

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



INTERNATIONAL TERRORISM

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INTERNATIONAL TERRORISM

I. INTRODUCTION

A. Background

1. The Charter of the United Nations sets out the purposes of the Organization, which include the maintenance of international peace and security, to take collective measures to prevent threats to peace and suppress aggression and to promote human rights and economic development. As an assault on the principles of law and order, human rights and the peaceful settlement of disputes, terrorism runs counter to the principles and purposes that define the United Nations. The United Nations has been taking concrete steps to address the threat of terrorism, helping Member States to counter this scourge.¹

2. Several international legal instruments were adopted addressing certain specific acts of terrorism, which are also known as Sectoral Conventions.² However, the adoption of the historic Declaration on “Measures to Eliminate International Terrorism” by the General Assembly at its 49th Session on 9th December 1994³ gave impetus to the active consideration of the issues involved.

¹ <http://www.un.org/terrorism/makingadifference>.

² 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.

³ A/RES/49/60.

3. At its 51st Session, the General Assembly adopted a Supplement to its 1994 Declaration and established an Ad Hoc Committee⁴ with the mandate to elaborate an International Convention for the Suppression of Terrorist Bombings and another one on Suppression of Acts of Nuclear Terrorism.

4. 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 52nd Session on 15 December 1997.⁵

5. In the meantime, at its 53rd 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 9th December 1999⁶.

6. 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.

7. At the 53rd 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 51st 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 25th September to 6th 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.

8. At the 38th meeting, 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.

9. The item entitled "International Terrorism" was placed on the agenda of the AALCO's Fortieth Session held in New Delhi from 20-24 June 2001, 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 the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the comprehensive convention on international terrorism. The successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee of negotiations related to the drafting of

⁴ A/RES/51/210.

⁵ A/RES/52/164.

⁶ A/RES/54/109.

a comprehensive international convention to combat terrorism; and requested the Secretariat to carry out, an in-depth study on this topic.

B. Deliberations at the Forty-Seventh Session of AALCO held at New Delhi (Headquarters), India (30 June – 4 July 2008)

10. **Dr. Xu Jie, the DSG of AALCO** in his introductory remarks stated that international terrorism had become a worldwide threat to the life and security of humankind. He informed that the item “International Terrorism” was placed on the AALCO’s agenda 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. He informed that, based upon the discussions at the Ad hoc Committee as well as the Sixth Committee of the United Nations General Assembly, the Secretariat had identified *inter alia* some of the issues for focused deliberations, namely, Draft Comprehensive Convention on International Terrorism: the legal definition of terrorism distinguishing it from the self-determination; and the Question of Convening a High-Level Conference under the auspices of the United Nations.

11. The President introduced the panellist, **Counselor Dr. Iskander Ghattas, Global Consultant, UNODC, Vienna**. His comments predominantly focused on the international cooperation in combating terrorism in general, with special emphasis on the Plan of Action on Global Counter-Terrorism Strategy adopted by the United Nations General Assembly in September 2006.

12. Many delegations presented their comments and observations on the item. Delegates were of the general view that international peace and security was threatened by terrorism, they unanimously condemned terrorism in all its forms and manifestations. They were of the view that terrorist activities by any individual, groups, or non-state entities have to be checked by all possible means. The delegates were of the view that the discussion on the Comprehensive Convention on International Terrorism is a positive step that was being discussed by Member States of the United Nations which may reflect the views of the whole international community. However, the delegates stressed that counter-terrorism initiatives should not be used as a pretext for interfering in the domestic affairs of other countries. They emphasized that each country’s sovereignty and territorial integrity should be respected and not to be violated under any circumstances. The delegates generally recognized the suppression of terrorist financing as one of the key factors in fighting against terrorism. To this end, the delegates were of the view that devastating terrorist attacks could be accomplished at relatively low cost, measures to cut-off money flows to individual terrorists and terrorist organizations thus become crucial in the global effort against terrorism.

13. The delegates were of the opinion that for enhancing international cooperation at the level of concluding international instruments and also at the level of establishing bilateral and regional coordination particularly in the fields of investigation, extradition and prosecution. Resolution RES/47/S 7, dated 4 July 2008 adopted by the Forty-Seventh Annual Session of AALCO requested the Secretary-General to coordinate with concerned Organizations on the sharing of experiences and practices in countering terrorism also in

addressing the causes conducive to the spread of terrorism and also requested the Secretary-General to explore the possibility of holding a workshop in co-operation with UNODC to deal with the legal aspects of Countering Terrorism.

