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## INTERNATIONAL TERRORISM

### I. INTRODUCTION

#### A. Background

1. Issues concerning international terrorism have been on the agenda of the General Assembly of the United Nations and various other international organizations for over three decades. During this period several international legal instruments were adopted addressing certain specific acts of terrorism, which are also known as Sectoral Conventions.<sup>1</sup> However, the adoption of the historic Declaration on “Measures to Eliminate International Terrorism” by the General Assembly at its 49<sup>th</sup> Session on 9<sup>th</sup> December 1994<sup>2</sup> gave impetus to the active consideration of the issues involved.

2. At its 51<sup>st</sup> Session, the General Assembly adopted a Supplement to its 1994 Declaration and established an Ad Hoc Committee<sup>3</sup> with the mandate to elaborate an International Convention for the Suppression of Terrorist Bombings and another one on Suppression of Acts of Nuclear Terrorism.

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<sup>1</sup> These conventions are: 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft; signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969). 2. Convention for the Suppression of Unlawful Seizure of Aircraft; signed at The Hague on 16 December 1970 (entered into force on 14 October 1971). 3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 23 September 1971 (entered into force on 26 January 1973). 4. Convention on the Prevention and punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977). 5. International Convention against the Taking of Hostages; adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983). 6. Convention on the physical Protection of Nuclear Material; signed at Vienna on 3 march 1980 (entered into force on 8 February 1987). 7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). 8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 10. Convention on the Marking of Plastic Explosives for the Purpose of Detection; signed at Montreal on 1 March 1991 (entered into force on 21 June 1998). 11. International Convention for the Suppression of Terrorist Bombings; adopted by the General Assembly of the United Nations on 15 December 1997 (entered into force on 23 May 2001). 12. International Convention for the Suppression of the Financing of Terrorism; adopted by the General Assembly of the United Nations on 9 December 1999 (entered into force on 10 April 2002). 13. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005.

<sup>2</sup> A/RES/49/60.

<sup>3</sup> A/RES/51/210.

3. Following that mandate, the Ad Hoc Committee met twice during the year 1997 and completed its work on the International Convention for the Suppression of Terrorist Bombings, which later was adopted by the General Assembly at its 52<sup>nd</sup> Session on 15 December 1997.<sup>4</sup>

4. In the meantime, at its 53<sup>rd</sup> Session, the General Assembly initiated consideration of a draft Convention for the Suppression of Financing of Terrorism taking as a basis for discussion the draft text submitted by the delegation of France to the Sixth Committee. The Convention was adopted by the General Assembly on 9<sup>th</sup> December 1999<sup>5</sup>.

5. The matters concerning elaboration of an International Convention for the Suppression of Acts of Nuclear Terrorism have been discussed extensively in the subsequent meetings of the Ad Hoc Committee and its Working Group. The UN General Assembly adopted the Convention on 13 April 2005.

6. At the 53<sup>rd</sup> Session, the General Assembly decided that the negotiations on the draft Comprehensive Convention on International Terrorism based on the draft circulated by India earlier at the 51<sup>st</sup> Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In addition, it would also take up the question of convening a high level conference under the auspices of the United Nations to address these issues. Pursuant to that mandate, a Working Group of the Sixth Committee in its meeting held from 25<sup>th</sup> September to 6<sup>th</sup> October 2000 considered the draft Comprehensive Convention on International Terrorism as proposed by India. Since then the matter has been under active consideration of the Ad Hoc Committee and the Sixth Committee of the UN General Assembly.

7. During the deliberation on the draft Comprehensive Convention, consensus has emerged on certain issues notwithstanding differences of opinion on some crucial matters. Accordingly, subsequent discussions were focused on the outstanding issues to arrive at a common understanding on these issues.

## **B. General Comments**

8. Addressing the phenomenon of terrorism is a complex and challenging task. Condemnation of terrorist activities by the international community has been unanimous and unequivocal. Efforts in the direction of concluding a comprehensive convention against terrorism are underway although there are differences of opinion and approaches.

9. Terrorist activities by any individual, groups, non-state entities or states have to be checked by all possible means. International law is one of the tools to prevent and punish terrorist activities. It is a positive step that a draft Comprehensive Convention on International Terrorism is being discussed by Member States of the United Nations which may reflect the views of the whole international community. However, it should be pointed out that counter-terrorism initiatives should not be used as a pretext for

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<sup>4</sup> A/RES/52/164.

