NOTE TO USERS

Page(s) missing in number only; text follows. The manuscript was microfilmed as received.

141-142, 667-672

This reproduction is the best copy available.

UMI®

NEGOTIATING TERRORISM: THE NEGOTIATION DYNAMICS OF FOUR UN COUNTER-TERRORISM TREATIES, 1997-2005

by

CARLOS FERNANDO DÍAZ-PANIAGUA

VOLUME I

A dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2008

UMI Number: 3296923

Copyright 2008 by
Diaz-Paniagua, Carlos Fernando

All rights reserved.

UMI Microform 3296923
Copyright 2008 by ProQuest Information and Learning Company.
All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

© 2008

CARLOS FERNANDO DÍAZ-PANIAGUA

All Rights Reserved

This manuscript has been read and accepted for the
Graduate Faculty in Political Science in satisfaction of the
dissertation requirement for the degree of Doctor of Philosophy

Susan Woodward

_____	_____
Date	Chair of the Examining Committee

Ruth O'Brian

_____	_____
Date	Executive Officer

Bruce Cronin

Maivan Lam

Peter Liberman

Thomas Weiss

Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

NEGOTIATING TERRORISM: THE NEGOTIATION DYNAMICS OF FOUR UN COUNTER-TERRORISM TREATIES, 1997-2005

by

Carlos Fernando Díaz-Paniagua

Adviser: Professor Susan Woodward

This work studies the dynamics of international, multilateral, legal negotiations. It seeks to understand how the participants in a multilateral negotiation on a new international law instrument actually behave and why they do so. To this end, it provides a rich historical narrative of the negotiation of four United Nations counter-terrorism treaties: the 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, and the draft United Nations Comprehensive Convention against Terrorism, which, to date, has not been adopted. It highlights the exchange of proposals and counterproposals, the preparation of consolidated negotiating texts, the formation of coalitions, and the various readings necessary to elaborate the delicate legal formulations that were incorporated into the final text of each counter-terrorism treaty. As an analytical framework, this work proposes a simple rational-choice model of the negotiations to reveal the options

available to the participants at each point of the negotiation and the incentives that they might have had to choose one alternative or another. The research concludes that the negotiation process is dominated by two overlapping dynamics. At the level of the whole negotiation, the process is characterized by the disaggregating and re-aggregating of issues, whereby the proposed legal instrument is gradually divided into smaller segments, which are then discussed in gradually smaller negotiating groups. At the level of each individual issue being negotiated, the process is dominated by the actors' continuous reassessment of the possibilities for success of their proposal in order to make concessions, or to ask for a vote. This research underlines the outcome of the negotiation is the result of the behaviour of the individual negotiatiors in light of the institutional constraints, that is, that that consensus is the prefer decision making mechanisms but that voting is possible. This work also highlights existence of an institutional framework: a characteristic UN treaty making procedure that, by demaning an exhaustive and reiterative consideration of all the issues being negotiated, favours agreement and enhances the legitimacy of the outcomes.

Table of Contents

Volume I

Abstract iv

Table of contents vi

List of abbreviations and symbols used xii

Introduction 1

Chapter 1 – Setting the stage 7

A) Multilateral, legal negotiation at the United Nations 7

1) Negotiation 8

2) Multilateral negotiation 10

3) International, multilateral negotiations 13

4) International, multilateral law-making negotiation 18

5) International law-making negotiations at the United Nations 22

B) Terrorism as a subject-matter for negotiation 39

1) Criminalizing terrorism 40

2) Defining terrorist acts 46

a) Technical aspects of defining a crime 49

b) Distinguishing terrorism from state action 55

c) Distinguishing terrorism from self-determination 63

3) Terrorism, refugee law and the political offence exception 76

Chapter 2 – Understanding multilateral negotiation 83

A) Analyzing Multilateral Negotiation 83

1) The structural-analysis approach 84

2) The decision-analysis approach 86

3) The process-analysis approach 88

B) Previous findings regarding international, multilateral legal negotiation 91

C) A model of strategic negotiating behavior 107

D) Developing the model 110

1) Definitions 111

2) Rules 118

3) Playing the game 120

E) The game's limits 140

Chapter 3 - Antecedents 1931 – 1995 143

A) A first approach: 1931- 1937 144

B) Failing to agree: 1972 – 1977 147

C) A parallel track: 1971 – 1979 160

D) Building consensus gradually: 1979 – 1992 177

E) A milestone: the 1994 Declaration on Terrorism 209

Chapter 4 – The negotiation of the 1997 Terrorist Bombings Convention 223

A) Agreeing to negotiate 224

B) Proceedings 229

C) Defining the crime 234

1) The possible targets 236

2) The instruments of the crime: explosive or other lethal devices 251

3) The definition of the offence 259

D) Participation and attempt 279

E) The political offence exception and non-refoulement principle 290

F) Armed forces 301

G) The end-game 330

Chapter 5 – The negotiation of the 2005 Nuclear Terrorism Convention 338

A) Agreeing to negotiate 338

B) Defining the crime 345

C) The return of the nuclear material and the compensation for any damages 366

D) The question of military forces and non-proliferation 381

E) A failed end-game 392

F) A long winter 400

G) A belated conclusion 417

Volume II

Chapter 6 – The negotiation of the 1999 Terrorist Financing Convention 433

A) Agreeing to negotiate 434

B) Defining the crime 439

1) The wrongful act 443

2) The actor and the intentionality requirements 448

3) The offences set forth in previous conventions 455

4) Murder with terrorist purposes 461

5) Self-determination and armed forces 466

6) Re-aggregating the issues 474

C) Seizing funds 479

D) Banking secrecy 491

E) Adoption 509

Chapter 7 – The negotiation of the Comprehensive Convention on Terrorism 515

A) Agreeing to negotiate 515

B) Defining the crime 524

C) Relationship with the sectoral conventions 552

D) Self-determination and armed forces 573

E) A failed end-game 587

F) The Secretary-General intervenes 615

G) A long winter 623

H) Renewed interest 635

I) Another failed end-game 656

Conclusions – Analyzing international, multilateral law-making negotiations 673

A) Characteristic traits of international, multilateral, legal negotiations 673

B) Interaction patterns 686

C) Explaining the outcomes 697

Annex: Letter from the Minister of Foreign Affairs of Costa Rica 710

Bibliography 711

A) Books 711

B) Articles 724

C) Treaties 725

D) Law cases 729

E) Declarations 729

F) Resolutions and decisions 729

1) General Assembly Decisions 730

2) General Assembly Resolutions 730

3) Security Council Presidential Statements 731

4) Security Council Resolutions 731

G) Reports 732

H) Verbatim and summary records of U.N. meetings 737

I) Statements 743

J) Negotiating texts 758

1) Single, consolidate, negotiating texts 758

2) Formal proposals 761

3) Informal proposals and negotiating “non-papers” 784

K) Summaries of the negotiations 789

1) Published, informal summaries 789

2) Private summaries 793

L) Diplomatic correspondence 800

M) Other parliamentary documentation 802

N) Interviews 804

O) Press releases and public information 804

List of abbreviations and symbols used

&	and
¶	paragraph
¶¶	paragraphs
Add.	Addendum
AM.J.INT'L.L	American Journal of International Law
Amb.	Ambassador
Apr.	April
Arb.	Arbitral, Arbitration
art.	article
Aug.	August
C.Eu.T.	Central European Time
CSCE	Conference on Security and Cooperation in Europe
C.R.	Costa Rica
Comm.	Committee
Dec.	December
Doc.	document
ed.	edition
eds.	Editors
FATF	Financial Action Task Force on Money Laundering
Feb.	February
Fr.	France
G.A.	General Assembly
G-7	Group of the Seven Major Industrialized Nations
G-8	Group of the Eight Major Industrialized Nations
GAOR	General Assembly Official Records
GRULAC	Latin American and Caribbean group
ICRC	International Committee of the Red Cross
I.C.J.	International Court of Justice

ILC	International Law Commission
I.L.M.	International Legal Materials
I.L.R.	International Law Reports
ICAO	International Civil Aviation Organization
IMO	International Maritime Organization
Int'L. Comm.	International Law Commission
Int. Org.	International Organization (journal)
Mar.	March
mtg.	meeting
n.	footnote
N.Z.	New Zealand
N.Z.H.C.	New Zealand High Court
NAM	Non-Aligned Movement
Nicar.	Nicaragua
No.	number
Nov.	November
NPT	Non-Proliferation Treaty
NY	New York
O.A.S.T.S	Organization of American States' Treaty Series
OAS	Organization of American States
OIC	Organization of the Islamic Conference
Oct.	October
p.	page
plen.	plenary
pp.	pages
pr. para.	preambular paragraph
Res.	Resolution
SADC	Southern African Development Community
S.C.	Security Council
SCOR	Security Council Official Records
Sept.	September

Sess.	session
Supp.	supplement
TD	typewritten document
U.N.	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
U.N.T.S.	United Nations' Treaty Series
U.N.Y.B.	United Nations' Yearbook
U.S.	United States
U.S.T.	United States Treaties and Other International Agreements
USSR	Union of Socialist Soviet Republics
WEOG	Western European and Other States group
Y.B.	yearbook

Introduction

The purpose of this dissertation is twofold: to analyze the dynamics of the negotiation of international, multilateral legal instruments; and to provide an exhaustive historical account of the negotiation of four counter-terrorism treaties: the 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism,[1] and the draft Comprehensive Convention against Terrorism, which has not yet been adopted. At a basic level, this work seeks to answer the two-pronged question of how participants in an international legal negotiation actually behave and why they do so. At an analytical level, it seeks to explain why the negotiation of the two first treaties was concluded in a relatively brief period of time, while the negotiation of the 2005 took much longer, and the negotiation of the draft Comprehensive Convention has been deadlocked for several years; that is, in essence, why some negotiations are successful while others fail.

The negotiation of international legal instruments is an important subject matter. An increasing number of matters that are regulated by legally binding norms are adopted and negotiated by states at an international level. Moreover, the required cooperation among states on many issues can only be attained through negotiation. However, the negotiation of such instruments is more likely than not to occur outside of the public

[1] International Convention for the Suppression of Terrorist Bombings, *adopted* on Dec. 15, 1997, G.A. Res. 52/164 Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997); International Convention for the Suppression of the Financing of Terrorism, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999), International Convention for the Suppression of Acts of Nuclear Terrorism, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005).

view. International negotiation is still a rather arcane subject, protected by the rules of state secrecy and diplomatic confidentiality. While there might be public debates, and the positions might be release to the general public, the real negotiation, that is, the making of proposals, the exchange of concessions, and the formulation of broad agreements, still occurs in private. This area: what happens in the private, closed, and even secret negotiating meetings, has not been sufficiently studied.[2] Unfortunately, it seems that most researchers either did not have access to those meetings or, if they did, they were subject to the rules of diplomatic confidentiality and, therefore, they were unable to uncover the actual details of the negotiating process. This work, in contrast, highlights the importance of the negotiations held in private. It looks at the negotiations at very close quarters. Rather than studying the broad policy options and variables that impact the negotiations, it concentrates on what actually happened at the negotiating table.

The negotiation of these four counter-terrorism treaties is also an important subject matter for research. These four instruments are the main building blocks of the international counter-terrorism legal regime. They are designed to facilitate judicial and police cooperation to prevent terrorist acts and to bring to justice any person accused of committing a terrorist attack. The first three of them have been almost universally ratified and incorporated into the domestic legislation of most states. Even more, the United Nations Security Council has incorporated them into its mandatory measures to combat international terrorism.[3] A description of their negotiating process illustrates the

[2] For a review of the existing literature on negotiation see chapter 2.

[3] See: S.C. Res. 1373 (2001), U.N. Doc. S/RES/1373 (Sept. 28, 2001); S.C. Res. 1566 (2004), U.N. Doc. S/RES/1566 (Oct. 8, 2004).

real intentions of their drafters and reveals the delicate balances that were required to conclude them. In this sense, such a description will reveal the intended meaning of the technical and somewhat obscure legal provisions of those treaties.

To explore the dynamics of the negotiations, this work follows a double approach. First, it provides a rich narrative of each one of the negotiations, stressing the exchange of proposals and counterproposals, the preparation of consolidated negotiating texts, the formation of coalitions, and the various readings necessary to formulate an acceptable text. Second, it proposes a simple rational-choice model of the negotiations to reveal the options available to the participants in each negotiation and the incentives that they might have had to choose one alternative or another.

I have been able to reconstruct most of the historical record of the negotiations from primary materials, such as informal negotiating papers, internal memorandums, and informal summaries prepared by the United Nations Secretariat for the internal use of the negotiating committee's bureau. I have also relied on my personal notes of the negotiation. In fact, I was fortunate to have a privileged access to the negotiations here studied because, from 1997 to 2006, I participated in them as an delegate of Costa Rica and a vice-chairman of the negotiating committee. I am particularly grateful to the government of Costa Rica and to its Foreign Minister, Mr. Bruno Stagno, for authorizing me to use these materials and for encouraging me to describe the negotiation in great detail.[4]

Unfortunately, since the negotiations were intended to draft legal instruments on criminal law and extradition procedures, the narrative of the negotiations is heavily legal:

[4] See *infra:* Annex: Letter from the Minister of Foreign Affairs of Costa Rica.

the questions being discussed were legal; delegations' positions were couched in legal terms; and heated discussions usually focused on minor nuances of legal language. Nevertheless, I must stress that this is not a work in the area of international law. Its purpose is not to describe what the law is, that is, what is the content of the legally binding norm, but to understand how those norms were actually created through an international, multilateral, negotiating process. Moreover, since it provides a rich narrative of the negotiation of several treaties, their *travaux preparatoire,* this work will, if nothing else, assist international lawyers in interpreting the provisions of those instruments. That, however, is not its main objective.

Chapter 1 presents an overview of some of the key terms and concepts used in this work, such as negotiation, international negotiation, and international legal negotiation. It also presents briefly the procedure used by the United Nations for negotiating international treaties and some of the difficult questions that any negotiation on terrorism had to face. Chapter 2 contains a short review of the academic literature on terrorism and presents my simple model of the negotiating procedure. Chapter 3 focuses on the various negotiations of counter-terrorism treaties held at the global level from 1931 to 1995 as well as the consideration of the question of international terrorism within the United Nations General Assembly. Chapter 4 presents the narrative of the negotiation of the 1997 Terrorist Bombings Convention. Chapter 5 is devoted to the negotiation of the 2005 Nuclear Terrorism Convention. Chapter 6 looks at the negotiation of the 1999 Terrorist Financing Convention, and Chapter 7 focuses on the negotiations of the draft Comprehensive Convention against International Terrorism. The conclusions return to

my simple rational-choice model of the negotiation to highlight the paths of action available to the negotiating parties along the bargaining process.

A final note on the bibliography and the references: as far as possible I have used the system of citations proposed by Turabian[5] on the basis of the Chicago Manual of Style. However, since most of the documentation used was either unpublished, legal materials, or United Nations documents, it was been necessary to complement Turabian's system with the Blue Book[6] system, commonly use in Law Reviews.

To conclude, I must express my gratitude to all those who helped me, encouraged me, and bore with me during my research. I must mention in particular: Professor Susan Woodward, who, with infinite patience, has guided in the preparation of this work; my father, Luis Fernando Diaz, who encouraged when I was ready to give up; Ambassadors Fernando Berrocal, Bernd Niehaus, and Bruno Stagno, who, as my immediate superiors from 1994 to 2006, trusted me to represent Costa Rica in the counter-terrorism negotiations and encouraged me to continue my academic studies; Judge Phillippe Kirsh and Ambassador Rohan Pereira, who, as Chairmen of the negotiating Ad Hoc Committee, trusted me with the coordination of the negotiation of various issues considered in this research; Mr. Vaclav Mikulka, Director of the United Nations Codification Division during most of the period considered in this work, and his staff, for their continued assistance during the negotiating process and for the preparation of the excellent summaries of the negotiations that I have used in this research; Ms. Carolyn

---

[5] Kate L. Turabian, *A Manual for Writers of Term Papers, Theses, and Dissertations*, 6th ed. (Chicago: Chicago University Press, 1996).

[6] *The BlueBook: A Uniform System of Citation,* 18th ed., Compiled by the editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and the Yale Law Review (Cambridge, Mass: Harvard Law Review Association, 2005).

Wilson and the late Mr. Robert Rosenstok, legal advisors of the United States Mission to the United Nations, who taught me all I know about UN procedure; Mr. Norman Monagas, once legal advisor to the Permanent Mission of Venezuela to the United Nations, who nominated me as vice-chairman of the Ad Hoc Committee when I was still a very young and inexperienced diplomat; and Fr. Robert Araujo, S.J., international lawyer, diplomat, and priest, who helped me to remain sane during this period. Obviously, all mistakes and shortcomings are solely mine.

Chapter 1 – Setting the stage

Since this work I seek to understand the process of international, multilateral, law-making negotiations by studying the elaboration, within the United Nations' General Assembly, of four treaties on judicial and police cooperation against international terrorism, this chapter will present the legal, conceptual and factual background of those negotiations. At the outset, I will define the subject matter of this work: international, multilateral, law-making negotiation; and I will present some of the common characteristics of international legal negotiations within the United Nations system. Moreover, since international terrorism as a subject-matter for negotiation and legal codification presents some unique challenges; this chapter will present in an overview of some of the technical-legal issues that those negotiations had to address.

A) Legal multilateral negotiation at the United Nations

This section defines the concept negotiation in general and then, underlines the distinguishing characteristics of multilateral negotiations. It focuses, subsequently, on those multilateral negotiations that are held at the international level and then it considers the nature of those negotiations devoted to the elaboration of new international law instruments. Finally, it looks at the law-making negotiations held within the United Nations, and in particular, at the legal committee of the General Assembly. Some attention is devoted to the formal procedure within the United Nations, since those procedures constitute the institutional framework of the negotiations studied.

1) Negotiation

Negotiation may be defined as "any form of verbal communication, direct or indirect, whereby parties to a conflict of interest discuss, without resort to arbitration or other judicial processes, the form of any joint action which they might take to manage a dispute between them."[7] The scientific literature highlights three characteristic traits of negotiations. First, the parties have mixed motives; that is, they have conflictive or diverging interests while they share the possibility of reaping potential gains if they chose to cooperate. Second, those benefits may be obtained only through their joint decision and action.[8] Third, the participants actively communicate with one another. Thus, Iklé defined negotiation as "a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange on the realization of a common interest where conflicting interests are present."[9] Similarly, Brams defines it as "exchanges between parties designed to reconcile their differences and produce a settlement."[10] Rubin characterizes it as "joint decision making under conditions of conflict and uncertainty, in which divergent positions are combined into a single outcome," where each side "attempts to obtain what it wants through the exchange of information, typically in the form of offers and counteroffers,"[11] while Peyton Young

---

[7] Ian Morley and Geoffry Stephenson, *The Social Psychology of Bargaining* (London: George Allen & Unwin Ltd., 1977) 26.

[8] Terrence Hopmann, *Negotiation Process and the Resolution of International Conflicts* (Columbia, SC.: University of South Carolina, 1996) 25 - 26.

[9] Fred Charles Iklé, *How Nations Negotiate* (New York, Evanston, and London: Harper Row Publishers, 1964) 3 – 4.

[10] Steven Brams, *Negotiation Games* (New York and London: Routledge, 1999), xiv.

[11] I. William Zartman and Jeffrey Z. Rubin, "The study of power and the practice of negotiation" in I. William Zartman and Jeffrey Z. Rubin, Power and Negotiation (Ann Arbor: The University of Michigan Press, 2000) 12.

argues that "[n]egotiation is the process of joint decision making. It is communication, direct or tacit, between individuals who are trying to forge an agreement for mutual benefit."[12] For her part, Milner focuses on the policy coordination aspect of negotiation. She argues that negotiated cooperation is characterized by "*goal-directed* behavior that seeks to create *mutual gains* through policy adjustment."[13] Similarly, Morley underlines that, in negotiation, the parties search for an agreement regarding the form of joint action to be taken to manage a dispute among them.[14] This facet of negotiation, the coordination of policies regarding what to do, is important for understanding international, legal negotiations since the parties to those negotiations expressly seek to coordinate their domestic legal policies to face a common threat.

Some authors have defined negotiation narrowly, arguing that its most distinctive element is the use of unanimity as its sole decision-making rule. Thus, Zartman defines negotiation as "the process of combining different positions into a single unanimous joint decision. It is the process of making a decision when there are no rules about how decisions are made or when the only rule that exists is that the decision must be unanimous."[15] He has further distinguished negotiation, where the consent of all the parties is necessary for adopting a decision, from "coalition as a decision-making process," where the majority actors may adopt a decision, through a vote, against the

---

[12] Peyton Young, "Negotiation Analysis" in Peyton Young, ed., *Negotiation Analysis* (Ann Arbor, Mich.: University of Michigan, 1991) 1.

[13] Helen Milner, *Interests, Institutions and Information* (Princeton, NJ: Princeton University Press, 1997) 8. Italics in the original.

[14] Morley and Stephenson, *supra* note 7, 23 - 26.

[15] I. William Zartman, "Negotiation: Theory and reality" in Diane B. Bendahmane and John W. McDonald, eds., *International Negotiation: art and science* (Foreign Service Institute, U.S. Department of State, 1984) 1.

wishes of the minority.[16] Nevertheless, such a narrow definition is inadequate for describing the dynamics of multilateral negotiations at the United Nations. Within the United Nations system, unanimity is not the only decision-making rule available. Although practice favors the adoption of decisions without a vote, voting is still possible if, after exhausting all efforts to reach an agreement, a party asks for it.[17] Undoubtedly, within the United Nations, negotiation does occur, in the sense that actors make an intentional effort to combine their common interests and to overcome the diverging ones in order to reap some benefits from the coordination of their policies, even if, in some cases, the final decision may be formally adopted through a vote. In this context, the broader approach of Morley, who emphasizes that "negotiation involves *talking* about a relationship before doing anything about it,"[18] seems preferable. The emphasis, thus, should not be on the final decision-making mechanism but on the communication among the parties who seek to coordinate their policies and realize mutual gains.

2) Multilateral negotiation

Multilateral negotiation is characterized, at its most basic level, by the fact that it "involves three or more essentially independent parties with at least three different sets of

---

[16] I. William Zartman, "Negotiation as a joint decision-making process" in I. William Zartman, ed., *The Negotiation Process, theories and applications* (Beverly Hills and London: Sage Publications, 1977) 69 – 71. See also*:* I. William Zartman and Maureen Berman, *The Practical Negotiator* (New Haven and London: Yale University Press, 1982) 46; Ulf Lindell, *Modern Multilateral Negotiation* (Lund, Sweden: Studentlitteratur, 1988) 21 - 22.

[17] See *infra:* Section 1.5.c. See generally: U.N.G.A., Rules of Procedure, U.N.Doc. A/520/Rev.15, (1985), Annex V, para. 104; André Lewin, "Article 18: vote" in Jean-Pierre Cot and Alain Pellet, *La Charte des Nations Unies: commentaire article par article,* 2 ed., (Paris: Economica, 1991) 392 - 393; Rüdiger Wolfrum, "Article 18" in Bruno Simma, ed., *The Charter of the United Nations: a commentary,* (München: C. H. Beck Verlag, 1995) 317; Robbie Sabel, *Procedures at International Conferences*, 2nd ed. (Cambridge: Cambridge University Press, 2006) 298 – 299, 344 - 345.

[18] Morley and Stephenson, *supra* note 7, 24. Italics in the original.

interests and preferences about the outcome" where "[t]he parties seek a general solution to their problem that more or less applies to all."[19] Nevertheless, the difference between bilateral and multilateral negotiations is not quantitative but qualitative, since the larger number of participants generates fundamentally different dynamics.[20] The addition of new participants increases exponentially the number of potential interactions, of possible combinations of preferences, and of possible roles for the actors. There is also increased uncertainty regarding the issues and the positions as well as greater challenges for communication and information-processing, making all the more difficult finding an acceptable solution.[21] Thus, it has been argued, the overarching characteristic of multilateral negotiation is its complexity on all dimensions.[22]

Zartman identifies six distinctive characteristics of multilateral negotiations. First, multilateral negotiations are multi-party negotiations in the sense that there are at least three autonomous entities with separate interests. Second, real-life, multilateral negotiations usually address multiple issues, enabling parties to make trade-offs while building an overarching agreement. Third, actors may play multiple roles such as leaders, trying to produce an agreement in line with their own interests; conductors, who manage the negotiation impartially; defenders, who promote their preferences on a single issue; breakers, who seek to protect their freedom of action by blocking agreement; and

---

[19] Hopmann, *supra* note 8, 244.

[20] Fen Osler Hampson and Michael Hart, *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment,* (Baltimore and London: Johns Hopkins, 1995) 4.

[21] Gilbert R. Winham, "Complexity in international negotiation" in Daniel Druckman, *Negotiations: social-psycological perspectives* (Beverly Hills and London: Sage Publications, 1977) 347 – 348, 350 - 353; Hopmann, *supra* note 8, 246; Knut Midgaard and Arild Underdal, "Multiparty Conferences" in Druckman, *Ibid,* 332; Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, SC: University of South Carolina Press, 1993) 44 - 45, 315.

[22] I. William Zartman, "Two´s Company and More's a Crowd: the Complexities of Multilateral Negotiation" in I. William Zartman, ed., *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco, CA: Jossey-Bass, 1994) 3.

cruisers, who do not have strong interests of their own. Fourth, agreement is usually reached by consensus, that is, that agreement is reached when a significant number of actors are in favor of a certain solution and the rest do not actively oppose it. Fifth, multilateral negotiation usually deals with rule making rather than with the distribution of tangible goods, so that their effects tend to be uncertain, long-range, and universal. Sixth, multilateral negotiations are dominated by the formation of coalitions and the aggregation of issues through packaging, linkages, and trade-offs.[23]

Similarly, Midgaard identifies several ways in which the actors adapt their behavior to cope with the increased complexity produced by a greater number of the participants in a negotiation. In the first place, as the number of participants increases, actors seek to formalize the rules that govern their interactions so that they can be orderly and effective. Second, there is increasing differentiation. Some actors undertake the role of leading the negotiation or facilitating the discussions, such as chairing the meetings or mediating among opposing parties, while the negotiation might be split into several groups to consider a discrete number of issues. Third, there is an increased need to adopt formal and informal mechanisms to "cut through" stalemates, such as rules preventing the re-opening of previous agreements, the adoption of deadlines, and voting. Fourth, actors with compatible interests tend to form coalitions to promote common interests. Fifth, there is greater resort to informal channels of communication, to differentiated messages being conveyed, and to greater selection regarding the recipients of those messages. Sixth, there is a tendency to "wait-and-see," that is, actors avoid being the first one to make concessions and take stands only on some issues, tentatively, or

[23] Zartman, *Ibid*, 4 – 6. See also*:* Pamela S. Chasek, *Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy,* (Tokio, New York, Paris: United Nations University Press, 2001), 25 - 35.

ambiguously. Thus, they propose, larger negotiations tend to be less exploratory and adventurous than smaller ones. Seventh, outcomes tend to be partial in a triple sense: they tend to cover only some of the issues being discussed; they are accepted only by some of the negotiating parties; and they leave some disagreements latent, frequently through the use of ambiguous formulations. Thus, with an increased number of participants, the outcomes of multilateral negotiations tend to become suboptimal.[24]

3) International, multilateral negotiations

International, multilateral negotiations refers to those multilateral negotiations carried out at the international level between three or more states. In essence, the "fundamental distinguishing characteristic of international negotiation is the fact that the delegates at international conferences or to international organizations normally are representatives of sovereign states."[25] State representatives are the essential actors since all international negotiations involve, in the end, questions of sovereignty. In effect, to reach any international agreement, the negotiating parties must consent to limit their states' sovereign freedom of action and commit themselves to behave in conformity with the agreed terms. Thus, under the current international system, such a commitment may be undertaken only by the states themselves, through their governments' representatives.[26] Nowadays though, in addition to governmental representatives, there

---

[24] Midgaard and Underdal, *supra* note 21, 335 – 339. See also Lindell, *supra* note 16, 22 – 23.

[25] Alan K. Henrikson, *Negotiating World Order: The Artisanship and Architecture of Global Diplomacy*. (Wilmington, Delaware: Scholarly Resources Inc., 1986) p. xix.

[26] Victor A. Kremenyuk, "The emerging system of International Negotiation," in Victor A. Kremenyuk, ed. *International Negotiation, Analysis, Approaches, Issues.* (San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991) 23 - 24.

are many other participants to international negotiations, such as members of scientific communities, the secretariat of international organizations, non-governmental organizations, the media, and even the general public. Moreover, states are not unitary actors. Frequently, there is bureaucratic infighting and domestic negotiation to elaborate each state's position and preferences. [27]

In a classic study on international, multilateral negotiation, Kaufmann distinguished between "multilateral diplomacy," "conference diplomacy," and "parliamentary diplomacy." The broader concept of "multilateral diplomacy" involves any negotiations between and among many states, whether conducted within the framework of an international conference or not. The narrowest concept of "parliamentary diplomacy" encompasses any international negotiation where there is a permanent organizational framework with continuous interests and responsibilities that go beyond the particular issues being negotiated at any time, where there are regular debates open to the public and the media, where there are rules of procedure that govern the debate and that can be object of tactical manipulation, and where decisions are usually taken through a vote; while the concept of "conference diplomacy" encompasses not only the public meetings but also the private and informal meetings that occur before, after, and in parallel with the public meetings of international conferences.[28] According

---

[27] Lawrence E. Susskind *Environmental Diplomacy: Negotiating more effective global agreements.* (Oxford: Oxford University Press, 1993) 4 – 5; Peter Evans, Harold Jacobson, and Robert Putnam, eds., *Double Edged Diplomacy: International Bargaining and Domestic Politics* (Berkeley, Los Angeles and London: University of California, 1993); Milner, *supra* note 13, 253 – 255; Chasek, *supra* note 23, 26; Ronald A. Walker*, Multilateral Conferences: purposeful international negotiation* (Houndmills and New York: Palgrave Macmillan, 2004) 109 - 116, 126.

[28] Johan Kaufmann, *Conference Diplomacy: An Introductory Analysis* (Leyden: Sijthoff, 1968) 21 - 22.

to Chasek, negotiations within the United Nations General Assembly can be classified as conference diplomacy[29]

In a broad study of the negotiation of the United Nations' Law of the Sea Convention, Friedheim argues that parliamentary diplomacy combines the fundamental attribute of traditional diplomacy, the fact that participating states may choose to defect from the negotiation if the expected outcome does not satisfy them, with elements of a legislature, where individual interests are aggregated into group positions and ultimately into a collective decision. In his view, parliamentary diplomacy has adopted from legislative practice: the election of officials to lead the negotiations; the celebration of formal debates and plenary sessions with public speeches; the creation of committees and formal working groups; and the adoption of a formal decision making mechanism, such as the possibility of making decisions by vote. It has also adopted an informal decision-making process comprising: the elaboration of a single negotiating text to focus the discussions, the possibility of making trade-offs between issues, and the creation of a single overarching package deal that comprises all the partial trade-offs and agreements. Moreover, parties tend to form blocks, caucusing groups, and coalitions that behave like political parties within domestic legislatures, bargaining both with like-minded and opposing delegations. On the other hand, parliamentary diplomacy retains some elements of traditional negotiation, such as an informal decision-making rule requiring consensus or near consensus to adopt a decision, an agreement to delay voting to the end, and the lack of mechanisms to force adherence to the final agreement. In addition, there are informal processes, such as the formation of small negotiating groups, bilateral

[29] Chasek, *supra* note 23, 20.

interactions, and secret groupings, and the fact that some actors assume informal leading roles and undertake mediation efforts[30] (see Figure 1.1.[31])

According to Friedheim, there is an internal tension between the choice of legislative procedures, which tend to generate opposing groups and create winners and losers, and the fact that, within the international community, defection and refusal to accept a decision are still possible. Thus, although voting is possible, there is a tendency within parliamentary diplomacy to move away from voting and to adopt consensus or quasi-consensus decision-making procedures. Hence, he concludes, although parliamentary diplomacy has borrowed many of the trappings of legislation, it remains at the core a form of bargaining.[32]

[30] Friedheim, *supra* note 21, 44 – 48.

[31] *Ibid.,* 46.

[32] Adapted from *ibid.,* 44 - 45.

Fig. 1.1: Friedheim's Attributes of Parliamentary Diplomacy

SIZE
Many parties: 150 + States
Many issues: 150 + issues

FORMAL PROCESSES
Parliamentary organization:
- Elected leadership
- Plenary sessions, speeches
- Committees, formal working groups

Formal decision-making system:
- Decision by vote of requisite majority
- One state-one vote formula
- Voting delayed to the end
- No reservations allowed
- Lack of mechanisms for forcing adherence to convention

INFORMAL PROCESSES
Many bilateral and small group negotiations, often simultaneous:
- Bilateral interactions
- Contact groups, negotiating groups, compromise groups, and secret groups

Informal decision-making processes:
- Single negotiating text
- Trade-offs on single issues and between issues
- The final agreement is a overarching package of trade-offs and sub-packages

Informal decision-making rule:
- Consensus or near-consensus

PARTIES, COALITIONS AND LEADERSHIP
- Blocks and caucusing groups that act like political parties
- Coalitions that shift between issues
- Bargaining within delegations, between like-minded delegations, and with opposing groups
- Informal entrepreneurial leadership
- Mediation efforts by formal and informal leaders

ISSUES
- Technically complex issues: Common property, natural resources, security
- Mix of distributive and integrative issues

TIME
- Little time pressure
- Few outside forcing events (external crises)
- Continuity of participants and few leadership changes

4) International, multilateral law-making negotiation

International conferences serve a variety of purposes. They serve as fora for general discussions, they facilitate exchange of information among states, they guide and manage international organizations, they make non-binding recommendations, they review previous agreements, and they draft new legal instruments that become obligatory for those who choose to accept them.[33] This work focuses only on the last category: those international, multilateral negotiations that seek to create general norms of conduct where agreed policies are "frozen" into formal agreements that create rights and duties for the participating states. The distinguishing characteristic of this type of negotiation is that the outcomes sought are "not recommendations, resolutions, or advisory opinions, but rather contracts concerning state power, jurisdiction, and wealth."[34]

In the current international system, there is no centralized or hierarchical mechanism for authoritative decision making; the allocation of values and resources within the system depends on the will of its constituting members: the states. With the limited exception of Security Council Chapter VII resolutions and budgetary decisions by international organizations, the consent of each individual state is necessary to adopt any decision that might affect its rights and duties. If a state does not want to be bound by a certain rule, it may disassociate itself from the decision that creates it. International negotiation, inasmuch as it leads states to agree to be bound by certain norms of conduct, is therefore the primary source of obligations, rights, and duties in the international

[33] Kaufmann, *supra* note 28, 25 -28; Chasek, *supra* note 23, 21 – 22.

[34] Friedheim, *supra* note 21, 42.

system.[35] International law is binding and, therefore, legal precisely because its prescriptions and proscriptions – the states' rights and duties – enjoy the states' consent. International norms are obligatory because states consider them to be obligatory and believe that a sanction would be the appropriate response to their violation, even if it is not forthcoming.[36] In this sense, there is a close relationship between legal norms and the negotiating process that led to their formulation.

International, law-making negotiation seeks to produce treaties, that is, international agreements "concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation,"[37] since they are both the most expeditious and the most effective means of formulating new legally binding rules. Treaties are contractual engagements. They are the product of negotiation and agreement between the states, and derive their force from the consent of the parties. Consequently, a treaty does not generate rights and obligations for all the members of the international community but only for those states that choose to ratify it. In this sense, a treaty does not produce "universal" international law, immediately applicable to all the members of the international community, but only "partial" law, applicable to the segment of the

---

[35] Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw Hill, 1979) 113; Lawrence Finkelstein, "The politics of value allocation in the UN System," in: Lawrence Finkelstein, ed., *Politics in the United Nations System* (Durham and London: Duke University Press, 1988) 3,17; Ian Brownlie, *Principles of Public International Law,* 4th ed., (Oxford: Clarendon Press, 1990) 2, 288 – 289, 705; Paul C. Szasz , "The Security Council Starts Legislating," 96 AM.J.INT'L.L 901, at 901 (2002).

[36] Anthony Clark Arend, "Towards an understanding of international legal rules" in Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt, eds., *International Rules: approaches from international law and international relations.* (Oxford: Oxford University Press, 1996) 291.

[37] Vienna Convention on the Law of Treaties, art. 2.1.a, *done on* May 23, 1969, 1155 UNTS 331, 8 ILM 679 (1969).

international society that has accepted it.[38] On the other hand, if a treaty is ratified by the great majority of states, its norms acquire a quasi-universal character.[39] Not all treaties, though, are law-making. Some treaties, involving the exchange of reciprocal obligations between a small number of states, are akin to bilateral contracts under domestic law. Others, which establish international organizations, are similar to the charter of incorporation of a corporation under civil law. Only those instruments that create "*general* norms for the future conduct of the parties in terms of legal propositions," including obligations that "are basically the same for all parties"[40] can be properly considered law-making treaties.[41]

Some recent research has considered the formation and impact of rules and norms in international relations using the concept of "international regimes."[42] The subject-matter of regime theory, though, is far broader than the topic of this study: international, multilateral, law-making negotiations. International regimes, that is, "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors'

---

[38] Treaty provisions may incorporate norms of customary international law, be evidence of their existence, or contribute to their formation. This question, while important to international law, is not of immediate concern for this study. See generally: Brownlie, *supra* note 35, 11 – 14; Boyle, Alan and Christine Chinkin, *The Making of International Law* (Oxford: Oxford University Press, 2007) 234 -238.

[39] J. L. Brierly, *The Law of Nations: an introduction to the international law of peace*, 6th ed. (Oxford: Clarendon Press, 1963) 317; Victor A. Kremenyuk and Windfried Lang, "The political, diplomatic, and legal background" in Gunnar Sjöstedt, ed., *International Environmental Negotiation* (Newbury Park, London, New Delhi: Sage Publications: 1993) 11; Boyle and Chinkin, *supra* note 38, 233.

[40] Brownlie, *supra* note 35, 12. Italics in the original.

[41] *Ibid.,* 12, 633; Boyle and Chinkin, *supra* note 39, 233.