II. AD HOC COMMITTEE ON INTERNATIONAL TERRORISM

A. Background

14. In 1996 the General Assembly, in resolution 51/210 of 17 December, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism. This mandate continues to be renewed and revised on an annual basis by the General Assembly in its resolutions on the topic of measures to eliminate international terrorism.

15. The Ad Hoc Committee's mandate is further framed by the following two declarations adopted by the General Assembly:

- the Declaration on *Measures to Eliminate International Terrorism*, Res. 49/60 of 9 December 1994; and
- the Declaration to Supplement the 1994 Declaration on *Measures to Eliminate International Terrorism*, Res. 51/210 of 17 December 1996.

B. Ad Hoc Committee's work

16. Since its establishment, the Ad Hoc Committee has negotiated several texts resulting in the adoption of three treaties:

- the *International Convention for the Suppression of Terrorist Bombings* adopted by the General Assembly in resolution 52/164 of 15 December 1997;
- the *International Convention for the Suppression of the Financing of Terrorism* adopted by the General Assembly in resolution 54/109 of 9 December 1999; and
- the *International Convention for the Suppression of Acts of Nuclear Terrorism* adopted by the General Assembly in resolution 59/290 of 13 April 2005.

By the end of 2000, work had begun on a draft comprehensive convention on international terrorism.⁷

C. Mandate of the Ad Hoc Committee

⁷ For an indication of subsequent developments concerning the negotiations of the draft comprehensive convention refer the UN Document A/57/37, A/59/894, A/C.6/60/L.6, A/61/37, A/C.6/61/SR.21, A/62/37 and A/C.6/62/SR.16.

17. Under the terms of General Assembly resolution 62/71 adopted on 6 December 2007 (operative paragraph 22), the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and should continue to discuss 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.

D. Discussion on the Draft Comprehensive Convention on International Terrorism at the Twelfth Session of the Ad Hoc Committee

18. In accordance with paragraph 23 of General Assembly resolution 62/71, the twelfth 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 25, 26 February and 6 March 2008.⁸ The Committee held two plenary meetings: the 40th on 25 February and 41st on 6 March 2008.

19. At its 40th 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, Ms. Telalian, Coordinator of the draft comprehensive convention was requested to continue her consultations and contacts on the outstanding issues concerning the draft convention during the current session of the Committee. At the same meeting the Committee held a general exchange of views on the draft comprehensive convention and on the question of convening a high-level conference.

20. At the 40th 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.

1. Draft Comprehensive Convention on International Terrorism

21. During the general exchange of views at the 40th meeting of the Ad Hoc Committee, delegations reiterated the importance of finalizing the Draft Comprehensive Convention on International Terrorism, as it would be an effective tool for combating international terrorism, complementing the existing legal framework. They also reaffirmed their commitment to the current negotiating process and the early adoption of the draft comprehensive convention. Some delegations observed that the draft comprehensive convention would not be the final answer or sole response of the international community to combating international terrorism; rather it was intended to

⁸ This report of the AALCO Secretariat is based on the *'Report of the Ad Hoc Committee established by the General Assembly Resolution 51/210 of 17 December 1996, Twelfth Session, General Assembly Official Records, Draft Report No. A/AC.252/2008/L.1*

fill existing gaps and enhance cooperation among States in areas not yet covered by other legal instruments. It was also observed that the present draft text, having been refined over the years, preserved the integrity of international humanitarian law; it should not be considered to be an instrument by which to make changes to that law.

22. Some other delegations stressed the need for the comprehensive convention to provide for a clear legal definition of terrorism. It was added that such a definition should establish a clear distinction between acts of terrorism covered by the convention and the legitimate struggle of peoples in the exercise of their right to self-determination or against foreign occupation.

23. With regard to draft article 18, some delegations stated that the latest draft proposal by the Coordinator could be a sound basis for negotiating and reaching a consensus on the text, noting in particular that the proposal constituted a clarification of various aspects of the previous text of the draft article. Some other delegations recalled that they had already accepted the previous draft of the former Coordinator, and also encouraged all States to actively and constructively participate in the consultations on the outstanding issues, maintaining a focus on the scope of article 18.