<sup>5</sup> A/RES/54/109.

interfering in the domestic affairs of other countries. Each country's sovereignty and territorial integrity should be respected and not to be violated under any circumstances. The United Nations has an indispensable role to play in any action against terrorism. Cooperation of the international community is vital to win the fight against terrorism.

10. Defining terrorism itself is a major task. Although it has diverse versions, there is a growing demand that it needs a universally acceptable definition to solve the problem. The definition may be drafted in such a manner that the root causes and underlying factors of terrorism should be taken into account, as well as protection of human rights and fundamental freedoms. The definition of terrorism may be possible on the basis of experts' views and with the support of various countries.

11. The fight against international terrorism has been initiated at various levels under the United Nations system. Apart from the United Nations General Assembly and the Security Council, other bodies under the UN system are also focusing on various dimensions of the issue. Gravity of the problem certainly demands utmost attention of the international community. However, it is suggested that all the activities under the United Nations system may be streamlined under a body to bring uniformity and to avoid overlapping of activities. It would also help States to streamline their activities and report the same to the UN system in a comprehensive manner.

## **C. Issues for Focused Consideration during the Forty-Sixth Session of AALCO**

### **1. Outstanding Issues**

12. Negotiations at the Ad Hoc Committee on the comprehensive convention on combating international terrorism are at the crucial stage of resolving the outstanding issues. Many States are of the view that a solution to draft article 18 is crucial to resolving the remaining outstanding issues. The draft article 18 deals with the scope of the draft convention, primarily with regard to the inclusion of the activities of the armed forces/parties during the armed conflict, including in situations of foreign occupation. Therefore, the Member States of AALCO may focus their deliberations particularly on the draft article 18, so that the Ad Hoc Committee negotiations may be expedited towards concluding a draft comprehensive convention.

### **2. High-Level Conference under the Auspices of the United Nations**

13. Arab Republic of Egypt had launched an initiative to convene an international conference on the issue of international terrorism since 1986. The item had been introduced in the Sixth Committee in 1999 and its importance had been reaffirmed in the 2005 World Summit Outcome. Egypt renewed its proposal through the letter of its Foreign Minister addressed to the Secretary-General (A/60/329) and submitted a working paper for discussion (A/C.6/60/2, annex). The high-level conference would be a part of the United Nations efforts to combat terrorism and would not preclude the priority that should be given to the conclusion of the comprehensive convention. Therefore, the Member States of AALCO may also deliberate on the question of 'Convening a High

Level Conference under the Auspices of the United Nations', which has been on the agenda of the United Nations since a few years.

## **II. DISCUSSION ON THE DRAFT COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM AT THE TENTH SESSION OF THE AD HOC COMMITTEE**

14. The Tenth Session of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 22 of General Assembly resolution 60/43 of 8 December 2005. The Committee met at the UN Headquarters from 27 February to 3 March 2006 and held two plenary meetings: the 36<sup>th</sup> on 27 February and the 37<sup>th</sup> on 3 March 2006.

15. The Ad Hoc Committee had its report of the Ninth Session,<sup>6</sup> which contains written amendments and proposals submitted by delegations in connection with the elaboration of a draft Comprehensive Convention on International Terrorism and 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.

16. During the discussions, some delegations reiterated their previously preferred positions on Article 18. However, no concrete proposals were submitted in respect of draft Article 18 which continued to be the key and the central focus of the discussions, and solution to this Article would pave way for the resolution of other outstanding issues on the Draft Comprehensive Convention.

17. A written proposal was made by Argentina,<sup>7</sup> in respect of the Preambular paragraph, which would seek to amend the proposal contained in the earlier document and it read as follows:

“Reaffirming the right to self-determination of peoples in accordance with the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”.

18. It was also suggested that a Preambular paragraph be envisaged that would emphasize that the utilization of the mechanisms and expertise of Interpol would facilitate the efforts of States in the prevention and suppression of acts of international terrorism.

19. Several delegations have indicated their intention to continue negotiations in the coming period, and the Chairman strongly urged all delegations to strive to develop

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<sup>6</sup> Official Records of the General Assembly, Sixtieth Session, Supplement No. 37 (A/60/37).