[42] Stephen D. Krasner ed., *International Regimes* (Ithaca and London: Cornell University Press, 1983); Volker Rittberger, ed. *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993); Mark W. Zacher, "Multilateral Organizations and the Institution of Multilateralism: the Development of Regimes for Nonterrestrial Spaces," in: John Gerard Ruggie, ed. *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993); Mark W. Zacher and Brent A. Sutton, *Governing global networks: International regimes for transportation and communications* (Cambridge: Cambridge University Press, 1996).

expectations converge,"[43] include not only internationally, legally binding norms but also non-binding rules, principles and procedures. When studying negotiation, however, the distinction between legally binding norms – hard-law – and non-binding rules and principles – soft-law – should not be overlooked.

Adopting legally binding norms is far more costly for states than simply formulating general, non-binding rules and principles. Legal norms require greater commitment: their content tends to be more precise than that of non-binding rules; they require a sacrifice of sovereign, autonomous decision-making in the area concerned; and their adoption usually requires the involvement of various branches of government. Moreover, the violation of legal norms entails greater loss of reputation; a state that violates them would be seen as unreliable by the rest of the international community and would find it more difficult to conclude new international agreements. Complying with non-binding rules is, on the contrary, voluntary. Legal commitments can be enforced more easily than non-binding rules; frequently, there is the possibility of resorting to judicial or arbitral mechanisms and general international law provides legal remedies for their violation. Meanwhile, enforcement mechanisms for soft-law principles and procedures are rare. In addition, legal commitments are perceived to have greater legitimacy than non-binding rules; they cannot be contested solely on the base of parochial interests and preferences, and any challenge must be based on legal discourse. Conversely, states find it easier to agree to soft-law measures: there is no need for domestic ratification, there is no perceived sacrifice of sovereign autonomy, escaping

[43] Stephen D., Krasner "Structural causes and regime consequences: regimes as intervening variables" in Stephen D. Krasner, ed., *supra* note 42, 2.

enforcement is easier, modifying the rules is simple, and violation is less costly.[44] In addition, the greater cost of adopting and complying with legally binding norms may affect the behavior of the negotiators. As Abbott notes:

> Any agreement entails some negotiating costs – coming together, learning about the issue, bargaining, and so forth – especially when issues are unfamiliar or complex. But these costs are far greater for legalized agreements. States normally exercise special care in negotiating and drafting legal agreements, since the costs of violation are higher. Legal specialists must be consulted; bureaucratic reviews are often lengthy. Different legal traditions across states complicate the exercise. Approval and ratification processes, typically involving legislative authorization, are more complex than for purely political agreements.[45]

5) International law-making negotiations at the United Nations

International law-making negotiations can be held in a wide variety of fora, such as *ad hoc* conferences, meetings of state parties to preexisting treaties, plenary meetings of international organizations, negotiating groups and sub-committees within international organizations, and even expert groups specially charged with the task of drafting international agreements. Nowadays, though, the United Nations has become the principal forum for international law-making. As Boyle has noted, the United Nations is well suited for this role. It has particular legitimacy since all states may participate in the decision-making process, thanks to universal membership in the General Assembly and the formal equality among states. It has universal competence, permitting negotiations of

---

[44] Kenneth W. Abbott and Duncal Snidal, "Hard and soft law in international governance," in 54 Int. Org. (2000) 424 – 441; Alan Boyle, "Some reflections on the relationship of treaties and soft law" in Vera Gowlland-Debbas, ed., *Multilateral Treaty-Making: The current status of challenges to and reforms needed in the international legislative process*. (The Hague, Boston and London: Martinus Nijhoff Publishers, 2000) 27- 29; Boyle and Chinkin, *supra* note 39, 214 - 216.

[45] Abbott and Snidal, *supra* note 44, 434.

a wide variety of issues; and its normal modus operandi, based on deliberation, negotiation, and political accommodation, favors agreement.[46]

Within the United Nations system, though, international, multilateral law-making negotiations may be held in various intergovernmental bodies. These include: the General Assembly, ECOSOC, the Security Council;[47] subsidiary bodies of the General Assembly and of ECOSOC; the assembly of specialized UN agencies; and *ad hoc* treaty-making conferences convened by the General Assembly..[48] The General Assembly, in particular, has an express mandate for creation of new international law. Article 13 of the UN Charter establishes that the "General Assembly shall initiate studies and make recommendations for the purpose of: (…) encouraging the progressive development of international law and its codification."[49] Subsequent practice has interpreted this provision as a broad authorization for the General Assembly to elaborate new law-making agreements on the widest range of issues, to adopt them, and to recommend them to states for their subsequent signature, ratification, and accession. Nevertheless, the Charter, does not grant to the Assembly the power to legislate, that is, to directly impose new rules, rights, and duties upon states, but only to recommend new norms to the states. Hence, the binding character of the instruments elaborated by the General Assembly depends on the states' subsequent decision to accept those norms in conformity with their

---

[46] Boyle and Chinkin, *supra* note 39, 108 – 109.

[47] For a discussion on role of the Security Council in the negotiation of internationally legally binding norms against terrorism see *infra* Chapter 7.B.3.

[48] Nagendra Singh, "The UN and the Development of International Law" in Adam Roberts and Benedict Kingsbury, eds. *United Nations, Divided World: the UN's roles in international relations*, 2nd ed. (Oxford: Clarendon Press, 1993); Carl-August Fleischhauer, "article 13" in Simma, *supra* note 17, 268 – 278; Boyle and Chinkin, *supra* note 39, 109 – 124, 126 -134, 141 - 151.

[49] UN Charter, art. 13.1.a.

own domestic procedures and following the formal procedures ratification or accession.[50] Moreover, even within the General Assembly, international, law-making negotiations can take place in a variety of specialized subsidiary bodies depending on their actual subject-matter.[51] This work focuses on the negotiation of new treaties against international terrorism held in the Sixth Committee, which is the main standing committee of the General Assembly devoted to the consideration of those agenda items related to general international law. It has considered the question of international terrorism since 1972.[52]

The Sixth Committee has universal membership, that is, all state members of the United Nations are *de iure* members of that committee. Observers in the General Assembly, such as Switzerland, before its accession to the UN, the Holy See, and Palestine, may attend the discussions and are invited, as a matter of course, to participate in the debates. States are usually represented in the Sixth Committee by their Permanent Representatives to the United Nations and by the legal advisors of their permanent missions in New York. However, the actual participation of heads of mission in the work of the Sixth Committee is rare. It is usually limited to the delivery of formal speeches. In practice, negotiations are normally conducted by the legal advisors to the missions, usually diplomats with legal training and experience in the legal department of their respective ministries of foreign affairs. Some countries, such as Italy, Fiji, and Portugal,

---

[50] Fleischhauer, *supra* note 48, 265 – 266; Szasz, *supra* note 35, at 901:

> It has long been accepted that intergovernmental organizations (IGOs) cannot legislate international law. "Hard," or binding, international law could be created only by states, whether through the adoption and ratification of treaties, the creation of customary law by means of general practice supported by *opinio juris*, or the recognition of general principles of law. In general, IGOs, or rather their organs, could only adopt recommendations to their members, though they could make definitive decisions concerning the organization itself that might create some binding obligations, such as the payment of assessed contributions..

[51] U.N.G.A., Rules of Procedure, *supra* note 17, art. 98; Boyle and Chinkin, *supra* note 39, 116 – 117; Meinhard Hilf, "article 22" in Simma, *supra* note 17, 382 - 384.

[52] See *infra* Chapter 3.B.

occasionally invite academics, officials of their ministries of justice, or members of the judiciary to work for a few years in New York as representatives to the Sixth Committee. In cases of complex negotiations, delegations may be augmented with additional experts from the foreign ministries; other governmental departments interested in the subject-matter, such as the ministries of justice and defense; and academics. Additionally, every year, most states send the heads of the legal departments of their foreign ministries to participate in a few sessions of the Sixth Committee.

Some representatives of inter-governmental organizations take part in the work of the Sixth Committee. During the terrorism negotiations, the United Nations High Commissioner for Refugees (UNHCR) and the International Atomic Energy Agency (IAEA) attended as observers and were allowed to make statements and distribute documentation. The participation of non-governmental organizations (NGO's) as observers in the work of the Sixth Committee varies widely, depending on the subject-matter in discussion. During the terrorism negotiations, only the International Committee of the Red Cross (ICRC) was constantly present. In the negotiations on human cloning and on the International Criminal Court, by contrast, there were dozens of active NGO's. NGO representatives may attend only public meetings. They are not allowed to make statements or to participate in closed negotiation meetings. In principle, they may only lobby delegations outside the site of formal meetings. However, during the terrorism negotiations, the ICRC was allowed on exceptional basis to make statements and to participate in informal negotiating meetings, in view of its recognized expertise in international humanitarian law.

The work of the Sixth Committee is led by a chairman assisted by a bureau. The chairman must conduct the formal meetings, propose the program of work, and solve any procedural hurdles that may rise.[53] In practice, the chairman seeks to ensure that the negotiations conclude with a positive outcome. He invites delegations to negotiate, he proposes the creation of formal and informal working groups, he appoints coordinators for the various topics, he asks delegations to mediate, and he may undertake mediation efforts himself. If necessary, he offers formulas for possible agreement and suggests how to proceed. In case there is agreement on a certain text, the chairman puts forward the agreed draft as his own proposal in order to avoid the appearance of a confrontation between those who may wish to sponsor that proposal and those who do not.

The bureau is composed of a chairman, three vice-chairmen, and a rapporteur. The vice-chairmen may conduct the committee's formal meetings in absence of the chairman. Usually, they also coordinate the negotiation of the various topics assigned to the Committee's agenda, chairing any informal meetings, offering proposals, and preparing consolidated texts.[54] For his part, the rapporteaur prepares, with the UN Secretariat's assistance, the written reports that the committee submits to the plenary of the General Assembly.[55] These reports summarize the formal aspects of the various agenda items and contain the text of any draft decision or resolution that the committee recommends to the Plenary for its final, formal adoption. In order to ensure a broad representation in the bureau, each one of its members is chosen from a different regional group: the Asian group, the African group, the Eastern European group, the Latin

---

[53] U.N.G.A., Rules of Procedure, *supra* note 17, art. 106; Sabel, *supra* note 17, 73 – 93.

[54] U.N.G.A., Rules of Procedure, *supra* note 17, art 105; Sabel, *supra* note 17, 95.

[55] Sabel, *supra* note 17, 93 – 94.

American and Caribbean group (GRULAC), and the Western European and Other States group (WEOG). There is also an informal agreement that guarantees that the chairmanship of the Sixth Committee rotates annually among the various regional groups. The members of the bureau are elected for only one session of the General Assembly, that is, for only one year. Normally, each regional group, after consultation among its members, presents a single candidate, and the elections are made by acclamation. Although the rules of procedure of the General Assembly foresee voting in the case that there are two or more candidates for the same position,[56] this has not occurred in the Sixth Committee in recent times. The chairman of the Sixth Committee is usually a senior ambassador or permanent representative to the United Nations who has had some previous experience in the legal field. In most cases, they are former representatives to the Sixth Committee itself. The vice-chairmen and the rapporteaur are usually more junior diplomats, having served in the committee for a few years. Representatives of the five Permanent Members of the Security Council never sit in the bureau as a matter of courtesy to smaller countries. During the session, the bureau meets once or twice a week to assess the progress made in the negotiations and to coordinate the week's work. On occasions, the bureau may serve as a sounding board to assess possible formulas for agreement. It may also propose consolidated negotiating texts and submit new proposals, with the view to moving the negotiations forward. In case a vote is likely, the bureau prepares itself for the various procedural scenarios, such as motions of non action, opposing proposals, and separate votes.

[56] U.N.G.A., Rules of Procedure, *supra* note 17, art 103.

The Sixth Committee and its bureau are assisted by a secretariat, composed of members of the Codification Division of the United Nations Department of Legal Affairs. The Director of the Codification Division is, at the same time, secretary of the Sixth Committee. In principle, the secretariat assists the committee in setting up the meetings, ensuring that there is interpretation in the various working languages, and processing any documentation. During meetings, the secretariat assists the chairman and the coordinators in organizing the list of speakers, preparing speaking notes, and in resolving any procedural questions that may arise.[57] Frequently, the secretariat prepares informal summaries of the discussions and proposals for the use of the chairman and the coordinators. Those summaries help the chairman to identify the various positions, coalitions, and objectors, and, if necessary, to prepare a consolidated negotiating text. More importantly, the secretariat may discreetly propose to the bureau formulas for consensus and suggest improvements to the negotiating texts.

The Sixth Committee meets every year in parallel with the first part of the General Assembly's annual session, that is, from late September to late November. At the beginning of the session, the General Assembly assigns to the Sixth Committee a list of agenda items to be discussed. While some items may be new, arising from fresh proposals from states or from the Secretary-General, most items appear recurrently on its agenda, on annual or biannual basis. This is the case of international terrorism that has been on its agenda since 1972. The Sixth Committee then holds a public debate on each item. Delegations express their general position regarding the problem at hand and make proposals for action, both for the United Nations and for states individually. Sometimes

[57] *Ibid.,* art. 47.

the debate on terrorism has become contentious, particularly when states have accused each other of sponsoring international terrorism, committing acts of state terrorism, or shielding terrorists. After the debate, either an interested delegation or a coordinator prepares and distributes a draft resolution or decision. Such a draft is normally based on previous resolutions on the same topic, trying to build upon previously agreed texts. On occasion, two or more drafts, with diverse or even opposing content, are proposed. If necessary, the draft then is negotiated in "informal consultations," that is, in private meetings open to all interested delegations, but not to NGOs or the media, and conducted by a coordinator appointed by the chairman. The draft agreement may also be discussed in "informal-informals," that is, among small groups of delegations, or bilaterally. If there is agreement on a text, it is then formally submitted for translation and publication under the responsibility of the chairman and adopted without a vote. If there is no agreement, the draft might then be submitted formally by one or more delegations. If the sponsoring delegations push for the adoption of the draft, and some other delegations formally object to it, the proposal is then voted. If the opposing delegations choose not to ask for a vote and ask instead that their objections just be recorded, the text is then adopted "without a vote." Regardless of the procedure used for its adoption, any text adopted by the Sixth Committee is then submitted to the Plenary of the General Assembly for its final adoption as a recommendation to states. Normally, by the middle of December, the Plenary adopts the recommendations of the Sixth Committee without further debate and without changing their content. In those recommendations, the committee frequently suggests that the same topic should be retained on the agenda for the following session of the General Assembly. This procedure is used for the

negotiation and adoption of short, non-binding texts, such as the annual resolutions on terrorism, which take only one or two months to be negotiated. The negotiation of new treaties is more complex and requires the sustained action of the General Assembly and the Sixth Committee over several years. Usually, the first step is the adoption of a resolution, following the procedure just described, deciding to launch negotiations and deciding on the negotiating forum. The General Assembly may decide to initiate intergovernmental negotiations immediately or it may choose to refer the topic to the International Law Commission (ILC), an expert body, for the preparation of a first draft.

The International Law Commission is a permanent body composed of 34 independent experts of recognized competence that assists the General Assembly in its law-making work by preparing draft agreements on technically complex issues of international law. It members, usually academics and diplomats, are nominated and elected by governments, on the basis of equitable geographical representation, for five years. Every year, in a separate resolution prepared by the Sixth Committee, the General Assembly chooses the topics to be considered for codification by the commission. When the commission receives a new topic, it designates a rapporteur who prepares a preliminary study on the status of the question and, if necessary, asks states for their points of view. The preliminary study is then discussed by the commission. These discussions are subsequently reflected in the commission's annual report to the Sixth Committee. In the Sixth Committee, states express views on the proposed topic and on the Commission's debate. Once a topic is "mature" enough, the rapporteur prepares a first set of draft articles. Alternatively, the commission may establish a small drafting group to prepare the first set of articles. Whatever method is chosen, the text is then

discussed and negotiated by the commission as a whole. The text is then referred once more to the Sixth Committee. This process may go on for several years. Once the text is approved as a whole in first reading, it is referred to states for written comments. As soon as the commission receives the states' comments, it reviews the draft once more, gives it its final approval, and submits it to the General Assembly for action. The Sixth Committee has then to decide whether to adopt the text without changes, to establish an intergovernmental process to revise it, to recommend it to states for their consideration, or to take no action. The whole process is rather prolonged and deliberative, since discussions move back and forth between the Sixth Committee governmental representatives and the ILC independent experts.[58] This process was followed, in a somewhat abbreviated form, in the negotiation of one counter-terrorism treaty: the 1973 Convention on Internationally Protected Persons.[59]

Alternatively, the Sixth Committee may choose to initiate immediately intergovernmental negotiations on the new legal instrument. This course of action may be taken because there is a need to obtain speedy results, because it is believed that the topic is too political to be handed over to a group of independent experts, or because a state or a group of states has already prepared a text that can be used as the starting point of the negotiations.[60] The practice in these cases is to establish two parallel organs: a Working Group of the Sixth Committee and a special *Ad Hoc* Committee. This was done in 1996 with the establishment of the Terrorism Ad Hoc Committee and the parallel

---

[58] See generally*:* Herbert W. Briggs, *The International Law Commission* (Ithaca: Cornell University Press, 1965); Fleischhauer, *supra* note 48, 268 -271; United Nations, *La Comisión de Derecho Internacional y su obra,* 5th ed. (New York: United Nations, 1996) 7 - 28; Boyle and Chinkin, *supra* note 39, 174 – 183.

[59] See Chapter 3.C.

[60] Boyle and Chinkin, *supra* note 39, 170.

working group which negotiated the Bombings, Financing, and Nuclear Terrorism Conventions and which are currently negotiating the Comprehensive Terrorism Convention.[61] It should be noted, though, that the distinction between the working group and *Ad Hoc* Committee is largely formal. The working group meets during the Sixth Committee session, that is, at some point between late September and late November of every year; and reports to that same session of the Sixth Committee. The *Ad Hoc* Committee meets outside the regular Sixth Committee session, usually the following spring or summer, and reports to the next session of the Sixth Committee. The working group uses the resources, that is, the meeting rooms, interpretation, and documentation services, allocated to the Sixth Committee. The *Ad Hoc* Committee requires a separate budgetary allocation. Apart from these formal differences, the *Ad Hoc* Committee and the working group are essentially the same organ. They have the same members, the same officials, and the same procedures. The negotiations move smoothly from one to the other.

Membership in the Terrorism *Ad Hoc* Committee and in the working group is somewhat larger than that of the Sixth Committee. All states, including those who are not members of the United Nations, such as the Holy See and Cook Islands, are invited to be full participants in the negotiation since they are potential parties to the resulting treaty.[62] Moreover,, the *Ad Hoc* Committee has a bureau similar to that of the Sixth Committee: a chairman, three vice-chairmen, and a rapporteur, representing the five

---

[61] *Ibid*., 168 – 171. See *infra:* Chapter 4.A.

[62] See *e.g.:* G.A. Res. 51/210, ¶ 9, U.N. Doc. A/RES/51/210 (Dec. 17, 1996): "*Decides* to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to elaborate an international convention for the suppression of terrorist bombings (…)"

geographical groups. However, unlike the Sixth Committee's bureau, its members do not change every year. In ten years of existence, the Terrorism Ad Hoc Committee has had only two different chairmen. Strictly speaking, the working group does not have a bureau. It has only a chairman, the same one as the *Ad Hoc* Committee. However, the members of the *Ad Hoc* Committee's bureau continue to assist the chairman as "Friends of the Chairman," and are formally recognized in that role. During the negotiations of the Terrorism Conventions, the bureau/Group of Friends of the Chairman played a very active role in preparing consolidated negotiating texts, proposing formulas for agreement, mediating between opposing coalitions, and coordinating informal negotiations. Occasionally, the chairman invited non-members of the bureau to participate in its meetings and to assist in the preparation of the rolling texts. Thus, delegates of Canada, Argentina, and Sri Lanka occasionally assisted in the bureau's meetings. Members of the UN Secretariat were also instrumental to the work of the bureau, making summaries of both public and closed meetings and preparing consolidated lists of proposals.

The procedure of the *Ad Hoc* Committee and the working group is similar to that of the Sixth Committee: public plenary meetings, closed meetings of the working group, closed informal consultations, informal-infomals, and bilateral consultations. At the beginning of each negotiation, one delegation or a group of delegations introduced a rather elaborate first draft of the proposed instrument. After a general exchange of views, the discussions proceeded article by article. Eventually the texts were disaggregated into sets of articles concerning related topics, and separate coordinators were appointed. In informal consultations, the coordinators made a series of proposals to focus the discussions and to identify a common denominator. Delegations were encouraged to

negotiate bilaterally. Where necessary, the chairman asked members of the bureau and some enterprising delegations to mediate among opposing positions. When there was agreement on a sufficient number of issues, in an effort to form an overall package, the bureau produced a single consolidated negotiated text of the whole convention. As the negotiations proceeded, the Bureau/Group of Friends of the Chairman revised the consolidated text as many times as necessary.

Both the Terrorism *Ad Hoc* Committee and the working group prepared rather detailed reports to the Sixth Committee. Those reports contain all the proposals formally submitted by delegations as well as an informal summary prepared either by the chairman or by the coordinators. Delegations were, in fact, encouraged to submit in writing their proposals, to ensure both that the reports contain a complete record of the negotiations and that the individual positions would be accurately reflected. Summaries of the discussions, prepared by the secretariat, were submitted under the personal capacity of the chairman or of the coordinators, so that they were not open for negotiation. More importantly, negotiations were conducted under two basic understandings. First, that all proposals remain on the table, that is, that they are valid until formally withdrawn by their sponsor. Second, that nothing is agreed until everything is agreed.[63] These two understandings allow delegations to make tentative concessions and to search for creative solutions without conceding on their basic positions. Furthermore, they encourage the search for an overall package deal.

---

[63] See *e.g.*: U.N.G.A. Sixth Comm., "Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005," p. 3, in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005).

The Reports of the *Ad Hoc* Committee and of the working group usually contain a recommendation for action to the Sixth Committee. If there was agreement or close to agreement on the text of a draft treaty, the *Ad Hoc* Committee would refer that text to the Sixth Committee for its consideration. If there was no agreement, the report usually suggested that negotiations be continued. Those recommendations, proposed by the bureau, were always carefully drafted to focus ensuing negotiations on the major pending issues and to preclude reopening negotiations on issues previously agreed. Although voting on the text of these recommendations was technically possible, a vote was always avoided. If the text of the new treaty is finalized, either in the *Ad Hoc* Committee or in the Sixth Committee, it is annexed to an "enabling resolution:" a draft resolution which formally adopts the text, opens it for signature, and urges states to ratify it. This resolution is then formally adopted by the Sixth Committee and, subsequently, by the Plenary of the General Assembly. In this manner, the negotiation of the new international legal instrument concludes successfully. Alternatively, if the text is not finalized, and more time is needed for further negotiations, the Sixth Committee usually adopts a draft resolution reconvening the *Ad Hoc* Committee and the working group the following year.

The decision-making rules followed in international, multilateral negotiations vary widely. Some negotiations require unanimity for the adoption of any decision; others require unanimity minus one or two votes. Some grant a veto power to some participants. Others require consensus, that is, the lack of formal objections. Finally, some negotiations require a formal vote, with either a qualified majority or a simple

majority.[64] The Charter of the United Nations presupposes that the General Assembly takes all decisions through a vote. Article 18 reads:

> Article 18
> 1. Each member of the General Assembly shall have one vote.
> 2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
> 3. Decisions on other questions, including the determination of additional categories of questions, to be decided by a two-third majority, shall be made by a majority of members present and voting.[65]

Similarly, the rules of procedure of the General Assembly establish that "[d]ecisions of the Committees shall be made by a majority of the members present and voting."[66] Thus, in principle, law-making negotiations held in the United Nations General Assembly and Sixth Committee should conclude with a vote, either adopting the new treaty or verifying the negotiation's failure to produce a satisfactory outcome. All interim resolutions to launch negotiations, to establish subsidiary negotiating committees and working groups, and to authorize the continuation of negotiations, should equally be put to a vote. Currently, however, most General Assembly decisions are adopted without a formal vote, by acclamation, unanimity, or consensus. In those cases, at the moment of adoption, the chairman makes an oral statement recording the agreement of all members

---

[64] Sabel, *supra* note 17, 285 – 346.

[65] UN Charter, art. 18. See also U.N.G.A., Rules of Procedure, *supra* note 17, arts. 83 – 85.

[66] U.N.G.A., Rules of Procedure, *supra* note 17, art. 103.

to the adoption of the proposed text without resorting to a vote. If there are no objections, the text is deemed adopted.[67] Consequently, it could be said that the Sixth Committee follows a mixed decision-making rule, where consensus is preferred but were a vote is still possible.[68]

In general, states prefer the adoption of General Assembly resolutions and decisions by consensus. An authoritative recommendation contained in an annex to the rules of procedure of the General Assembly notes that "the adoption of decisions and resolutions by consensus is desirable when it contributes to the effective and lasting settlement of differences, thus strengthening the authority of the United Nations."[69] The adoption of a decision without a vote avoids creating the impression of confrontation, of winners and losers, which may weaken its desired effect. This fact is of particular importance regarding texts that contain legal principles and rules. Although the adoption of those texts by consensus does not modify their legal nature, such procedure suggests that their substance is comparatively more acceptable, legitimizes their application, and favors their incorporation into international customary law.[70] Moreover, the resort to consensus may also be based on practical considerations. Walker argues that many states are willing to accept outcomes that they really do not like, but that they do not oppose so adamantly as to ask for a vote since opposing the will of the majority may seem futile and not worth the effort unless major national interests are at risk. Moreover, smaller delegations do not have the capacity to follow all the details of a multilateral negotiation.

---

[67] Wolfrum, *supra* note 17, 324 – 327; Michael Schaefer, "article 21" in Simma, *supra* note 17, 370 – 372; Sabel, *supra* note 17, 298 – 299, 338 – 339, 343.

[68] See generally, Sabel, *supra* note 17, 344 -345.

[69] U.N.G.A., Rules of Procedure, *supra* note 17, annex V, para. 104.

[70] Wolfrum, *supra* note 17, 325; Walker, *supra* note 27, 161; Boyle and Chinkin, *supra* note 39, 160.

For those delegations, the easiest course of action is to go along with any text that appears likely to be adopted by consensus.[71]

From a technical point of view, it is possible to distinguish among: "unanimity," "general agreement," "consensus," and "adoption without a vote." These four terms refer to the adoption of a decision without resort to a formal voting procedure. "Unanimity" emphasizes the fact that there is positive agreement among all participants to the decision. "General agreement" and "consensus" reflect both the absence of formal objections to the proposed outcome, even if some delegations may have expressed reservations to the content of the agreement. Consensus, though, might be interpreted in the sense that delegations consent to the adoption of the decision, even if there is no full agreement on its substance. Consensus may also refer to a general approach of seeking real, substantive agreement. In this sense, a 1974 legal opinion from the United Nations' Legal Adviser defined consensus as "a practice under which every effort is made to achieve unanimous agreement; but that if it could not be done, those dissenting from the general trend were prepared simply to make their positions or reservations known and placed on the record."[72] For its part, "adoption without a vote" simply implies that no vote is taken; delegations might have reservations not only regarding the substance of the decision but also regarding its adoption. Thus, it is believed that texts "adopted without a vote" are less politically binding than "consensus" documents. In practice, these distinctions are a matter of subtle nuance. States tend to use these terms interchangeably, even though, on occasion, they have preferred one to the other. The recent practice of the Sixth Committee is to use the most neutral formula and, thus, to adopt resolutions

[71] Walker, *supra* note 27, 161.

[72] *Cited in:* Sabel, *supra* note 17, 336.

"without a vote."[73] In this work I will use these terms interchangeably, noting though that "consensus" is better known in the scientific literature, while "adoption without a vote" was the technical term actually used in the cases studied here.

Some recent studies on international, multilateral negotiation have focused on the impact of consensus as the sole or the dominant decision-making rule in the negotiation process.[74] In a sense, voting is interpreted as a failure of the negotiation. Moreover, the search for consensus gives rise to some of the distinguishing dynamics of international, multilateral negotiations, such as the search for a broadly accepted formula solutions and the creation of an overall package deal. However, the impact of voting in a mixed "consensus preferred – voting possible" system, such as the Sixth Committee, deserves closer attention. It has been suggested that, in such a system, voting becomes an inducement to achieve consensus; a means to pressure the minority and even a mechanism to stigmatize stubborn objectors.[75] This study explores the impact of a "consensus preferred – voting possible" system on actual law-making negotiations.[76]

B) Terrorism as a subject-matter for negotiation

This study analyzes the negotiation of four multilateral treaties on judicial and police cooperation against terrorism. Terrorism, is however a difficult subject-matter for negotiation. It is a multifaceted phenomenon, politically charged, and technically complex. Therefore, this section presents an overview of some of the political and

---

[73] Schaefer, *supra* note 67, 370 – 372; Sabel, *supra* note 17, 315 – 316, 335 – 338; Boyle and Chinkin, *supra* note 39, 157 - 158.

[74] See *e.g:* Lindell, *supra* note 16; Friedheim, *supra* note 22.

[75] Midgaard and Underdal, *supra* note 21, 337; Boyle and Chinkin, *supra* note 39, 158.

[76] See *infra:* Chapter 2.E.

technical issues that negotiators had to face in order to produce a new counter-terrorism legal regime that was both effective and broadly acceptable.

1) Criminalizing terrorism

At a very basic level, human societies consider that acts of wanton violence that produce death, bodily injury, or substantial material damage are negative and should be prevented and punished. Violence kills, erodes the quality of life, prevents or jeopardizes the enjoyment of human rights, endangers democracy, weakens the economy, polarizes the political scene, distorts governmental priorities, and invites revenge. At the international level, it may damage peace and security, undermine friendly relations among states, and undercut international cooperation.[77] It is not surprising then that the the United Nations has condemned "all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed."[78]

It is not obvious, though, that the adoption of new internationally, legally binding instruments for the criminalization of terrorist acts is an adequate response to the actual occurrence of terrorist incidents or that it, in fact, prevents their recurrence. One has to ask honestly whether any amount of criminal law could really prevent a suicide bombing or the hijacking of an airplane. As a noted authority has recognized, "criminal law should not be regarded as a primary means of protecting individual and social interests. In terms of prevention, more can probably be achieved through various techniques of situational crime prevention, social crime prevention, and general social and educational

---

[77] See generally: Declaration on Measures to Eliminate International Terrorism, ¶¶ 1 – 2, G.A. Res. 49/60, Annex, U.N. Doc. A/Res/49/60/Annex (Dec. 9, 1994).

[78] *Ibid.,* ¶ 1.

policies."[79] This is particularly so in the case of international terrorism. The 2005 Secretary-General's Strategy against Terrorism, for example, did not make criminalization one of its main pillars: dissuading people from resorting to terrorism or supporting it; denying to terrorists access to funds and materials; deterring states from sponsoring terrorism; developing state capacity to defeat terrorism; and defending human rights.[80] Unquestionably, the criminalization of terrorist activities could be part of such a strategy, as an effort to dissuade people from resorting to terrorist activities and as a means to develop states' capacity to defeat terrorism; but it cannot be its main component.

Criminal law has three purposes: to declare that a conduct is forbidden, to prevent it, and to express society's condemnation for the wrongful acts. The symbolic, normative role of criminalization is of particular importance in the case of terrorism. The criminalization of terrorist acts expresses society's repugnance at them, invokes social censure and shame, and stigmatizes those who commit them. Moreover, by creating and reaffirming values, criminalization may serve, in the long run, as a deterrent to terrorism, as those values are internalized.[81] In addition, from a practical point of view, the symbolic aspect of criminalization may also serve the short term interests of the political actors and legislators. As Ashworth notes:

---

[79] Andrew Ashworth, *Principles of Criminal Law*, 4th ed. (Oxford: Oxford University Press, 2003), 17.

[80] U.N. Secretary-General, "A Global Strategy for Fighting Terrorism" (Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, Madrid, March 10, 2005) available on line from http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html#transcripcion, accessed on March 24, 2005; see also: U.N. Secretary-General, *"In larger freedom: towards development, security and human rights for all,"* ¶ 88, U.N. Doc. A/59/2005 (March 21, 2005).

[81] Ashworth, *supra* note 79, 36; Ben Saul, *Defining Terrorism in International Law* (Oxford: Oxford University Press, 2006) 17 – 19.

> Creating a new criminal offence may often be regarded as an instantly satisfying political response to public worries about a form of conduct that has been given publicity by the newspapers and television. The pressures on politicians to be seen to be doing something may be great, and considered responses such as consultation and commissioning research may invite criticisms of indecision and procrastination. Thus, in many countries, the growth of the criminal law may reflect particular phases in contemporary social history, as written by the mass media and politicians.[82]

While his argument applies to the domestic sphere, it can be extended to international treaty law making. States may seek to adopt new international law instruments against terrorism, not because it is the best response available to the threat of terrorism, but because, in Ashworth's words, it is "instantly satisfying," in the sense that negotiating new treaties is a relatively economic, fast, and easy response to domestic pressures to do "something" about terrorism.

Besides the symbolic functions of criminalization, counter-terrorism treaties serve a more practical and modest purpose: to facilitate judicial and police cooperation for the prosecution of persons accused of committing terrorist acts. Currently, there is no international tribunal, international prosecutor, or international police with global competence to investigate and prosecute terrorist crimes. Consequently, the prosecution and investigation of terrorist acts falls within the competence of individual states: national courts must judge terrorists, national prosecutors must accuse them, and local police must carry out the investigations. Terrorism frequently has, however, transnational aspects. Commonly, those criminal activities are planned in the territory of one state against another. The targets may be foreigners, such as the head of state of another country, foreign diplomats, visiting military personnel, and even tourists. The terrorists

---

[82] Ashworth, *supra* note 79, 25.

themselves may be foreigners or they may flee to another country after committing the terrorist act. Financial or material resources may come from a third country while key witnesses and evidence may be found only outside the national territory. In all of these cases, effective prosecution and investigation of terrorist acts requires cooperation among the police and judicial authorities of the various countries involved. States, though, might be reluctant or unable to assist each other. States lacking formal diplomatic relations relations, such as Israel and some Arab States, or Cuba and the United States, are unlikely to cooperate because such assistance would, in the first place, imply recognition of the authorities they dislike and, second, actually strengthen those authorities. States may also face legal obstacles to cooperation. In order to prevent the arbitrary use of governmental power, most national legal systems require the existence of a local investigation or prosecution in order to arrest someone, to seek evidence, or to take preventive action, such as freezing assets. Foreign investigations and prosecutions are not automatically considered bases for legal action in another state. Most legal systems also protect individuals from being arbitrarily surrendered to another state. Extradition procedures usually require a domestic judicial process to recognize the legitimacy and soundness of any request to arrest and surrender a person to another country. In the absence of a legal mechanism to recognize the validity of foreign request for judicial assistance, such cooperation may be impossible or greatly hampered.

Customary international law neither prohibits nor obliges states to provide each other police and judicial cooperation on criminal matters. In the absence of a treaty or domestic legislation in that regard, such cooperation depends purely on reciprocity and

courtesy.[83] While customary law in this regard seems to be changing, due both to recent developments in the area of international crimes[84] and to the mandatory decisions of the Security Council requiring cooperation against terrorism,[85] the adoption of new treaties is, in principle, the only means to ensure that states actually cooperated among themselves to fight this crime. Hence, since the eighteenth century, states have concluded many bilateral and multilateral treaties to make such cooperation obligatory and to establish concrete domestic law mechanisms to make such cooperation more expeditious.[86]

Judicial and police cooperation treaties may cover a wide range of issues such as exchange of information regarding criminal investigations; interrogations, arrests, search and seizure operations, and local inspections on behalf of a foreign court or prosecutor; the extradition of accused persons and the surrender of seized property; serving documents and summons; enforcement of foreign criminal judgments; and, even, the possibility of assuming part of the prosecution in the domestic courts of the requested state.[87] Since actual cooperation against terrorism is essentially a bilateral affair between

---

[83] For the traditional stance of customary international law see, for example, Davis, who, writing in 1908, argued that: "The duty of a state to assist other states in the execution of their criminal laws is less generally conceded. Some writers have maintained that it is incumbent upon every state to refuse asylum to, and upon proper application to deliver up, all persons charged with crimes of excessive atrocity, or which affect peace and security of society. The contrary view, that extradition is a matter of comity, or treaty stipulation, has been ably maintained, and is now more generally accepted by text writers of authority, and sanctioned by the usage of nations." George B. Davis, *The Elements of International Law*, 3rd ed. (New York and London: Harper and Brothers Publishers, 1908) 166 – 167. See also: J. G. Starke, *An Introduction to International Law,* 5th ed.*,* (London: Butterworths, 1963) 292; Brownlie, *supra* note 35, 315.

[84] Brownlie, *supra* note 35, p. 315, n. 97.

[85] S.C. Res. 1373 (2001), U.N. Doc. S/RES/1373 (Sept. 28, 2001).

[86] Starke, *supra* note 83, 292; Bruce Zagaris and David Simonetti "Judicial Assistance under U.S. Bilateral Treaties" in M. Cherif Bassiouni, ed., *Legal Responses to International Terrorism: U.S. procedural Asspects* (Dordrecht, Boston and London: Martinus Nijhoff Publishers) 219 -228.

[87] Zagaris and Simonetti, *supra* note 86, 221.

the state that requests judicial or police assistance and the requested state, in practice, multilateral treaties could be broken down into a set of identical bilateral treaties between each possible pair of state parties.[88] However, the negotiation of multilateral counter-terrorism treaties has three distinct advantages. First, the moral, political, and legal impact – as evidence of the existence of a generally accepted legal principle or *opinio iuris* – of the whole international community declaring in a single act that a particular conduct is a terrorist crime is far greater than the impact of many separate, bilateral agreements stating the same. In this sense, the symbolic, normative impact of a multilateral treaty is much greater than that of a set of bilateral agreements. Second, the conclusion of a multilateral treaty reduces the transaction costs of the negotiation. Each state, rather than having to negotiate and ratify approximately two hundred separate agreements, can simplify the whole effort into a single negotiation. Third, by introducing standard rules, a single multilateral treaty reduces the transaction costs of the legal regime itself. Each state, instead of having to administer and use close to two hundred different extradition and legal cooperation mechanisms, can rely on a single set of rules.[89] In addition, for those states that lack formal diplomatic relations and who, precisely for that reason, are unable to conclude bilateral cooperation agreements, the adoption of multilateral treaties may be the only viable form of agreeing to cooperate against terrorism.

