, more than anything else, clarify what was already contained in the current draft text of article 18, as interpreted by persons who are not part of this negotiation. Let us not forget that these people are our audience; these people will apply this treaty in practice.

Mr. Chairman,

We have not been successful yet in figuring out the precise wording of the Convention, but we believe that over the last years, we have come much closer together as far as the

overriding principles are concerned, in particular regarding the delineation of the CCIT and IHL. We think that there are a number of general considerations of importance in this respect which do hopefully gather consensus in this room. Some of these principles would be:

- The parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians;
- the conduct of hostilities during armed conflict is regulated by rules of international humanitarian law by which all parties to the conflict must abide, this includes rules which regulate attacks against combatants;
- the CCIT should be compatible with the rules of international humanitarian law as they apply in a specific situation, which can be different for different countries depending on their respective obligations under treaty law and customary international law;
- the CCIT should not impose new IHL standards on States by which they were not bound before, nor should it exclude future developments in IHL, nor should the CCIT negotiations be the forum for such future changes to IHL.

While we acknowledge that the devil is in the detail, we would nevertheless submit that these principles are probably to a very large extent shared by all delegations in the room. If that is indeed the case, we should not waver in our efforts to find the right words which translate these principles into concrete legal provisions. In our view, the compromise proposal suggested is in line with these principles, and should thus serve as the basis for the conclusion of our work.

I thank you, Mr. Chairman.

Excerpts from the Liechtenstein statement during the Sixth Committee, 10 October 2007.

[...]

The Convention will not give us the final, overarching legal definition of terrorism. The existing international conventions in this area cover a wide range of terrorist acts, so that the draft Convention will have little to add in terms of scope. The draft Convention would mainly fill the gaps between existing conventions, since these are based on the description of specific acts. In addition, the Comprehensive Convention would be relevant in cases which relate to States which are not Parties to an otherwise applicable sectoral Convention, but which are Parties to the Comprehensive Convention. Nevertheless, it is clear that the terms of the Convention would soon be generally accepted as the most authoritative standard in defining the phenomenon of terrorism.

The Convention will not affect the right to self-determination, and it will not make a “distinction” between terrorism and the right to self-determination: We would like to reiterate that the reference to a “*distinction*” between terrorism and the right to self-determination is very easy to misunderstand and should be avoided. In fact, neither the Coordinator’s text nor any of the proposals on the table use this phrase. Instead, draft Article 18 paragraph 1 states that nothing in the Convention “shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law”. It should be noted that the OIC proposal on Article 18 uses the same language to express the idea that the Convention does not interfere with the right to self-determination. In the exercise of the right to self-determination, however, all actors must still abide by the rules governing such actions, in particular international humanitarian law. Even in such a situation, civilians and non-combatants may not be targeted, and other rules of the laws of armed conflict must be respected. We are confident that there is consensus in this room around this issue. Such a consensus would not have been possible only a few years back, and having achieved it constitutes real progress.

With respect to the interface of the draft Convention and international humanitarian law, my delegation supports efforts aimed at clarifying the **relationship between the Convention and international humanitarian law**. This stems from the conviction that the Convention should not interfere with the rules of armed conflict by criminalizing conduct which would otherwise not be prohibited under international humanitarian law. In other words, those who play by the rules of armed conflict should not be prosecuted as terrorists at the international level. This is clearly within the spirit of the current draft text, as evidenced by draft article 2: according to this article, only acts committed “unlawfully” can qualify as a terrorist offence, thus excluding those activities which are not unlawful.

Two clarifications are, however, necessary in this respect: First, excluding combatants in an armed conflict, be they State or non-State actors, from the application of this Convention at the international level is without prejudice to their status under **domestic law**. They may still be prosecuted under national criminal law.

Second, carving out those acts which are “lawful” under the laws of armed conflict does not imply that future States Parties to the Convention will import through the backdoor standards of international humanitarian law by which they were not bound before. All references to International humanitarian law in the Convention have to be understood as referring to “applicable” rules of IHL. This draft Convention is certainly neither the right tool to impose IHL rules on States against their will, nor to supersede such rules as they exist now. We are satisfied that the new proposal presented at the last Ad Hoc Committee session aims to respect this important principle.

The Convention will not explicitly address the concept of “State terrorism”, but it will also not exclude it.

We have heard many times that the draft Convention does not solve the issue of State terrorism. It should be noted, however, that Article 2 of the draft includes “any person” in the scope of the Convention, whereas Article 18 paragraphs 2 and 3 exclude only military personnel in specific situations. In addition, Article 2 paragraph 4 also brings those who participate as accomplices, or who organize or direct terrorist offences under the scope of the Convention. There is thus much room for acts committed by State agents to be covered under the regime of the Convention. This is consistent with a number of sectoral Conventions, which either do not exclude State actors from their scope, or do so only to a limited extent.

The Convention will not be comprehensive. As stated before, the Convention will merely complement the extensive existing regime of international instruments in this area, and not supersede them. The Convention would thus more accurately be described as “general” instead of “comprehensive”. This would reflect the fact that the scope of the Convention in Article 2 is defined in a more general manner than in the existing sectoral Conventions.