<sup>7</sup> A/AC.252/2006/WP.1.

concrete proposals to bring the matter very closely to reach the goal bearing in mind the World Summit Outcome 2005.

20. The question of high-level conference under the auspices of the United Nations, as mandated by the General Assembly in Resolution 60/43, was a subject of informal consultations on 1 March 2006. The sponsor delegation of Egypt said that the initiative to convene an international conference was started in 1986 and the same was renewed through its letter to the UN Secretary-General<sup>8</sup> and it also submitted a working paper for discussion on the issue.<sup>9</sup> The sponsor delegation further explained that the conference would be a part of the United Nations efforts to combat terrorism and would not preclude the priority that should be given to the conclusion of the Comprehensive Convention.

21. Some delegations supported the consideration of the proposal. Some other delegations pointed out that convening of the conference would facilitate finding solutions to the outstanding issues on the Draft Comprehensive Convention, which were political in nature and could best be addressed through the proposed high level conference.

22. Some expressed the view that the proposal should be taken up only after the completion of work on the Draft Comprehensive Convention. The view was also expressed that the Ad Hoc Committee should focus its attention on areas where a practical achievement was feasible.

23. On the other hand, some delegations suggested that the matter needed to be perceived in the context of the forthcoming negotiations in the General Assembly concerning the United Nations strategy on counter-terrorism and these negotiations would provide an opportunity to address any existing gaps in the efforts of the United Nations in combating international terrorism.

24. The sponsor delegation stressed the importance of defining a clear objective, and noting that the conference should focus on practical means of combating international terrorism to be taken by the United Nations and its Member States. The sponsor delegation said that the issue remained open to alternative approaches including the convening of a high-level meeting of the General Assembly that would designate response to international terrorism as an overarching theme for general debate during the sixty-second session or earlier, depending on the progress of preparatory work.

### **III. DELIBERATIONS ON THE COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM AT THE SIXTH COMMITTEE OF UN GENERAL ASSEMBLY AT ITS 61<sup>st</sup> SESSION (2006)**

25. The Sixth Committee considered the item at its 2nd to 5th, 7th, 21st and 23rd meetings, on 11, 12, 13, 16 and 17 October and on 9 and 21 November 2006. At the 2nd meeting, on 11 October 2006, the Chairman of the Ad Hoc Committee, established

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<sup>8</sup> A/60/329.

<sup>9</sup> A/C.6/60/2, annex.

pursuant to General Assembly resolution 51/210, introduced the report of the Ad Hoc Committee.<sup>10</sup>

26. At its 7th meeting, on 17 October 2006, the Sixth Committee decided to establish a Working Group to continue to carry out the mandate of the Ad Hoc Committee as contained in General Assembly resolution 60/43 of 8 December 2006. At the same meeting, the Committee re-elected Mr. Rohan Perera (Sri Lanka) as the Chairman of the Working Group. The Working Group held one meeting, on 3 November. At the 21st meeting, on 9 November, the Chairman of the Working Group gave an oral report on the meeting of the Working Group and on results of his bilateral contacts with delegations.

27. Concerning the draft comprehensive convention, delegations called for its early conclusion, building upon the momentum of the adoption of the Strategy. Although disappointment was expressed at the lack of recent progress in the negotiations, it was reiterated that the outstanding issues were not insurmountable.

28. Some delegations expressed the view that the draft convention should contain a universally acceptable definition of terrorism, which would differentiate it from the legitimate right of peoples for self-determination. A suggestion was made that the formulation contained in paragraph 81<sup>11</sup> of the 2005 World Summit Outcome document may provide a basis for a consensus solution in this regard. Others supported the elements of a definition presented by the Secretary-General. Some delegations continued to express support for the former Coordinator's text. Differing views were also expressed with regard to the scope of the exclusion for the acts of armed forces. A view was expressed that the draft convention should be viewed as a functional criminal law instrument, and that any compromise text would not include an overarching definition of terrorism, a clear distinction between terrorism and the right to self-determination, or an explicit reference to State terrorism.

#### **IV. UN GENERAL ASSEMBLY ADOPTS GLOBAL COUNTER-TERRORISM STRATEGY**

29. On 8 September 2006, the UN General Assembly adopted a Resolution<sup>12</sup> and an Annexed Plan of Action on Global Counter-Terrorism Strategy (hereinafter 'Strategy')- an unique global instrument that enhances national, regional and international efforts to combat terrorism. This is the first time that all Member States have agreed for a common strategic approach to fight against terrorism. The adoption of this Strategy was based on the commitment made by the Member States at the World Summit Outcome, 2005 and the recommendations made by the UN Secretary-General's Report on "Uniting Against

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<sup>10</sup> A/61/37

<sup>11</sup> The paragraph reads as follows: 'We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security'.