---

[88] See: Antonio Cassese, *International Law in a Divided World* (Oxford: Oxford University Press, 1986) 29.

[89] See generally*:* Robert O. Keohane, "The demand for International Regimes," in: Stephen D. Krasner, ed. *International Regimes* (Ithaca and London: Cornell University Press, 1983) 155 - 157; Robert O. Keohane and Joseph S. Nye, *Power and Interdependence,* 2nd ed. (New York: Harper Collins Publishers, 1989) 271 - 272.

2) Defining terrorist acts

All the negotiations considered in this work have sought to provide a precise definition of the violent acts that they intend to punish. However, those negotiations have not defined terrorism in itself nor have they called the forbidden acts terrorism. In defining the crime, the Terrorist Bombing, the Terrorist Financing, and the Nuclear Terrorism Conventions have all used the formula "an offence within the meaning of this Convention ..."[90] Terrorism is mentioned only in their titles and preambles.[91] Similarly, the most updated consolidated draft of the Comprehensive Convention against Terrorism defines only a list of offences without calling them terrorism.[92] As the historical record shows, agreeing on a single, comprehensive definition of terrorism has proved so far impossible.[93]

The definition of the offence in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society's condemnation of the forbidden acts.[94] Second, it facilitates agreement. Since states tend to be reluctant to undertake stringent obligations in matters related to the exercise of their domestic

---

[90] International Convention for the Suppression of Terrorist Bombings, art. 2.1, *adopted on* Dec. 15, 1997, G.A. Res. 52/164, Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter: Bombings Convention]; International Convention for the Suppression of the Financing of Terrorism, art. 2.1, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999) [hereinafter: Financing Convention]; International Convention for the Suppression of Acts of Nuclear Terrorism, art. 2.1, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005) [hereinafter: Nuclear Convention].

[91] Bombings Convention, *supra* note 90, title, pre. para. 7; Financing Convention, *supra* note 90, title, pre. para. 9; Nuclear Convention, *supra* note 90, title, pre. para. 10.

[92] Coordinator, "Draft comprehensive convention against international terrorism, consolidated text prepared by the coordinator for discussion" art. 2, in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Appendix II, U.N. Doc. A/59/894 Appendix II (Aug. 12, 2005).

[93] See *infra:* Chapters 3 – 7.

[94] See *supra* section B.1.

jurisdiction, a precise definition of the crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogeneous application of the treaty's obligations on judicial and police cooperation.[95] This function is of particular importance in extradition treaties because, to grant an extradition, most legal systems require that the crime be punishable both in the requesting state and the requested state.[96] Fourth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts defined in the treaty in conformity with their human rights' obligations. The principle of *nullum crimen sine lege* requires, in particular, that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts.[97]

To create an effective legal regime against terrorism, states should be able to formulate a comprehensive definition of that crime that, on the one hand, provides the strongest moral condemnation to terrorist activities while, on the other hand, has enough precision to permit the prosecution of criminal activities without condemning acts that should be deemed to be legitimate. Regrettably, due to major divergences on the question of the legitimacy of the use of violence for political purposes, either by states or

---

[95] Gerhard Hafner, "The definition of the crime of terrorism," in: Guiseppe Nesi, ed., *International Cooperation in Counter-terrorism: the United Nations and regional organizations in the fight against terrorism* (Aldershort, UK, and Burlington, VT: Ashgate Publishing Co., 2005) 35.

[96] Starke, *supra* note 83, 295.

[97] Universal Declaration of Human Rights, art. 11.2, G.A. Res. 217A (III) (Dec. 10, 1948); European Convention for the Protection on Human Rights and Fundamental Freedoms, art. 7.1, *adopted on* Nov. 4, 1950, ETS No. 5; International Covenant on Civil and Political Rights, art. 15.1, *adopted on* Dec 16, 1966, 999 UNTS 3; American Convention on Human Rights, art 9, *adopted on* Nov 22, 1969, 1144 UNTS 123; African Charter on Human and Peoples' Rights, art. 4, *adopted on* June 26, 1981, 21 I.L.M. 59. Article 11.2 of the Universal Declaration of Human Rights reads:

> 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

by self-determination and revolutionary groups, this has not yet been possible.[98] As Bassiouni notes:

> [T]o define "terrorism" in a way that is both all-inclusive and unambiguous is very difficult, if not impossible. One of the principal difficulties lies in the fundamental values which are at stake in the acceptance or rejection of terror-inspiring violence as means of accomplishing a given goal. The obvious and well known range of views on these issues are what makes an internationally accepted specific definition of what is loosely called "terrorism," a largely impossible undertaking. That is why the search for and internationally agreed upon definition may well be a futile and unnecessary effort.[99]

In this sense, the difficulties surrounding the efforts to define terrorism and its related offences arise from a contest regarding its symbolic value. In fact, the concept of terrorism is far more than a technical-legal definition of a discrete type of criminal activity. It is a highly charged weapon of political argument that actors use to influence decision-making and to change each other's behavior.[100] The use of mutual accusations of terrorism in the context of decolonization processes exemplifies this symbolic use of the concept of terrorism.[101] As Saul notes:

> Despite the shifting and contested meaning of "terrorism" over time, the peculiar semantic power of the term, beyond its literal signification, is its capacity to stigmatize, delegitimize, denigrate, and dehumanize those at whom it is directed, including political opponents. The term is ideologically and politically loaded; pejorative; implies moral, social, and value judgment; and is "slippery and

---

[98] See *infra:* Chapters 3 and 7.

[99] M. Cherif Bassiouni, "A Policy-oriented Inquiry of 'International Terrorism'" in: M. Cherif Bassiouni, ed., *Legal Responses to International Terrorism: U.S. Procedural Aspects,* (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988) xv – xvi.

[100] Neta C. Crawford, *Argument and Change in World Politics: ethics, decolonization and humanitarian intervention,* (Cambridge: Cambridge University Press, 2002.) p 100:

> Actors use ethical arguments when they try to change dominant normative beliefs and behaviors. Advocates use prescriptive normative beliefs in arguments to "normalize" and proclaim the abnormal, to legitimize or delegitimize their actions and the actions of others, and to influence the construction of interests and the sense of possibility in decision-making.

[101] See *infra:* section B.2.b, and Chapter 3.C.

> much-abused." In the absence of a definition of terrorism, the struggle over the representation of a violent act is a struggle over its legitimacy. The more confused a concept, the more it lends itself to opportunistic appropriation.[102]

Thus, the controversies regarding the symbolic use of the concept of terrorism constitute the immediate background of the difficulties faced by the international, multilateral negotiations on counter-terrorism instruments. Nonetheless, those political difficulties were compounded by the requirements of proper legal technique. Human rights law and criminal law principles require that the legal definition of a crime be precise enough that both the courts and the public know whether a certain conduct is lawful or not. Hence, resorting to ambiguity or lack of precision to hide substantive differences, as is frequently done in other multilateral negotiations, is problematic. An ambiguous definition of terrorism would be dangerous for individuals, who would not know how to behave; it could cause confusion for the courts, which would not have clear norms to apply; and it could lead to arbitrariness by both the police and prosecution. At the international level, such a definition could cause conflicts among the states that would not know whether a concrete situation falls within the scope of the treaty or not. For an international criminal law definition to be useful, it is not enough that it just captures the core elements of the crime; it has to provide clear answers to the test cases and to the borderline situations.

a) Technical aspects of defining a crime

[102] Saul, *supra* note 81, 3.

Defining a crime in an international, multilateral agreement, whether related to terrorism or not, is always a complex task because it requires harmonizing diverse legal systems. In effect, nowadays, each state has its own domestic definitions of the crimes and of the conditions that determine criminal liability, many of which are not immediately compatible. As Fletcher notes:

> Every country has adopted it own conception of punishable behavior, its own definitions of offences, its own principles for determining questions of self-defense, necessity, insanity, negligence, and complicity. Criminal law has become state law. If there was ever much unity among the countries that succeeded to the domain of Roman law, there is none now. If there was ever a common vocabulary and set of principles used by common law jurists, that commonality has long since disintegrated. (…) The republics of the former Soviet Union once had criminal codes that were, as the expressions of a single centralized policy, by and large the same. Now as each independent state in the region drafts its own code, we await a cacophony of policies and principles. Soon we will have as many bodies of criminal law as there are distinct flags flying over sovereign states.[103]

From this point of view, to produce a workable definition of a crime, the negotiations need to harmonize the technical-legal principles and concepts of each state into a single formula compatible with all of them. Moreover, the participants in the negotiations themselves use their domestic legal definitions and concepts to prepare their individual positions and react to other delegations' proposals. Thus, drafting a treaty's definition of an offence requires more than just making policy choices about which behavior should be punished; it requires finding a common language to translate the basic notions of the various legal systems of the world.

The four treaty making negotiations analyzed in this study followed a similar legal technique to identify the main elements of the crime. In the first place, they stated

---

[103] George F. Fletcher, *Basic Concepts of Criminal Law* (Oxford: Oxford University Press, 1998) 3 – 4.

which actions are unlawful (the *actus reus*) and declared for whom those actions are prohibited (the actor of the criminal offence). They also characterized the wrongful action by reference to the means used, the target, and expected or actual results. Additionally, each definition contains a threshold based on the level of intention of the actor (*mens rea*). In this regard, a definition may require, for the crime to be committed, that the actor willfully intended to obtain certain wrongful consequences (criminal intent or *dolus*). Alternatively, the definition could require that the actor foresees that his wrongful action is likely to produce the prohibited consequences and that he, nevertheless, accepts the risk (recklessness or *dolus eventualis*), or that he acted in circumstances where he should have known, because of a positive duty to abide by certain standards of conduct, that those wrongful consequences may arise, even if at the time he believed that those negative consequences would not occur (gross negligence or *culpa gravis*).[104]

In addition to the main offence, counter-terrorism treaties usually criminalize a series of related, subsidiary offences. In particular, they seek to criminalize the attempt to commit a terrorist attack, various preparatory acts, and some forms of indirect participation in terrorist behaviour. Criminal activities in general and terrorist attacks in particular are frequently committed by groups of persons. From a technical point of view, when each member of a group performs the wrongful action and shares the common criminal intent, they are co-perpetrators. Each separate person is then criminally liable for the commission of the main offence.[105] When criminals divide the

---

[104] Antonio Cassese, *International Criminal Law*, (Oxford: Oxford University Press, 2003) 57, 162, 168, 171 – 173.

[105] Cassese, *supra* note 104, 181.

work among themselves, there is participation in a common design or criminal enterprise. In this situation, most legal systems attribute equal responsibility to all the participants if they contribute, in any degree, to the commission of the crime pursuant such common plan.[106] Moreover, any person who provides practical, financial, or moral support to the principal perpetrator of the crime, in the absence of a common plan, but aware that his assistance furthers the commission of the offence, participates as an accessory to the crime: he is an accomplice. Accomplices do not need to share the principal actor's criminal intent but their aid must have a substantial effect on the commission of the offence.[107] Most criminal law systems also attribute criminal liability to whoever induces, encourages or persuades the perpetrator to commit the crime. Usually, to be criminally liable, the instigator has to encourage the commission of the crime directly and explicitly and the crime must actually be committed.[108]

In international law, there are no uniform rules and principles to punish the various participants in criminal activities. Each legal system has its own definitions and guiding principles regarding the responsibility of co-perpetrators, accomplices, instigators, and participants in a criminal enterprise. Some countries, such as the United States, France, Australia, Italy, and Argentina, make no distinction between the participants in the crime and the principal perpetrator of the main offence. Their legislation does not define as separate crimes each separate forms of participation. Consequently, in those countries, all the participants are criminally liable for the commission of the main offence. Other countries, such as Germany and Russia, do make

---

[106] *Ibid.,* 181 – 182; Geert-Jan Knoops, *An Introduction to the Law of the International Criminal Tribunals: a comparative study* (Ardsley, New York: Transnational Publishers, 2003) pp. 60 - 64.

[107] Cassese, *supra* note 104, 188.

[108] *Ibid.,* 189.

a distinction between the criminal responsibility of the perpetrator and that of the participant. Consequently, their legal systems define the main offences separately from the various forms of participation.[109] Thus, during the negotiation of the counter-terrorism treaties, the formulation of a provision on the criminal participation acceptable to all was a major challenge.[110]

In addition, most legal systems of the world also penalize wrongful acts preparatory of the main offence. Among this category of "inchoate" crimes it is possible to distinguish three different types. [111] The first kind includes preparatory acts that are punishable only if the actual offence is not committed, such as planning and ordering the commission of a crime. Once the principal offence has been committed, those who ordered it or planned it are considered to be actors of the main offence, due to their participation in a common criminal design. The second kind of inchoate crimes comprehends activities directed to the commission of an offence which, for reasons beyond the actor's control, does not ensue. This is the attempt. To be punishable, the attempt requires, first, that the criminal action is begun; second, that the person intends to commit the crime; third, that the intended consequences do not ensue either because the actor is stopped before concluding the wrongful action or because the wrongful conduct does not produce, in that particular circumstance, its normal result. This may occur, for instance, when the victim manages to escape. The third kind of preparatory offences includes acts which are punishable by themselves, regardless of whether the main offence is committed or not. This includes incitement and conspiracy. Incitement is the public

---

[109] *Ibid.,* 179 - 180.

[110] See *infra:* Chapter 4.D.

[111] Cassese, *supra* note 104, pp. 190 - 198.

encouragement of the commission of a crime. In most legal systems, incitement is punishable as a separate offence only when the criminal act being promoted is of extreme gravity, such as genocide. For its part, conspiracy consists in the agreement among two or more persons to commit a crime. Not all legal systems, though, punish conspiracy. In those systems that do, the perpetrators are held liable for both the conspiracy and the actual offence, if it is committed. Most common law countries, for instance, use the concept of criminal conspiracy as a separate offence while most civil law nations reject this idea or use it only for exceptionally serious offences against the public order, such as drug trafficking and mafia activites.[112] Since the various legal systems of the world contain different definitions and conditions for the penalization of inchoate crimes, based on their national legislation and jurisprudence, another major challenge for the international, multilateral law-making negotiations on terrorism was drafting a provision on preparatory crimes that was acceptable to all delegations.

A further difficulty arose from the relationship between the various criminal definitions and their respective subsidiary crimes. Planting a bomb that does not explode is a terrorist act under the Bombings Convention, but it is just attempted murder.[113] Providing funds to a terrorist group knowing that they may use them to plant a bomb is both a form of complicity to terrorist bombing and a crime of terrorist financing under the Financing Convention.[114] Possessing nuclear material with the intent to build a nuclear

---

[112] *Ibid.,* 197.

[113] Bombings Convention, *supra* note 90, art. 2.1.

[114] *Ibid.,* art. 2.3.c; Financing Convention, *supra* note 90, art. 2.1.b.

bomb is a crime of nuclear terrorism, pursuant to the Nuclear Convention, but only attempted terrorism according to the Bombings Convention.[115]

b) Distinguishing terrorism from state action

One of the major difficulties in defining terrorism and its related offences is how to distinguish them from state action. This problem arises because, on occasions, states have accused each other of committing terrorist acts.[116] In particular, during the early seventies, the newly independent nations accused their former metropolises of terrorist practices. They argued that both the colonial powers' military efforts to retain control and their practice of handing control over local natural resources to foreign interests were terrorist acts. They defined state terrorism as "acts of violence and other repressive acts by colonial, racists and alien regimes against peoples struggling for their liberation, for their legitimate right to self-determination, independence and other human rights and fundamental freedoms."[117] Algeria, for instance, argued that acts of state terrorism "take the form of mass imprisonments, the use of torture, the massacres of whole groups, widespread reprisals, the bombing of civilian population, the use of defoliants, [and] the destruction of the economic structure of a country," that states use it to "break the will of a people in order to impose direct rule, to subject them to a policy or to use their territory and resources for purposes contrary to that people's interests," as part of a policy of

---

[115] Nuclear Convention, *supra* note 90, art. 2.1.a; Bombings Convention, *supra* note 90, art. 2.2.

[116] See *supra* section 2.a.

[117] Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire, and Zambia), "Draft proposal on the definition of international terrorism," ¶ 1, U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 21, UN Doc. A/9028 (Aug. 11, 1973) [Hereinafter 1973 Ad Hoc Comm. Report].

"expansionism and hegemony."[118] This use of the concept of "terrorism" was directed to obtain leverage in what developing countries saw as the still raging colonial conflicts of the time, including South Africa, Rhodesia, the Portuguese colonies in Africa, the Arab-Israeli conflict, and Vietnam.[119] In fact, most of the measures suggested by the Non-aligned group to fight terrorism were actually directed against colonialism and foreign occupation. They included: the elimination of all situations of colonial domination and foreign occupation; the fight against apartheid and racial discrimination; the return of the populations that had been expelled by foreign regimes; and the prohibition of any kind of assistance to any regime that practiced racial discrimination, colonialism, or that usurped territory.[120] Obviously, those countries that were being attacked, including the former colonial powers, could not accept the concept of state terrorism.[121]

---

[118] Algeria, "Suggestion," subsection II.A, *in:* 1973 Ad Hoc Comm. Report, *supra* note 117, at 23 - 25.

[119] See *e.g.:* Democratic Yemen, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 191, U.N. Doc. A/PV.2037 (Sept. 23, 1972):

> If we want to prevent the murder of innocent victims in the world we must first understand the motivations for these killings. The Fascist regime of Portugal is and has been for many years a regime of violence, terror and murder. The Ian Smith regime of Southern Rhodesia is a racist, terrorist regime. The Government of South Africa is blatantly terrorist and racist. The Zionist regime of Israel is a racist, militarist, terrorist regime that was given birth by conspiratorial terrorist organizations such as Haganah, Leonziffy and Histadrut. (…) The imperialist administration of the United States is committing acts of terror and atrocities against innocent people of Viet-Nam and South-east Asia. These regimes are the true terrorists of the world. If we want to end violence and terror we must first prevent these regimes from continuing their practices of violence and terror.

[120] Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire, and Zambia), "Draft proposal on measures for the prevention on international terrorism," ¶¶ a – d, *in:* 1973 Ad Hoc Comm. Report, *supra* note 117, at 25 – 26.

[121] See *infra:* Chapter 3.B. See also*:* Christopher H. Pyle, "The Political Offence Exception" in: Bassiouni, *supra* note 86, at 183:

> [R]egimes under attack cannot, for obvious political reasons, accept a definition of terrorism that could be applied to their own officials, should they be forced to flee. Everything a beleaguered regime does to suppress a revolt, including emergency legislation, internment without trial, house-to-house searches, abusive interrogations, and a "shoot-to-kill" policy against suspected rebels, must be characterized as legitimate law enforcement. Thus, the British, who might condemn the same measures when used against rebels in the Philippines, South Africa, or

In 1972, thanks to the automatic majority of developing countries in the General Assembly, its first resolution on terrorism condemned: "the continuation of repressive and terrorist acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms."[122] Nonetheless, as the various colonial and post-colonial conflicts were being solved, the enthusiasm for the concept of state terrorism began to wane. The condemnation of state terrorism was repeated in the 1976, 1977 and 1979 resolutions,[123] all of which were adopted by a vote, but it disappeared in the 1981 resolution, which was adopted by consensus.[124] The 1983 resolution had only a short reference to state terrorism asking states to refrain "from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State,"[125] while the 1985 resolution used the broad but somewhat ambiguous formulation that has been used ever since: "Unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed."[126]

At the same time, though, the concept of state terrorism began to change. Rather than being used to refer to colonial practices against the civilian population, it began to refer to the use of force in situations that states could not or would not call war. By 1985, Syria and Cuba called "state terrorism" a wide variety of military activities including: the

---

Eastern Europe, naturally feel compelled to defend them when employed by British authorities in India, Palestine, Cyprus, or Northern Ireland.

[122] G.A. Res. 3034 (XXVII) ¶ 4, (Dec. 18, 1972).

[123] G.A. Res. 31/102, ¶ 4, U.N. Doc. A/RES/31/102 (Dec. 15, 1976); G.A. Res. 32/147, ¶ 4, U.N. Doc. A/RES/32/147 (Dec. 16, 1977); G.A. Res. 34/145, U.N. Doc. A/RES/34/145 (Dec. 17, 1979);

[124] G.A. Res. 36/109, U.N. Doc. A/RES/36/109 (Dec. 10, 1981).

[125] G.A. Res. 38/130, ¶ 4, U.N. Doc. A/RES/38/130 (Dec. 19, 1983).

[126] G.A. Res. 40/61, ¶ 1, U.N. Doc. A/RES/4061 (Dec. 9, 1985). See *infra:* Chapter, 3.B and C.

Israeli raid against the PLO's headquarters in Tunisia; the diversion, by the US Navy, of the Egyptian jetliner that was carrying the *Achille Lauro* hostage takers; the mining of the ports of Nicaragua by counterrevolutionary groups supported by the United States; South Africa's intervention in Angola; Israel's invasion of Lebanon; Israel's bombing of both Iraq's nuclear reactor and the Palestinian refugee camps in southern Lebanon; and the detention of civilians without trial in Palestinian occupied territories.[127] For its part, New Zealand called terrorism the French undercover military operation that sank the Rainbow Warrior in Auckland.[128] By 2001, the term state terrorism was being used almost exclusively by a small group of mostly Arab states to refer to low-level armed conflicts, particularly in the Palestinian-Israeli context.[129] For example, United Arab Emirates said to the General Assembly that:

> We consider State terrorism, which is practiced by the Israeli Government against the Palestinian people daily, to be the most dangerous kind of international terrorism. This includes the killing of thousands of innocent civilians, arbitrary arrests, the prevention of people's movement and of the transport of food and medication, the confiscation of land, the destruction of property and infrastructure and the desecration of Islamic and Christian holy places.[130]

---

[127] Syria, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 18, U.N. Doc. A/C.6/40/SR.20 (Oct. 24, 1985); Cuba "Statement," U.N. GAOR 40th Sess. Sixth Comm. 22th mtg., ¶ 40, at 9, U.N. Doc. A/C.6/40/SR.22 (Oct. 25, 1985).

[128] New Zealand, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 8, U.N. Doc. A/C.6/40/SR.21 (Oct. 25, 1985). See *infra* subsection (ii.

[129] Yemen, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 4, U.N. Doc. A/56/PV.14 (Oct. 2, 2001); Libya, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 19, U.N. Doc. A/56/PV.14 (Oct. 2, 2001); Saudi Arabia, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., at 23, U.N. Doc. A/56/PV.15 (Oct. 2, 2001); Democratic republic of Congo, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., at 6, U.N. Doc. A/56/PV.16 (Oct. 3, 2001); Syria, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., at 18, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

[130] United Arab Emirates, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., at 13, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

Simmilarly, Libya considered terrorist the April 14th, 1986, aerial attack against Tripoli and Benghazi, when the United States had sought to kill Muammar Qadhafi,[131] while Iraq argued that all acts of violence contrary to international law were forms of state terrorism.[132] The ambassador of the United Kingdom summarized the situation as follows:

> There are also wars and armed struggles where actions can be characterized, for metaphorical and rhetorical force, as terrorists. This is a highly controversial and subjective area, on which, because of the legitimate spectrum of viewpoints within the United Nations membership, we will never reach full consensus.[133]

The difficulties in differentiating terrorism from state action are not limited only to the question of the symbolical or "rhetorical" use of the concept. There is also a technical problem arising from the fact that the essential element of terrorism, using violence with the intention to kill or to cause extensive property damage in order to intimidate a population or to force a government or an organization to do something,[134] is a normal and lawful activity of states waging war. A whole branch of international law -- international humanitarian law – is devoted to recognizing the legitimacy of such actions and to establishing conditions to restrict it. If international law has to maintain coherence, counter-terrorism treaties should not make punishable activities that are legitimate under international humanitarian law. An easy but somewhat simplistic

---

[131] Libya, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 20, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

[132] Iraq, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., at 16, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

[133] United Kingdom, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., at 18, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

[134] *Cf.* Financing Convention, *supra* note 90, art. 2.1.

solution would be to carve out from the definition of terrorism all the situations regulated by the laws of war. In 2005, the Secretary-General advocated this solution:

> The moral authority of the United Nations and its strength in condemning terrorism have been hampered by the inability of Member States to agree on a comprehensive convention that includes a definition. It is time to set aside debates on so-called "State terrorism." The use of force by States is already thoroughly regulated under international law.[135]

This solution was simplistic because the use of force by states is not thoroughly regulated by international law. The use of force during an armed conflict is regulated by international humanitarian law. Similarly, any use of force that threatens international peace and security is addressed by the relevant sections of the United Nations Charter. However, borderline cases of low-level state violence that do not rise to the threshold of armed conflict, and that, therefore, do not trigger either the application of international humanitarian law or the Charter mechanisms - such as undercover activities of special forces outside of their territory in peacetime, activities of "military advisors," and even flash military operations – seem to fall into a legal vacuum. This point was clearly illustrated by the Rainbow Warrior incident, which many delegations had in mind during the counter-terrorism negotiations.[136] Consequently, any definition of a terrorist offence

---

[135] U.N. Secretary-General, *"In larger freedom: towards development, security and human rights for all," supra* note 80, ¶¶ 90 – 91.

[136] In early 1985, Greenpeace announced its intention to disrupt a series of planned French nuclear tests in the South Pacific by sailing into the test area. On July 10th, agents of the Directorate General of External Security of the French Ministry of Defence sank the Rainbow Warrior, one of Greenpeace's ships, while docked in Auckland's harbor. The agents used two underwater explosives charges. One member of the Rainbow Warrior's crew was killed. New Zealand arrested two of the French agents involved in operation, Major Mafart and Captain Prieur. They were indicted and both plead guilty to manslaughter. In sentencing them to 10 years of prison, the New Zealand judge determined that their acts "may well fall within the definition of terrorist activity" and that the "action was an affront to the sovereignty of this country (New Zealand) and an attack on the peace-abiding people within this territory." The judge chose to disregard the fact that they were acting under orders. For its part, France acknowledged that the ship had been sunk by French agents, recognized that the attack had violated New Zealand's sovereignty, and expressed its

had to provide a clear answer to the question of whether undercover special forces acting in peacetime could be terrorists or not. France and the United States argued that they could not. The United States, in fact, sought to protect to the maximum its military personnel from politically motivated prosecutions and tried to exclude from the scope of the counter-terrorism treaties all activities of its armed forces. Meanwhile, New Zealand, Switzerland, and others, argued that members of the armed forces that commit wrongful actions in peacetime should be considered terrorists.[137]

A related issue was whether the police and judicial cooperation regime established by the new counter-terrorism treaties could be used to enforce international humanitarian law. According to that law, not all acts of armed forces are lawful. Military attacks carried out in a disproportionate or indiscriminate manner, for example,

---

willingness to pay reparations. France, however, contended that the agents had no criminal responsibility since they had followed military orders and had acted on behalf of the French Government. France argued that the agents' imprisonment was not justified and demanded their immediate liberation. France maintained that, if New Zealand deported the agents to France, it would not prosecute them and they would not serve any prison time. New Zealand argued that "New Zealand does not accept that military personnel acting under official orders are exempt from personal responsibility for criminal acts. 'Superior orders' is not a defence in New Zealand law, nor is it a defence in the legal systems of most countries. It is certainly not a defence in international law, as was clearly established in the judgements of the Nuremberg Tribunals and the post-Nuremberg war crimes trials." The conflict escalated into a commercial dispute with France opposing New Zealand's export of butter and lamb to the European Community. To avoid further escalation, the two countries submitted the dispute to the Secretary-General of the United Nations. In his arbitral award, the Secretary-General decided that the French government had to convey a formal apology to New Zealand and pay a compensation of nine million US dollars. He also determined that New Zealand should transfer Major Mafart and Captain Prieur to French custody and that France should assign them to an isolated military facility outside Europe, for three years, without permission to leave. The arbitral award did not delve into whether the act generated individual criminal responsibility as a terrorist attack. Consequently, both countries maintained their original positions regarding the criminal responsibility of the individuals involved. R. v. Mafart and Prieur, [1985] N.Z.H.C., Auckland Registry, (Davison C.J.) *reprinted in* 74 I.L.R 241, 252; France, *Communiqué by the Prime Minister* (Sept 22, 1985), 74 I.L.R 241, 261; France, *Memorandum of to the U.N, Secretary-General*, 74 I.L.R 269; New Zealand, *Memorandum to the U.N, Secretary-General*, 74 I.L.R 260-261; Rainbow Warrior Arb. Award (N.Z. v. Fr.) (U.N. Secretary-General, July 6, 1986), 74 I.L.R 241, 241-277; MIPT Terrorism Knowledge Base, "Other group attacked other target (July 10, 1985, New Zealand)" database on line available from *http://www.tkb.org/Indicent.jsp?incID=4256*, accessed on Apr. 26, 2006.

[137] See *infra:* Chapter 4.F.

or against civilian targets, constitute war crimes and must be prosecuted.[138] However, the prosecution of war crimes is hampered by the fact that international humanitarian law establishes very limited mechanisms for police and judicial cooperation. Theoretically, if certain war crimes fall within the definition of the offence contained in a counter-terrorism treaty, states could cooperate, pursuant to the counter-terrorism instrument, to prosecute wrongful conduct that, in fact, constitutes a breach of the laws of war. On the other hand, some states guard jealously the prosecution of war crimes committed by its own military personnel. They do not want the conduct of their military operations to be judged by other states and fear that, after an armed conflict, the opposing party may use international criminal law to persecute its soldiers for what they see as legitimate military operations. In this regard, the negotiations on the counter-terrorism treaties had to make a policy choice: to let international humanitarian law and counter-terrorism instruments overlap and mutually reinforce or to separate completely the two legal regimes. As we will see, negotiators chose to separate, as far as possible, the two regimes. This raised another problem: how to address terrorist acts committed during an armed conflict but not related to that conflict, and therefore, not subject to international humanitarian law. The negotiations of the Bombing and the Financing Conventions seem to have chosen that those instruments were applicable in wartime regarding acts not related to the armed conflict.[139]

---

[138] Geneva Convention Relative to the Treatment of Prisoners of War, arts. 146 and 147, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 135-285 [hereinafter III Geneva Convention]; Protocol Additional to the Geneva Conventions of 12 August 1943, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 51 – 53, 85.3, *adopted on* June 8, 1977, 1125 U.N.T.S. 3-608 [hereinafter Protocol I] Rome Statute of the International Criminal Court, done in Rome, July 17th, 1998, art. 8.

[139] See Bombings Convention, *supra* note 90, art. 19.2; Financing Convention, *supra* note 90, art. 2.1.b.

c) Distinguishing terrorism from self-determination

The second major difficulty for defining terrorism and the related criminal offences lies in how to distinguish it from legitimate but violent acts of self-determination.[140] The issue can be aptly summarized by the expression: "someone's freedom fighter is someone else's terrorist." More precisely, the question is, then, whether the right of self-determination entitles peoples under colonial domination or foreign occupation to take up arms and perform legitimately acts of violence that would, otherwise, be considered terrorism.

During the twentieth century, the idea that peoples should be able to govern themselves and, if they wish so, attain independence, evolved gradually. After the First World War, President Wilson argued that the Paris Peace Settlement had to seek a

> Free, open-minded and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty, the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.[141]

After the Second World War, self-determination was seen as a general principle that promoted peaceful relations among nations. One of the purposes of the United

---

[140] For a general discussion on self-determination See*:* John P. Humphrey, "Political and related rights," in Theodor Meron, *Human Rights in International Law: Legal and policy issues,* (Oxford: Clarendon Press, 1984) 193 – 196; James Crawford, "The rights of Peoples: 'Peoples' or 'Governments'," in James Crawford, ed., *The Rights of Peoples*, (Oxford: Clarendon Press, 1988); Karl Doehring, "Self-Determination," in: Bruno Simma, ed., *The Charter of the United Nations: a commentary* (München: C.H.Beck Verlag, 1995) 56 – 72; Cassese, *supra* note 88, 131 – 137; Richard A. Falk, "The right of self-determination under international law: the coherence of doctrine versus the incoherence of experience" in: Wolfgang Danspeckgruber and Arthur Watts, eds., *Self-Determination and Self-Administration* (Boulder and London: Lynne Rienner Publishers, 1997) 47 – 63.

[141] Woodrow Wilson, "Fourteen Points" in Margaret MacMillan, *Paris 1919: Six moths that changed the world*, Annex, (New York: Random House, 2003,) 494.

Nations was therefore "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[142] By 1966, self-determination had become a fundamental right recognized in the two major human rights covenants: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[143] The gradual inclusion of the concept of self-determination in normative instruments shows its increasing acceptability as a legal, political and ethical argument in favor of the independence of peoples under colonial or foreign occupation and minority groups.[144] At the same time, it reveals the practical success of the principle in assisting the independence of the former European colonies. It was not an accident that the recognition of the principle of self-determination as a human right coincided with the independence of most African and Asian nations. However, although the independence of most former colonies in Asia and Africa was pacific, there were independence wars and guerrilla movements in Algeria, Tunisia, Vietnam, Western Sahara, Angola, Mozambique, and Guinea Bissau. In those cases, it was claimed that self-determination justified the violent acts of freedom fighters.[145] By 1970 the General Assembly had reaffirmed "the inherent right of colonial peoples to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and

---

[142] UN Charter, art. 1.2.; See also art 55.

[143] International Covenant on Civil and Political Rights, art. 1.1, *adopted on* Dec. 16, 1966, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, art. 1.1, *adopted on* Dec. 16, 1966, 999 UNTS 3.

[144] See generally Crawford, *supra* note 100, 291 – 342.

[145] Crawford, *supra* note 100, 320 - 325.

independence."[146] Accordingly, if liberation movements had a positive right to use "all necessary means" to achieve independence, their violent acts could not be considered terrorism.

By 1972, when the topic of terrorism was brought to the General Assembly, developing countries feared that the condemnation of terrorism could be used to demonize national liberation movements. At the time, the discussions focused, not on practical measures to fight a discreet form of criminal activity, but on the symbolic and normative value of the terms. Several statements are telling. According to Jordan:

> People living under an occupation regime have every right – duty, rather – to resist occupation and foreign oppression. Be it, therefore, in Angola, Mozambique or Palestine and the other occupied Arab territories, my country fully supports the right of the people to fight, by every forceful and legitimate means, occupying Powers and oppressive discriminatory regimes. While the oppressive and colonial Powers have always depicted the patriotic struggle of nationalist movements and individuals as terrorism, that is no reason for confident and believing individuals, movements and countries to be intimidated by such forms of intellectual and psychological terrorism.[147]

Democratic Yemen highlighted the fact that many governments represented at the United Nations at the time had their origins in violent groups. He said:

> It is most interesting to note that several years ago more than 50 percent of the representatives here were referred to as terrorists, not as ambassadors. Is the Mau Mau movement a terrorist organization? Is the Algerian Government a terrorist administration? Is the Cuban Government considered a terrorist Government? Was Che Guevara a terrorist? Is the legitimate right of the oppressed peoples of the world to fight for justice and their rights, using all means

---

[146] G.A. Res. 2621 (XXV) ¶ 2, (Oct. 12, 1970). See also African Charter on Human and Peoples' Rights, art. 4, *adopted on* June 26, 1981, 21 I.L.M. 59: "Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community."

[147] Jordan, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 290 - 291, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

> available to them, considered to be terrorism? It is evident that there is no clear-cut definition or understanding of terrorism.[148]

The representative of Kuwait went further by recalling that many Western nations had exalted individuals who, in their times, had been considered terrorists. He argued that:

> Terrorism is a boundlessly broad word that envelopes aspects of highly cherished values upon which many nations represented here pride themselves. An act of terrorism in the interpretation of one may be a Napoleonic act of heroism to another. Great figures whom we all admire lavishly today were notorious terrorist in their day and left their imprint on history through what were considered acts of terrorism, but are considered today as spectacular acts of patriotism. The progenitors of the independence of a great many countries on this congested globe were wrongly labeled as the terrorist of their day. Today their busts and monuments and statues are not evidence of disgrace, but marks of pride, dignity and loyalty. These great characters traversed the dark era of suppression to the bright pages of history. I am afraid that the doors of a glorious history are sometimes unlocked by the keys of what is called terrorism.[149]

The United States could not ignore this argument. The then ambassador George Bush, Sr., replied that "[t]he United States has not forgotten the nature of its own national birth. We are dedicated to the right of self-determination, but my country is likewise dedicated to the right to life, to personal life in conditions of reasonable security and real opportunities for betterment."[150]

Eventually, as most colonial and postcolonial conflicts were gradually solved, the most extreme positions that sought to justify terrorist practices on the basis of self-

---

[148] Democratic Yemen, "Statement," *supra* note 119, ¶ 192.

[149] Kuwait, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 306, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

[150] United States, "Statement," (George Bush, Sr.) U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 288, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

determination took less prominence.[151] The fist General Assembly resolution on terrorism, adopted in 1972, reaffirmed "the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination" and upheld "the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the relevant resolutions of the organs of the United Nations."[152] It did not condemn, though, all forms of terrorism; only state terrorism.[153] The 1985 resolution used the same language on self-determination but, this time around, unequivocally condemned "as criminal, all acts, methods and practices of terrorism wherever and by whomever committed."[154] Finally, the 1994 Declaration, adopted by consensus, stated that "[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."[155] It did not mention self-determination. It contained only a general reference to the principles of the UN Charter and to the Declaration on Principles of International Law.[156]

---

[151] See *infra*: Chapter 3.D.

[152] G.A. Res. 3034 (XXVII) ¶ 3, (Dec. 18, 1972).

[153] *Ibid.,* ¶ 4.

[154] G.A. Res. 40/61, ¶ 1. U.N. Doc. A/RES/4061 (Dec. 9, 1985).

[155] Declaration on Measures to Eliminate International Terrorism, *supra* note 77, ¶ 3.

[156] *Ibid.,* pre. para. 1 – 2; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV) annex (Oct. 24, 1970).