2. Summary of Briefing on the Results of Inter-sessional Informal Contacts

24. During the inter-sessional contacts, the Coordinator of the draft comprehensive convention, Ms. Maria Telalian informed that two rounds of bilateral contacts had been convened intersessionally, on 13th and 20th February 2008. The purpose of the bilateral contacts had been to afford delegations the opportunity to remain engaged, particularly in the light of the text containing elements of a package to resolve the outstanding issues surrounding the draft comprehensive convention, which had been presented during the 2007 session of the Ad Hoc Committee. The Coordinator recalled that the proposal built upon the already existing language and that the additional elements were presented with a view to seeking to bridge the gaps between divergent viewpoints.

25. Most comments made during the bilateral contacts and informal meetings surrounded two aspects, namely the need to have a clear delineation between those activities governed by international humanitarian law and those covered by the draft convention and the question of possible impunity of military forces in peacetime.

26. With regard to the need for a clear delineation, the Coordinator recalled that exclusionary clauses already existed in several of the sectoral 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. The proposed elements to draft article 18 were, in substance, very similar to those clauses but, in the light of the broader scope of the draft comprehensive convention, they sought to provide clarity and further guidance, including to those who might be responsible for implementing the sectoral conventions. The purpose of excluding certain activities was not to allow impunity but only to carve out from the scope of the convention certain activities regulated by other fields of law. Since the draft

comprehensive convention would be implemented in the context of an overall international legal framework, the importance of preserving the integrity of those other fields of law had been recognized earlier on.

27. With regard to the question of impunity, the Coordinator recalled that paragraph 3 of draft article 18, read together with paragraph 4, intended to close any gap in relation to the military forces of a State. It did not make lawful otherwise unlawful acts. It simply recognized that other laws apply in such circumstances and did not preclude prosecution under such laws. The new element, the reference to article 2 in paragraph 4 of draft article 18, together with the new preambular paragraph, only sought to accentuate that there is an inner core of conduct which, if committed, would constitute an offence which remained punishable irrespective of the regime that would apply.

3. Question of Convening a High-Level Conference

28. During the 40th meeting of the Ad Hoc Committee, as well as during the informal consultations, some delegations reiterated their support for the convening of a high-level conference and stated that it should not be linked to the draft comprehensive convention. Some other delegations reiterated their support for the consideration of the proposal in principle. However, it was emphasized that the question should be considered after the finalization of the draft convention, which should remain the focus of the Committee. The view was also expressed that discussions on the draft comprehensive convention and the convening of a high-level conference could continue in parallel. Furthermore, support was expressed by some delegations for the elaboration of an international code of conduct in the fight against terrorism.

E. Thirteenth Session of the Ad Hoc Committee

29. General Assembly resolution 63/129 of 11 December 2008 states that the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and shall continue to discuss 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 and also decided that the Ad Hoc Committee shall meet from 29th June to 2nd July 2009 in order to fulfil the mandate.

III. DEVELOPMENTS IN COUNTER TERRORISM COMMITTEE (CTC)

A. Background

30. The Counter-Terrorism Committee (CTC) derives its mandate from Security Council resolution 1373 (2001), which was adopted unanimously on 28 September 2001. The Committee is monitoring the implementation of its anti-terrorism mandates and it is made up of all 15 members of the Security Council. The Committee monitors the implementation of resolution 1373 (2001) by all States and tries to increase the capability of States to fight terrorism. The CTC is charged with ensuring every State's compliance with Council requirements to halt terrorist activity, and with identifying weakness in

state's capabilities to do so. For States with deficiencies in legislation, funds, or personnel, the CTC is supposed to help them remedy their deficiencies and upgrade their capacity. However, where the Committee concludes that the deficiencies are in political will, it will leave it to the Security Council to decide what measures to take to bring such determinedly non-compliant States into compliance with the 1373 mandates.

31. Seeking to revitalize the Committee's work, in 2004 the Security Council adopted resolution 1535, creating the Counter-Terrorism Committee Executive Directorate (CTED) to provide the CTC with expert advice on all areas covered by resolution 1373. CTED was established also with the aim of facilitating technical assistance to countries, as well as promoting closer cooperation and coordination both within the UN system of organizations and among regional and intergovernmental bodies. During the September 2005 World Summit at the United Nations, the Security Council – meeting at the level of Heads of States or Government for just the third time in its history – adopted resolution 1624 concerning incitement to commit acts of terrorism. The resolution also stressed the obligations of countries to comply with international human rights laws.