<sup>12</sup> A/RES/60/289.

Terrorism: Recommendations for a Global Counter-Terrorism Strategy”, presented to the UN General Assembly on 2 May 2006.<sup>13</sup>

30. The Strategy includes a wide array of practical steps ranging from strengthening State capacity to counter-terrorism threats to better coordinating United Nations system’s counter-terrorism activities; measures to address the conditions conducive to the spread of terrorism; measures to prevent and combat terrorism; measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

31. The Resolution reiterates its strong condemnation of terrorism in all its forms and manifestations, committed by whomever and for whatever purposes. It reaffirms that terrorism could not and should not be associated with any religion, nationality, civilization or ethnic group. The Resolution affirms to further encourage non-governmental organizations and civil society to engage, enhance efforts to implement the Strategy and decides to inscribe in the provisional agenda of its Sixty-Second Session an item entitled, “The United Nations Global Counter-Terrorism Strategy”. It further calls for the Strategy to be reviewed by the General Assembly in two years of time to chart the progress made by the Member States.

32. The Strategy’s Comprehensive Plan of Action, apart from its elaborate guidelines, makes it clear to implement all General Assembly resolutions on measures to eliminate international terrorism, and General Assembly resolutions on the protection of human rights and fundamental freedoms while countering terrorism. Identifying some conditions-such as prolonged unresolved conflict, human rights violations, socio-economic marginalization and lack of good governance-as conducive to the spread of terrorism, the Plan of Action stresses the importance of achieving the UN’s Millennium Development Goals (MDGs), resolving conflicts and promoting dialogue and tolerance among civilizations.

## **V. REPORT OF THE COUNTER-TERRORISM COMMITTEE TO THE SECURITY COUNCIL ON THE IMPLEMENTATION OF RESOLUTION 1624 (2005)**

33. The Security Council, by its resolution 1624 (2005) of 14 September 2005, called upon all States to take a number of steps in connection with the imperative to combat terrorism, including steps aimed at prohibiting by law and preventing incitement to commit a terrorist act or acts. It called upon all States to report to the Counter-Terrorism Committee, as part of their ongoing dialogue, on the steps they have taken to implement the resolution, and directed the Committee to report back to the Council in twelve months on such implementation. Following is the summary of the report prepared by the Counter-Terrorism Committee in accordance with the Council’s directive. As at 7 September 2006, 69 States had reported to the Committee on their implementation of resolution 1624 (2005).

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<sup>13</sup> A/60/825.

## **A. Prohibition and Prevention of Incitement**

34. In paragraph 1 of the resolution 1624 (2005), the Council calls upon all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law in order to prohibit by law and to prevent incitement to commit a terrorist act or acts. The reports received by the Committee show that States have a range of understanding of the steps that may be taken to prohibit and prevent incitement.

35. Most of the States which reported expressly prohibiting incitement provided additional information explaining the measures they had taken. The majority of them stated that they had targeted incitement by expressly criminalizing the making of public statements to that end, whether oral or written. Others indicated that the scope of their prohibition of incitement included private communications, which might fall within traditional criminal law concepts such as counselling, inducement and solicitation. Most States noted that, in order for criminal liability to be imposed, it was immaterial whether the terrorist act or acts incited were actually attempted or committed. Some States specified that incitement might be either direct or indirect.

36. Several States told the Committee that, in order to be punishable as incitement, a statement must be shown to be likely to lead to the commission of an act of terrorism. Those States indicated that this requirement, which effectively narrows the scope of liability, stemmed primarily from the obligation to ensure respect for the right to freedom of expression. Most States provided the Committee with information on provisions of their laws that prohibit an array of widely recognized accessory or “inchoate” offences that may be applied to any serious crime, including aiding, abetting, counselling, facilitation, incitement, inducement, instigation, organization, participation, preparation, persuasion, provocation and solicitation. Several States noted that they had assumed relevant obligations through their ratification of certain international instruments.