Although the most extreme positions began to fade away, the issue of self-determination did not disappear. In 1977, states adopted Protocol I to the 1949 Geneva Conventions which recognized as legitimate some military activities of national liberation movements so that, from that point onwards, freedom fighters could be considered, under certain circumstances, legitimate combatants and not terrorists. However, not all states ratified Protocol I and, among those who did, there were disputes on the precise conditions for the recognition of freedom fighters as combatants. Hence, the politically charged question of self-determination became a technical question of the interpretation of the international humanitarian law applicable to non-governmental armed forces.[157]

Nonetheless, the contest over the symbolic and normative meaning of terrorism and self-determination continued. As late as 2006, the Secretary General argued that: "[i]n order to constrict the pool of those who may resort to terrorism, we must make absolutely clear that no cause, no matter how just, can excuse terrorism. This includes the legitimate struggle of peoples for self-determination. Even this fundamental right defined in the Charter of the United Nations does not excuse deliberately killing or maiming civilians and non-combatants."[158] Syria replied that:

> The most serious impediment to international counter-terrorism efforts was the attempt by some States to redefine long-agreed values that had led to the establishment of the United Nations, including the principles of equal sovereignty and the right of peoples to self-determination. Scores of countries had been liberated from occupation and colonialism with United Nations support and this country was proud of its long service as Rapporteur of the Special Committee on Decolonization. A minority, however, wished to turn the clock back by pinning the terrorism label on acts of legitimate resistance to foreign occupation in an attempt to erase all memory of the past fight against colonialism. Such practices

[157] See *infra:* subsection ii).

[158] U.N. Secretary-General, *"Uniting against terrorism: recommendations for a global counter-terrorism strategy,"* ¶ 10, U.N. Doc. A/60/825 (April 26, 2006).

> were a form of intellectual terrorism designed to persuade victims to abandon their rights lest they themselves be branded as terrorists.[159]

It should be noted that both the Secretary-General and Syria were not concerned with the legal impact of the definition of terrorism and self-determination but with their symbolic, normative use: how the terms would be perceived by the broader public. Also in 2006, an important number of developing countries emphasized the need to distinguish terrorism from self-determination.[160] For them, the issue was not that self-determination justified terrorism, but that violent acts committed pursuant to self-determination should not be considered terrorism.[161]

As noted before, some of the difficulties to distinguish terrorism from self-determination are of a technical nature. International humanitarian law establishes two different legal regimes to regulate war: first, a set of norms on the conditions that make lawful the resort to armed force (the *ius ad bellum)*, and, second, a set of norms that regulate the actual conduct of hostilities (the *ius in bello).* From the point of view of individual responsibility, these two legal regimes are completely separated. The legality

---

[159] Syria, 'Statement," U.N. GAOR 61st Sess. Sixth Comm. 5th mtg. ¶ 32, Doc. A/C.6/61/SR.5 (Oct. 16, 2006).

[160] African Group as a whole, the Community of Caribbean Countries (CARICOM), the Organization of the Islamic Conference (OIC) as a whole, United Arab Emirates, Pakistan, Sudan, Qatar, Algeria, Kuwait, Libya, Cuba, Sierra Leone, Bahrain, Senegal, Zambia, Yemen, Iran. U.N. GAOR 61st Sess. Sixth Comm. 2nd mtg. ¶¶ 17, 27 – 28, 37, 40, 47, 48, 62, 74, U.N. Doc. A/C.6/61/SR.2 (Oct. 11, 2006); U.N. GAOR 61st Sess. Sixth Comm. 3nd mtg. ¶¶ 12, 18, 42, 81, 94, U.N. Doc. A/C.6/61/SR.3 (Oct. 12, 2006); U.N. GAOR 61st Sess. Sixth Comm. 4th mtg. ¶ 44, U.N. Doc. A/C.6/61/SR.4 (Oct. 13, 2006); U.N. GAOR 61st Sess. Sixth Comm. 5th mtg. ¶¶ 6, 16, 27, 37, U.N. Doc. A/C.6/61/SR.5 (Oct. 16, 2006).

[161] See *e.g.:* Bangladesh "Statement," U.N. GAOR 61st Sess. Sixth Comm. 2nd mtg. ¶ 33, U.N. Doc. A/C.6/61/SR.2 (Oct. 11, 2006):

> A clear distinction should be drawn between terrorism and legitimate struggles against foreign occupation and for self-determination and independence. Bangladesh itself had achieved independence through a war of liberation, much of which had been conducted in an unconventional manner, like all such wars. Any attempt at political use of anti-terrorist sentiment to suppress genuine freedom movements was bound to backfire. That fact must be taken into account in any definition of terrorism. However, acts of terrorism against innocent people were abhorrent, and strict laws, both domestic and international, should be put in place accordingly.

of the soldiers' behavior is completely independent from the lawfulness of the use of force by their state or armed group. In this sense, the political and military leaders of a country that initiate a war of aggression are criminals; the individual soldiers that participate in such war of aggression, respecting the international humanitarian norms regarding the conduct of hostilities, are innocent of any crime. The argument considered previously, that the right of self-determination justifies the use of violent means, belongs to the area of the *ius ad bellum*, the right to resort to war. It is, however, possible to make the same argument at the level of the *ius in bello,* saying that freedom fighters are lawful combatants in an armed conflict, so that they do not commit any crime if they kill and destroy in accordance with the norms that regulate the conduct of hostilities, regardless of the legitimacy of the armed conflict in itself.[162]

The basic rules of international humanitarian law, contained in the 1949 Geneva Conventions,[163] distinguish between combatants and civilians. Combatants are entitled to participate in hostilities: they are entitled to kill other combatants and destroy military targets without being held criminally liable. If captured, they become prisoners of war and cannot be punished for participating in the hostilities.[164] Thus, legitimate combatants enjoy immunity from prosecution regarding their participation in the hostilities. Nonetheless, combatants are legitimate targets; they may be killed during the hostilities. Conversely, civilians and other protected persons cannot be targeted; killing them

---

[162] Saul, *supra* note 81, at 75 – 78.

[163] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 31 – 83; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 85 – 133; III Geneva Convention, *supra* note 138; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 287 – 417 [hereinafter IV Geneva Convention].

[164] III Geneva Convention, *supra* note 138, art. 4.A, 99.

intentionally constitutes a war crime.[165] Thus, civilians who take active part in hostilities, spy, commit acts of sabotage, or kill enemy soldiers, forfeit their protection under international humanitarian law and may be killed. They cannot claim prisoner of war status, and they can be tried and punished for their belligerent acts.[166] A combatant that kills and destroys in accordance with the rules and customs of war is not a terrorist. A civilian that does so can be prosecuted and punished as a terrorist. The purpose of this distinction is to protect civilians. As Saul notes: "the French resistance woman in 1944 who, dressed in civilian clothes and concealing a revolver, cycled up to a German officer in a Paris street and shot him in the head, necessarily renders all French civilians suspect, and invites drastic retaliation."[167] Hence, violent acts of resistance by civilians should be considered a crime not because they damage the enemy but because they endanger other civilians.

The distinction between combatants and civilians in the Geneva Conventions is highly formal. Combatants are members of the armed forces of states and members of irregular forces, such as resistance movements, that fulfil the following requisites: first, are members of an organized force which belongs to one of the parties in the conflict; second, operate under the command of a person who is responsible for his subordinates; third, wear a distinctive, fixed sign recognizable at a distance; fourth, carry arms openly; and, fifth, conduct their operations in accordance with the law and customs of war.[168] Everybody else is, in principle, a civilian. Moreover, the provisions of the Geneva

---

[165] IV Geneva Convention, *supra* note 163, arts. 27 and 147.

[166] *Ibid.,* art. 5 and 68; Christopher Greenwood, *Command and the Laws of Armed Conflict* (Camberley, UK: Staff College Strategic and Combat Studies Institute, 1993) 14.

[167] Saul, *supra* note 81, at 89.

[168] III Geneva Convention, *supra* note 138, art. 4.A.1 – 4.A.2.

Conventions are applicable only between state parties – that is, between states that have ratified those conventions – during an international armed conflict – that is, during a war between state parties – or during the military occupation of part of the territory of one state party by another. Those norms are not applicable to internal armed conflicts. In non-international armed conflicts, state parties only have to apply some very general humanitarian norms and whoever participates in such a conflict may be punished as a criminal.[169]

The Geneva Conventions provide very limited protection for freedom fighters. If they fight against an occupying power in an international armed conflict, such as the French Resistance, they could perform violent acts against the enemy legitimately only if they comply with the stringent requirements of having a chain of command, wearing a fixed sign, carrying their weapons openly, and obeying the rules of war. Thus, to enjoy combatant immunity and to escape an accusation of terrorism, irregulars practically have to assimilate themselves with regular armed forces. Besides, undercover operation, sabotage, and planting bombs in public places by civilians are all forbidden. Moreover, under the Geneva Conventions, freedom fighters in independence or secession wars have no protection at all; they could always be considered criminals.

During the Sixties and Seventies, states that had attained independence through independence wars or that supported guerrilla wars elsewhere found that this restrictive legal regime was not satisfactory.[170] Thus, in 1977, a diplomatic conference on the reaffirmation and development of international humanitarian law adopted Protocol I, on

---

[169] *Ibid.,* art. 2 - 3; IV Geneva Convention, *supra* note 163, art. 2 - 3.

[170] See: Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 1994) 206 – 231.

International Armed Conflict, which extended the application of the Geneva Conventions to:

> Armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[171]

In addition, Protocol I relaxed the conditions that combatants had to fulfil. Article 44, paragraph 3 of the protocol reads:

> 3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
> a) during each military engagement, and
> b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

The last part of this provision greatly benefited freedom fighters. Under Protocol I, members of self-determination movements need only to carry arms openly during the military engagement and the preceding deployment to be considered lawful combatants, to enjoy combatant immunity, and not to be considered terrorists. Undercover operations, sabotage, and planting bombs, though, are still considered terrorist acts or war crimes, since weapons are not carried openly.

---

[171] Protocol I, *supra* note 138, art. 1.4.

It seems that the rationale for this provision is two-fold. On the one hand, it seeks to maintain the coherence of international law. If peoples do have a legitimate right to self-determination, international law cannot become an accomplice of oppressive and repressive regimes by criminalizing those who rebel against them and who only attack legitimate military targets.[172] On the other hand, it seeks to protect both civilians and combatants from indiscriminate and excessive attacks and forbidden weapons. By granting freedom fighters recognition as combatants, including the benefits of combatant immunity and prisoner of war status, it becomes an incentive for non-state armed groups to respect the limits of international humanitarian law regarding permitted targets and means of war.[173] As protocol I states in the same article 44: "all combatants are obliged to comply with the rules of international law applicable in armed conflicts (…)."[174]

Nevertheless, this provision proved to be extremely controversial. It has been said that it went so far in accommodating the guerrilla movements that it endangered true civilians.[175] Moreover, there was a dispute on how long combatants have to carry arms openly. For Western nations, the last sentence was applicable only in the most limited circumstances and to combatants who carry their weapons openly all the time they are moving to the place of the attack and are visible to the enemy.[176] For the Palestine Liberation Organization (PLO), it was necessary only to produce the weapons

---

[172] Saul, *supra* note 81, at 69 and 86. He argues (p. 69) that: "if international law is not to become complicit in oppression by criminalizing legitimate political resistance, justifications for terrorist violence must be taken seriously by the law."

[173] *Ibid.,* 89.

[174] Protocol I, *supra* note 138, art. 44.2.

[175] Michael Reisman and Chris T. Antoniou, eds., *The Laws of War: a comprehensive collection of primary documents on international laws governing armed conflict,* (New York: Vintage Books, 1991) 43 – 44.

[176] See the formal declarations made at the moment of ratification by Argentina, Italy, Republic of Korea, Netherlands, New Zealand, United Kingdom and United States. Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War,* 2nd ed., (Oxford: Oxford University Press, 1989) 462 - 468.

immediately before firing.[177] These differences of view led some countries, such as the United States and Israel, not to ratify Protocol I. The regrettable conclusion is that today there are three different legal standards regarding the status of freedom fighters as lawful combatants: the very restrictive regime of the 1949 Conventions, followed by the United States and Israel; a conservative interpretation of Protocol I, upheld by Western European and Latin American states; and a very permissive interpretation of Protocol I followed by some Arab States. These positions are incompatible. For those states that follow the first criteria, most freedom fighters are terrorists. For those who follow the second standard, some freedom fighters are lawful combatants while some others are terrorists, while for those who that uphold the third standard, most freedom fighters are lawful combatants and, therefore, not terrorists. This variety of views created an almost impossible situation for the negotiation of new counter-terrorism treaties. Criminal law requires a precise solution that, in concrete cases, would distinguish terrorists from lawful combatants. International humanitarian law does not give one answer but three, depending on whether states have ratified Protocol I and on how they interpret its provisions. A solution that privileges one standard or another is unacceptable for those who maintain a different standard.

The solution found in the Bombings and Nuclear Conventions was to use an open formulation: "[t]he 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,"[178] which left the determination of who is a member of the armed forces and, therefore, a lawful combatant to the interpretation of each state. This

[177] Greenwood, *supra* note 166, 16.

[178] Bombings Convention, *supra* note 90, art. 19.2; .Nuclear Convention, *supra* note 90, art. 4.2.

solution, however, has not been accepted in the negotiations of the Comprehensive Convention.[179] The Organization of the Islamic Conference, representing 54 Asian and African states, believes that this formulation used in the Bombings Convention is too restrictive and proposed to exclude from the scope of the draft Comprehensive Convention the activities of "parties" to an armed conflict in situations of foreign occupation.[180] This formulation seems to eliminate the distinction between combatants and civilians. Commentators believe that, if this formulation were adopted, it would not be possible to charge as terrorist, under the new convention, civilian members of Hamas, Islamic Jihad, and Hezbollah who take part in the hostilities, effectively introducing into the draft Convention a full-fledged self-determination exception.[181] It is not surprising then that this proposal has not been accepted by Western nations.

3) Terrorism, refugee law, and the political offence exception

As noted earlier,[182] general, customary international law neither prohibits nor obliges states to provide each other police and judicial cooperation on criminal matters.

---

[179] See *infra:* Chapter 7.D - I.

[180] Organization of the Islamic Conference, "Text proposed by the Member States of the OIC" art. 18.2, in: U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report,* Annex IV, at 17,U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002).

[181] Saul, *supra* note 81, at 187 – 188; Malvina Halberstam, "The evolution of the United Nations position on terrorism: from exempting national liberation movements to criminalizing terrorism wherever and by whomever committed," 41 Colum. J. Transnat'l L. 573, at 581- 582 (2003):

> However, a proposal by the member states of the Organization of the Islamic Conference ("OIC") may make the Convention far narrower, indeed return it to the resolutions of the 1970s and the early 1980s. (…) One need only look at recent events, such as the attacks in Bali and the Philippines and the hostage taking in Moscow by Chechens. It is at least arguable that the perpetrators of these terrorist acts were involved in an armed conflict of the kind described in the proposed article 18, thereby making the Convention inapplicable. Thus, the proposed article, if adopted, would eviscerate the Convention.

[182] See *supra:* section B) subsection 1).

Mutual legal assistance treaties, such counter-terrorism treaties negotiated at the General Assembly, seek to reverse this situation by creating the positive duty to either extradite or prosecute any persons accused of committing a crime. However, since the nineteenth century, states have occasionally refused extradition requests, even when there was a treaty obligation, if they believed that the prosecution was politically motivated. The technical use of this argument as lawful grounds for denying an extradition request is known as the "political offense exception."[183]

The political offense exception in the context of extradition requests, and the broader concept of political asylum, arose from ideological sympathy among liberal states for those who had unsuccessfully tried to overthrow regimes that they saw as oppressive.[184] Those ideas eventually evolved into human rights principles based on the prohibition of persecution for political opinions. Both the Universal Declaration on Human Rights and the Inter-American Human Rights Convention recognize the right to seek political asylum.[185] Several Latin American and European extradition treaties recognize the political offence exception as grounds for denying an extradition.[186] The

---

[183] For a general discussion on the relation between the political offense exception and terrorism see*:* William, H. Hannay, "The Legislative Approach to the Political Offence Exception" in: Bassiouni, *supra* note 86; Pyle, *supra* note 121; Valerie Epps, "Abolishing the Political Offence Exception" in: Bassiouni, *supra* note 86; Michael De Feo, "The Political Offence Concept in Regional and International Conventions Relating to Terrorism," in: Guiseppe Nesi, ed., *International Cooperation in Counter-terrorism: the United Nations and regional organizations in the fight against terrorism* (Aldershort, UK, and Burlington, VT: Ashgate Publishing Co. 2005); Saul, *supra* note 81, 42 – 44.

[184] Starke, *supra* note 83, 294; Epps, *supra* note 183, 204; Brownlie, *supra* note 35, 559.

[185] Universal Declaration of Human Rights, art 14, G.A. Res. 217A (III) (Dec. 10, 1948); American Convention on Human Rights, art. 22.7, *adopted on* Nov 22, 1969, 1144 UNTS 123: "7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the national legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes."

[186] Organization of American States' Convention on Territorial Asylum, art. 4, *adopted on* March 28, 1954; European Convention on Extradition, art. 3, *adopted on* Dec. 13, 1957; Inter-American Convention on Extradition, art. 4.4, *adopted on* Feb. 25, 1981, art. 4.4.

1957 European Convention on Extradition, for example, establishes that: "extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence."[187] Nonetheless, at the global level, not all states accept the practice of granting political asylum or the validity of the political offence exception. The main universal human rights treaty, the Covenant on Civil and Political Rights, does not recognize the right of asylum.[188] In fact, during the negotiation, a proposal to include this right was not accepted,[189] and it does not constitute part of customary international law.[190]

International refugee law also protects persons persecuted for their political activities.[191] The 1951 Convention on the Status of Refugees recognizes a broad category of persons who deserve protection outside their country of nationality due to a well-founded fear of persecution for reasons of political opinion, race, religion, nationality, and social origin.[192] Although criminals and persons suspected of having committed common crimes may not be considered refugees, persons being persecuted for political crimes may be.[193] Moreover, the 1951 Convention prohibits state parties to "expel or

---

[187] European Convention on Extradition, *supra* note 186, art. 3.

[188] International Covenant on Civil and Political Rights, *supra* note 143.

[189] Brownlie, *supra* note 35, 559.

[190] Lillich, Richard B. "Civil Rights" in: Theodor Meron, *Human Rights in International Law: Legal and policy issues,* (Oxford: Clarendon Press, 1984) 153.

[191] See generally: Guy S. Goodwin-Gill, *The Refugee in International Law,* (Oxford: Clarendon Press, 1983).

[192] Convention relating to the Status of Refugees, art. 1.A.2, *adopted on* July 28, 1951, U.N. Doc. A/CONF.2/108.

[193] *Ibid.,*art. 1.F:

> F. The provisions of this Convention shall not apply to a person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[194] This prohibition, known as the non-refoulement principle, may serve as a legal ground for denying an extradition.[195] Hence, in practice, it has a similar effect to the political offense exception. In this sense, even though the non-refoulement principle technically applies only to refugees, there is a trend to transform it into a broader human rights principle that could supercede the political offence exception. For example, article 22.8 of the American Convention on Human Rights affirms that:

> 8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.[196]

Similar language is contained in the 1977 European Counter-terrorism Convention, the 1979 Hostages Convention, the 1988 UN Narcotics Convention, and the 1990 UN Model Treaty on Extradition. [197]

(b) he has committed a serious nonpolitical crime outside the country of refuge prior to his admission to that country as a refugee ;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

[194] *Ibid.,* art. 33.1.

[195] Goodwin-Gill, *supra* note 191, 78 – 81,

[196] American Convention on Human Rights, 22 Nov. 1969, art. 22.8.

[197] European Convention on the Suppression of Terrorism, art. 5, *adopted on* January 27, 1977, 1137 U.N.T.S. No. 17828, ETS No. 90; International Convention against the Taking of Hostages, art. 9.1, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art. 6.6, *adopted on* Dec. 19, 1988; United Nations Model Treaty on Extradition, art. 3.b and 3.f; G.A. Res. 46/116, Annex, U.N. Doc. A/RES/46/116, Annex (Dec. 14, 1990).

The application of these three mechanisms became a contentious issue during the negotiation of the counter-terrorism conventions because they could significantly erode the effectiveness of the new legal regime. Terrorist acts are usually politically motivated and, therefore, states may abuse those mechanisms to shelter terrorists.[198] Conversely, states may abuse extradition treaties in order to persecute their political opponents. In this sense, the non-refoulement principle and the political exception are necessary human rights guarantees. Thus, the negotiations had to balance, on the one hand, the effectiveness of the new treaty and, on the other hand, the need to protect individuals from politically motivated persecution and prosecution.

Previous multilateral negotiations on terrorism had already faced this dilemma. The 1963 Convention on offences committed on board aircraft excludes criminal laws of a discriminatory or political nature for the scope of the convention.[199] The 1971 Convention of the Organization of American States against terrorism gives primacy to the right of asylum.[200] The 1973 Convention on Protected Persons limits the application of the non-refoulement principle and the political exemption only to those situations in which both the requesting and the requested states are parties to asylum treaties.[201] The 1979 Hostages Convention, while limiting the political offence exception only to the state parties to the treaties on asylum, establishes a positive duty not to extradite if the request

---

[198] Brownlie, *supra* note 35, 559.

[199] Convention on Offences and Certain Other Acts Committed on Board Aircraft, art. 2, *adopted in* Sept. 14, 1963, 704 U.N.T.S.

[200] Organization of American States' Convention to prevent and punish acts of terrorism taking the form of crimes against persons and related extortion that are of international significance, preamble and art. 6, *concluded on* Feb. 2, 1971, OAS Official records OEA/Ser.A/17, O.A.S.T.S. No. No.37, 1438 U.N.T.S.

[201] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *adopted on* Dec. 14, 1973, G.A. Res. 3166(XXVIII) Annex, 1035 U.N.T.S., art. 12.

is discriminatory.[202] The 1977 European Anti-terrorism Convention allows state parties to reserve – at the moment of signature or ratification – the right to use the political offence exception while it recognizes the principle of non-refoulement, in a weak form, by establishing that there is no obligation to extradite if the request is discriminatory.[203] The 1987 Convention for the Suppression of Terrorism of the South Asian Association for Regional Cooperation abolished the political offence exception in that region by establishing that its state parties should not regard terrorist acts as political offences for the purpose of extradition.[204] The 1996 European Union Extradition Treaty abolished the use of the political exception for terrorist crimes among the state members of the Union.[205] Other instruments are either silent[206] or have a general savings clause on the issue, leaving the matter to be sorted out, at the bilateral level, between the requested and the requesting state.[207] Furthermore, in the same resolution that launched the four negotiations on counter-terrorism treaties analyzed in this study, the General Assembly dealt with the relationship between terrorism, international refugee law, and the political offence exception. During the negotiations, the United Kingdom sought to limit the application of refugee law to persons accused of terrorism. The Nordic countries, France, Switzerland, and Costa Rica defended the use of refugee law to protect individuals

---

[202] International Convention against the Taking of Hostages, *supra* note 197, arts. 9.1 and 15.

[203] European Convention on the Suppression of Terrorism, *supra* note 197, arts 5 and 13.1.

[204] South Asian Association for Regional Cooperation's Regional Convention on Suppression of Terrorism, art. 1.f, *adopted on* Nov. 4, 1987.

[205] Treaty on European Union, relating to extradition between the Member States of the European Union, art. 5, *adopted on* Sept. 23, 1996, E.U. Official Journal C 313.

[206] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1.

[207] See, *e.g.* Convention for the Suppression of Unlawful Seizure of Aircraft, art. 10, *adopted on* Dec. 16, 1970, 22 U.S.T. 1641, 869 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, art. 11, *adopted on* Sept. 23, 1971, 974 U.N.T.S.

unjustly accused of terrorism from political persecution. After a heated discussion, the General Assembly, first, highlighted the fact that refugee law does not protect terrorists; second, stressed the importance of applying the non-refoulement principle to protect persons persecuted for their political opinions; and, third, encouraged states not to consider terrorism as a political offense.[208]

After a similar discussion,[209] the Bombings Convention adopted a similar package that prevented the application of the political offence exception in cases of terrorist bombings at the same time that it stressed the right of states to deny cooperation if they believed that the request had a discriminatory purpose. However, in 2001, the Security Council asked states to ensure "that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists," without mentioning the principle of non-refoulement.[210]

---

[208] Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, pre. para. 6 - 7, ¶¶ 3, 6, G.A. Res. 51/210, annex, U.N. Doc. A/RES/51/210, annex (Dec. 17, 1996).

[209] See *infra:* Chapter 4.E.

[210] S.C. Res. 1373 (2001), *supra* note 85, ¶ 3.g.

Chapter 2 - Understanding multilateral negotiation

This chapter provides an overview of the various theoretical approaches that have been proposed for analyzing multilateral negotiations. It will also present the theoretical framework used throughout this work to reveal the key features of international, multilateral legal negotiations. It will provide, in particular, a synthetic model of the negotiation process that seeks to identify both the bargaining process and the options available to the parties to the negotiation. It is hoped that, by highlighting the concrete alternative paths of action available to the parties at the various points of the negotiation, it will be possible to uncover the motives that lie behind their behavior and, thus, explain the development and outcome of the negotiations.

A) Analyzing Multilateral Negotiation

International, multilateral negotiation is highly complex. The number of participants is high: 190 states in open-ended negotiations in the United Nations' framework. The values and interests of the parties are heterogeneous, and numerous issues are negotiated.[1] Moreover, issues are technically complex and politically sensitive, and negotiations usually last for long periods of time. Consequently, any theoretical approach that seeks to explain multilateral negotiation must reduce this complex process to a few salient features while capturing all the key explanatory variables.

The subject matter of this work: international, multilateral, legal negotiation, falls at the intersection between international organizations theory and bargaining theory. In

[1] Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, SC: University of South Carolina Press, 1993) 45, 48.

these two areas, there have been numerous studies on both negotiation in general and international negotiation and multi-party negotiation in particular. Some of these studies have been mainly descriptive,[2] a few have been largely experimental,[3] while some others have attempted to explain why negotiations occur and how their outcomes are produced. To classify this body of literature, Hampson's three broad categories -- structural analysis, decision analysis, and process analysis -- seem useful.[4]

1) The structural-analysis approach

For the structural-analysis approach, the key explanatory variable of the outcome of negotiations is the distribution of power among the parties.[5] At the international level, this approach argues, the outcome of multilateral negotiation is determined by the preferences of the most powerful actors in the international system. However, since international negotiation itself can affect the distribution of power among the participants, cooperation might be thwarted by fear of providing relative advantages to opposing parties.[6]

Within this approach, some scholars have focused on the aggregate power of the actors within the international system, and, in particular, on the consequences of

---

[2] Fred Charles Iklé, *How Nations Negotiate* (New York, Evanston, and London: Harper Row Publishers, 1964); Arthur Lall, *Modern International Negotiation: Principles and Practice* (New York and London: Columbia University Press, 1966); Johan Kaufmann, *Conference Diplomacy: An Introductory Analysis* (Leyden: Sijthoff, 1968).

[3] Otomar J. Bartos, *Process and Outcome of Negotiations* (New York and London: Columbia University Press, 1974); Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

[4] Fen Osler Hampson and Michael Hart *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment* (Baltimore and London: Johns Hopkins, 1995) 8 - 19.

[5] *Ibid*., 8 -10.

[6] Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw Hill, 1979) 210.

hegemonic status;[7] others have analyzed the impact of issue-specific power,[8] while a third group has considered the behavioral power of the actors, that is, how they maneuver and deploy their resources to achieve their preferred outcomes.[9] These authors assume that, through tactical behavior – such as making offers, proposals, and concessions, backsliding, threatening to defect, bluffing, exaggerating demands or bottom lines, and imposing deadlines and sanctions – parties are able to manipulate the bargaining situations to their own advantage. They propose that these tactics succeed by altering each side's alternatives, commitment, and control within the bargaining situation. Persuasion, promises, and threats, in particular, work because they change the other party's preferences and commitment to its preferred outcome by altering its assessment of the available alternatives and of the expected benefits and costs arising from the

---

[7] Glenn H. Snyder and Paul Diesing, *Conflict among Nations, Bargaining, Decision Making and System Structure in International Crises* (Princeton, NJ: Princeton University Press, 1977); Waltz, *supra* note 6, 210.; Robert O. Keohane, "The demand for International Regimes," in Stephen D. Krasner, ed., *International Regimes* (Ithaca and London: Cornell University Press, 1983); Arthur A. Stein, "Coordination and collaboration: regimes in an anarchic world," in Krasner, *ibid*.; Strange, Susan, "Cave! Hic Dragones: a Critique of Regime Analysis" in Krasner, *ibid*.; Robert L. Rothstein, "Commodity Bargaining: The Political Economy of Regime Creation," in I. William Zartman, *Positive Sum, Improving North-South Negotiations* (New Brunswick and Oxford: Transaction Books, 1987); Stephen D. Krasner, "Sovereignty, Regimes and Human Rights," in Volker Rittberger, ed., *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993); Heike Schröeder, *Negotiating the Kyoto Protocol: an Analysis of Negotiations Dynamics in International Negotiations* (Münster, Hamburg and London: Lit Verlag, 2001).

[8] Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984); Gunnar Sjöstedt, "Leadership in Multilateral Negotiations: Crisis or Transition?" in Peter Berton, Hiroshi Kimura, and I. William Zartman, eds. *International Negotiation: Actors, Structure/Process, Values* (London: Macmillan Press Ltd. 1999).

[9] Thomas Schelling, "An Essay on Bargaining," in Oran R. Young, ed. *Bargaining: Formal Theories of Negotiation* (Champaign-Urbana, Il., Chicago and London: University of Illinois Press, 1975); Paul Gordon Lauren, "Theories of Bargaining with Threats of Force: Deterrence and Coercive Diplomacy," in Paul Gordon Lauren, ed., *Diplomacy: New Approaches in History, Theory and Policy* (New York: The Free Press, 1979); C. R. Mitchell, *The Structure of International Conflict* (London: Macmillan Press Ltd., 1981) 218 – 250; James A. Wall, *Negotiation: Theory and Practice* (Glenview, IL, and London: Scott, Foresman and Co., 1985); Dean G. Pruitt, "Strategy in Negotiation," in Victor A. Kremenyuk, ed., *International Negotiation, Analysis, Approaches, Issues,* (San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991).

negotiation.[10] Some scholars have analyzed, in particular, the tactics of weaker parties.[11] They argue that weaker states take part in international negotiation in order to obtain greater wealth or control, or to prevent any further loss in their relative situation.

2) The decision-analysis approach

For the decision-analysis approach, the key explanatory variable of the outcome of negotiation is the strategic choices that actors make. This approach assumes that states, or those who act on their behalf, are rational actors that seek to maximize their utility. In addition, it is assumed that parties have a clear utility structure underlying their preferences within the negotiation.[12]

Within this approach, some scholars have used game theoretic models to explain the outcome of negotiations.[13] A few of them have used models of iterated, nested, and two-level games to represent the bargaining process at the international level.[14]

---

[10] William Mark Habeeb, *Power and Tactics in International Negotiation: How Weak Nations Bargaining with Strong Nations* (Baltimore and London: John Hopkins Press, 1988) 23 - 25.

[11] Habeeb, *Ibid.*; Arild Underdal, "Leadership Theory: Rediscovering the Arts of Management," in I. William Zartman, ed. *International Multilateral Negotiation: Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994); Robert Maryse, *Negotiating NAFTA, Explaining the Outcomes in Culture, Textile, Autos and Pharmaceuticals* (Toronto, Buffalo and London: University of Toronto Press, 2000).

[12] Hampson and Hart, supra note 4, 11-14.

[13] Howard Raiffa, *The Art and Science of Negotiation* (Cambridge, Ma., and London: Harvard University Press, 1982); Kenneth Oye, "Explaining Cooperation under Anarchy: Hypotheses and Strategies," in Kenneth Oye ed. *Cooperation under Anarchy* (Princeton, NJ: Princeton University Press, 1986); Snidal, Duncan, "The Game *Theory* of International Politics," in Oye, *Cooperation under Anarchy, ibid.*; Wilfried Siebe, "Game Theory," in Kremenyuk, *supra* note 9; Steven Brams, *Negotiation Games* (New York and London: Routledge, 1999); Sarit Krauss, *Strategic Negotiations in Multiagent Environments* (Cambridge, Mass., and London: MIT Press, 2001).

[14] Daniel Druckman, "Boundary Role Conflict: Negotiation as Dual Responsiveness" in I. William Zartman, ed., *The Negotiation Process: Theories and Applications* (Beverly Hills, CA, and London: Sage Publications, 1978); Robert Axelrod and Robert Keohane. "Achieving Cooperation under Anarchy: Strategies and Institutions," in Oye, *Cooperation under Anarchy, supra* note 13; Peter Evans, Harold Jacobson, and Robert Putnam, eds., *Double Edged Diplomacy: International Bargaining and Domestic*

Other scholars use rational choice theory to explain the dynamics of the negotiation. Among these, some explore the strategic choices behind the formation of coalitions.[15] Their interest has focused mostly on the formation of "winning coalitions," that is, of coalitions that are able to impose their preferred option as the outcome of the negotiation; and of "blocking coalitions," that is, coalitions that are able to prevent the adoption of a decision that they oppose.

A few researchers within this approach have considered the use of linkages and tradeoffs as means for exploiting the differences in the actors' structure of preferences, in order to reach integrative solutions and generate joint gains.[16] Meanwhile, a final group of scholars has analyzed the strategies used to make concessions.[17] They have stressed the role of concessions both in tactical maneuvering and as a form of communication

---

Politics (Berkeley, Los Angeles and London: University of California, 1993); Robert Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," in: Peter Evans *et al., ibid.*; Helen Milner, *Interests, Institutions and Information,* (Princeton, NJ: Princeton University Press, 1997); Vinod K. Aggarwal, *Institutional Designs for a Complex World : Bargaining, Linkages and Nesting* (Ithaca and London: Cornell University Press, 1998).

[15] William H. Riker, The *Theory of Political Coalitions* (New Haven and London: Yale University Press, 1962); Abram de Swaan, *Coalition theories and Cabinet Formation: A Study of the Formal Theories of Coalition Formation Applied to Nine European Parliaments after 1918* (San Francisco and Washington: Jossey-Bass Elsevier, 1973); David A. Lax and James K. Sebenius, "Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing," in Peyton Young, ed., *Negotiation Analysis* (Ann Arbor, Mich.: University of Michigan, 1991); Steven Brams, Ann Doherty, and Matthew Weidner, "Game Theory: Focusing on the Players, Decisions and Agreements," in Zartman, *supra* note 11; Christophe Dupont and Guy-Olivier Faure, "The Negotiation Process," in Kremenyuk, *supra* note 9; Gary E. Bolton and Kaylan Chatterjee, "Coalition Formation, Communication and Coordination: an Exploratory Experiment," in Richard J. Zeckhauser, Ralph L. Keeney, and James K. Sebenius, eds., *Wise Choices: Decisions, Games, and Negotiations* (Boston, Mass: Harvard Business School Press, 1996); James K. Sebenius, "Sequencing to Build Coalitions: With Whom Should I Talk First?," in Zeckhauser *et al., Ibid.*

[16] James K. Sebenius, *Negotiating the Law of the Sea: Lessons in the Art and Science of Reaching Agreement* (Cambridge and London: Harvard University Press, 1984); Bertram I. Spector, "Decision Theory: Diagnosing Strategic Alternatives and Outcome Trade-offs," in Zartman, *supra* note 11.

[17] Alan Coddington, *Theories of the Bargaining Process* (Chicago, IL: Aldine Publishing Co., 1968); Otomar J. Bartos, *Process and Outcome of Negotiations* (New York and London: Columbia University Press, 1974); John G. Cross, "A Theory of the Bargaining Process," in Young, *supra* note 9; Otomar J. Bartos, "Simple Model of Negotiation: a sociological point of view," in Zartman, *supra* note 14; Brian H. Tracy and Haus Rissen, "Bargaining as Trial and Error: The case of the Spanish Base Negotiations 1963–1970," in Zartman, *supra* note 14.

used by the parties to learn about each other's utility structure and to reassess their expectations regarding the cost of further negotiation.

3) The process-analysis approach

The process-analysis approach considers a wide range of variables. It examines the impact of the cognitive, institutional, and social contexts of the negotiations.[18] Some scholars within this approach have studied the roles of and the interaction among the participants in international negotiations, such as transnational alliances;[19] epistemic communities,[20] and international organizations.[21] For these scholars, complex linkages, shifting actors and interests, and logrolling are of key importance.

Other researchers believe that the individual characteristics of the persons who represent the states determine the outcome of the negotiations. They have questioned the rational choice model and have sought to underline, instead, the bounded rationality of actors. Thus, some authors have explored the impact of the actors' personality,

---

[18] Dupont and Faure, *supra* note 15; Hampson and Hart, supra note 4, 14 - 19.

[19] Raymond Hopkins, "The Wheat Negotiations: Loss or Gain in North-South Relations?," in Zartman, *supra* note 7; Robert O. Keohane and Joseph S. Nye *Power and Interdependence* 2nd ed., (New York: Harper Collins Publishers, 1989); Ernst B. Haas, *When Knowledge is Power: Three Models of Change in International Organizations* (Berkeley, Los Angeles, and Oxford: University of California Press, 1990).

[20] Peter M. Haas, "Introduction: epistemic communities and international policy coordination," 46 *International Organization* 1 winter 1992; M. J. Peterson, "Whalers, cetologists, environmentalists and the international management of whaling," 46 *International Organization* 1 winter 1992; Peter M. Haas, "Epistemic Communities and the Dynamics of International Environmental Co-operation," in Rittberger, *supra* note 7.

