

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

I thank you very much Mr. Chairman.

After a long lull since we last met in the context of the working group of the Sixth Committee, as part of an effort to re-engage delegations on matters relating to the draft comprehensive convention on international terrorism, last week, I held one round of bilateral contacts with interested delegations on Tuesday 23 June and a series of other informal contacts with delegations in the rest of the week.

As on previous occasions the purpose of the bilateral contacts and informal meetings was to afford an opportunity for a better appreciation of positions of delegations in light of the elements of a possible package presented in 2007 in context of the eleventh session of the Ad Hoc Committee. It is also an occasion to brief new delegations on the state of play in the negotiations.

I have had ample opportunity in the past to explain the rationale for the elements of the package proposal and its background context, particularly when it was introduced in 2007, and such explanations may be found in the report of the eleventh session (A/62/37). In subsequent reports, namely the oral report to the Sixth Committee of the Chairman of the

Working Group on measures to eliminate international terrorism in 2007 (A/C.6/62/SR.16), the report of the Ad Hoc Committee at the twelfth session (A/63/37) and the oral report to the Sixth Committee of the Chairman of the Working Group on measures to eliminate international terrorism in 2008 (A/C.6/63/SR.14) further clarifications have been offered in respect of the elements.

I am most appreciative of the efforts made by delegations who made time last week to consult with me and share their hopes and concerns. The continuing efforts to find a solution to the outstanding issues are a shared quest. I wish to report that in my meetings there is an interest among some delegations to begin to project periods within which the current process may be concluded. This sense of guarded optimism is understandable. This is the ninth year in which the discussions on the outstanding issues have entered. More importantly, the approach that has been taken thus far has been to build upon proposals which in the past have been the basis of concrete outcomes. At the same time, there seems to be recognition among delegations that the negotiations are in a state of inertia. A little push of goodwill and a realization that the twenty-fifth mile of the marathon has been reached might help the process move forward.

I still see a tendency, to hold on to previously held positions while signaling a willingness to remain engaged. Indeed, delegations have reiterated the importance that they attach to the early conclusion of the draft convention. In this, there is a ray of hope that soon we may be able to conclude our work.

I also still see a tendency, to read specific situations, events and circumstances into the proposed text. Natural as that mindset might be for lawyers, it needs to be eschewed when involved in a legislative exercise of the type that we embarked upon. In a legislative exercise the essential role is to project principles.

In my previous interventions the following aspects, which seek to distil such principles and points of convergence, have been echoed:

(a) The draft convention is designed to serve as a law enforcement instrument. Accordingly, the need to preserve its *acquis* as an instrument for ensuring individual criminal responsibility on the basis of an extradite or prosecute regime has been stressed. Such an approach has been followed in the various other multilateral counter-terrorism instruments, including those adopted by the Ad Hoc Committee in recent years.

(b) At the same time the draft convention ought not to be seen in isolation of other rules of international law; but as an additional building block in an already existing legal framework that governs the conduct of relations among States. Indeed, the draft convention contains specific obligations of cooperation between States in the prevention and suppression of terrorist activities taking place in their own territories, in particular in draft article 8, thus codifying in an elaborate manner and building upon relevant provisions contained in existing anti-terrorism conventions. The results achieved are reminiscent of the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-

operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)).

(c) In carving out a niche for the scope of application of the draft convention the negotiating process has not been oblivious to the fact that the draft convention would operate in the context of other existing legal regimes. In particular, three regimes are implicated by the draft convention, namely the law under the Charter of the United Nations, international humanitarian law, and international and national “security law”, which, *inter alia*, separates when administering justice, in practically all jurisdictions, the activities of the civil administration from those of the military.

Accordingly, an attempt has made to establish a demarcation between what is covered by the draft convention on the one hand and what is safeguarded and what is not prejudiced on the other. In particular, activities of armed forces of a State during armed conflict, as those terms are understood under international humanitarian law are governed by that law; the overarching objective being that the sanctity of international humanitarian law, together with developments thereof, is not to be prejudiced by the draft convention. Equally essential has been the recognition that the draft convention is not intended to impose international humanitarian standards on States that would become parties to it if they were not bound by such standards nor is it intended to supersede such obligations where they already existed.

Moreover, an attempt has been made to ensure that the exclusionary elements safeguard, as far as possible, the application of such other law, by,

for instance, not rendering unlawful otherwise lawful acts under such law, while also seeking to close any loopholes that might open possibilities for impunity for certain categories of persons. The key consideration being the principle that no impunity is intended in respect of military forces of a State who might commit offences that may be similar to the ones the convention proscribes as such members would be prosecuted under other applicable laws.

(d) It has also been stressed that the approach that has exclusionary clauses is not without precedent. Negotiations leading to the adoption of several counter-terrorism instruments, including the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Acts of Nuclear Terrorism have wrestled with similar concerns and have resolved these concerns successfully. It is understandable that the reference to "comprehensive convention" might have heightened certain expectations. There ought to be a certain element of satisfaction in the fact that we have come a long way to even have a definitional article for individual criminal responsibility like the one we have in draft article 2. It is recalled that some suggestions have been made to have a different title to the draft convention, this might assist lower expectations hitherto associated with the word "comprehensive". As we move forward this is an idea which would require serious consideration.

The need to have exclusions is not without factual or legal significance. It is needless to point out that without such exclusions the draft convention would make unlawful conduct which otherwise is not prohibited in a variety of circumstances. Thus, for instance if death were to occur as it

does in an armed conflict situation in circumstances that would intimidate a population such factual situation would conceivably fall within conduct that the draft convention seeks to proscribe. This in turn would imply that, legally, by concluding this draft convention some well settled rules will have unwittingly been implicated or modified when the current format is not the appropriate negotiating forum to do so. We should not by elaborating the “New York law” on combating international terrorism alter the “Geneva law” of armed conflict.

(e) Instead of reflecting the possible exclusions as part of the draft article that proscribes particular conduct, in this case draft article 2, the negotiating process considered it appropriate, after long drawn negotiations, to reflect such exclusions in the form of “without prejudice” and “applicable law” clauses, as draft article 18 now seeks to do. Such an approach is intended to make the circumscription more complete and legally consonant. Excluding the activities of armed forces during an armed conflict from the scope of application of the comprehensive convention does not grant them impunity. For instance, a range of violations of international humanitarian law are punishable under that law and must be prosecuted by all States. Indeed, international criminal law has made some proscriptions subject of international criminal jurisdiction. Effectively, the exclusions preserve what already exists without in any way prejudicing or prejudging their application when a set of factual circumstances necessitate the application of that other law. After all by elaborating this draft convention we are only adding an extra tool in an existing legal tool box available to States to use when dealing with acts of violence and criminality.

It is these legal principles, those that assure the continuing application of existing law, operating alongside the principles that the draft convention seeks to elaborate, which are the preoccupation of our efforts. I have no doubt in my mind that we are on the right track. In light of the precedents that we have followed, the approach we have taken is beyond legal reproach. We must however garner the necessary political will and this we must.

Thank you Mr. Chairman.