## **B. Denial of Safe Haven**

37. In paragraph 1 of resolution 1624 (2005), the Council calls upon all States to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement.

38. Most States affirmed that their immigration and border control laws provided a basis to refuse entry in cases where there were serious reasons to consider that a person had been guilty of incitement. Most States reported that their systems to ensure denial of safe haven relied, in the first instance, on close cooperation between their immigration and border control authorities and other national authorities, including police and, in some cases, intelligence agencies. Several States reaffirmed that they did not recognize claims of political motivation as grounds for refusing requests for the extradition of alleged terrorists, while others also recalled their application of the principle of “extradite or prosecute”.

### **C. Strengthened Security of International Borders**

39. In paragraph 2 of resolution 1624 (2005), the Council calls upon all States to cooperate, *inter alia*, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of incitement from entering their territory.

40. Most States reaffirmed the importance they attach to international cooperation in the areas of enforcement, training and development of relevant tools. At the national level, a number of States reported enhanced training programmes and strengthened staffing of border control agencies, initiatives to improve control of civil aviation and maritime access, and deployment of state-of the-art technological equipment. Investment in the development of new technologies to strengthen safeguards against fraudulent documents was reported by several States. Some referred to increased use of optical readers for travel documents while others have recently introduced, or are considering introducing, biometric travel documents. The Committee also received information from States concerning ways in which inadequate financial resources and equipment had made effective control of their borders and territory difficult to attain.

### **D. Dialogue and Understanding among Civilizations**

41. In paragraph 3 of resolution 1624 (2005), the Council calls upon all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures.

42. Several States mentioned their support for General Assembly resolution 60/4, entitled “Global Agenda for Dialogue among Civilizations”, and for related Assembly initiatives that have encouraged States, as well as international and regional organizations and civil society, to develop ways and means of promoting dialogue and mutual understanding at all levels among the world’s cultures, religions and peoples. The Committee was also informed of the initiatives of the General Assembly and other bodies aimed at combating defamation of religions and promoting respect for cultural rights and cultural diversity. Several States identified their active membership in the United Nations itself as an important means of fostering international understanding and dialogue among civilizations.

43. Several States highlighted their support for the Anna Lindh Euro-Mediterranean Foundation for Dialogue between Cultures, established in Alexandria, Egypt in April 2005 under the auspices of the Barcelona Process. The Foundation, financed by the Member States of the Euro-Mediterranean Partnership, seeks to promote dialogue among cultures through conferences, academic exchanges and cultural events with the goal of increasing understanding among European and Mediterranean countries. Other international initiatives mentioned by States included agenda items on dialogue among civilizations at several events organized by the Asia-Europe Meeting beginning in 2002,

including the meeting held in Bali in July 2005. States also mentioned the Asia-Middle East Dialogue, which began with a meeting of representatives of 50 Asian and Middle Eastern countries in Singapore in 2005 with the goal of boosting regional cooperation, including in the fight against terrorism.

44. Some States informed the Committee of actions at the national level intended to foster dialogue and understanding among civilizations. One commonly described measure was the adoption of laws designed to protect minorities, conduct outreach and engage them in the political process. For example, some States referred to measures designed to help newly arrived immigrants integrate into society.

#### **E. Countering Incitement Motivated by Extremism and Intolerance**

45. In paragraph 3 of resolution 1624 (2005), the Council calls upon all States to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters.

46. Several States informed the Committee of provisions of their criminal codes that prohibit various forms of speech advocating hatred based on racial, cultural, religious or similar grounds. Some referred to the obligation imposed by article 20 of the International Covenant on Civil and Political Rights. Many States mentioned Government-sponsored public awareness campaigns denouncing extremism and promoting tolerance and non-discrimination. All of these efforts have attempted to address the problem of disenfranchised ethnic and religious groups that are particularly susceptible to the rhetoric of extremism.

#### **F. Compliance with Obligations under International Law**

47. In paragraph 4 of resolution 1624 (2005), the Council stresses that States must ensure that any measures taken to implement paragraphs 1, 2 and 3 of the resolution comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law. While addressing the need to prohibit and prevent incitement, several States highlighted safeguards enshrined in their legislation or applied by their courts to ensure that any related measures are taken in conformity with the obligation to respect freedom of expression, including as provided by article 19 of the International Covenant on Civil and Political Rights.