[21] Lawrence Finkelstein, "The Political Role of the Director-General of UNESCO," in Lawrence Finkelstein, ed., *Politics in the United Nations System* (Durham and London: Duke University Press, 1988); Christer Jönsson and Staffan Bolin, "The Role of the International Atomic Energy Agency in the Politics of Atomic Energy," in Finkelstein, *Politics, ibid.*; Michael G. Schechter, "The Political Roles of Recent World Bank Presidents," in Finkelstein, ed., *Politics, ibid.*; Mark W. Zacher, "Multilateral Organizations and the Institution of Multilateralism: the Development of Regimes for Nonterrestrial Spaces," in John Gerard Ruggie, ed., *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993); Michael G. Schechter, *United Nations-Sponsored World Conferences: focus on impact and follow-up* (Tokyo: United Nations University Press, 2001).

motivations, perceptions, expectations and learning;[22] while others have examined the role of the actors' culture.[23] Some authors have stressed that actors behave under limited information.[24]

Some researchers have considered the negotiation process in itself as an important intervening variable. Thus, they have analyzed the various stages of the negotiation and the dynamics that lead to the adoption of a particular agreement.[25] These authors tend to consider negotiation as a form of problem-solving where actors search broad formulas that satisfy all parties. A few researchers have studied the impact of the institutional framework on the negotiation process, that is, they have considered the impact of the decision-making rules and practices of the forum where the negotiations are

---

[22] Jeffrey Z. Rubin and Bert R. Brown, *The Social Psychology of Bargaining and Negotiation* (NewYork, San Francisco and London: Academic Press, 1975); Bertram I. Spector, "Negotiation as a Psychological Process," in Zartman, *supra* note 14; Christer Jönsson, "Cognitive Theory," in Kremenyuk, *supra* note 9; Margaret A. Neale and Max H. Bazerman, *Cognition and Rationality in Negotiation* (New York: The Free Press, 1991); Jeffrey Z. Rubin, "Psychological Approach" in Kremenyuk, *supra* note 9; Jeffrey Z. Rubin and Walter Swap, "Forming Consensus Trough Group Processes" in Zartman, *supra* note 11; Roderick M. Kramer and David M. Messick, eds., *Negotiation as a Social Process* (Thousand Oaks, Ca., London and New Delhi: Sage Publications, 1995); Graham, John L., "International Commercial Negotiations: A Focus on Japan," in Zartman, *supra* note 8.

[23] Peter Berton, "Japanese, Chinese and Soviet/Russian Negotiators: An Analytical Framework," in Berton *et al, supra* note 8; Faure, Guy Oliver, "Cultural Aspects of International Negotiations," in Berton *et al, supra* note 8.

[24] Oran R.Young and Gail Osherenko, "Testing Theories of Regime Formation: Findings from a Large Collaborative Research Project," in Rittberger, *supra* note 7, 244.

[25] I. William Zartman, "Negotiation as a Joint Decision-Making Process" in Zartman, *supra* note 14; P. H. Gulliver, *Disputes and Negotiations: A Cross-cultural Perspective* (New York, London, Toronto, Sydney and San Francisco: Academic Press, 1979); I. William Zartman and Maureen Berman, *The Practical Negotiator* (New Haven and London: Yale University Press, 1982); Robert L. Friedheim, "The Third United Nations Conference on the Law of the Sea: North-South Bargaining on Ocean Issues" in Zartman, *supra* note 7; Robert L. Friedheim, "Value Allocation and North-South Conflict in the Third United Nations Law of the Sea Conference" in Finkelstein, ed., *Politics, supra* note 21; Pamela S. Chasek, *Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy,* (Tokio, New York, Paris: United Nations University Press, 2001).

held.[26] Finally, some recent research has sought to combine the multiple findings of this approach.[27]

Within this approach, the phased-process analysis, that is, the focus on the various stages of the negotiation for separate description and analysis, has been particularly fruitful.[28] Some authors have divided the negotiation process into three phases: the diagnostic phase, the formula phase, and the detail phase.[29]

In the diagnostic phase, the actors explore whether negotiation is an adequate means for solving the substantive problems at hand, whether the time is ripe to initiate negotiations, and whether an acceptable venue is available.[30] Once the negotiations have begun, the parties test substantive ideas, introduce their preferred policy alternatives, assess their options and the position of other parties, build their own position, and search for potential allies among those who support similar formulas.[31]

In the formula phase, each actor tries to convince the others that its preferred policy alternative should be adopted as the outcome of the negotiation. In some cases, a genuine compromise that blends the competing approaches into a new one emerges.

---

[26] Robert L. Kahn, "Organizational Theory" in Kremenyuk, *supra* note 9; Garrett, Geoffrey, "International Cooperation and Institutional Choice: The European Community's Internal Market" in Ruggie, *supra* note 21; Deborah Kolb and Guy-Olivier Fauvre, "Organizational Theory: The Interface of Structure, Culture, Procedures, and Negotiation Processes" in Zartman, *supra* note 11; Robert L. Friedheim, "Explaining Japan's Failure in the International Whaling Negotiations" in Berton *et al, supra* note 8; Frank R. Pfetsch, "Institutions Matter: Negotiating the European Unions" in Berton *et al, supra* note 8.

[27] James K. Sebenius, "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities" 46 *International Organization* 1 winter 1992; Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, SC: University of South Carolina Press, 1993); Hampson and Hart, *supra* note 4; Terrence Hopmann, *Negotiation Process and the Resolution of International Conflicts* (Columbia, SC.: University of South Carolina, 1996).

[28] For a detailed comparison of the various typologies of the stages of negotiation proposed by the various authors see: Chasek, *supra* note 25, 38 – 52.

[29] Zartman and Berman, *supra* note 25, 42 – 201; Habeeb, *supra* note 10, 27 – 33; Friedheim, *supra* note 27, 58 - 63.

[30] Zartman and Berman, *supra* note 25, 42 – 86; Friedheim, *supra* note 27, 316.

[31] Friedheim, *supra* note 27, 58 – 59, 316 – 317.

Frequently, however, the conceptual approach supported by the greatest number of parties is adopted as the basis for further discussion.[32]

In the detail phase, the participants refine the language of the formula in order to make it acceptable to all. Positive inducements, such as side payments and concessions on other issues, are given to those actors whose policy preference was rejected. If necessary, the majority makes further concessions that modify its preferred policy alternative while the minority weakens the chosen approach by including escape clauses and exceptions, muddying the language, or altering the distribution of benefits.[33]

B) Previous findings regarding international, multilateral legal negotiation

Several large-scale case studies on treaty-making negotiations that have combined the various theoretical approaches to negotiation described above deserve closer attention since they have produced both important empirical findings and useful theoretical models that serve as the immediate background to this study.

P. Chasek, while researching the negotiation of eleven environmental treaties, further developed the phased process analysis by identifying the key phases and turning points of the negotiation.[34] Her work provides a useful framework to describe the broad stages that negotiations undergo. Chasek identified six stages in the negotiation process: precipitants, issue definition, statement of initial positions, drafting/formula-building, final-bargaining/details, and ratification/implementation. The precipitants are the events or problems that provoke the decision of the international community to take action. This

[32] *Ibid.,* 59-60, 318-319.

[33] *Ibid.,* 61-63, 319.

[34] Chasek, *supra* note 25, 134 – 173.

phase continues until governments recognize that the particular issue is of a global or regional nature, that it cannot be solved on a bilateral or unilateral level, and agree that multilateral negotiation is the preferred mechanism to solve it. At the issue definition phase, the one or a group of states bring the issue to the attention of the rest of the international community, and seek to identify the magnitude of the problem, its causes and the action required to address it. This stage can take place outside the formal negotiating framework or at the initial exchange of statements. At the statement-of-initial-positions phase, delegates present their opening positions and proposals in the form of public statements, written proposals and drafts of the possible agreement. At this time, they also form early alliances and coalitions as a means for managing the complexity of large-scale multilateral negotiation. During the drafting/formula-building phase, participants actually draft the proposed agreement by exploring various alternative packages and drafts. At this time, parties focus on drafting and reaching agreement on the broad formulas and the conceptual framework of the agreement. Usually, parties reach tentative, conditional understandings that become the basis for further negotiation. Final agreement on the entire text of the treaty occurs at the final-bargaining/details phase, where the major concessions are made. At this stage, parties focus on the specific language of provisions of the final agreement. As international agreements are forged through consensus rather than through a vote, parties tend to exchange proposals and counter-proposals and resort to ambiguous formulations in the negotiated text. Chasek contends that, at this stage, opposing positions tend to converge, as each party adjusts its expectations in favor of what is needed to reach an agreement. At this stage, deadlines usually force parties to reach consensus even on the most difficult issues. The final stage

of the negotiation is the ratification/implementation phase, where the measures agreed at the international level are transformed into concrete policy measures at the domestic level by the participating states and international organizations. Negotiations may continue to ensure the entry into force of the agreement and there might be need to strengthen or adjust the agreement. It should be noted that, at this stage, negotiations might still fail if the agreement is not ratified by enough states to enter into force. Chasek notes that these stages should not be conceived as rigid phases since they do not always take place in the presented order and that they can overlap.[35]

Chasek completed her model with the concept of "turning points," that is, the critical and indispensable points in the negotiation where a decision is taken, a compromise is agreed upon, a concession is made, or an external event occurs that enable the negotiations to move from one phase to the other. She maintains that the absence of a turning point leads to the failure of the negotiations since the parties are unable to make the necessary compromises to move forward. She identifies five different turning points: first, when the international community agrees to address the problem; second, when there is agreement to begin negotiations; third, when there is agreement to begin formula-building or drafting, that is, when the parties agree to move away from their opening positions and begin evaluating the others' positions; fourth, when there is agreement on a formula or general framework for the entire agreement; and, fifth, the conclusion of the negotiations, when agreement is reached.[36]

By bringing together various phases and turning points of the negotiation, Chasek produced a synthetic model of the multilateral, environmental negotiation process (see

[35] *Ibid.,* 134 – 151.

[36] *Ibid.,* 155 – 172.

figure 2.1[37]). She concludes that this model enables both participants and observers to better understand the nature of the negotiating process itself and the events that motivate it as well as to determine which steps need to be taken to move the negotiations forward. She recognizes, though, that her model does not address the nature of the specific compromises that produce a turning point nor does it suggest any strategy to the negotiators.[38]

Fen Osler Hampson, in a wide-raging study of environmental, arms control, and international trade conferences, argues that multilateral negotiation is, in essence, a "coalition-building" enterprise where leadership, strategies, tactics, and formulas are all directed to the formation of coalitions and consensus. He explores, in particular, which conditions give rise to competing coalitions and how they overcome their differences, forming broader winning coalitions that enable them to adopt decisions through consensus.[39]

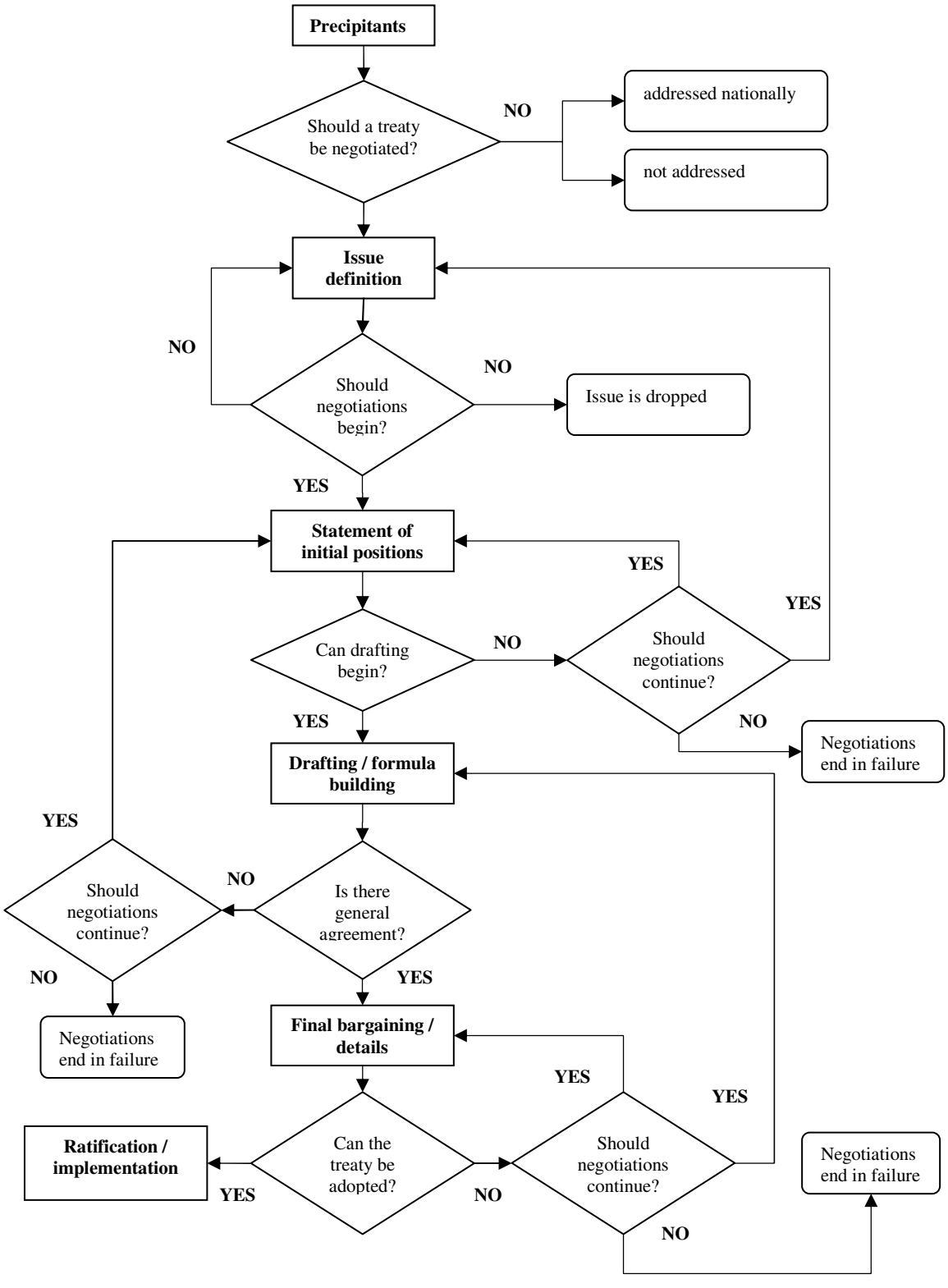
---

[37] Adapted from *Ibid.,* 171.

[38] *Ibid.,* 172.

[39] Hampson, *supra* note 4, 19, 24, 346.

Fig. 2.1: Chasek's multilateral environmental negotiation process model



He identifies some independent variables that affect the success of international, multilateral negotiations. As barriers to a successful outcome, he proposes: the multiplicity of parties and interests, the presence of blocking coalitions, the parties' ideology and belief system, the presence of process-generated stakes, and some decision-making rules that make the whole progress more difficult. As facilitating factors, he identifies: the occurrence of crises and pre-negotiation; the existence of epistemic communities, crosscutting coalitions, coalition representatives, entrepreneurial leadership, focal points, and clear-cut compliance mechanisms; and the use of issue decomposition, sequencing, and incrementalism.[40]

Hampson considers that a high number of participants, with a wide variety of interests and preferences, is an obstacle to negotiation since it reduces the possibility of reshaping those preferences into a mutually satisfactory agreement. He also contends that a large number of participants hampers communication and information-processing, making it more difficult to identify potential trade-offs and relevant concessions.[41]

Hampson argues that actors form coalitions to lower the individual costs of participation in the negotiation and to increase their potential gains when they perceive the benefits of joint action are greater than the expected benefits of acting alone. He then defines blocking coalitions as a group of actors "who enjoy sufficient structural power that their defection from a cooperative solution or refusal to participate in a negotiated settlement will be sufficient to prevent agreement."[42] In his view, blocking coalitions are an obstacle to the success of the negotiations since they tend to be inflexible, either

---

[40] *Ibid*, 22 -51, 349 – 358.

[41] *Ibid*., 28 – 29.

[42] *Ibid*., 30.

because of the shared ideology of its members or because of the compromises reached within the coalition to develop a common position; in these cases, coalition maintenance and group solidarity may become ends in themselves. He proposes that a lack of flexibility, while increasing the possibility of a favorable result for the inflexible party, also reduces the chances of reaching an agreement as a whole.[43]

Intrinsic values, interests, and beliefs which are independent from the negotiation's outcome, such as pre-existing standards of justice and expectations regarding the value and the purpose of the negotiation, provide a basis for the actor's concrete preferences and focal points for choosing an outcome. According to Hampson, if these values differ widely, they make agreement more difficult. Values and beliefs may also encourage the formation of ideologically motivated coalitions and the adoption of ideologically motivated strategies rather than problem-solving approaches, thus hampering agreement.[44]

He notes, in addition, that negotiations generate their own political and psychological dynamics so that the negotiation process in itself generates gains and losses that can affect the outcomes. Actors may define expected benefits not only on the basis of the final outcome but also on how they play the game. In international conferences, negotiators have to consider how their negotiating behavior is perceived domestically. Moreover, actors may be locked into previous positions, such as having rejected a proposal early on, or they may fear showing weakness. Hampson underscores that large-scale conference diplomacy encourages grandstanding.[45]

---

[43] *Ibid*., 29 – 30, 353.

[44] *Ibid*., 30 – 31.

[45] *Ibid*, 32.

Finally, according to Hampson, some decision-making rules and procedures may also make agreements more difficult. Consensus procedures strengthen the bargaining power of coalitions that do not enjoy the structural power to block an agreement. Moreover, consensus promotes the adoption of ambiguous decisions that mask the real disagreements. In his view, consensus or mixed procedures favor suboptimal outcomes regarding collective goods.[46]

Crises, instead, favor agreement. Hampson defines crises as "situations where a grave threat is perceived, which usually develops suddenly and poses a direct challenge to the vital interests or core values and beliefs of the decision maker."[47] Crises present new costs and risks and generate or increase the need for remedial action. Integrative crises, in particular, reinforce the perception of mutual vulnerability or of the possibility of joint losses that can be eliminated only through cooperation. At the pre-negotiation phase, this type of crisis serves to reframe the problems at hand and prompts actors to consider solving them through negotiation. During the negotiation phase, integrative crises encourage the parties to reach an agreement and help to break deadlocks. On the other hand, distributive crises, where the parties enter into direct competition for a limited number of resources, have a negative impact on the negotiation since they generate the perception that attaining one actor's goals is incompatible with the realization of the other side's objectives.[48]

Consensual knowledge, that is, knowledge that is shared among various actors regarding the problems at hand and the possible ways to address them, favors the

---

[46] *Ibid*., 33.

[47] *Ibid*., 34.

[48] *Ibid.,* 34 – 36, 350.

successful conclusion of the negotiation since it helps actors both to define the negotiating agenda and to develop convergent preferences regarding the outcome. In Hampson's view, consensual knowledge is particularly effective in situations of high levels of risk or uncertainty, where decision makers seek expert advice. In this regard, epistemic communities, that is, communities of experts that share a common causal model about a certain question and a common set of political values can facilitate agreement by introducing into the negotiation their common knowledge, values, and policy options, thus favoring the convergence of the various proposals.[49]

Coalitions help negotiations by reducing the number of bargaining parties and by facilitating communication. They reduce cognitive complexity and simplify the negotiation by reducing the multiplicity of core positions and interests to a manageable number. In Hampson's view, cross-cutting, flexible coalitions, that is, coalitions that bring competing interests together through an exchange of concessions and logrolling create a series of interlocking ties and agreements that reduce the confrontational elements of the process and make the negotiation's failure more costly to the parties. Bridging occurs, instead, when the actors creatively devise a formula that satisfies their interests without sacrificing them.[50] Coalitions may also simplify negotiations by selecting representatives that concentrate on the most salient issues, identify possible concessions, and formulate potential formulas for agreement.[51]

For Hampson, entrepreneurial leadership, that is, the presence of actors that have the skills to actively frame the issues in ways that foster agreement and lead to the

---

[49] *Ibid.,* 17, 37 – 40, 351 - 352.

[50] *Ibid.,* 40 - 42, 352 - 354.

[51] *Ibid*., 42.

formation of cross-cutting or bridging coalitions, help set the agenda constructively, draw the attention to the issues at stake, invent novel solutions to overcome the obstacles to the negotiation, and make deals, greatly contributes to a successful negotiation. In conference diplomacy, this kind of leadership may be exercised by the chairperson of the meeting, by members of bridging coalitions, by individual delegates, by the staff of international organizations, or even by heads of state.[52]

Negotiation is also facilitated by the identification of simple solutions or conceptual focal points, based on concepts of fairness, that frame actors' competing demands, provide the terms for a trade in concessions, and serve as the basis for an outcome. These formula solutions usually contain a simple concept of the desired outcome that is perceived by all parties to be fair.[53] Similarly, the adoption of clear-cut compliance, verification, and dispute-settlement mechanisms, which ensure that the agreement will be observed once adopted, facilitate the successful conclusion of the negotiation since they make the agreement more attractive to actors who do not trust each other.[54]

Finally, Hampson argues that international negotiations on complex issues and with high levels of uncertainty are more likely to succeed when parties are willing to adopt partial or limited settlements on specific issues, thus maximizing joint gains and minimizing opposing interests that could prevent a comprehensive agreement. Moreover, the negotiation on the various issues can be arranged sequentially, through an incremental strategy, generating momentum towards a broader agreement. Negotiations may also be

---

[52] *Ibid*., 42 – 43, 354 - 355.

[53] *Ibid*., 44, 355 - 356.

[54] *Ibid*., 45, 358.

simplified by dividing the negotiations into separate bargaining groups or subcommittees.[55]

Hampson brings together all of these factors into a single model of the negotiation stressing that these obstacles and contributing elements have different degrees of importance at different stages of the negotiation (see Figure 2.2[56]).

Robert Friedheim, while trying to forecast for the US Navy and the United States State Department the outcome of the vast negotiations leading to the adoption of the United Nations Law of the Sea Convention, focused mostly on the questions of competing coalitions, decomposition and aggregation of issues, trade-offs, and formula solutions.[57] In his view, to understand international, multilateral legal negotiation it is necessary, first, to understand the individual issues being negotiated; second, to trace the linkages between issues and between the parties and the issues; third, to capture the existence of coalitions and their movements; fourth, to identify small packages, that is limited trade-offs, and the overall package that forms the final outcome; and, fifth, to determine if a better outcome would have been possible if the negotiating parties had known better each other's positions.[58]

---

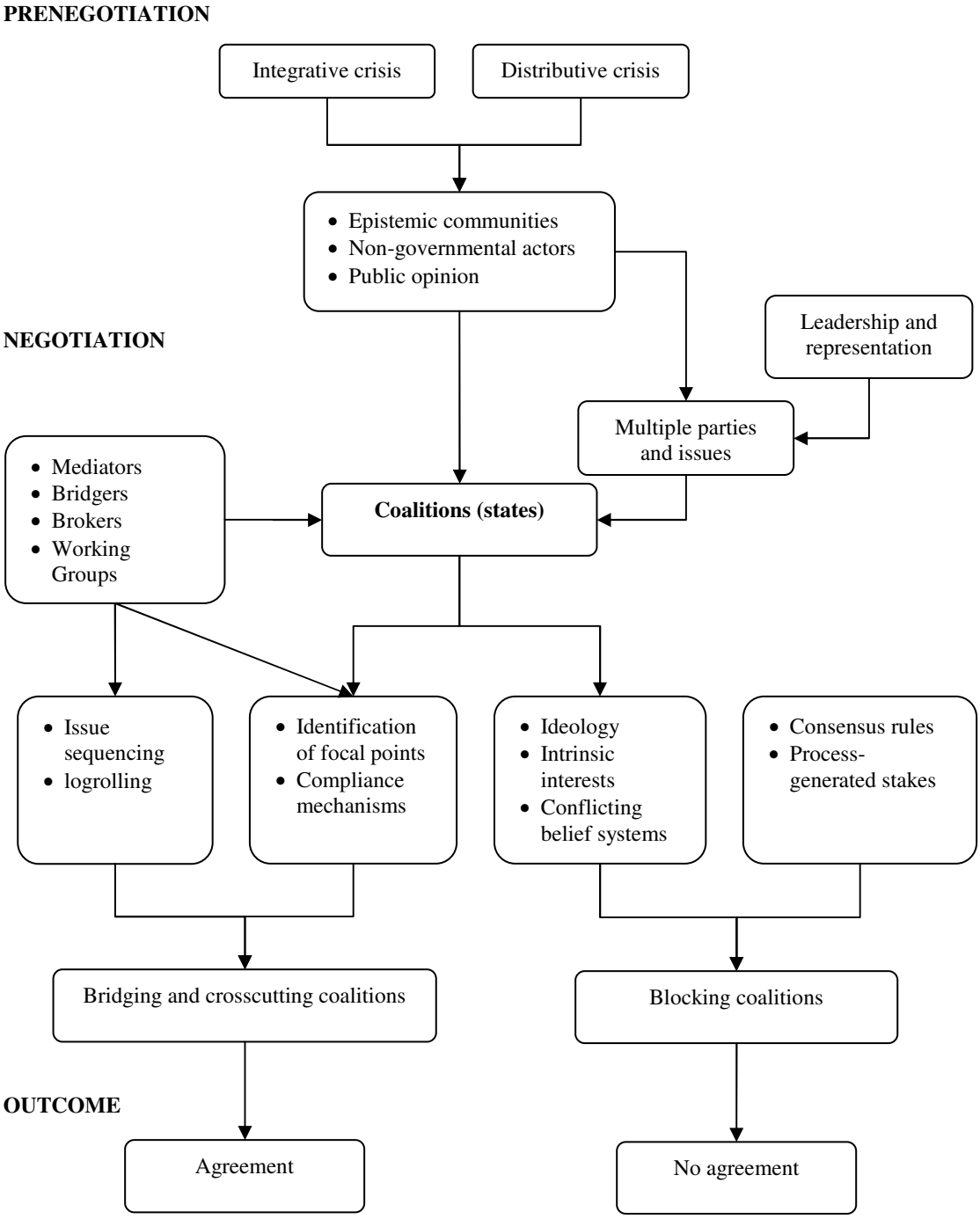
[55] *Ibid*., 45 – 47, 356 - 358.

[56] Adapted from *Ibid*., 48.

[57] Friedheim, *supra* note 27.

[58] *Ibid,* 49.

Fig. 2.2: Hampson's model of coalition building



Friedheim noted that in large-scale negotiations, it is impossible for all actors to interact directly with each other on each and every issue. Hence, the formation of coalitions and the aggregation of similar positions are essential to organize the negotiation process. In addition, coalitions help parties by enabling them to gain strength in numbers, thus allowing them to promote their preferred policy alternative as the basic formula solution. Membership in these coalitions, however, changes between issues, depending on the parties´ substantive positions. Consequently, great efforts are made to maintain the internal cohesion of the coalitions and to move them to take a stand, such as to adopt a particular policy alternative, accept a tradeoff or make a concession. Meanwhile, the parties seek to strengthen their own position by creating divisions in opposing coalitions by offering concessions to only some of their members.[59]

He found that parties in international-law making negotiations usually do not search for a mutually acceptable outcome but that they rather form rival coalitions to support competing policy alternatives.[60] Each side then tries to persuade the other to accept its own approach by offering concessions and tradeoffs. In offering and agreeing to concessions, however, each party tries to preserve the integrity of its own preferred policy option while weakening the alternative ones. The most important concession for the minority is to accept that its preferred approach has not enough support to be adopted, while, for the majority, it is to recognize that its preferred policy alternative will not be agreed without some modifications.[61] Usually, though, the determination of which policy alternative becomes the working formula falls on the chair or the informal leaders who

---

[59] *Ibid,* 47, 336 – 338.

[60] *Ibid*., 58, 63.

[61] *Ibid.,* 347.

prepare a single negotiating text. They select the policy alternative that has greatest numerical support, or, if no clear trend has emerged, the idea around which they believe consensus might emerge.[62]

Friedheim also noted that, in law-making negotiations, the details of the agreement are often worked out and expressed in subtle changes in the language. Some changes represent meaningful concessions, while others work because they dilute the compromise by making the language so ambiguous that the parties are not forced to make meaningful concessions. Sometimes, ambiguity is used to hide who has won and who has lost on a particular issue. In his view, the cost of this tactic falls upon those who have to interpret and implement the rights and obligations embedded in an agreement.[63]

Finally, according to Friedheim, the aggregation of issues to create package deals, linkages, and tradeoffs is another important feature of multilateral negotiation. While assessing the possible benefits of a proposed compromise, different actors give different weights to the various elements of the possible outcome. Thus, by aggregating issues, each party is able to obtain its preferred outcome on those issues it considers of greatest salience, thereby making possible the conclusion of an agreement by consensus.[64]

For his part, Ulf Lindell focused primarily on the impact of consensus as the only decision-making rule.[65] In a wide-ranging case study, he discovered that consensus could have, in practice, various meanings and a diverse impact. In the Conference on Disbarment, for example, consensus was "commonly regarded as a requirement of

---

[62] *Ibid*., 318 – 319.

[63] *Ibid*., 348.

[64] *Ibid,* 332 - 336.

[65] Ulf Lindell, *Modern Multilateral Negotiation* (Lund, Sweden: Studentlitteratur, 1988).

unanimity,"[66] so that no decision could be made if there were disagreements or misgivings on the part of some delegations. According to Lindell, such interpretation does not create incentives for delegations to make concessions, and agreements tend to correspond to the lowest common denominator. In the Conference on Security and Cooperation in Europe (CSCE), consensus was seen as the "absence of any overriding national reasons for objection"[67] so that, unless there were compelling reasons, states were obliged to go along the proposals. Consequently, agreements were "slightly over the lowest common denominator." Moreover, consensus prompted coordinators to hold informal consultations and to prepare rolling texts to bring together the non-contested proposals. In the Third United Nations Conference on the Law of the Sea (UNCLOS), consensus was understood as a convergence of views and the absence of very strong objections. This understanding prompted the participants to adopt what Lindell calls an "active consensus procedure," that is, the preparation of single negotiating texts by the chairman and the coordinators which were used repeatedly to serve as the basis of agreement. If any participant wanted to challenge a formulation contained in the negotiating text, he had to prove that his preferred proposal was closer to an agreement than the one proposed by the chairman. In the end, the chairman would declare that the final text was as close to consensus as possible. This procedure tended to concentrate the negotiation in the hands of the chairman and his close collaborators. At the same time, this procedure was accompanied by a series of informal contacts and negotiating groups to identify which formulations could be included in the single negotiating texts. Finally,

---

[66] *Ibid*., 96.

[67] *Ibid*., 98.

there was a tendency to form an overall package so that concessions on some issues could be traded for concessions on some others.[68]

According to Lindell, there is no unitary "consensus negotiating process," but, in fact, various processes that vary among the various forums. In his view, the decisive variable for the character of the negotiating process is the centrality of the issue area in the "participants' value hierarchy."[69] However, the relative number of participants, the length of the negotiations, and the fact that negotiations are repeated in the same forum, that is, whether there is any iteration, also affect how the participants interpret and apply the consensus rule.[70]

C) A model of strategic negotiating behavior

The phased-process analysis and the linkage analysis provide us with a rather accurate description of the negotiation process and some of its dynamics. These approaches, however, do not reveal why the parties to a negotiation behave as they do: Why do they make concessions? Why do they seek to form coalitions? Why do they reject possible formulae for an agreement? Why do they threaten to call a vote? Why do they, sometimes, join agreements that they clearly dislike while, other times, they reject consensus on formulas that they had accepted before?

I propose that the answer to these questions lies within the strategic behavior of the parties to the negotiation. The outcome of the negotiation is the direct result of the interaction among the negotiating parties. Therefore, if we seek to understand why a

---

[68] *Ibid*., 95 - 130.

[69] *Ibid*., 187.

[70] *Ibid*., 187 - 188.

particular negotiation occurs, why it develops as it does, and why a particular outcome is produced, we need to understand the reasons that motivate the actors during their interactions. Thus, to understand international negotiations, we need to go beyond a description of the stages of the negotiation and look at the rationale of the parties in their moves and countermoves.

In this section, I propose a schematic model of a negotiation, looking not at the stages of the process but to the options available to the parties and to the reasons that prompt them to take one action instead of another. The model adopts the basic explanatory proposition of the rational-choice approach, that is, that the actors' behavior results from their intentional efforts to maximize their benefits in light of their pre-established preferences. In other words, when confronted with an array of possible paths of action, actors choose the one that they believe would best serve their own objectives.[71] In terms of the negotiation, this means that actors will take those actions that lead to the adoption of their preferred policy option or, if this is not possible, to the adoption of that proposal that is closest to their preferred policy option. Moreover, since an actor's behavior is always assumed to be his best response to his environment and to the other actors' behavior, to explain a concrete action it is necessary only to present the options available to the actor at a concrete point in time and to show how it corresponds to his preferences. As Tsebelis notes: "A successful rational-choice explanation describes prevailing institutions and existing contexts, persuading the reader that the action

[71] Donald P. Green and Ian Shapiro, *Pathologies of Rational Choice: A critique of applications in political science* (New Haven and London: Yale University Press, 1994) p. 14.

undertaken was optimal and that she would have adopted the same course of action in the same situation."[72]

In this sense, since any rational-choice explanation of the bargaining process looks at the options available to the actors at particular points in time, the institutional constraints of the negotiation play a key role. Consequently, the model that I propose underlines impact of the distinctive decision-making rules of conference diplomacy. In particular, the model takes into account the fact that decisions might be made through consensus or through a vote, that all delegations have one vote, and that a decision adopted through a vote does not necessarily have the same value to the parties as the same decision adopted through consensus; that is, that negotiations use a "consensus preferred-vote possible" decision-making rule.[73]

I must stress that, although my model of the bargaining process uses the basic propositions of the rational-choice approach; it is not a game-theoretic model. I do not suggest that it could be solved "in abstract" by calculating mathematically the points of equilibrium or through backwards inference. To be able to do so, it would have been necessary to propose hypothetically a complete order of preferences for all the actors and to assign numerical values to all the possible outcomes. However, while proposing such a complete ordering of preferences would have made possible to "play" the game in the abstract and to predict ideal solutions, it would also have made it too far removed from reality.

In effect, to propose an accurate ordering of preferences, it would have been necessary, first, to know the actors' preferences regarding both all possible substantive

---

[72] George Tsebelis, *Nested Games: Rational Choice in Comparative Politics,* (Berkeley, Los Angeles, and London: California University Press, 1990) pp. 46 - 47.

[73] See *supra:* Chapter 1.A.5.c.

proposals and the concrete alternatives available at each decision point, before the negotiations started; and, second, to develop an extended decision tree that would have incorporated all the key actors at all the key interactions. Moreover, it would have been necessary to take into account the creativity of the parties in formulating innovative solutions without knowing *a priori* what the actual content of those solutions would be. I contend that fulfilling these conditions is impossible since, in real-life treaty-making negotiations, actors develop their own preferences as the bargaining process gets underway and in reaction to the concrete proposals made by the other parties.

The purpose of this model is more modest. It intends to serve only as an interpretive tool of empirical evidence. Since this model reveals to us the options available to the actors at the various stages of the negotiations, in light of their possible preferences, it uncovers the incentives they had to choose one path of action instead of another. Hence, the model makes evident both the possible paths of action and the preferences that lay behind the dynamics of the negotiation. In fact, proposing a fully developed game-theoretic model would have obscured the dynamics of the negotiation process. In so far as game-theoretic models are concerned with ideal outcomes in situations of equilibrium, that is, with those outcomes that arise from combinations of strategies that no actor has an incentive to change, they focus only on the end result and not on the paths that actors follow to reach that result.[74] In contrast, this work focuses more on the dynamics of the negotiation than on their result.

Moreover, by assuming that the behavior of the actors results from deliberate choices, the model excludes *a priori* any *ad hoc* explanations of the evidence, such as mistakes, miscommunication, group-thinking, cultural factors, and personal

[74] Tsebelis, *supra* note 72, p. 28.

characteristics. In this sense, it imposes a high standard for the interpretation of the facts: only when rationality has been positively excluded is it legitimate to search for alternative explanations to the actors' behavior. Finally, since the model abstracts away the individual characteristics of the actors, it makes it easier to compare the various actions and to generalize the conclusions.

D) Developing the model as an extended game

To reveal the rationale of the actors during the negotiation, I propose to represent the negotiation process as an extended game. This model intends to reduce the complex phenomenon of conference diplomacy to the minimum of essential elements and to reveal both the options available to the actors at each step of the process and the motives that led them to take one of those options instead of another.

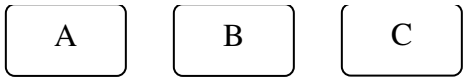
1) Definitions

In order to develop the model of the negotiation, it is necessary to define the key terms and concepts that that will be used as well as the rules that govern the interaction. Hence, it is necessary to define at the outset the concepts "actors," "proposals," "moves," "decisions," and "preferences."

Multilateral negotiation is characterized by the presence of three or more actors that take part in the bargaining process. The difference between a bilateral negotiation and a trilateral negotiation is not simply quantitative but qualitative, since the presence of a third actor permits the formation of coalitions and the interplay between a majority and

a minority position. On the other hand, the difference between a trilateral negotiation and a multilateral negotiation with more than three participants is only quantitative, since the basic dynamics of the negotiation do not change, even if the number of possible interactions increases exponentially. Therefore, to represent the negotiation process in the simplest manner, I will reduce the number of actors in the model to three (see Figure 2.3).

Fig. 2.3: Actors will be denoted with capital letters:

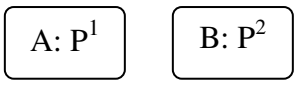


The model will also abstract from all the individual characteristics of the actors. Thus, in developing the model, I assume that all actors are identical in terms of power and information, being fully aware that, in practice, the capabilities of the participants in international, multilateral negotiation vary widely. In this sense, it will be assumed that each actor has just one vote.

During the negotiation, actors make proposals, counter-proposals, offers, and demands as means of expressing their positions and their preferences. For the purpose of developing this model, all of these – proposals, counter-proposals, offers, and demands – are indistinguishable since all of them represent the actors' preferred outcome at the time when they are made (see Figure 2.4). A proposal is defined as the actual policy option that an actor submits to the consideration of the other participants in the bargaining process, at a specific point in time, with the intention that it will adopted as the substantive, concrete outcome of the negotiation. Hence, proposals reflect the actor's

preferences regarding the negotiation's outcome. I assume also that actors are honest, in the sense that their proposals represent their real preferences, making abstraction of the fact that, in practice, participants may exaggerate their proposals in hopes of obtaining a better outcome at the end of the negotiations.