B. Work programme of the Counter-Terrorism Committee for the period from 1 January 2009 to 30 June 2009

32. On 20 March 2008, the Security Council adopted resolution 1805 (2008), which constitutes further guidance for the work of the Committee and the Executive Directorate. In the resolution, the Security Council decided that the Executive Directorate would continue to operate as a special political mission under the policy guidance of the Committee for the period ending 31 December 2010 and further decided to conduct an interim review by 30 June 2009, and a comprehensive consideration of the work of the Executive Directorate prior to the expiration of its mandate; and decided that the Committee would focus its work on the priority objectives set out below:

1. Monitoring and promoting the implementation of resolution 1373 (2001)

33. The Committee and the Executive Directorate would collaborate actively with Member States to facilitate implementation of resolution 1373 (2001). On the basis of the survey of the implementation of Security Council resolution 1373 (2001) by Member States (S/2008/379), adopted by the Committee and discussed by the Security Council, the Committee would initiate discussions on detected gaps and thematic issues, as well as elaborate possible additional practical proposals, in order to facilitate the implementation of the priority recommendations for the Committee's future action. The Committee would consider a technical guide, prepared by the Executive Directorate on the basis of the work of the technical groups, that sets out the requirements and steps for implementing the provisions of resolution 1373 (2001) and contributes to ensuring consistency and even-handedness in the work of the Committee.

34. The Committee would take steps to ensure that visits conducted to States with their consent have the effect of enhancing their implementation of resolution 1373 (2001), assess the results of such visits and consider the appropriate follow-up action. It would consider the report prepared by the Executive Directorate on the follow-up of the fifth special meeting of the Committee, held in Nairobi in November 2007, and would initiate considerations of the modalities and format for a sixth special meeting of the Committee. It would conduct, on the basis of a report prepared by the Executive Directorate, an interim review of the Executive Directorate by 30 June 2009, in accordance with resolution 1805 (2008).

2. Facilitating technical assistance to States

35. The Committee would continue to pay close attention to facilitating technical assistance. In this context, the Committee would continue to look for opportunities to match current and potential donors/providers with recipients in order to enhance the dialogue between the donor community and recipient countries and to further the implementation of resolution 1373 (2001). The Committee, including through the Executive Directorate, would intensify cooperation with relevant international, regional and subregional organizations with a view to enhancing Member States' capacity to fully implement resolution 1373 (2001) and to facilitate the provision of technical assistance.

3. Maintaining dialogue with States on the implementation of Security Council resolution 1624 (2005)

36. The Committee would continue to encourage States that have not yet submitted a report on their implementation of resolution 1624 (2005) to do so. On the basis of the reports received from States and the information gathered during its on-site visits, the Committee would initiate a discussion to explore the needs of States for technical assistance in implementing resolution 1624 (2005) and facilitate the provision of such assistance, as appropriate.

4. Implementing the United Nations Global Counter-Terrorism Strategy

37. On the basis of the regular inputs of the Executive Directorate on its participation in the activities of the Counter-Terrorism Implementation Task Force, the Committee would continue to contribute to the implementation of the United Nations Global Counter-Terrorism Strategy. The Committee would continue its discussions on issues related to the implementation of the Global Strategy. By the end of June 2009, the Committee would formulate and agree on an updated work programme for the period from 1 July to 31 December 2009.

C. Decisions taken by the Counter-Terrorism Committee (CTC) Related to the Framework Document for Committee Visits to Member States, 20 October 2008

38. The Counter-Terrorism Committee took the following decisions related to the Framework Document for Committee Visits to Member States:

- Member States to be visited shall have an opportunity to meet, on a voluntary basis, with the members of the Counter Terrorism Committee before the Committee's consideration of the final visit report, in order to present their views on the visit and its outcome.
- CTED will inform the States to be visited about this opportunity during the preparations and the conduct of the visit.
- Once the date of the meeting of the Committee to consider the final report is established, the Chairman of the Committee will officially inform the Permanent Mission of the concerned Member State about the date for the consideration of the report by the Committee, and will invite the visited State to meet with the members of the Committee in an informal setting, if the State wishes to do so.
- The holding of the meeting between the Permanent Mission and the Committee members shall not be a precondition for the adoption of the final visit report by the Committee.