48. Several States stressed the crucial role of an independent judiciary in reviewing and ensuring the lawfulness of counter-terrorism measures, including those taken against incitement. Many States informed the Committee of their ratification of most, and in some cases all, of the major international human rights treaties, as well as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Geneva Conventions and their Protocols, and relevant regional human rights instruments. In most cases, the ensuing obligations have been incorporated directly into their national legal

orders through their constitutions and other laws, prevail over any conflicting legislative provisions and are directly applicable.

49. Several States cited certain human rights guarantees that are ensured in the course of criminal investigations, including respect for the principle of legality, freedom from discrimination, access to evidence and other due process rights, and respect for the presumption of innocence. Several States noted the need to take into account the right to privacy in international information sharing related to terrorism. With respect to international refugee law, several States stressed that they ensured respect for international legal obligations imposing an absolute prohibition on the expulsion of persons, irrespective of their alleged involvement in serious crimes, to other States where there were substantial grounds for believing that such persons would be in danger of being subjected to torture, ill treatment or persecution.

## **VI. DELIBERATIONS AT THE FORTY-FIFTH SESSION OF AALCO HELD AT NEW DELHI, INDIA (3-8 APRIL 2006)**

50. The item titled "International Terrorism" was placed on the AALCO's agenda at its Fortieth Session held on 20-24 June 2001, in New Delhi, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of ongoing negotiations in the Ad Hoc Committee of the United Nations on elaboration of the Comprehensive Convention on International Terrorism. During the forty-fifth Session, all the delegates came to the consensus in arriving at an international understanding to combat terrorism in all aspects.

51. One Delegation welcomed the adoption of the Security Council Resolution 1624 (2005) on terrorism and also stated that the legal instruments should address the root causes of terrorism, including *inter alia* poverty, social deprivation and human rights abuse. He also added that the acts of terrorists should not be ascribed as the acts of their race, nationality or religion as a whole. Another Delegation pointed out the importance of strengthening the international legal framework for preventing and eliminating international terrorism.

52. Another Delegation said that the international terrorism constituted one of the most pervasive threats confronting the world today. It threatened to destabilize all modern societies. Hence, the Delegation urged and called all States to work together, in a coordinated and cooperative manner, to address this menace comprehensively in all its forms and manifestations, which was never as acute as today. Further, the Delegation said that terrorism had no faith; therefore, no one should become party to efforts to link terrorism with any particular religion. He also added that greater efforts should be made to foster intercultural understanding and cooperation and stressed that the objective of all States, was to make the world safe from terrorist violence, was essential and, indeed, imperative, for international peace and stability, for development and prosperity, and for the promotion and respect for human rights.

53. One Delegation stressed that international terrorism was a serious problem faced by the international community, and constituted a serious threat to international peace and security as a common enemy of the whole world, including Asian-African countries. The Delegation also added that all the States should oppose and condemn international terrorism in all forms and manifestations and at the same time, it was the long-standing position of his country that terrorism should not be linked to any particular nation or religion. The fight against international terrorism must observe the purposes and principles of the UN Charter and other recognized rules of international law, eschew double standards and deal with both the symptoms and the root causes of terrorism.

54. One Delegation said that due recognition should be accorded to States that had taken practical courses of action, in accordance with their domestic laws and with due regard for the rule of law, against terrorists and terrorist groups whenever and however necessary. The Delegation further urged the AALCO Member States to work together to consider the options currently on the table and/or come up with viable alternatives for the consideration of the Ad Hoc Committee through the ongoing informal consultations. The Delegation also said that his country was supporting the proposal to convene a special session of the General Assembly to adopt an action plan for cooperation against terrorism.

**55. The Resolution (RES/45/S 8, dated 8 April 2006)) requested the Secretary-General to explore the possibility of holding an Expert Group Meeting to reach a comprehensive definition on “Terrorism” acceptable to all Member States of AALCO, which could once adopted by all Member States be reported to UN.**

## **INTERNATIONAL TERRORISM**

### **DISCUSSION ON THE DRAFT COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM AT THE ELEVENTH SESSION OF THE AD HOC COMMITTEE**

1. The eleventh session of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 met at the United Nations Headquarters on 5, 6 and 15 February 2007.<sup>14</sup> The Committee held two plenary meetings: the 38<sup>th</sup> on 5 February and 39<sup>th</sup> on 15 February 2007.