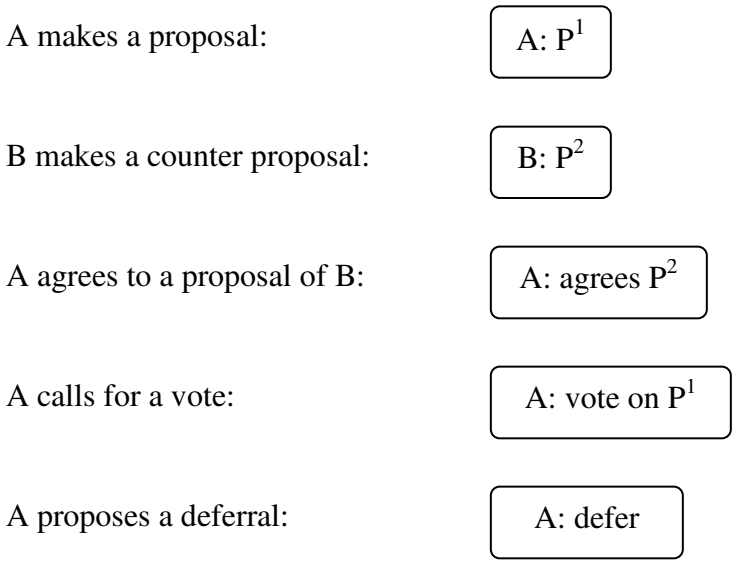
Fig. 2.4: Proposals will be denoted with a capital P and distinguished with a superscripted number



Furthermore, I assume that proposals reflect the actors' preferences at a specific point in the negotiation. The initial position of an actor, that is, the preferred policy option that an actor seeks to have adopted at the beginning of the negotiations may change as the negotiation gets under way. Thus, if an actor makes a new proposal or changes his initial proposal, I assume that he has, in fact, changed his expectations and preferences regarding the negotiation's outcome in light of the alternatives then available and the other actors' behavior.

In developing the model, I assume that actors can take a limited number of actions: they may make proposals; they may accept the proposal made by others; they may call for a vote on their own proposals; or they may propose the suspension of negotiation by suggesting a deferral (see Figure 2.5). Undoubtedly, this is a simplification of the complex negotiation process where actors may lobby each other, have brain-storming sessions, circulate proposals informally without committing themselves, threaten each other, and provide discrete incentives.

Fig. 2.5: Moves



The question of asking for a vote deserves particular attention. Nowadays, it is common practice in international, multilateral negotiations under the United Nations General Assembly's rules of procedure that decisions are taken without a vote. Thus, actors rarely call openly for a vote on their own proposals. In practice, an actor merely asks that action be taken on its own proposal, that is, that it be adopted without a vote. This situation in fact shifts the burden of calling for the vote. It is those actors who dislike a proposal who have to object to it and request a formal, recorded vote.[75] In the model, this situation is simplified by making clear that any actor who formally requests the adoption of a proposal that does not enjoy consensus is ultimately responsible for the

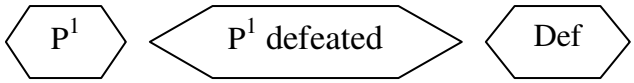
[75] Robbie Sabel, *Procedures at International Conferences*, 2nd ed. (Cambridge: Cambridge University Press, 2006) 298 – 299.

eventual vote. One should bear in mind, however, that this shift in the burden of calling a vote may create additional costs for any actor who opposes the adoption of a proposal.

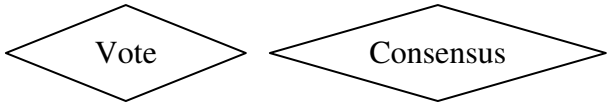
Multilateral, law-making negotiations always conclude with the adoption of some decision. Such decisions may be substantive, that is, the adoption of concrete measures to address the problem at hand, or they might be procedural, such as the deferral of the negotiations to a later date or defeat of a proposal without taking further action. It should also be noted that, in conference diplomacy, a decision can be adopted through consensus or through a vote.[76] Thus, the model has to reflect the fact that decisions may be reached through agreement or through a vote (see Figure 2.6).

Fig. 2.6: Decisions

Decisions may consist in the adoption of a proposal, the defeat of a proposal, or the deferral of the negotiations to another time.



Decisions may be adopted by a vote or by consensus. The decision-making procedure will be denoted with a rhomboid.



The fundamental explanatory proposition of the rational-choice model is that actors have preferences and that they take action to maximize their utility in view of those preferences. In multilateral negotiation, these preferences enable actors to compare

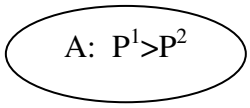
[76] *Ibid*, 335, 344 - 345.

the substantive proposals and to choose among them. As noted before, it is assumed that the actors' proposals reflect their preferences at the specific point in time.

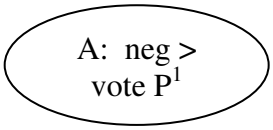
Moreover, in conference diplomacy, actors also have preferences regarding the decision-making procedure and the combination of substantive proposals and decision-making procedures. For example, an actor may prefer to adopt decisions by consensus rather than through a vote. Alternatively, he may prefer the adoption of its own proposal by a vote rather than the adoption, by consensus, of a different proposal put forward by another actor (see figure 2.7).

Fig. 2.7: Preferences

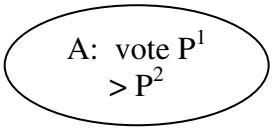
- A prefers the adoption of proposal P^1 rather than proposal P^2:



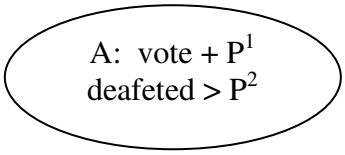
- A prefers the continuation of the negotiations rather than adoption of proposal P^1 by a vote:



- A prefers the adoption of proposal P^1 by a vote rather than the adoption by consensus of proposal P^2:



- A prefers calling and losing a vote on proposal P^1 to the adoption of by consensus of proposal P^2:



It should be noted that, in this model, preferences are set in relative terms, that is, they compare the alternatives available to the particular actor at the concrete decision point, rather than being set as an absolute scale ordering all the possible outcomes. This approach reflects the fact that, in real-life negotiations, actors develop their preferences in light of each other's proposals. As Winham notes, in large-scale negotiations, "what is acceptable is a function of what is available, and this is demonstrated only in the act of negotiating."[77]

2) Rules

In order to develop the model, it is necessary to establish the basic rules that govern the interaction among the actors. I propose four simple rules to represent international, multilateral legal negotiation.

First, actors make their proposals successively. There are no simultaneous proposals. This rule enables us to consider sequentially the alternatives that the various actors have when faced with a new proposal. In real-life international, multilateral negotiations, however, it does occur that proposals are made simultaneously and that various actors present their opening positions before considering each other's proposals.

Second, for any proposal to be adopted, it requires at least a simple majority, that is, the support of 50% of the actors plus one. If all the participants agree on a particular decision, it is adopted by consensus. Conversely, if a decision is taken through a vote, it requires the positive vote of at least the 50% plus one of the actors present and voting.

---

[77] Gilbert R. Winham, "Complexity in international negotiation" in Daniel Druckman, *Negotiations: social-psycological perspectives,* (Beverly Hills and London: Sage Publications, 1977) 353.

Once more, this rule is a simplification of the complex process of conference diplomacy. In real-life negotiations, the adoption of a proposal without a vote might mean simply agreement on the decision-making procedure, that is, agreement to avoid a vote, but not substantive agreement on the concrete policy adopted.[78]

Third, voting carries costs. In general, actors prefer the adoption of their own substantive proposals by consensus rather than their adoption through a vote. Resorting to the vote usually involves a certain cost both to the delegation that asks for it and for those that would have preferred a consensus decision. These costs may represent a loss in the value of the decision adopted, if it is believed that a consensus decision is more authoritative than a voted one; a loss in the reputation of the party that is perceived as unreasonable in preventing a consensus agreement, making more difficult its participation in future negotiations; and a loss of face for the party that is defeated. Conversely, on some occasions, calling for a vote may carry some benefits. There might be perceived benefits, both domestically and internationally, of acting on the base of highly valued principles and defending a principled position to the end. Moreover, the party calling for a vote may gain a reputation for determination and resolve, which may strengthen its stance in later negotiations.

Fourth, negotiations conclude either by the adoption of a proposal, the defeat of a proposal, or the deferral of the negotiations to another time. This rule intends to capture the fact that international, multilateral negotiations usually have long series of interactions: proposal, counter-proposals, concessions, and threats. To formalize the bargaining process, we will need only to represent a few interactions. However, it is

[78] Sabel, *supra* note 75, at 337, 346; see also *supra:* Chapter 1.A.5.c.

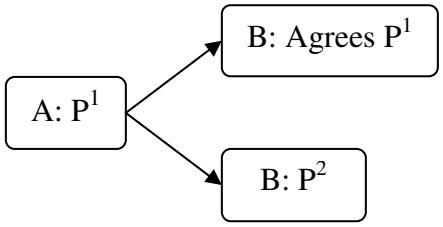
necessary to bear in mind that, in an international, multilateral negotiation, there might be hundreds of proposals and counter-proposals.

The second and third rules, taken together, capture one of the most salient features of international, multilateral law-making negotiations, that is, that a vote is always possible but that consensus is preferred.[79]

3) Playing the game

The negotiation begins when one participant, A, makes an opening proposal, P^1. The second actor, B, may respond by either agreeing to A's proposal or by making a counter-proposal, P^2. This situation is represented as a decision tree in figure 2.8.

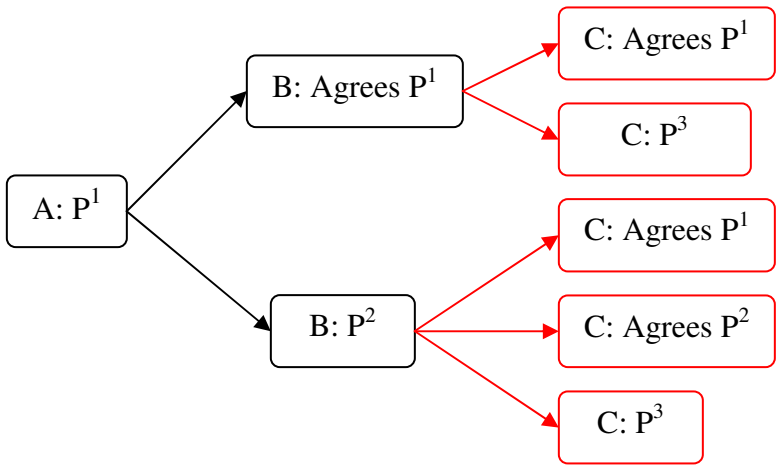
Fig. 2.8: The initial proposal and the first reaction



At this early stage, the negotiation is bilateral. It becomes multilateral once a third actor, C, responds to A's initial proposal and to B's reaction (see Figure 2.9). C may agree with A's initial proposal, may agree with B's counter proposal, or may make a new proposal of its own, P^3.

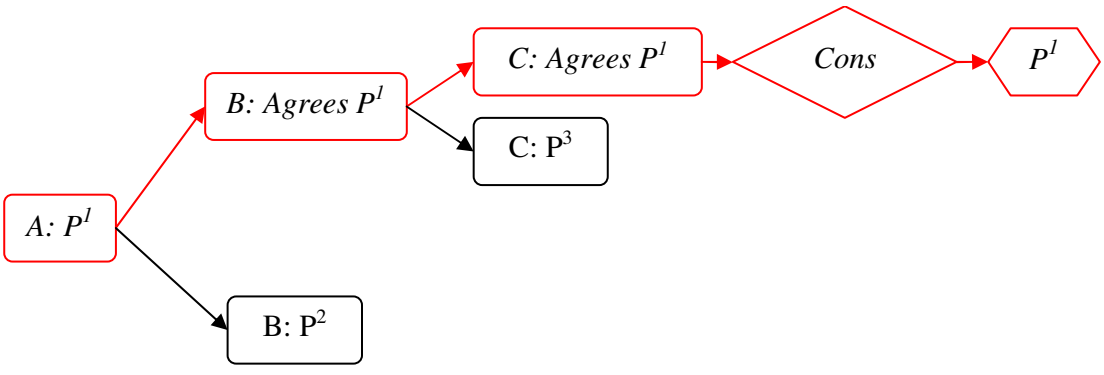
[79] *Ibid*, 344 – 345*; See supra* Chapter 1.A.5.c.

Fig. 2.9: A third actor enters the game



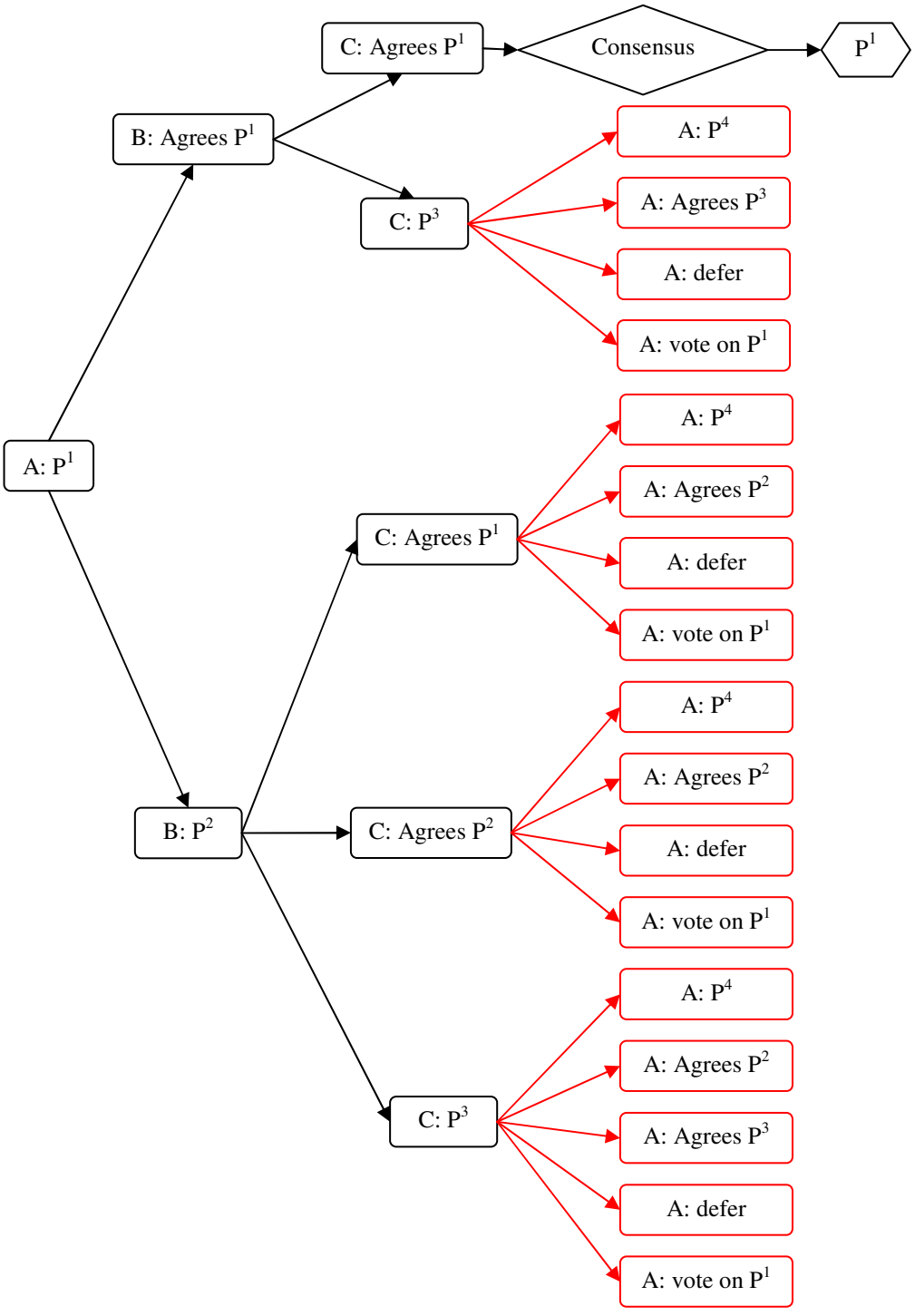
If B and C agree with A's initial proposal, P^1, the game concludes by the adoption of the initial proposal, P^1, by consensus. In this case, there is harmony among the actors (see Figure 2.10).

Fig. 2.10: Harmony



Once the other participants in the negotiation have expressed their positions, the initiative returns to the first actor, A. If there is no immediate agreement, A has to respond to the counter-proposals made. He may make a new proposal of his own, P^4; he may agree with one or other of the counterproposals made (P^2, P^3); he may propose a deferral, or he may call for a vote on his own initial proposal. Figure 2.11 shows the various moves that A can make at each branch of the decision tree.

Fig. 2.11: Second round, the first actor reacts

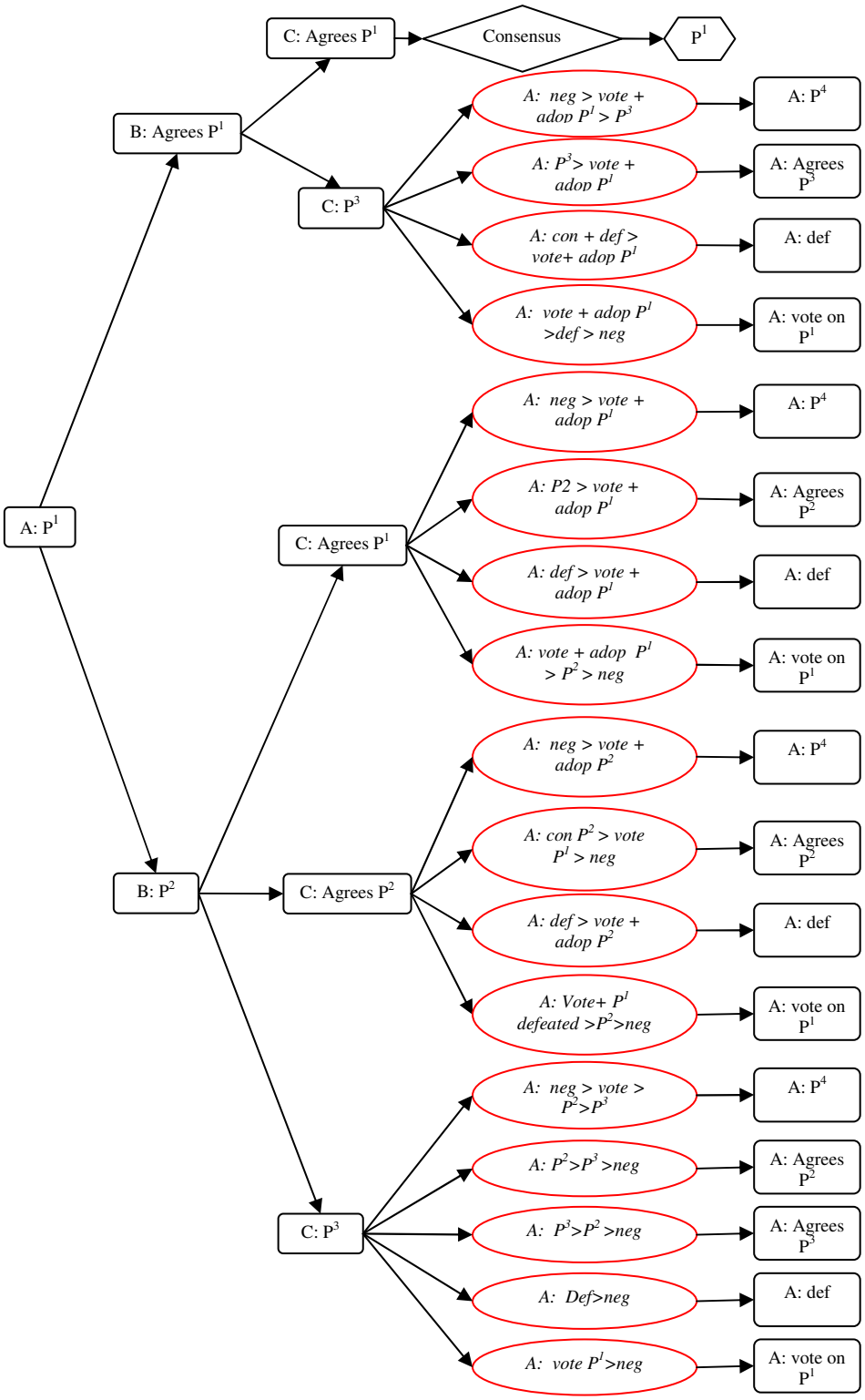


To understand A's actual behavior, it is necessary to look at the preferences which, according to the rational-choice model, motivate his actions. However, we do not know a priori the actor's preferences. Up to this point, the model has included only alternatives available to the participants in the negotiation at the various decision points.

I contend that the extended game presented in Figure 2.11 enables us to deduce, from the moves available, what the actor's preferences should be at a particular point in time if he chooses one path of action instead of another. To deduce what their preferences should be, in abstract terms, it is simply necessary to assume that the path chosen is preferred to all other alternatives available to that actor in that particular branch of the decision tree. Therefore, the actor's preferences are not set in absolute terms, since they do not reflect that actor's complete structure of preferences regarding all the possible outcomes of the negotiation. Preferences are instead relative, in the sense that they just compare the options available at each particular stage of the negotiation. In other words, an actor may not accept a proposal that has not yet been made in that specific branch of the decision tree.

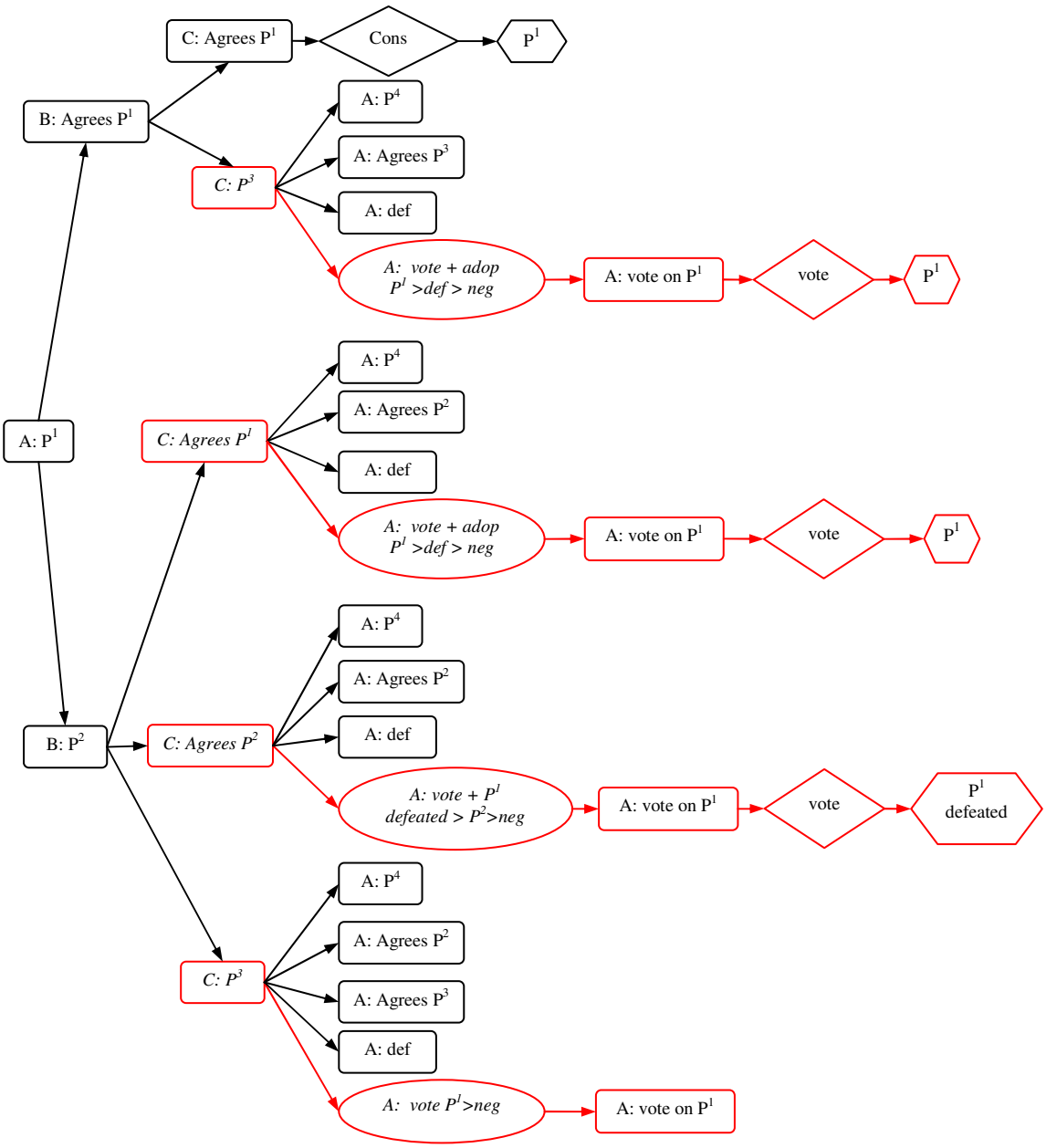
It should be added that his preferences are "ideal" in the sense that they are deduced from the model itself by considering only the alternatives available to the actors. They do not reflect what the actual, real-life preferences of the participants in the negotiation are or should be. They are "empty" of any substantive meaning. The complete set of A's preferences at the beginning of the second round is contained in figure 2.12.

Fig. 2.12: Second round, A's preferences



The preferences contained in figure 2.12 enable us to discover three situations where the first actor, A, will call for a vote (see figure 2.13). First, A will call for a vote if his preferred option is supported by the majority of parties to the negotiation, and if he prefers its adoption though a vote rather than the adoption of any other proposal or the continuation of the negotiations. Second, A will call for a vote if he prefers the defeat of his proposal to either the adoption of any other alternative or the continuation of the negotiations. In this case, while A's proposal does not enjoy majority support and it is likely to be defeated, that actor wants to ask for a vote in order to make the political "point" of carrying that proposal to the end. Third, when no proposal enjoys a clear majority, A may take the risk of calling for a vote on his own proposal, thus forcing the other actors to reevaluate their positions.

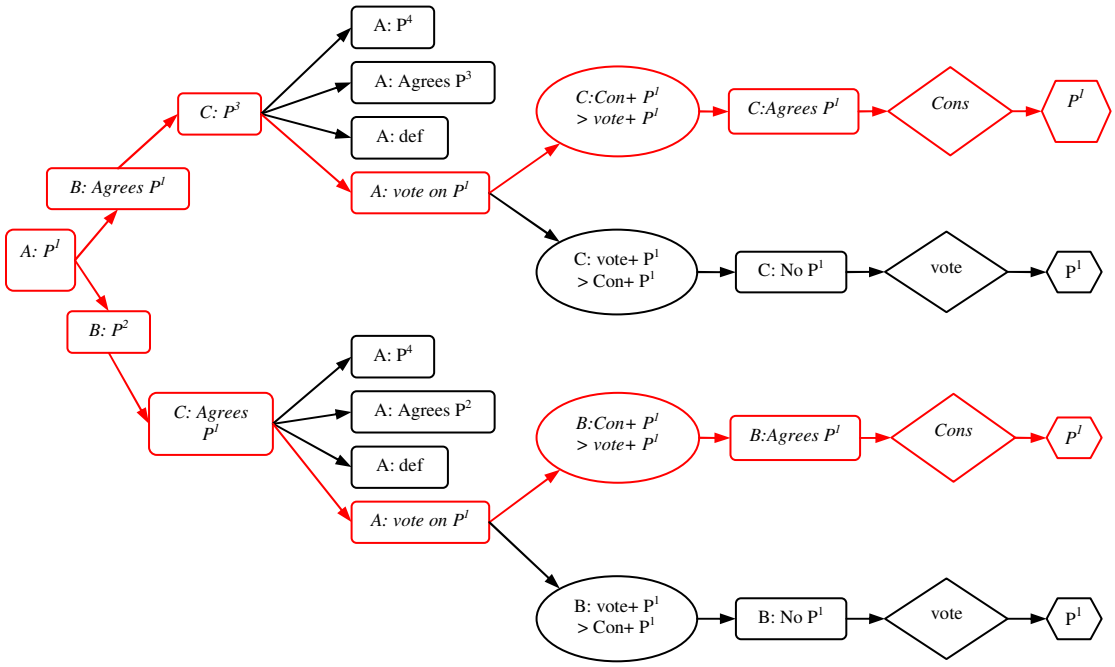
Fig. 2.13: A calls for a vote



In the first case, where A calls for a vote on her own proposal, having majority support, consensus is in fact still possible. If the actor in the minority (B or C) prefers adopting the first actor's proposal by consensus rather than losing a vote, he will reverse

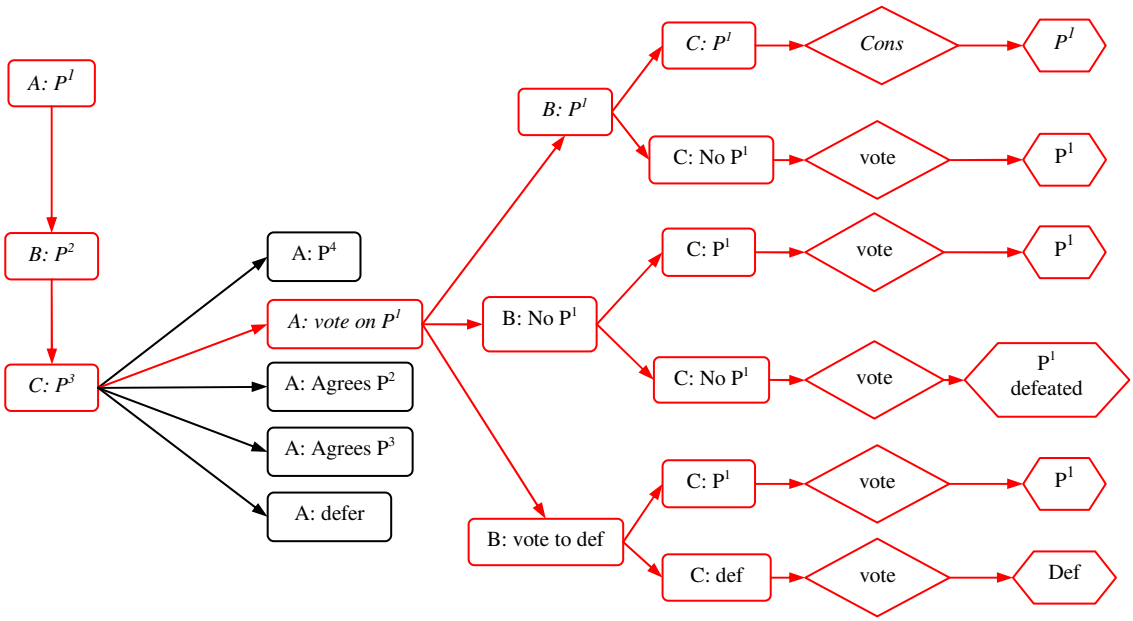
his previous position and accept A's proposal, thus avoiding paying the costs of the lack of consensus. Consequently, by threatening to call for a vote, the first actor may still obtain a consensus result (see figure 2.14).

Fig. 2.14: A obtains consensus by threatening a vote



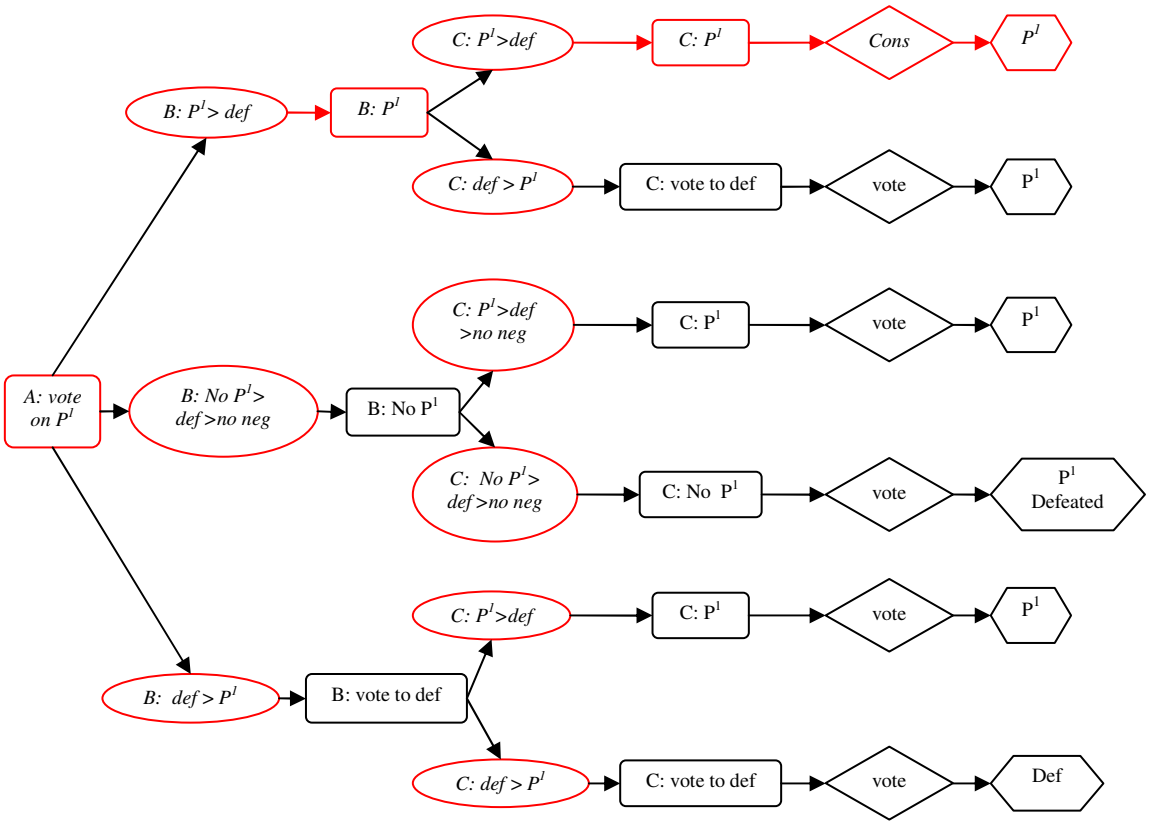
In the third case, where no proposal enjoys a clear majority and the first actor, A, takes the risk of calling a vote on his own proposal, the other actors may vote in favor of it, may vote against it, or may call for a deferral, through a motion of non-action, depending on their relative preferences. Thus, depending on the other actors' actions, the final outcome of the negotiation may be the adoption of the proposal put to the vote, either through vote or through consensus, its defeat, or a deferral of the negotiations (see Figure 2.15).

Fig. 2.15: A calls for a vote when there is no clear majority



It is possible, in fact, to understand this variety of outcomes on the basis of the other actors' preferences (see figure 2.16). If they value more the proposal put to the vote than a deferral that would produce no substantive result, they will vote in favor of that proposal, even if it means changing their previous position. Conversely, if they value more a deferral than the proposal put to the vote, they will support a motion of non-action. Interestingly, if they believe that a positive decision must be taken, that is, if they prefer adopting the proposal put to the vote rather than a deferral, the first actor, by asking a vote, may force the adoption of its preferred option by consensus. Finally, if they opposed the text put to the vote as well as the continuation of the negotiations, they will vote against the proposal, defeating it.

Fig. 2.16: A calls for a vote when there is no clear majority - preferences of the other actors



Instead of calling a vote, A may endorse a proposal made by some other participant in the negotiation. This move will occur in three situations (see Figure 2.17). First, if calling for a vote on its own proposal would mean that it is likely to be defeated, and A does not want to continue the negotiations by making a new proposal, he will endorse the proposal supported by the majority, which would then be adopted by consensus. Second, if there is no consensus on any of the previous proposals, A is not willing to take the risk of calling for a vote, and he does not want to continue the

negotiations by making a new proposal, he will endorse the proposal of another actor that is close to his own preferred policy option. Third, if A's proposal enjoys majority support, but he prefers a consensus outcome and he does not want to continue the negotiations by making a new proposal, he will move away from its original proposal and join the minority. In this case, A would value more a consensus outcome than his own substantive proposal.

Instead of calling for a vote or endorsing a pre-existing proposal, A may make a new proposal of his own, P^4. This occurs when he prefers the continuation of the negotiation to the adoption of any of the proposals available, either because calling for a vote on his preferred option, P^1, would mean that it would be defeated or because he strongly prefers a consensus outcome (See Figure 2.18). Alternatively, if A finds that his own proposal is unlikely to be adopted, either because it does not have sufficient support or because it will not attain consensus, and that continued negotiations would be unfruitful, he will propose to close the negotiation through a deferral (see Figure 2.19).