D. Address by Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism to the Counter-Terrorism Committee of the Security Council, 20 October 2008 , New York

39. Professor Martin Scheinin in his statement to the Counter-Terrorism Committee of the Security Council on 20 October 2008, stated that since the adoption, a little more than two years ago, of the Global Counter- Terrorism Strategy, clear progress had been made in the inclusion of human rights into the framework of United Nations action against terrorism. There existed a wide consensus that any sustainable strategy for the effective combat of terrorism must include promotion and protection of human rights as an essential element – both as a pillar of its own and as an ingredient of all other pillars, to use a metaphor.

40. As to the role of the CTC, he noted with appreciation that the CTC does now include human rights elements in its assessment of Member States' compliance with Resolution 1373 and in its technical assistance to Member States. The work that comes to the CTC under Resolution 1624, which reiterates the human rights clause of Resolution 1456, entrusts the CTC with a new mandate. This was a most welcome development as it makes it clear that respect for human rights will be an element of the CTC's assessment of compliance in accordance with Resolution 1624.

41. Speaking of resolutions as the legal basis for United Nations action against terrorism, he stated that it was worthwhile noting that the formulation of the so-called human rights clause had evolved since the days of Resolution 1456. Both Resolution 1822 by the Security Council and General Assembly Resolution 62/272 on the implementation of the Global Strategy, now also referred to the United Nations Charter

when affirming the duty of all States to comply with international law, including human rights law, when combating terrorism, hence dismissing speculations about Charter obligations in the field of counter-terrorism possibly trumping States' human rights obligations.

42. As his mandate was one of the entities participating in the Counter-Terrorism Implementation Task Force, he informed that the Task Force had moved from planning to action. He further informed that there had been two important visits undertaken by him within the mandate past year. In December 2007, he visited Guantánamo Bay for the purpose of observing Military Commission hearings. While he regreted that the United States retained its policy of not allowing United Nations Special Rapporteurs to visit persons detained of their liberty without any form of monitoring, he thanked the Government of the United States for their cooperation in facilitating the trial observation mission.

43. He sought the support and cooperation of the CTC in making it clear to Member States those broad national law definitions of "terrorism" or of specific terrorist crimes, were often counterproductive in the crucially important task of countering international terrorism. If national law applied the stigma of terrorism in respect of a broad range of activities, it might dilute the message and also delegitimize the fight against terrorism in the eyes of the population or certain segments of it. He invited attention to paragraph 45 of his report to the General Assembly, that he would be applying the notion of "best practice" when identifying human-rights-conform ways of effectively combating terrorism. He reaffirmed his willingness to cooperate with the CTC in identifying best practice.

E. Procedures of the Counter-Terrorism Committee and its Subcommittees for the "PIA stocktaking" exercise

44. The Counter-Terrorism Committee adopted at its 211th meeting on 11 December 2008 the following procedures for the "PIA stocktaking" exercise, as outlined in the revised discussion paper on "PIA stocktaking" (S/AC.40/2008/NOTE.117/Add.2), endorsed by the Committee at its 209th meeting on 30 October 2008. The documents referred to below will consist of files for each Member State and will include an updated Preliminary Implementation Assessment (PIA); a cover note, containing specific recommendations, and a cover letter, where appropriate, as prepared by CTED for the purpose of the stocktaking exercise:

1. Upon receipt of the relevant documents from CTED, they will be circulated by the Chairmen of the subcommittees to the subcommittee members with a view to discussing them at a future meeting of the subcommittee. These documents will also be circulated to all other members of the Committee for their information.
2. Each subcommittee will discuss the relevant documents (draft PIAs and cover notes, and draft letters, where appropriate) at a meeting to be convened by the subcommittee Chairmen no less than five working days after the circulation of these documents.

3. When the initial discussion held by a subcommittee reveals that some or all documents as prepared by CTED require no revision, these documents will be held over by the Chairman of the subcommittee for further action.

4. If during the initial discussions subcommittee members propose substantive and/or editorial amendments to all or some of the documents, CTED will be asked to revise these documents accordingly and to forward the documents thus revised in track changes mode to the Chairman of the Committee, for information, and to the Chairman of the relevant subcommittee for further action.

5. The Chairman of the subcommittee will then circulate the documents which had required no revision (para. 3 above), along with the documents revised by CTED (para. 4 above) and will initiate a five-day silence procedure on all documents before forwarding them to the Chairman of the Committee for further action. In the note initiating the silence procedure, the subcommittee Chairman will clearly indicate which documents required no revision and which documents have been revised by CTED.