2. At its 38<sup>th</sup> meeting, the Ad Hoc Committee adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the same meeting, the Vice Chairperson who had been requested by the Chairman of the Working Group of the Sixth Committee on Measures to Eliminate International Terrorism to coordinate informal contacts among delegations intersessionally on the outstanding issues concerning the Draft Comprehensive Convention on International Terrorism on behalf of the Chairman in his absence, was further requested to continue her consultations during the current session of the Ad Hoc Committee.

3. The informal consultations regarding the draft comprehensive convention on International Terrorism were held on 5, 6 and 9 February and informal contacts were held on 5 and 6 February, as well as between 7 and 14 February. The informal consultations concerning 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 were held on 6 February. During the informal consultations, on 5 February, the Vice Chairperson made a statement regarding the results of the informal contacts held intersessionally; and on 9 and 15 February she made statements on the informal contacts held during the current session.

4. At the 39<sup>th</sup> meeting, the Chairman presented his report on the exchange of views in the Committee, on the results of the informal consultations and informal contacts on the draft convention and on the question of convening a high-level conference. Following is the informal summary by the Chairman of the Ad Hoc Committee on the exchange of views in the plenary meeting and on the results of the informal consultations and informal contacts on the Draft Comprehensive Convention on International Terrorism and on the question of convening a high-level conference.

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<sup>14</sup> This report of the AALCO Secretariat heavily relied on the ‘*Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996, Eleventh Session, General Assembly Official Records, Sixty-Second Session, Supplement No. 37(A/62/37)*’.

## **I. Draft Comprehensive Convention on International Terrorism**

5. During the general exchange of views at the 38<sup>th</sup> meeting of the Ad Hoc Committee, delegations reiterated the importance they attached to the early conclusion of the Draft Comprehensive Convention on International Terrorism. Some delegations reiterated their commitment to reaching an agreement on the text of the draft convention preferably on the basis of the former coordinator's text. It was noted that the instrument to be concluded should represent a significant addition to the existing counter-terrorism legal framework. Further, the instrument should not create ambiguity or confusion about the critical distinction between terrorism and violations of international humanitarian law.

6. Some other delegations emphasized the importance of including in the draft comprehensive convention, a legal definition of terrorism to distinguish it from the legitimate struggle of peoples for self-determination. In addition, other delegations expressed the view that State Terrorism would have to be included in any comprehensive convention on international terrorism. It was reiterated that acts of State Terrorism were of serious concern to the international community and that such acts only contributed to a vicious cycle of terrorism.

### **A. Summary of Briefing on the Results of Intersessional Informal Contacts**

7. During the intersessional contacts, delegations affirmed their commitment in support of the continuing efforts to finalize as a matter of priority the Draft Comprehensive Convention on International Terrorism. The focus of the contacts was on draft article 18. Although no specific new proposals were presented, a number of delegations indicated that the proposal contained in document A/C.6/60/INF/1<sup>15</sup> was a step in the right direction. With respect to paragraph 2 of draft article 18, it was noted by some delegations that a clear delineation between those activities that were governed by international humanitarian law and those covered by the draft convention was necessary. While document A/C.6/60/INF/1 contained elements that held promise, the proposal needed further work, and there was a willingness to explore other possibilities and options that would enhance appreciation of the demarcation needed in order to carve out the scope of application of the draft convention. Some delegations noted in that regard the possibility of capturing the essence of the demarcation in the form of a "without prejudice" clause. It was emphasized by other delegations that such an undertaking should be worked around the language of draft article 18 without departing too much from it. Some delegations doubted that the proposal opened any further avenues for compromise.

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<sup>15</sup> Proposed addition to article 18 of the draft comprehensive convention on international terrorism:  
5. Nothing in this Convention makes acts unlawful which are governed by international humanitarian law and which are not unlawful under that law.  
*Proposal to facilitate discussion by the Friends of the Chairman of the Working Group on measures to eliminate international terrorism A/C.6/60/INF/1.*

8. During the intersessional contacts, some delegations noted that it would be necessary to explore further the possibility of clarifying the understanding of the scope of the exclusion in paragraph 3 of draft article 18, in particular the rules of international law that applied particularly in peacetime to activities of military forces of a State acting in an official capacity. In this connection, the Vice Chairperson recalled that the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Acts of Nuclear Terrorism contained in the Preamble some language that was intended to shed light on this question.