Fig. 2.17: A endorses one of the counter-proposals

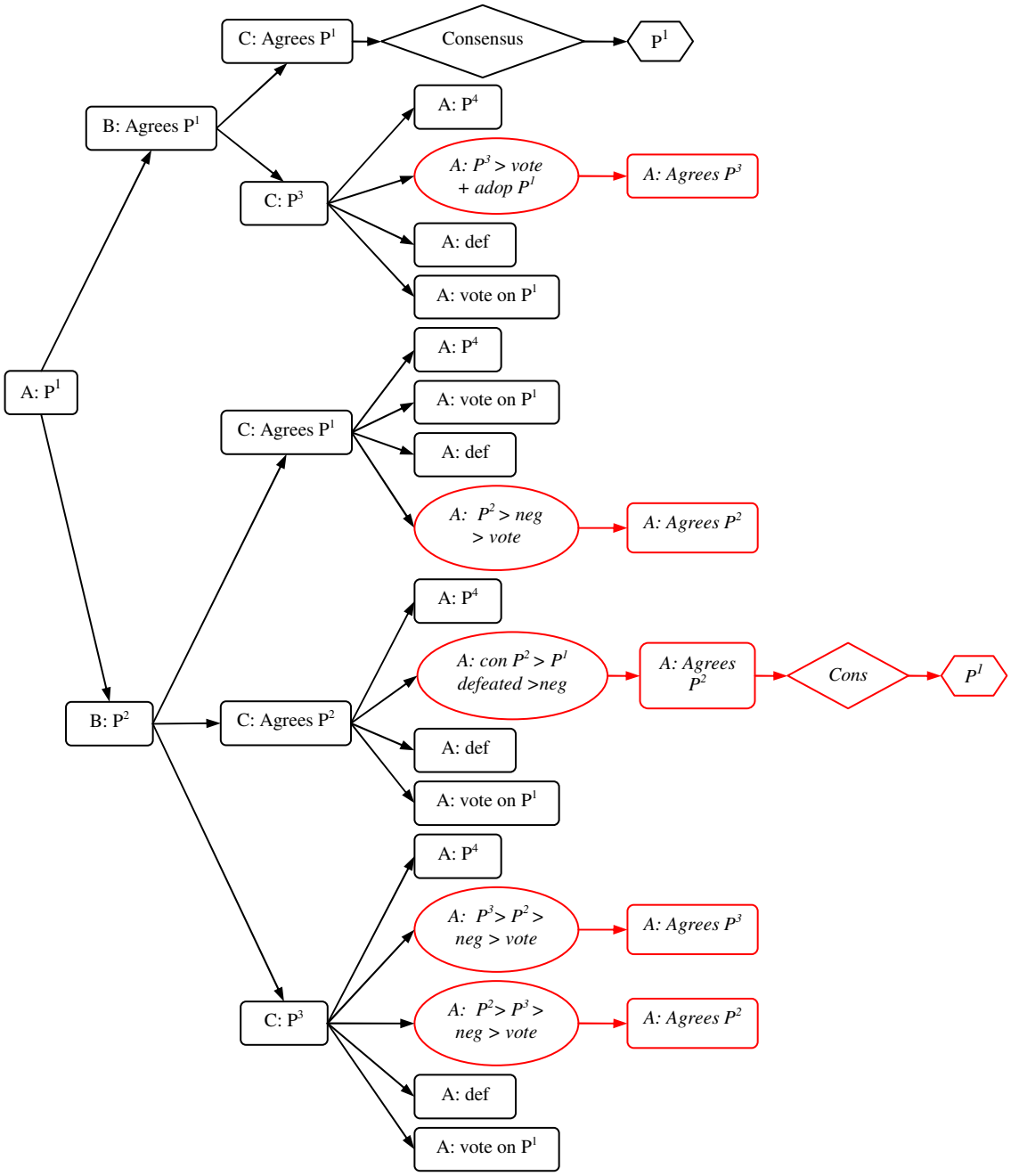


Fig. 2.18: A makes a new proposal

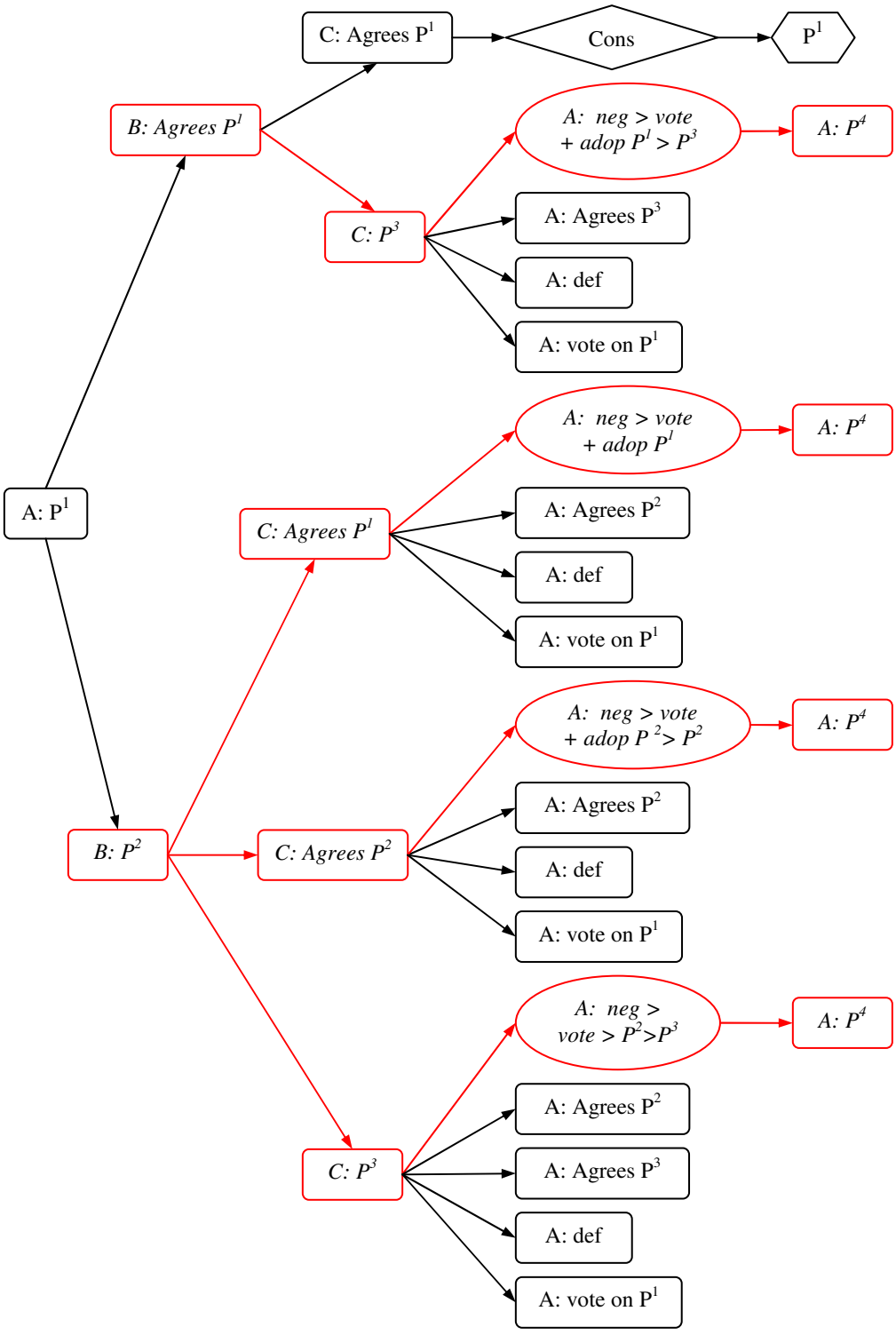
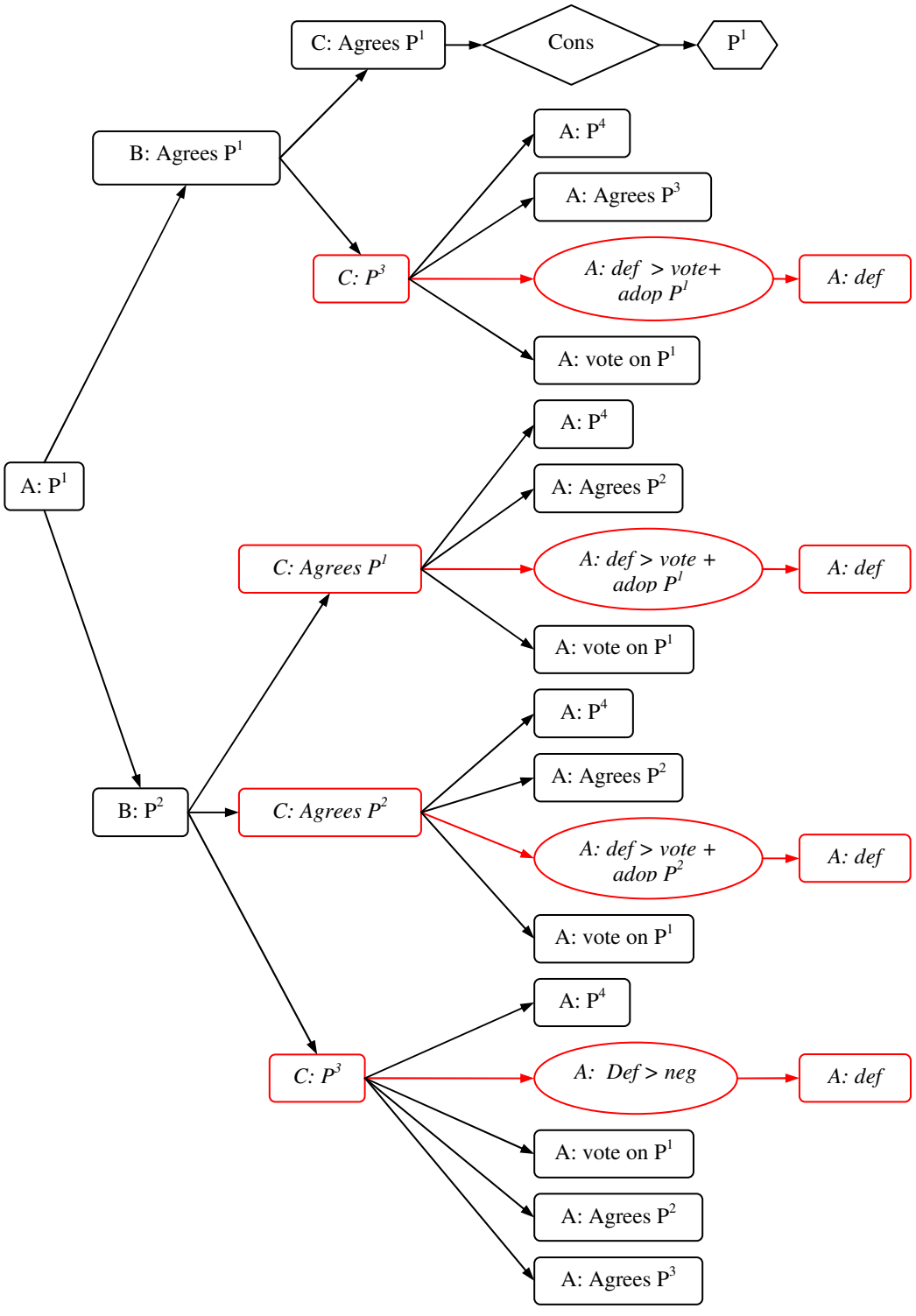


Fig. 2.19: A proposes a deferral



After the first actor, A, has made his second move, the other actors will react. Each proposal that does not conclude the game opens a new branch of possible actions. Thus, the number of possible actions and reactions grows exponentially. In fact, as long as no actor is willing to put to the vote either a substantive proposal or a motion to suspend the negotiations, the game will continue as a succession of proposals and counter-proposals (see figures 2.20 and 2.21).

I propose that the same rationale, that is, the same motives for action based on the actor's relative preferences that guided A's behavior in the second round of negotiations will repeat itself for the other actors at the various points of the negotiation. Thus, to understand the behavior of the actors in the negotiation, we just need to discover their preferences at the particular point of the negotiation in light of the alternatives then available.

Fig. 2.20: The third round

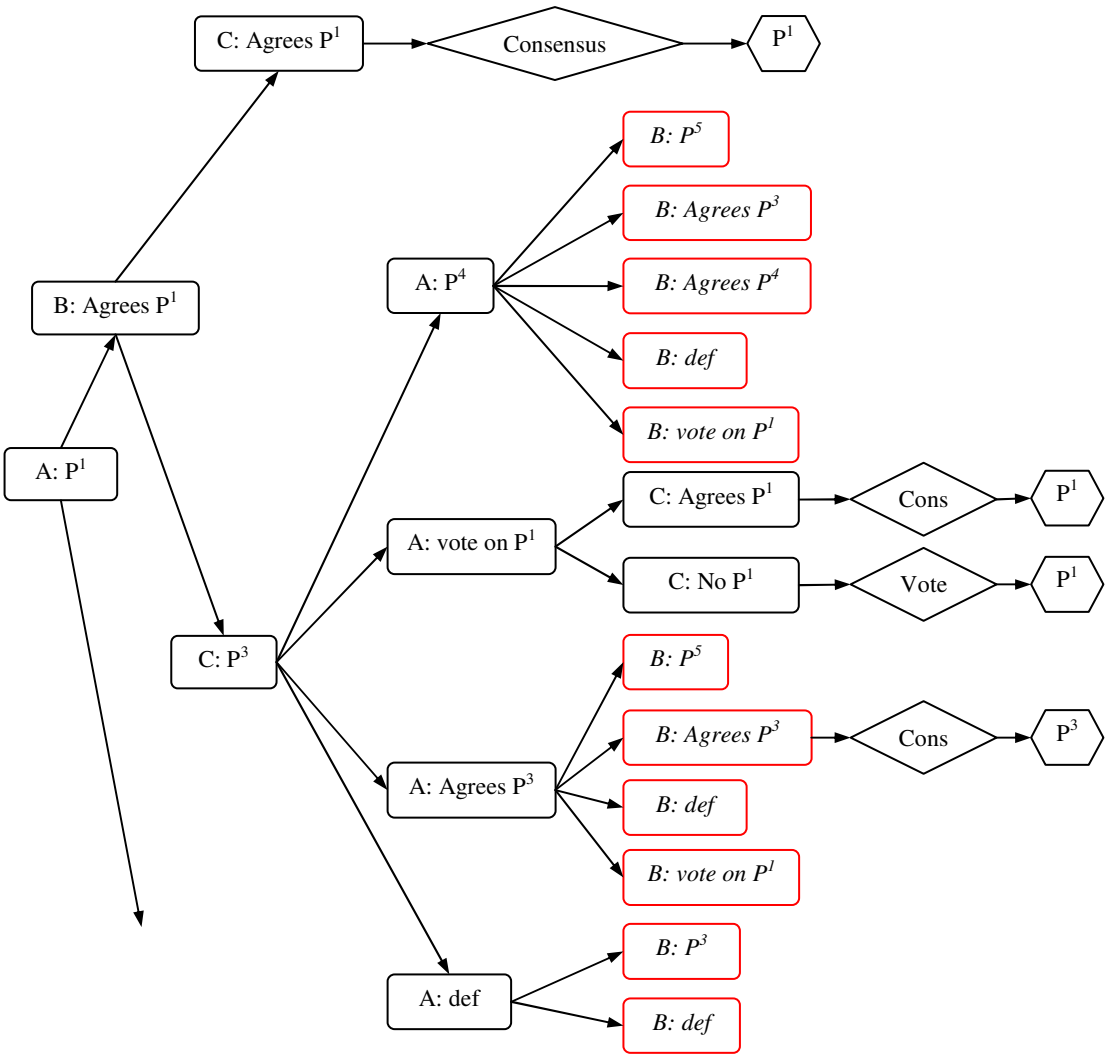


Fig. 2.20: The third round, continuation

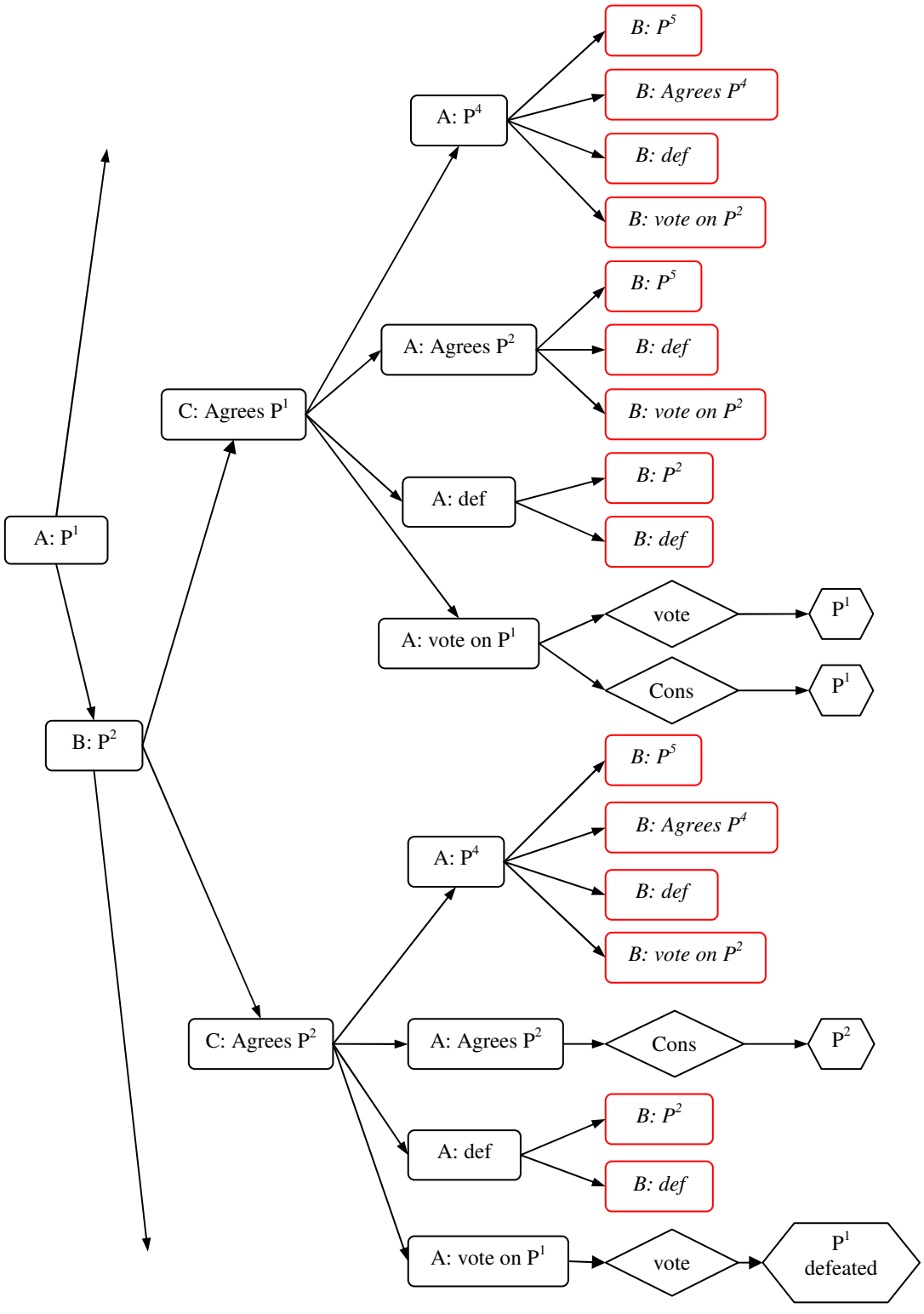


Fig. 2.20: The third round, conclusion

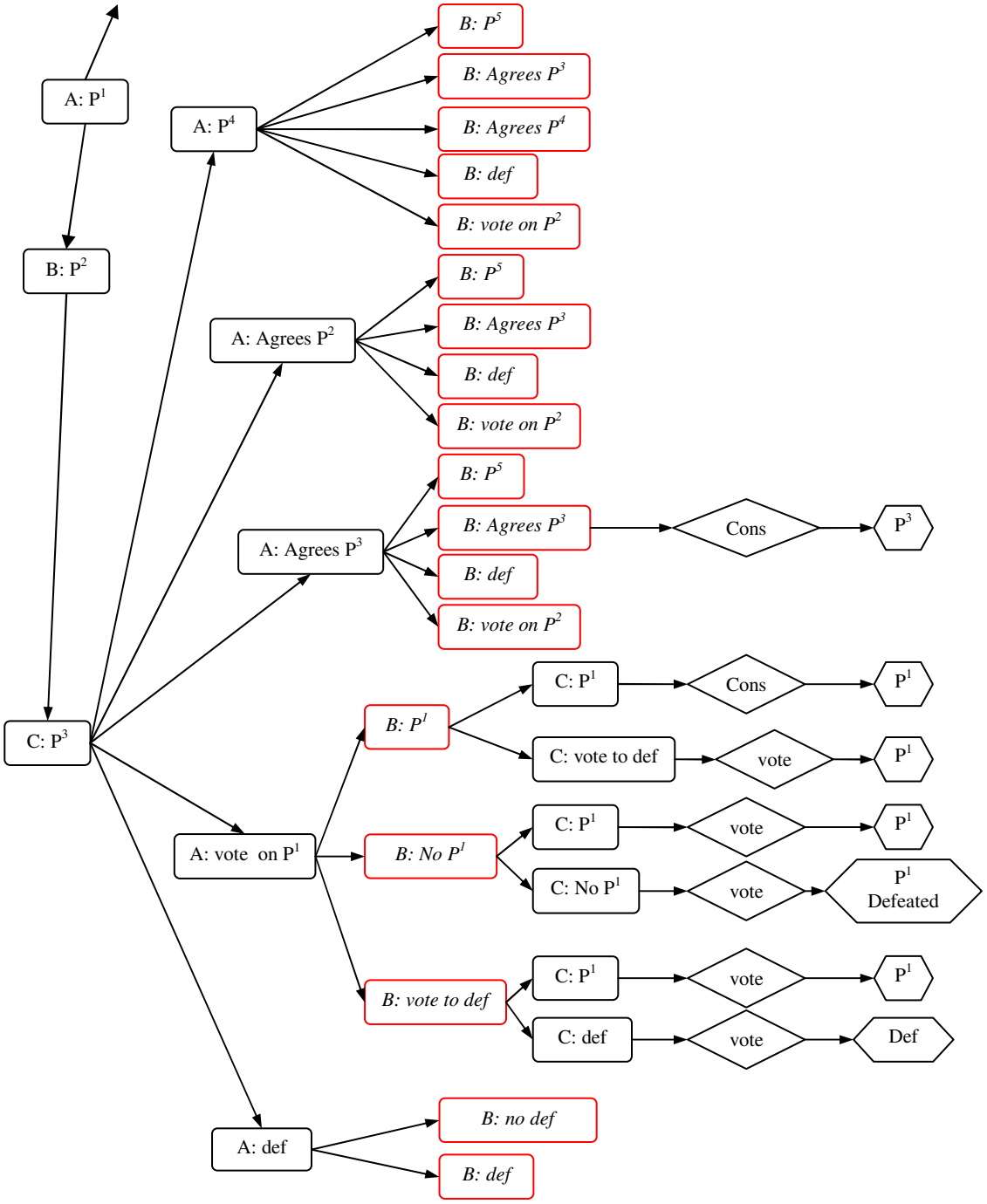
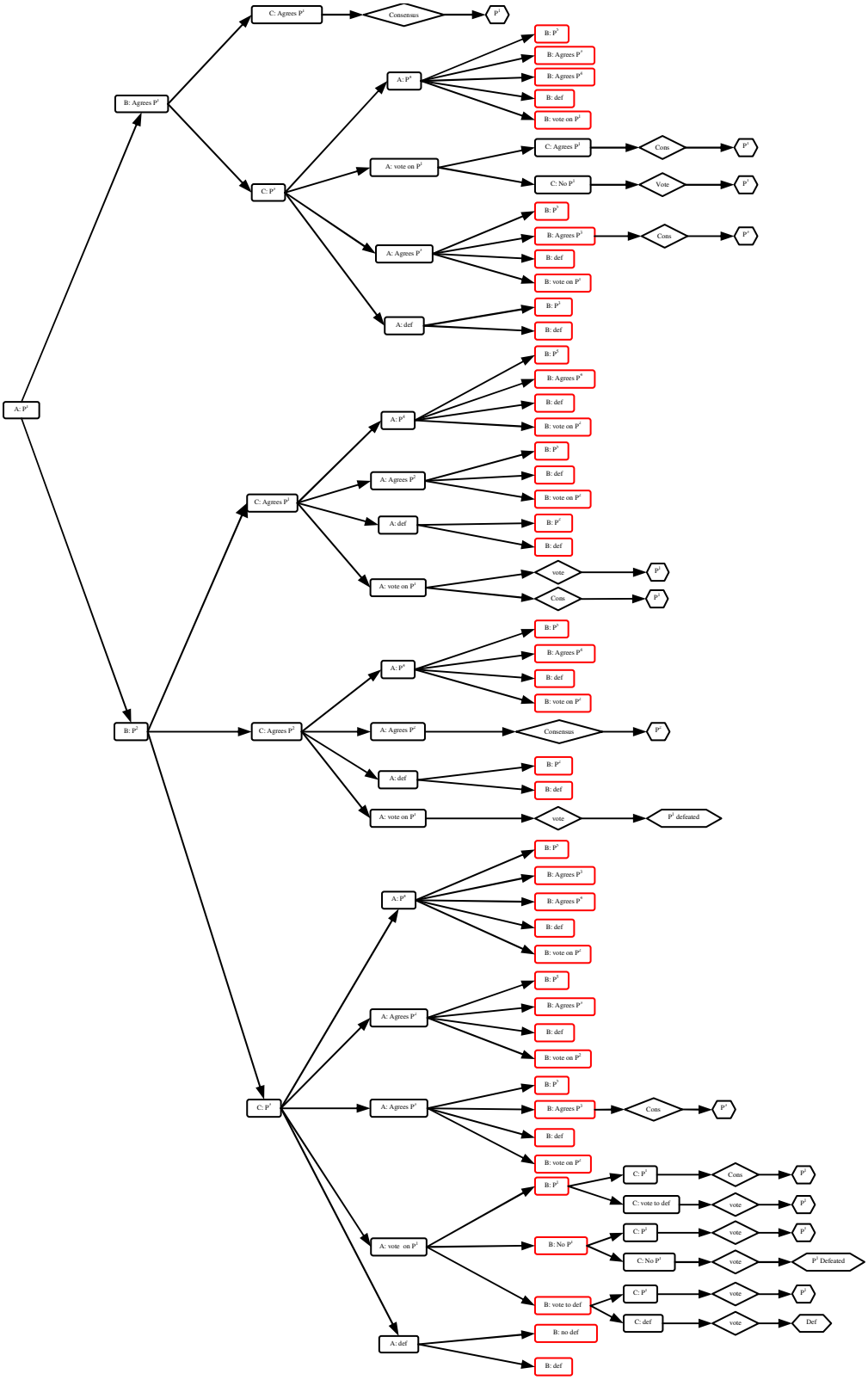


Fig. 2.21: The third round, consolidated



E) The model's limits

This model of multilateral negotiation seeks to make evident the rationale that guides the actors' decisions and interaction during the bargaining process, at a high level of abstraction. Unquestionably, this model has some limitations.

International, multilateral negotiation is a complex process that cannot be simply reduced to an extended decision tree. Important variables affecting the final outcome, such as the various phases of the negotiations, consensual knowledge, value systems, leadership, decomposition and aggregation of issues, linkages, crises, formula solutions, and process-generated stakes, are abstracted out of the model. In fact, a rational-choice model, such as the one here proposed, simply highlights the rationale that actors follow when seeking to maximize their utilities in a world whose definition and terms of reference fall outside of the model itself. This does not mean, though, that this model is oblivious to those conditions. Those variables enter the model through the actors' preferences because, in an actual negotiation, they impact the actor's assessment of the available alternatives and his choice of a preferred outcome. Nevertheless, we must recognize that a deep understanding of concrete, real-life cases of international, multilateral negotiation would require not only a rational choice model of the actors' behavior but also the models and insights developed by multi-variable process analysis studies.[80] Hence, to obtain a rich understanding of a real-life negotiation, it would be necessary to integrate the various approaches.

[80] *See supra* Chapter 2, section C.

This model is exhaustive, in the sense that it presents all the interaction patterns available, depending on the various combinations of preferences. At the same time, though, the model is "empty" because it does not say what the actual, real-life preferences of the participants in the negotiation are or should be. In this regard, the model simply makes explicit the logical propositions that are implicit in its premises, the rules of the game. The model has value precisely because it makes explicit the reasoning behind the various interaction patterns and because it reveals the dynamics behind situations that seem, at first sight, counter-intuitive, such as a minority obtaining consensus by threatening a vote.

It should be noted, furthermore, that this model is not predictive. As mentioned before, making accurate, testable predictions would require knowing the actors' preferences regarding both all possible substantive proposals and the concrete alternatives available at each decision point, before the negotiation starts, and an extended decision tree that would incorporate all the key actors at all the key interactions. Proposing such ordering of preferences to reflect accurately complex, real-life, multilateral negotiation is almost impossible. In real-life international, multilateral negotiations, the participants do not have perfect knowledge of each others' preferences and even of their own preferences. An important part of the negotiation process consists in discovering those preferences in the face of the concrete alternatives available. I argue, however, that an actor or a researcher familiar enough with a negotiation and with the position of all the key actors may be able to produce plausible forecasts using the reasoning that lies behind this model. Actually, the fact that actors seek to behave strategically implies not only that they try to behave rationally but that they believe that the other participants in the

negotiation also try to behave rationally and that, therefore, it is possible to deduce their future behavior.

Finally, the fact that this model cannot be used to make accurate predictions does not mean that its usefulness as an analytical tool cannot be tested. The model's usefulness can be tested, first, by determining whether the various interaction patterns proposed by the model actually do occur in real-life international, multilateral legal negotiations. Second, the model's usefulness can also be tested by determining whether identifying the occurrence of those interaction patterns in real-life cases gives us greater understanding of why actors behaved as they did and why a certain outcome, rather than another, occurred. I will return to these points in the concluding section.[81]

[81] See *infra:* Conclusions.

Chapter 3 – Antecedents 1931 – 1995

In this chapter I present an overview of the efforts made, between 1931 and 1994, to adopt various legally binding international instruments against terrorism within the framework of the United Nations and its predecessor, the League of Nations. I review, first, the negotiation of the 1936 League of Nations´ Convention for the Prevention and Punishment of Terrorism, which never entered into force. I then narrate how, during the early 1970s, the question of international terrorism was included in the agenda of the United Nations' General Assembly and how an initiative to draft a global convention against terrorism was derailed by ideological and political differences. Thereafter, I present the development of the sectoral approach, which enabled the international community to adopt treaties against particular forms of terrorism, such as crimes committed against internationally protected persons[1] and hostage-taking,[2] even if there was no agreement on the concept of terrorism as a whole. Finally, I describe the efforts made during the 1980s and the early 1990s to build consensus gradually on some basic concepts and practical measures to address the problem of international terrorism, which were crowned in 1994 with the adoption of the United Nations Declaration on Measures to Eliminate International Terrorism.[3]

---

[1] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *adopted on* Dec. 14, 1973, G.A. Res. 3166(XXVIII) Annex, 1035 U.N.T.S., [hereinafter Convention on Internationally Protected Persons].

[2] International Convention against the Taking of Hostages, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S. [hereinafter Hostages' Convention].

[3] Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60, Annex, U.N. Doc. A/Res/49/60/Annex (Dec. 9, 1994) [hereinafter 1994 Declaration].

These discussions set the stage for the negotiation of the four conventions studied in this work It was in the context of those debates that the idea of negotiating legally binding instruments matured. Moreover, it was within these negotiations that the basic understandings and formula solutions that were later to serve as the building blocks of the four conventions against terrorism were developed. On the other hand, these discussions enabled the parties to develop also their own national positions and to form like-minded coalitions. By focusing on the various aspects of the problem of international terrorism, these discussions allowed parties to exchange information on their preferences, priorities, and approaches regarding terrorism. Similarly, these discussions enabled parties to determine which related issues, such as self-determination, states' involvement in terrorist activities, and refugee law, were going to be important in the subsequent negotiations. Finally, these debates also revealed the political differences and opposing preferences that were later to obstruct the negotiation of the four conventions.

A) A first approach: 1931- 1937

The first efforts, albeit of a private character, to negotiate international norms to prevent terrorist acts and to ensure their prosecution were made in 1930, at the Third International Conference for the Unification of Penal Law held in Brussels.[4] That Conference, held under the auspices of the International Association of Penal Law, gathered practitioners and academic experts on criminal law, representing both governments and non-governmental organizations, with the purpose of identifying acts that could be considered offences under international law and to propose their inclusion

[4] See Amrith Rohan Perera, *International Terrorism* (Delhi: Vikas Publishing House, 1997), 16 -19.

in the criminal codes of the various states.[5] At the Third International Conference, the Special Raporteur proposed 5 articles to codify terrorism under international law. He proposed, in particular, to define as terrorist any crime "against the life, liberty or physical integrity of persons or against a governmental or private property for the purpose of propounding or putting into practice political or social ideas" that involved the "deliberate use of means of producing a common danger."[6] These proposals were considered in the meeting held in the following years. In 1931, the Fourth International Conference, held in Paris, recommended the conclusion of an International Convention to ensure the suppression of terrorist acts at a global level, and prepared a revised text of the draft articles on terrorism.[7] This text was further revised by the Fifth International Conference, held in Madrid on October 1934. The Sixth International Conference, held in 1935 in Copenhagen, recommended to states the inclusion of a new section in their criminal codes devoted to "outrages endangering the community or creating a state of terror" to criminalize those offences designed to provoke a change in the public authorities, to obstruct their operation, or to disturb international relations.[8]

The first official initiative to draft a convention on terrorism was made in 1934. Following the assassination of King Alexander I of Yugoslavia and of Mr. Louis Barthou, president of the Council of the French Republic, in Marseilles, on October 9th,

---

[5] U.N. Secretariat, *Study prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1927*, ¶ 22, n.2, U.N. Doc. A/C.6/418 (Nov. 2, 1972) [hereinafter 1972 Secretariat Study].

[6] Third International Conference for the Unification of Penal Law, Brussels, June 26 – 30, 1930, "Articles on terrorism," art. 2. in 1972 Secretariat Study, *supra* note 5, ¶ 23.

[7] Fourth International Conference for the Unification of Penal Law, Paris, Dec. 27 – 30, 1931, "Articles on terrorism," in 1972 Secretariat Study, *supra* note 5, ¶ 24.

[8] Sixth International Conference for the Unification of Penal Law, Copenhagen, Aug. 31 – Sept. 3, 1935, "Terrorism," in 1972 Secretariat Study, *supra* note 5, ¶ 26.

1934, France proposed to the Council of the League of Nations a series of principles that, in its view, could serve as the basis for a convention for the suppression of crimes with a political or terrorist purpose. Acting on this proposal, the Council established a committee of experts to draft a convention on terrorism. That expert committee met twice, once in 1935 and once in 1936, and submitted to the Assembly of the League of Nations two draft conventions: one on the prevention and punishment of terrorism and another on the creation of an international criminal court. The Assembly then convened the League of Nations' International Conference on the Repression of Terrorism, a meeting of plenipotentiaries to finalize the negotiation of both legal instruments. This Conference adopted, on November 16, 1937, the Geneva Convention for the Prevention and Punishment of Terrorism.[9] The Conference also adopted the Convention on for the Creation of an International Criminal Court, as an optional mechanism to try persons accused terrorist acts under the 1937 Terrorism Convention.[10]

Article 1.2 of the 1937 Convention defined terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons, or the general public."[11] The Convention reaffirmed the duty of every state party to refrain from encouraging terrorist acts against other states, to prevent those acts, to criminalize them in their domestic legislation, and to make them extraditable.[12] However, upon the insistence of the United Kingdom, Norway, Netherlands, and Finland, the Convention preserved the right of every state

---

[9] 1972 Secretariat Study, *supra* note 5, at 22 – 25, Perera, *supra* note 4, at 20-22.

[10] Perera, *supra* note 4, at 22, 36-39.

[11] League of Nations, Convention for the Prevention and Punishment of Terrorism, art. 1.2, *opened for signature* Nov. 16, 1937, in 1972 Secretariat Study, *supra* note 5, annex 1.

[12] *Ibid*., arts. 1, 3, 8.

party not to extradite if it considered that the crime, in the specific circumstances, was a political offence.[13] It seems, however, that states were not very satisfied with this outcome. At the onset of the Second World War, the 1937 Convention had been signed by 24 states but ratified only by 1, India. Thus, it did not reach the necessary number of ratifications to enter into force. After the war, there were no treaty actions regarding this instrument. Consequently, by 1972, the United Nations' Secretary-General concluded that the 1937 Convention had become obsolete.[14]

B) Failing to agree: 1972 – 1977

The possibility of negotiating a convention against terrorism at the United Nations was raised, for the first time, in 1972. At the time, however, there were major differences not only on the scope and objectives of the proposed instrument but also on the procedure to be followed. The lack of agreement on these questions made it impossible to negotiate such a convention at the time.

On 8 September 1972, the then Secretary-General, Kurt Waldheim, alarmed by a sharp increase in the number of terrorist attacks and, in particular, by the massacres at the Munich Olympics[15] and at Israel's Lod Airport,[16] proposed that the General Assembly

---

[13] *Ibid*., art. 8.4; Perera, *supra* note 4, at 26 - 30.

[14] 1972 Secretariat Study, *supra* note 5, ¶ 62.

[15] On 5 September 1972, eight Palestinian guerrillas broke into the Israeli team's quarters at the Munich Olympic Games, killing two athletes and taking nine others as hostages. They demanded the release of 200 Palestinians imprisoned in Israel. Israel rejected this demand. Latter, in a rescue attempt, the German police opened fire against the terrorists, when both they and their hostages were being transferred to the airport for safe passage. Five terrorists and the nine hostages were killed. MIPT Terrorism Knowledge Base, "Black September attacked other targets (Sept. 5, 1972, Federal Republic of Germany)," database on line available from *http://www.tkb.org/Indicent.jsp?incID=939*, accessed Mar. 10, 2006.

[16] On 31 May 1972, three Japanese gunmen, belonging to the Japanese Red Army and working in coordination with the Popular Front for the Liberation of Palestine, opened fire on arriving passengers at

should inscribe in its agenda a new item entitled: "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms."[17] While he suggested that the discussion should focus on possible new measures to prevent terrorism and violence, he also noted that it was necessary to study the underlying causes of the complex phenomenon of terrorism, which, in his view, "in many cases lie in the misery, frustration, grievance and despair so deep that men are prepared to sacrifice human lives, including their own, in the attempt to effect radical changes."[18] He stressed further that his proposal was not intended to affect the existing principles applicable to colonial or dependent peoples seeking independence and liberation.[19]

Even before the new item was included in the agenda of the General Assembly, it was contentious.[20] Western delegations, such as Sweden, Canada, and the United Status, firmly supported the inclusion of the new item, as a first step to address the global threat of terrorism.[21] Meanwhile, Arab delegations and members of the Eastern bloc, including

---

Tel Aviv's Lod Airport, killing 25 persons and injuring 76 others. Two terrorists were killed and one was captured. MIPT Terrorism Knowledge Base, "Japanese Red Army (JRA) and Popular Front for the Liberation of Palestine (PFLP) attacked airports and airlines target (May 31, 1972, Israel)," database on line available from http://www.tkb.org/Indicent.jsp?incID=430, accessed Mar. 10, 2006.