6. During the silence procedure any member of a subcommittee may at any time above request that a specific document be discussed, in whole or in part, at the next subcommittee meeting. Members of the subcommittee will be, however, encouraged to limit such requests to documents on which amendments have already been proposed.

7. Documents that have been approved by the subcommittees will be circulated by the Chairman of the Committee to members for their consideration. The documents will be considered by the Committee at a meeting which will be held no less than five working days after their circulation.

IV. DELIBERATIONS ON THE COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM AT THE SIXTH COMMITTEE OF UN GENERAL ASSEMBLY AT ITS 63rd SESSION (2008)

A. Background

45. The item “Measures to Eliminate International Terrorism” was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General (A/8791 and Add.1 and Add.1/Corr.1). At that session, the Assembly decided to establish the Ad Hoc Committee on International Terrorism, consisting of 35 members (resolution 3034 (XXVII)).

46. The General Assembly continued its consideration of the item biennially at its thirty-fourth to forty-eighth sessions, and annually thereafter (resolutions 34/145, 36/109, 38/130, 40/61, 42/159, 44/29, 46/51, 49/60 and 50/53; and decision 48/411).

47. At its fifty-first session, the General Assembly established an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and,

subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism (resolution 51/210).

48. The General Assembly continued its consideration of the item at its fifty-second to sixty-first sessions (resolutions 52/164, 52/165, 53/108, 54/110, 55/158, 56/88, 57/27, 58/81, 59/46, 60/43 and 61/40).

49. At its sixty-second session, the General Assembly called upon all Member States, the United Nations and other appropriate international, regional and subregional organizations to implement the United Nations Global Counter-Terrorism Strategy (resolution 60/288) in all its aspects at the international, regional, subregional and national levels without delay, including through mobilizing resources and expertise; decided that the Ad Hoc Committee established by General Assembly resolution 51/210 should, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and should continue to discuss the item included in its agenda by the Assembly in resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations; and also decided that the Ad Hoc Committee should meet on 25 and 26 February and 6 March 2008 in order to fulfil that mandate (resolution 62/71).

B. Consideration at the Sixty-Third Session

50. The Sixth Committee considered the item at its 2nd, 3rd, 4th, 14th and 26th meetings, on 8, 9 and 24 October and on 14 November 2008. At its 1st meeting, on 6 October 2008, the Sixth Committee decided to establish a Working Group to continue to carry out the mandate of the Ad Hoc Committee established by General Assembly resolution 51/210, as contained in General Assembly resolution 62/71 of 6 December 2007. The Working Group held two meetings, on 9 and 16 October 2008. Informal consultations were also held on the resolution on this item.

51. At the 2nd meeting of the Sixth Committee, on 8 October 2008, the Chairman of the Ad Hoc Committee established by General Assembly resolution 51/210 introduced the report of the Ad Hoc Committee (A/63/37). At the 14th meeting, on 24 October, the Chairman of the Working Group presented an oral report on the work of the Working Group and on the results of the bilateral contacts with delegations which were held intersessionally on 1 October, and during the current session on 13 and 14 October (A/C.6/63/SR.2 and 14).

52. Statements were made by the several delegations. Delegations reaffirmed their strong condemnation of terrorism in all its forms and manifestations, and recalled that it remains a major threat to international peace and security. They emphasized the transnational dimension of the phenomenon requiring a global response of the international community, which should be coordinated at the regional and international levels. Delegations further observed that terrorism should not be associated with any

culture or religion. The necessity to encourage dialogue among civilizations and religions as an integral part of the fight against terrorism was stressed and, in this regard, the role of the media and the civil society was emphasized.

53. Several delegations stressed that counter-terrorism measures must be in conformity with the Charter of the United Nations, international law, and in particular human rights, refugee and humanitarian law. Some speakers stressed that the right of peoples to self-determination and to fight against foreign occupation should also be respected and clearly differentiated from terrorist acts. Some delegations also recalled the necessity of addressing the conditions conducive to terrorism, as well as other crimes used to finance terrorism, such as drug trafficking.

54. Several delegations put an accent on the central role of the United Nations in the formulation of the response of the international community to terrorism, and some speakers underlined the specific role of the General Assembly as the most appropriate organ. Delegations reiterated their support for the United Nations Global Counter-Terrorism Strategy and viewed it as a key achievement in the coordination of the action of the international community against terrorism. It was stressed that the Strategy should be fully implemented by Member States without selectivity.