#### **B. Summary of Statements on the Results of Informal Contacts held During the Current Session**

9. In her statement on 9 February 2007, the Vice Chairperson noted that additional informal contacts with delegations during the current session had assisted her in forming a better impression of their views. Accordingly, she had reflected further on the ideas that had been presented intersessionally and thought it useful to present a text that she hoped captured the concerns of delegations in a way that would facilitate agreement on elements of an overall package. Following are the texts of the draft of the preamble and article 18.

#### **Preamble**

10. Addition to preamble taken from the Nuclear Terrorism Convention and the Terrorist Bombings Convention. The text reads as follows:

*Noting* that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws.

#### **Text relating to article 18 of the Draft Comprehensive Convention on International Terrorism**

1. Nothing in this 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 of the United Nations, and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.
3. The activities undertaken by the 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.
4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws; acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws.

5. This Convention is without prejudice to the rules of international law applicable in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.

11. In explaining the elements of a package consisting of a preamble, an addition to paragraph 4 and a new paragraph 5, it was noted that the preamble was based on language contained in the Terrorist Bombings and Nuclear Terrorism Conventions. With respect to paragraph 3 of draft article 18, it was noted that it had always been understood that it was intended to cover both procedural and substantive aspects. The phrase “inasmuch as they are governed by other rules of international law” embraced conduct both lawful and unlawful under international law. It was pointed out that in reality, military forces of a State were subject to a code of conduct separate from that applicable to civilians, which included trial by court martial. Further, when such forces were engaged in peacekeeping operations, different rules of engagement applied.

12. It was further stated that paragraph 3, as read with paragraph 4, was to be understood as meaning that it did not make lawful otherwise unlawful acts. Moreover, such acts, if unlawful did not preclude prosecution under other laws. In order to accentuate further that no impunity was intended and to remove any doubts as to the scope of paragraph 3 as read with paragraph 4, there was an addition to paragraph 4, which sought to stress that there was an inner core of offences that should remain punishable irrespective of the regime that would apply. The use of the word “punishable” denotes the legal regime concerning those acts.

13. With regard to the new paragraph 5, it was noted that it consisted of a general statement that was subsequently clarified with regard to rules of international law applicable for certain acts that would be lawful under international humanitarian law. It was underscored that it would be for the parties to the convention and consequently the judicial authorities to make interpretations in the light of circumstances in relevant specific cases. Stressing that the draft convention was a criminal law enforcement instrument, it was noted that parties would be responsible for its implementation in the context of other rules that formed part of the international legal system. Any relationship between the convention and international humanitarian law would have to be determined in accordance with the circumstances particular to each case. What was key to the addition was the principle that international humanitarian law was not prejudiced by the convention and that the elements offered provided sufficient guidance for those who would be responsible for its interpretation and application to proceed with its good-faith implementation. Delegations were urged to consult with their capitals with a view to ascertaining whether these elements could form the basis of an overall package.

## **II. Question of Convening a High-Level Conference**

15. During the 38<sup>th</sup> meeting of the Ad Hoc Committee, on 5 February, some delegations reiterated their full support for the convening of the high-level conference and they urged all Member States to support it. Some other delegations expressed their support in principle while indicating their flexibility regarding the timing. It was noted by some delegations that the question should be considered following an agreement on the

draft comprehensive convention. The sponsor and other delegations observed that the question of the convening of the conference should be considered without linking it to the draft comprehensive convention, as the conference could address other issues, such as the underlying causes of terrorism and the definition thereof.

16. In the informal consultations on 6 February, the sponsor delegation of the Arab Republic of Egypt provided an update on some developments relating to the convening of a high-level conference. It noted in particular that the proposal had been endorsed by the Movement of Non-Aligned Countries in the 2006 Putrajaya Declaration, adopted at the Ministerial Meeting of the Coordinating Bureau of the Movement (A/60/1002-S/2006/718, annex V), as well as in the final document of its 2006 summit, held in Havana (A/61/472-S/2006/780, annex I). In the view of the sponsor delegation, the high-level conference would adopt a declaration of principles condemning terrorism and a plan of action to fight terrorism and to address its root causes. It reiterated that the convening of the conference should not be tied to the completion of the work on the draft comprehensive convention, as some of the topics to be addressed by the conference would not be covered in the discussions on the draft convention.