55. With regard to the work of the Ad Hoc Committee established by General Assembly resolution 51/210, several delegations reiterated their call for the early conclusion of the draft comprehensive convention on international terrorism. Some delegations expressed support for the proposal of the Coordinator of the draft comprehensive convention made during the 2007 session of the Ad Hoc Committee and considered it to be legally and politically sound and a viable basis for compromise.

56. Several other delegations expressed the view that the draft convention should contain a universally accepted definition of terrorism, which would differentiate it from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination. Some delegations also stressed the need for the instrument to address the issue of State terrorism and include in its scope activities of military forces that may not be regulated by international humanitarian law. The necessity to preserve and respect the integrity of international humanitarian law was emphasized by several delegations.

57. In relation to the question of convening a high-level conference under the auspices of the United Nations, several delegations expressed their support for the proposal, which would help to formulate a joint coordinated response of the international community to terrorism in all its forms and manifestations. Such a conference would also expedite the finalization of the comprehensive convention, as well as the formulation of an agreed definition of terrorism. On the other hand, several other delegations reiterated that this issue should only be considered once an agreement on the comprehensive convention on international terrorism had been reached or once it has been concluded and adopted.

58. Several delegations reiterated their support for the proposal by Tunisia to convene a high-level conference to establish a code of conduct in the fight against terrorism, and for the proposal by Saudi Arabia to establish an international centre, under United Nations auspices, to combat international terrorism.

C. Action taken by the Sixth Committee

59. At the 26th meeting, on 14 November 2008, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled “Measures to eliminate international terrorism” (A/C.6/63/L.11). At the same meeting, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution (see A/C.6/63/SR.26). Also at the same meeting, the Committee adopted draft resolution A/C.6/63/L.11 without a vote. Before the adoption of the draft resolution, the representatives of Egypt, Iran (Islamic Republic of) and Cuba made statements in explanation of position; after the adoption of the draft resolution, the representative of Tunisia made a statement in explanation of position (see A/C.6/63/SR.26).

60. Under the terms of the draft resolution, the General Assembly would note the progress attained in the elaboration of the draft comprehensive convention on international terrorism and, welcoming continuing efforts to that end, would decide that the Ad Hoc Committee established pursuant to resolution 51/210 of 17 December 1996 shall, on an expedited basis, continue to elaborate the draft comprehensive convention and to discuss the question of convening a high-level conference under the auspices of the United Nations, which was included in its agenda by General Assembly resolution 54/110. The General Assembly would further decide that the Ad Hoc Committee shall meet from 29 June to 2 July 2009 in order to fulfill its mandate.

V. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

61. International terrorism poses a threat to international peace and security, as well as to human life and dignity. Terrorist activities by any individual, groups, non-State entities or States have to be checked by all possible means. Furthermore, any attempt to link terrorism with any religion, race, culture or ethnic origin should be rejected.

62. The fight against international terrorism should be conducted in conformity with international law, including the Charter of the United Nations, as well as relevant instruments concerning international human rights law, international humanitarian law and international refugee law. 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 interfering in the domestic affairs of other countries. Each country’s sovereignty and territorial integrity should be respected and should not 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.

63. Initiations have been made at various levels to curb the international terrorism under the United Nations system. The landmark strides achieved thus far, including the 13 multilateral counter-terrorism instruments adopted under the United Nations auspices, the 2005 World Summit Outcome (General Assembly resolution 60/1), the United Nations Global Counter-Terrorism Strategy (resolution 60/288), as well as the relevant Security Council resolutions. 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.

64. 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. In addition, AALCO Member States can contribute more usefully by working together in the on-going negotiations on the "Draft Comprehensive Convention on International Terrorism", particularly as regards finding an acceptable definition of "terrorism".

65. International terrorism is a vital issue in the global scenario. Greater cooperation and coordination amongst all the UN Member States is highly essential to combat the threat posed by international terrorism. In this direction, Member States of AALCO may consider ratifying/acceding to the existing international counter terrorism conventions, including the 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism; and 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. National implementation and enforcement mechanisms, including legislations are crucial in the fight against terrorism. Further, mutual legal assistance in counter-terrorism and criminal matters are of much significance.