[17] U.N. Secretary-General, *Request for the inclusion of an additional item in the agenda of the Twenty-Seventh Session*, U.N. Doc. A/8791 (Sept. 8, 1972) in U.N. GAOR 27th Sess. Annex No. 92, at 1.

[18] U.N. Secretary-General, *Statement at the 199th Meeting of the General Comm., on 20 September 1972,* U.N. Doc. A/8791/ADD.1 (Sept. 20, 1972) in U.N. GAOR 27th Sess. Annex No. 92, at 2.

[19] *Ibid*.

[20] 1972 U.N.Y.B. 640; M. J. Peterson, "Using the General Assembly," in *Terrorism and the UN, before and after September 11*, ed. Jane Boulden and Thomas G. Weiss (Bloomington: Indiana University Press, 2004)178-179; Perera, supra note 4, at 84.

[21] U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 164 – 182, 286 - 288, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Democratic Yemen, Cuba, Jordan and the Soviet Union, opposed it, fearing that it could be used to suppress national liberation movements.[22] Kuwait, for instance, argued that:

> Terrorism is a boundless broad word that envelops aspects of highly cherished values upon which many nations represented here pride themselves. An act of terrorism in the interpretation of one may be a Napoleonic act of heroism to another. (…) In many instances of national struggle, terrorism generated greatness. In many chapters of human struggle the two were inextricably interwoven.[23]

In their view, even before the item was allocated to the Sixth Committee, it was necessary to study the definition of terrorism to distinguish it from self determination and to avoid a debate that could prejudice the rights of freedom fighters.[24] Similarly, Saudi Arabia proposed amending the title of the new item by adding the words: "… and a study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievances and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes."[25] This formulation, taken, in fact, from the Secretary-General's statement, was intended to give the discussions an overt anti-colonialist connotation and make them it more acceptable for developing countries.[26] In the long term, however, the Saudi amendment had the effect of shifting the focus of the debate from the consideration of discrete preventive measures against terrorism to the discussion of broad political questions. The Saudi

---

[22] *Ibid.,* ¶¶ 185 – 206, 289 – 292, 314 - 330.

[23] Kuwait, "Statement" U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 307, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

[24] *Ibid.,* ¶¶ 308 - 309.

[25] Saudi Arabia "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 136 – 138, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

[26] See *e.g*. Egypt, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 342, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

amendment was adopted by 42 votes in favor, 35 against and 44 abstentions.[27] The new item itself was included in the agenda by 66 votes in favor, 27 against and 33 abstentions.

The new item was allocated to the Sixth Committee. During the debate, many Western and Latin American delegations argued that terrorism was becoming an increasingly pressing problem requiring urgent international action. From that perspective, the United States proposed the negotiation of a broad convention against terrorists. The United States' delegation then submitted a draft for such a convention and advocated convening urgently a conference of plenipotentiaries to conclude it. There was, however, no agreement on the American proposal. The Soviet Union felt that it was premature to convene, at that time, a conference of plenipotentiaries and suggested that the International Law Commission could be invited to prepare a draft for such instrument. Algeria argued against a hasty political decision, noting that it was necessary first to study the origin of the various forms of terrorism to determine their legality or illegality. Senegal denounced the whole discussion as an effort to punish those who sought to change the status quo imposed by racist minorities and colonial opportunists. Similarly, Syria denounced the use of the term terrorism by Israel as an effort to repress the Palestinian resistance movement. China rejected the proposal to negotiate an international convention on terrorism on the basis that it opposed any effort to condemn the Palestinian, Arab, and African peoples under the pretext of combating terrorism. It stressed that, in its view, the suppression of terrorist acts fell solely within the sovereign jurisdiction of the country where those acts were committed. Finally, Lebanon argued

[27] U.N. GAOR 27th Sess. 2037 plen. mtg. ¶ 156, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

that the problem of international terrorism should be considered as a whole, without separating its effects from its underlying causes.[28]

After consultations with the most interested delegations, the chairman of the Sixth Committee concluded that, while there was agreement in principle to condemn international terrorism, this could not be done without defining the phenomenon more precisely. He also noted that there was no agreement on whether it was possible to address the effects of terrorism separately from its causes.[29] For its part, the Secretary-General submitted a report noting that, at that time, the international community had already adopted several treaties aimed, directly or indirectly, at the suppression of certain forms of terrorism,[30] such as the 1963 Tokyo Convention Acts Committed on Board Aircraft;[31] the 1970 Hague Convention on the Unlawful Seizure of Aircraft;[32] and the 1971 Montreal Convention on the Safety of Civil Aviation.[33]

The United States then submitted a draft resolution to launch negotiations both on a series of new sectoral treaties and on a comprehensive convention against terrorism. The American draft, first, expressed grave concern at the increased frequency of terrorist acts; second, requested the International Civil Aviation Organization to draft a Convention for enforcing the principles and obligations embodied in the Tokyo, Hague and Montreal Conventions; third, called upon all states to become parties to the

---

[28] 1972 U.N.Y.B. 641 – 643.

[29] *Ibid*. at 641; Perera, *supra* note 4. at 48.

[30] 1972 U.N.Y.B. 641.

[31] Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 704 U.N.T.S. [hereinafter Tokyo Convention].

[32] Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 869 U.N.T.S. 105 [hereinafter Hague Convention].

[33] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 974 U.N.T.S. [hereinafter Montreal Convention].

Convention on the Prevention and Punishment of crimes against Diplomatic Agents, then being drafted by the International Law Commission; and, fourth, decided to convene, in early 1973, a conference of plenipotentiaries to consider the adoption of a comprehensive convention against international terrorism.[34]

A competing draft resolution was submitted by Zambia and 15 other Non-Aligned countries.[35] Instead of launching the negotiation of new legal instruments against terrorism, this draft sought to establish an *Ad Hoc* Committee to consider recommendations on how to promote cooperation for the elimination of all forms of violence which endanger human lives or fundamental freedoms. On the one hand, the subject matter of this draft was much broader than the concept of terrorism put forward in the American proposal because it included the question of state-terrorism. Meanwhile, on the other hand, the goals of this text were far less ambitious, as it did not seek the adoption of new legally binding norms. Moreover, the Non-Aligned draft subjected any possible measures against terrorism to the inalienable right to self-determination and independence of peoples under colonial and racist regimes. Finally, it urged states to find just and peaceful solutions to the underlying causes of terrorism.[36]

A third draft was presented by Italy and 13 other Western and Latin American delegations[37] as an effort to find a compromise solution. They suggested that the General

---

[34] United States, "Draft resolution," U.N. Doc. A/C.6/L.851 (Dec. 8, 1972) in U.N.G.A. Sixth Comm. *Report,* ¶ 9, U.N. Doc. A/8969 (Dec. 16, 1972) *reprinted in* U.N. GAOR 27th Sess. Annex No. 92, at 2 – 9 [hereinafter 1972 Sixth Comm. Report]; 1972 U.N.Y.B. 643 - 644.

[35] Afghanistan, Algeria, Cameroon, Chad, Congo, Equatorial Guinea, Guyana, India, Kenya, Madagascar, Mali, Mauritania, Sudan, and Yugoslavia.

[36] Zambia *et al.*, "Draft resolution," U.N. Doc. A/C.6/L.880 in 1972 Sixth Comm. Report, *supra* note 34, ¶ 11; U.N.Y.B. 645 - 646.

[37] Australia, Austria, Belgium, Canada, Costa Rica, Guatemala, Honduras, Iran, Japan, Luxembourg, New Zealand, Nicaragua, and the United Kingdom.

Assembly should request the International Law Commission to prepare, with the highest priority, a draft convention on measures to prevent international terrorism, paying particular attention to those violent acts that affect countries and persons that are not parties to an armed conflict and to those acts that affect means of international transportation and communication. Such draft a convention was to be submitted to the General Assembly the following year, so that the Assembly could refer it to a conference of plenipotentiaries for its finalization and adoption. In parallel, an *Ad Hoc* Committee was to be established to study the underlying causes of terrorism. Finally, all states were called upon to fulfill their obligation to refrain from organizing, instigating, assisting, or participating in acts of international terrorism.[38]

On December 11th, 1972, as there was no agreement on any of these draft resolutions, they were put to the Sixth Committee for action. After a successful procedural move to give priority to the Zambian text, it was adopted by 76 votes in favor, mostly from Non-Aligned and Eastern European states, 34 votes against, and 16 abstentions.[39] Thereafter, no action was taken on the other two drafts. Thus, the proposal to negotiate a new convention against terrorism, contained in both the American and the Italian texts, was defeated. Finally, on December 18th, 1972, the Non-Aligned proposal was adopted, also by a vote, by the General Assembly as resolution 3034(XXVII).[40]

The 1972 General Assembly resolution on terrorism established an *Ad Hoc* Committee, composed of 35 states selected by the Assembly itself, to consider means to promote cooperation for the elimination of all forms of violence. That committee met in

---

[38] Italy *et al*., "Draft resolution," U.N. Doc. A/C.6/L.879/Rev.1 orally amended (Dec. 11, 1972) in 1972 Sixth Comm. Report, *supra* note 34, ¶¶ 10, 12; 1972 U.N.Y.B. 644 - 645.

[39] 1972 Sixth Comm. Report, *supra* note 34, ¶ 18.

[40] 1972 U.N.Y.B. 647.

New York from 16 July to 11 August 1973. Once again, the idea of adopting one or several counter-terrorism legal instruments at the United Nations was put forward. The United Kingdom proposed that the committee should recommend to the General Assembly the adoption, as a matter of priority, of an international convention for the suppression of certain acts of international terrorism based on the principle of "extradite or prosecute," building upon the instruments already adopted within the UN system.[41] The Soviet Union, while supporting the negotiation of such an instrument, argued that it should not jeopardize the right of self-determination. Meanwhile, the United States submitted, once again, a complete draft of a general convention on terrorism. The American draft did not contain an all-encompassing definition of terrorism but focused instead on specific offences, such as murder, causing serious bodily harm, and kidnapping, if they had some international element and if they were intended to damage the interests or to obtain concessions from a state or an international organization.[42] Conversely, other delegations were of the view that, instead of drafting a comprehensive convention, it was better to draft a series of conventions relating to specific forms of terrorism which were considered particularly serious. In this sense, the Non-Aligned Group proposed that there could be greater cooperation in the elaboration of new international instruments relating to specific aspects of terrorism not covered by the pre-existing conventions.[43] Nevertheless, although there was an apparent agreement on the

---

[41] United Kingdom, "Draft proposal," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 28, UN Doc. A/9028 (Aug. 11, 1973) [hereinafter 1973 Ad Hoc Comm. Report].

[42] United States, "Working paper: Draft Convention for the Prevention and Punishment of Certain Acts on International Terrorism," art. 1, 1973 Ad Hoc Comm. Report, *supra* note 41, at 29.

[43] Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia,

advisability of adopting new legal instruments to deal with terrorism, major differences of view on the need to address the root causes of terrorism and on the concept of terrorism itself precluded the adoption of any decision.[44]

The first obstacle for agreeing to launch negotiations on new instruments against terrorism was the differences of opinion on whether it was possible to address the effects of terrorism without addressing, either first or at the same time, its root causes. For some delegations, like Syria and Tanzania, the study of the causes of international terrorism was a precondition to the consideration of any measures to combat it. Yemen and Guinea went further, arguing that it would be a serious mistake to seek to eliminate international terrorism through punitive measures without having identified previously its causes. For these delegations, once colonial domination, apartheid, racial discrimination, and the interference in internal affairs by other states ceased to exist, international terrorism would disappear automatically. These delegations could not accept that the *Ad Hoc* Committee recommend to the General Assembly the development of new criminal law norms without addressing simultaneously the root causes of terrorism, such as the definitive elimination of all situations of colonial domination and the settlement of situations of foreign occupation.[45]

The second obstacle was the differences of opinion on the concept of terrorism itself. The United States, France, and Iran, among others, argued that the work should concentrate on the acts of violence by individuals or groups not involving, directly or

---

Zaire, and Zambia), "Draft proposal on measures for the prevention on international terrorism," 1973 Ad Hoc Comm. Report, *supra* note 41, at 26.

[44] 1973 U.N.Y.B. 777–778; Perera, *supra* note 4. at 53–54.

[45] 1973 Ad Hoc Comm. Report, *supra* note 41, at 19; 1973 U.N.Y.B. 777 – 778. See also Non-Aligned Group in the Ad Hoc Comm., *supra* note 43, at 25–26.

indirectly, state action.[46] In contrast, Algeria defined as terrorist, *inter alia,* the use – by states - of torture, mass imprisonments, massacres, reprisals, bombing of civilian populations, the use of defoliants and the destruction of the economic structure of a country when pursuing a policy of expansionism and hegemony.[47] In the same vein, the Non-Aligned Group argued that international terrorism included any violent or repressive acts committed by a colonial, racist, or alien regime against a people struggling for their self-determination and human rights, as well as those violent acts committed by individuals or groups for private gain. Nonetheless, the Non-Aligned Group excluded from its proposed concept of terrorism those acts of violence committed pursuant to the inalienable right of self-determination of peoples under colonial or racist regimes or under alien domination.[48] The United Kingdom objected to such exclusion noting that the legitimacy of a cause does not legitimize, by itself, the use of violence against the innocent.[49] The differences of approach were not only conceptual but also methodological. While France and Algeria advocated a Cartesian approach, leading to the formulation of an abstract conceptual definition that would have delimited clearly the notions involved, Canada and the United States argued that drafting, a priori, such a

---

[46] United States of America, *supra* note 42, art. 1; France, "Draft proposal," 1973 Ad Hoc Comm. Report, *supra* note 41, at 21; Iran, "Draft proposal," 1973 Ad Hoc Comm. Report, *supra* note 41, at 22–23; 1973 U.N.Y.B. 778.

[47] Algeria, "Suggestion," 1973 Ad Hoc Comm. Report, *supra* note 41, at 22 - 23.

[48] Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire. and Zambia), "Draft proposal on the definition of international terrorism," 1973 Ad Hoc Comm. Report, *supra* note 41, at 21.

[49] 1973 Ad Hoc Comm. Report, *supra* note 41, at 7 – 8; 1973 U.N.Y.B. 778.

conceptual definition was unrealistic; they favored a pragmatic approach based on a list of concrete offences of a recognized terrorist nature.[50]

After four weeks of meetings, the *Ad Hoc* Committee was unable to agree on concrete recommendations for action by the General Assembly. Consequently, it decided simply to submit a summary of its deliberations to the Assembly for its further consideration.[51] That year, however, the Sixth Committee did not consider the *Ad Hoc* Committee's report, as it had allocated most of its time to the negotiation of the Convention on Internationally Protected Persons, which was adopted that same year.[52] Thus, it decided to postpone the discussion of the *Ad Hoc* Committee's report until 1974.[53] However, in 1974 and 1975, the consideration of the report was postponed again without any substantive discussion.[54] It seems that these deferrals were caused by the unwillingness of Western delegations to participate in a debate that focused more on the root causes of terrorism and on self-determination rather than on practical measure to combat it.[55]

In 1976, the Sixth Committee finally considered the 1973 report of the *Ad Hoc* Committee on International Terrorism. This time, western delegations were eager to discuss the question of terrorism in order to adopt the West Germany's proposal of

---

[50] 1973 Ad Hoc Comm. Report, *supra* note 41, at 11; 1973 U.N.Y.B. 777 - 778.

[51] 1973 Ad Hoc Comm. Report, *supra* note 41, at 20.

[52] 1973 U.N.Y.B. 772.

[53] *Ibid*. at 779.

[54] 1974 U.N.Y.B. 866 - 867; 1975 U.N.Y.B. 896.

[55] See Zaire, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 69th mtg. ¶¶ 16 - 18, U.N. Doc. A/C.6/31/SR.69 (Dec. 9, 1976); See also Peterson, *supra* note 20, at 179.

negotiating a convention against hostage-taking.[56] However, once the question of terrorism had been brought to the fore again, developing nations, led by Zaire and Saudi Arabia, took advantage of the opportunity. They argued that terrorism should not be dealt with in a fragmentary manner but as a whole, and they advocated renewing the mandate of the *Ad Hoc* Committee to do so.[57] At the very last moment and without any consultations, several Non-Aligned countries[58] submitted and pressed for the adoption of a draft resolution reaffirming the inalienable right of self-determination and independence of peoples under colonial occupation; condemning the repressive and terrorist acts by colonial, racist, and alien powers; and inviting the *Ad Hoc* Committee to meet again to continue its work. This text[59] was adopted with 86 votes in favor, 8 against, and 24 abstentions, with most western delegations arguing that it did not condemn terrorism adequately and that the references to self-determination and state-terrorism were inappropriate.[60] The United States, in particular, protested the reconvening of the *Ad Hoc* Committee which, in their view, had been a total failure due to the fact that its mandate contained material quite irrelevant to the prevention of terrorism.[61]

---

[56] U.N.G.A. Sixth Comm., Summary Record of the 55th mtg., U.N. GAOR 31st Sess. Sixth Comm. 55th mtg., U.N. Doc. A/C.6/31/SR.55 (Nov. 26, 1976). See *infra* section D.

[57] Zaire, *supra* note 55, at ¶¶ 15 – 18; Saudi Arabia, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 61st mtg. ¶¶ 1 - 6, U.N. Doc. A/C.6/31/SR.61 (Dec. 2, 1976).

[58] Algeria, Benin, Burundi, Democratic Yemen, Egypt, Equatorial Guinea, India, Indonesia, Lesotho, the Libyan Arab Republic, Mali, Niger, Nigeria, Sri Lanka, Sudan, Togo, Uganda, United Republic of Tanzania, Yemen, Yugoslavia, Zaire and Zambia. 1976 U.N.Y.B. 832.

[59] G.A. Res. 31/102, U.N. Doc. A/RES/31/102 (Dec. 15, 1976).

[60] Australia, Belgium, Canada, Israel, Japan, Netherlands, the United Kingdom, and the United States voted against. U.N. GAOR 31st Sess. Sixth Comm. 70th mtg., ¶¶ 39 – 46, 49, 52 – 53, 58, U.N. Doc. A/C.6/31/SR.70 (Dec. 10, 1976); 1976 U.N.Y.B. 833.

[61] United States, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 70th mtg., ¶ 22, U.N. Doc. A/C.6/31/SR.70 (Dec. 10, 1976).

The *Ad Hoc* Committee on Terrorism met again from 14 to 25 March, 1977. Once again, the questions of self-determination and state-terrorism dominated the debate. Non-Aligned countries, in particular, continued to advocate a comprehensive approach involving the formulation of an all-encompassing definition of terrorism, including state-terrorism, and for addressing – first and foremost - its root causes. Meanwhile, Uruguay, Sweden, and Canada, among others, suggested a sectoral approach, that is, that the committee identifies specific criminal acts on which the international community could elaborate further specific treaties to combat terrorism. In their view, given the insurmountable political differences on the broad conceptual questions, the best way to achieve substantial progress was to avoid those questions completely and to focus instead on concrete forms of terrorism. For its part, the United States put forward, once more, the idea of drafting a convention addressing a wide range of terrorist acts, but it did not receive any support. There was, however, no agreement, due to the conflicting approaches proposed. Consequently, the committee had to limit itself to submit, once more, to the General Assembly a summary of its debates.[62]

Later that year, during the Sixth Committee debate, India endorsed the sectoral approach and proposed the adoption of a convention or code to prevent and deter some specific and typical cases of terrorism. Leading Non-Aligned and Socialist nations objected. Some[63] stressed that any such instrument should provide adequate safeguards for national liberation movements. Others[64] insisted that what was needed was a

---

[62] U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 32nd Sess. Supp. (no. 37), UN Doc. A/32/37 (Mar. 25, 1977) [hereinafter 1977 Ad Hoc Comm. Report]; 1977 U.N.Y.B. 968.

[63] Cuba, Iran, Libya, and the USSR.

[64] Bangladesh, Oman, Somalia, and Syria.

comprehensive definition of terrorism, while a third group[65] called for a study of the causes of terrorism.[66] At the end of the debate, 26 Non-Aligned countries[67] submitted a draft resolution that followed closely the language of the text adopted in 1976. The key difference was that, this time, the General Assembly requested the *Ad Hoc* Committee to study, first, the underlying causes of terrorism and, then, to recommend practical measures to combat it.[68] Thus, priority was to be given to the broad political and philosophical question of the root causes of terrorism over the adoption of practical measures to combat it.[69] On 16 December, 1977, this resolution was adopted, over the objections of many western delegations, with 91 votes in favor, 9 against, and 28 abstentions.[70]

C) A parallel track: 1971 – 1979

Surprisingly, between 1971 and 1979, while the General Assembly was deadlocked on the item "Measures to prevent terrorism which endanger or take innocent human lives or jeopardize fundamental freedoms and a study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievances and despair and which cause some people to sacrifice human lives, including their own,

---

[65] Congo, Czechoslovakia, El Salvador, Nicaragua, Pakistan, Qatar, and Yemen.

[66] 1977 U.N.Y.B. 969 – 970.

[67] Afghanistan, Algeria, Burundi, Congo, Democratic Yemen, Egypt, Ethiopia, Ghana, Guinea, Kenya, Lao People's Democratic Republic, Lesotho, the Lybian Arab Jamahiriya, Mali, Morocco, Niger, Nigeria, Somalia, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Yemen, Zaire, and Zambia,

[68] G.A. Res. 32/147, ¶ 7, U.N. Doc. A/RES/32/147 (Dec. 16, 1977).

[69] Perera, supra note 4, at 56.

[70] Austria, Belgium, Canada, Israel, Japan, Luxemburg, Netherlands, United Kingdom, and the United States voted against. 1977 U.N.Y.B. 969, 971.

in an attempt to effect radical changes," it worked fruitfully on two international conventions addressing two discrete forms of terrorism, and avoided some of the conceptual and political pitfalls that plagued the broader discussion. In particular, between 1971 and 1973, the General Assembly negotiated and adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,[71] while, between 1976 and 1979, it negotiated and adopted the International Convention against the Taking of Hostages.[72] It seems that the success of these negotiations was based precisely on the fact that their subject matter was not framed in the context of the broader question of terrorism.

The immediate background to the negotiation of the Convention on Internationally Protected Persons was an exchange of notes between the Permanent Representative of the Netherlands to the United Nations, the president of the Security Council, and the chairman of the International Law Commission. Between 1968 and 1970 there was a sharp increase in the number of violent acts against diplomats,[73] including, most notably, the kidnapping of the United States ambassador in Brazil,[74] as

---

[71] Convention on Internationally Protected Persons, *supra* note 1.

[72] Hostages' Convention, *supra* note 2.

[73] MIPT Terrorism Knowledge Base, "Incident Analysis Wizard," database on line available from *www.tkb.org/ChartModule.jsp*, searched on Mar. 10. 2006.

[74] On 3 September 1969, members of the Revolutionary Movement of the 8th (MR-8) and the "Aliança Libertadora National" (ALN) kidnapped the United States' Ambassador to Brazil, in Rio de Janeiro. The kidnappers demanded the release of 15 prisoners jailed by the government and the publication of a political manifesto. On 5th September, the Government authorized the publication of the manifesto by the newspapers and agreed to the release of the prisoners. After the prisoners were flown to Mexico, the Ambassador was released. This incident triggered a wave of kidnappings against diplomats in Latin America. "Alianca Libertadora Nacional (ALN) and Revolutionary Movement of the 8th (MR-8) attacked diplomatic target (Sept. 4, 1969, Brazil)," in MIPT Terrorism Knowledge Base, [database on line] available from *http://www.tkb.org/Indicent.jsp?incID=308*, accessed on Mar. 13, 2006.

well as a grenade attack against the Israeli Embassy in The Hague.[75] Reacting to this situation, on 5 May 1970, the Permanent Representative of the Netherlands to the United Nations, Ambassador R. Fack, wrote to the president of the Security Council expressing his government's concern that the increasing number of attacks against diplomats could endanger the maintenance of international peace and security. The Ambassador asked the president of the Security Council to inform both the members of the Council and the relevant organs of the United Nations of his government's concern.[76] The president of the Council then transmitted the letter of the Dutch Ambassador to the International Court of Justice and to the International Law Commission.[77] This referral of the Netherlands's request to the International Law Commission is noteworthy. Since the commission is a technical, expert body that assists the General Assembly on the codification and progressive development of international law by preparing the first draft of new treaties,[78] by referring the Netherlands's request to it, the president of the Security Council was implicitly suggesting that the wave of terrorist acts against diplomats could be addressed by adopting a new legally binding instrument.

In his reply to the president of the Security Council, the chairman of the International Law Commission noted that the question of the inviolability and protection

---

[75] On 8 September 1969, the Popular Front for the Liberation of Palestine threw hand grenades at the Israeli Embassy in The Hague. There were no injuries. "Popular Front for the Liberation of Palestine (PFLP) attacked diplomatic target (Sept. 8, 1969, Netherlands)," in MIPT Terrorism Knowledge Base, [database on line] available from *http://www.tkb.org/Indicent.jsp?incID=310*, accessed on Mar. 10, 2006.

[76] R. Fack, Permanent Representative of the Netherlands to the United Nations, letter to Amb. Jacques Kosciusko-Morizet, President of the Security Council (May 5, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 273.

[77] Jacques Kosciusko-Morizet, President of the Security Council, letter to Mr. T. O. Elias, Chairman of the International Law Commission, (May 14, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 273.

[78] See Carl-August Fleischhauer, "Article 13," in *The Charter of the United Nations: A Commentary,* eds. Bruno Simma *et al.*, (Oxford: Oxford University Press, 1995), 268 – 271.

of diplomatic agents had already been addressed by the Commission in its previous work on the Vienna Convention on Diplomatic Relations,[79] and that it expected to continue considering such issues in the future.[80] Later that year, during the Sixth Committee debate, the Dutch delegation, referring to the exchange of notes, suggested that in view of the sharp increase in the number of attacks against diplomatic personnel, it might be appropriate to include this issue as one of the possible topics for further work by the Law Commission.[81] At the time, however, this idea attracted little attention, being supported only by the Philippines and Pakistan.[82] The International Court of Justice, for its part, did not take any action in response to the letter of the president of the Security Council.

The following year, Mr. Richard Kearney, the American expert at the International Law Commission, recalling the exchange of notes, proposed the inclusion in the Commission's agenda the preparation, as a matter of high priority, of a set of articles on the protection of diplomats. He argued that that subject was of direct concern since the Commission had, so far, worked mainly on the development of consular and diplomatic law,[83] and that it would respond to the growing number of murders and kidnappings of diplomats for political reasons. He further proposed that the commission

---

[79] Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95.

[80] T. O. Elias, Chairman of the International Law Commission, letter to the President of the Security Council (June 12, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 274.

[81] Netherlands, "Statement" U.N. GAOR 25th Sess. Sixth Comm. 1187th mtg. at 56, U.N. Doc. A/C.6/SR.1187 (Oct. 1, 1970).

[82] U.N. GAOR 25th Sess. Sixth Comm. 1192nd mtg., at 91, U.N. Doc. A/C.6/SR.1192 (Oct. 7, 1970); U.N. GAOR 25th Sess. Sixth Comm. 1193rd mtg., at 93, U.N. Doc. A/C.6/SR.1193 (Oct. 8, 1970).

[83] The International Law Commission worked on the topic of "diplomatic intercourse and immunities" from 1955 to 1958, leading to the adoption of the Vienna Convention on Diplomatic Relations at the United Nations Conference on Diplomatic Intercourse and Immunities, which met in Vienna from March 2nd to April 14th, 1961. In parallel, from 1957 to 1961, the Commission studied the topic "consular intercourse and immunities," which concluded with the adoption of the Vienna Convention on Consular Relations by the 1963 Vienna Conference on Consular Relations. See Fleischhauer, *supra* note 78, at 270.

could prepare such articles that same year. Other members of the commission, while recognizing the importance of the question proposed, argued however that the commission should not embark on such a task without hearing views of the General Assembly and that the commission had to focus first on the topics that had already been approved by the Assembly.[84] After some debate, the commission decided to express, in its 1971 report, its readiness to prepare, during its 1972 session, a set of draft articles on crimes such as murder, kidnapping, and assaults upon diplomats and other persons entitled to special protection under international law, if the General Assembly approve it.[85]

At the Sixth Committee, the commission's proposal was supported by most delegations.[86] Uruguay was particularly enthusiastic, as it had suffered a wave of terrorist attacks against diplomats on its territory.[87] The Uruguayan delegation expressed

---

[84] U.N. Int'L. Comm. 23rd Sess. Summary records, (Apr. 26 – July 30, 1971), 1971 1. Y.B. Int'L. Comm. at 3 - 4, 363 – 365, 372 – 381.

[85] U.N. Int'L. Comm., *Report to the General Assembly*, ¶¶ 133 – 134, U.N. Doc. A/8410/Rev.1 (1971), U.N. GAOR 26th Sess. Supp. No. 10; 1971 U.N.Y.B. 592 - 593.

[86] The United States, Israel, Denmark, Spain, Malaysia, India, Colombia, Turkey, Japan, El Salvador, Canada, and Mali. U.N. GAOR 26th Sess. Sixth Comm. 1255th mtg., at 59, U.N. Doc. A/C.6/SR.1255 (Oct. 8, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1258th mtg., at 69, U.N. Doc. A/C.6/SR.1258 (Oct. 13, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1259th mtg., at 77, U.N. Doc. A/C.6/SR.1259 (Oct. 15, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1260th mtg., at 82, U.N. Doc. A/C.6/SR.1260 (Oct. 15, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1261st mtg., at 91 - 92, U.N. Doc. A/C.6/SR.1261 (Oct. 19, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1262nd mtg., at 99, U.N. Doc. A/C.6/SR.1262 (Oct. 19, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1263rd mtg., at 103, U.N. Doc. A/C.6/SR.1263 (Oct. 19, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1264th mtg., at 110 - 111, U.N. Doc. A/C.6/SR.1255 (Oct. 20, 1971).

[87] On 31 July 1970, the "Tupamaros" group kidnapped, in Uruguay, two advisors of United States Agency for International Development (USAID) and the Brazilian Consul. A simultaneous attempt to capture the second secretary and the cultural attaché at the United States' embassy failed. The terrorists demanded the release of 150 prisoners held by the Uruguayan government. The government refused and arrested several suspects. In retaliation, on the 10th of August, one of the USAID advisors was killed. On 8 January 1971, the Tupamaros kidnapped the British ambassador to Uruguay and demanded again the release of the same 150 prisoners. Eight month later, when 106 of those prisoners escaped from jail, the ambassador was released. Finally, on 6 April 1971, the residence of the United States' ambassador in Montevideo was attacked with a bazooka. MIPT Terrorism Knowledge Base, *"Tupamaros attacked diplomatic target (July 31, 1970, Uruguay)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=528, accessed on Mar. 10, 2006; MIPT Terrorism Knowledge Base, "Tupamaros attacked diplomatic target (July 31,

concern for the growing number of diplomats who had been kidnapped to blackmail their governments and recalled that, earlier that year, the Organization of American States had adopted a convention[88] on the same subject matter.[89] It then circulated two documents: a draft convention on the protection of diplomats, based on the OAS text; and a draft resolution formally requesting the International Law Commission to prepare, during the following year, a set of draft articles on this matter.[90] For their part, New Zealand, Australia, and the United Kingdom were more cautious in their approach. They expressed some doubts on whether a new convention would be useful, preferring instead a political declaration.[91] Only Zambia and Cuba were against the proposal. Zambia argued that a new legal instrument was not necessary; that what was needed was better implementation of the then existing criminal law.[92] Cuba argued that a new convention providing only for repressive measures would not address the social, economic, and political causes that underlie acts of violence against governmental representatives. Moreover, it argued, the new convention would not be able to stop the revolutionary tide that was causing havoc

---

1970, Uruguay)" database on line available from http://www.tkb.org/Indicent.jsp?incID=526, accessed on Mar. 10, 2006); MIPT Terrorism Knowledge Base, "Tupamaros attacked diplomatic target (Jan. 8, 1971, Uruguay)" database on line available from http://www.tkb.org/Indicent.jsp?incID=619, accessed on Mar. 10, 2006); MIPT Terrorism Knowledge Base, "Unknown group attacked diplomatic target (Apr. 6, 1971, Uruguay)" database on line available from http://www.tkb.org/Indicent.jsp?incID=672, accessed on Mar. 10, 2006.

[88] OAS, Convention to prevent and punish acts of terrorism taking the form of crimes against persons and related extortion that are of international significance, *concluded on* Feb. 2, 1971, OAS Official records OEA/Ser.A/17, O.A.S.T.S. No. No.37, 1438 U.N.T.S.; See also Perera, supra note 4, at 133 - 137.

[89] U.N. GAOR 26th Sess. Sixth Comm. 1259th mtg., at 75, U.N. Doc. A/C.6/SR.1259 (Oct. 15, 1971).

[90] Uruguay, "Draft resolution," U.N. Doc. A/C.6/L.825, in U.N.G.A. Sixth Comm. *Report*, UN Doc. A/8537, ¶ 6 (Nov. 29, 1971), U.N. GAOR 26th Sess. Annex No. 88.

[91] U.N. GAOR 26th Sess. Sixth Comm. 1260th mtg., at 86, U.N. Doc. A/C.6/SR.1260 (Oct. 15, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1261st mtg., at 93, U.N. Doc. A/C.6/SR.1261 (Oct. 19, 1971); U.N. GAOR 26th Sess. Sixth Comm. 1263rd mtg., at 104, U.N. Doc. A/C.6/SR.1263 (Oct. 19, 1971).

[92] U.N. GAOR 26th Sess. Sixth Comm. 1265th mtg., at 115, U.N. Doc. A/C.6/SR.1265 (Oct. 21, 1971). France shared Zambia's approach, that what was needed was the implementation of the existing norm, but it did not objected to the proposal, See U.N. GAOR 26th Sess. Sixth Comm. 1280th mtg., ¶ 9, U.N. Doc. A/C.6/SR.1280 (Nov. 12, 1971).

to the "establishment" in many Latin-American countries. For Cuba, the new treaty would just serve as an instrument for political propaganda and as pretext for increased repression.[93] It is noteworthy that, apart from Cuba, no delegation raised at the time the questions of self-determination and of the root causes of terrorism.

By the end of the Sixth Committee session, 16 delegations, including Uruguay, introduced a new draft resolution requesting, *inter alia*, that the International Law Commission prepare, as soon as possible and in light of the observations made by states, a set of draft articles on the question of the protection and inviolability of diplomatic agents.[94] This resolution was adopted on 12 November 1971.[95] Cuba, though, asked for a separate vote on the section of the resolution referring to the protection of diplomatic personnel. 70 delegations voted in favor, 13 abstained and only 1, Cuba, voted against.[96] The resolution, as a whole, was adopted at the plenary of the General Assembly by 107 votes in favor to none against.[97]

At its 1972 session, the International Law Commission prepared 13 draft articles on the protection and inviolability of diplomatic agents. These articles contained a list of criminal acts that states should punish, if committed against diplomats or other persons entitled to special protection under international law, and enshrined the principle that every state party had either to prosecute or to extradite any person accused of committing

---

[93] Cuba, "Statement," U.N. GAOR 26th Sess. Sixth Comm. 1280th mtg., ¶ 6, U.N. Doc. A/C.6/SR.1280 (Oct. Nov. 12, 1971).

[94] Canada, Central African Republic, Cyprus, Egypt, Finland, Greece, India, Iran, Japan, Poland, Thailand, Tunisia, Turkey, United States, Upper Volta, and Uruguay, "Draft resolution" U.N. Doc. A/C.6/826, 1971 U.N.Y.B. 594.

[95] G.A. Res. 2780 (XXVI), U.N. Doc. A/8536 (Dec. 3, 1971).

[96] U.N. GAOR 26th Sess. Sixth Comm. 1280th mtg., at 192, U.N. Doc. A/C.6/SR.1280 (Nov. 12, 1971); U.N.G.A. Sixth Comm., *Report*, at 23, Doc. A/8537, in U.N. GAOR 26th Sess. Annexes No. 88.

[97] 1971 U.N.Y.B. 594 - 595.

those crimes. Once again, the question of self-determination did not play a major role either at the International Law Commission's discussions or in the states' comments. The question of whether political asylum could be given to those who take part in acts against diplomats was far more prominent. Regarding the general approach of the convention, the Netherlands argued that it should focus on specific acts of violence and not on all possible forms of terrorism.[98] Similarly, Canada argued that the new treaty should have a limited scope, avoiding areas of international law which are ill defined and controversial.[99] This was the approach followed by the commission.

The text prepared by the International Law Commission was submitted to the General Assembly in the fall of 1972. The Assembly then decided to consider those articles at its 1973 session, after states had enough time to study them, with a view to finalizing the convention. While there were differences on the best procedure to follow, the resolution on this matter was adopted, as a whole, by consensus.[100] Finally, in the fall of 1973, the Sixth Committee considered the draft articles proposed by the International Law Commission and prepared a complete text of the convention. At this stage, the relationship between the crimes against diplomats and the struggle for self-determination became prominent. On 15 November 1973, 35 African and Middle Eastern countries[101] proposed a new article stating that "no provision of the new convention shall be

---

[98] U.N.G.A., *Observations of Member States on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law*, U.N. Doc. A/CN.4/253, and Add. 1 – 5, in 1972 2. Y.B. Int'L. Comm. 329, at 342.

[99] *Ibid*., at 332.

[100] G.A. Res. 2927 (XXVII) (Nov. 28, 1972); 1972 U.N.Y.B. 636 - 637.

[101] Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo, Dahomey, Democratic Yemen, Egypt, Equatorial Guinea, Ethiopia, Ghana, Guinea, Kenya, Liberia, Libyan Arab Republic, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Togo, Tunisia, Uganda, United Republic of Tanzania, Upper Volta, Zaire, and Zambia.

applicable to peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination, and apartheid, in the exercise of their legitimate rights to self-determination and independence."[102] In introducing this proposal, Mali explained that many African countries, while deploring terrorism, feared that the new convention would serve as a pretext for colonial and racist regimes to suppress recognized national liberation movements.[103] As this proposal was controversial, the chairman cut short the discussion by announcing that he was going to hold bilateral consultations on it.[104] Two weeks later, the chairman proposed, as a compromise, not to refer to the question of self-determination in the body of the convention but to include instead a strong provision in the text of the enabling resolution safeguarding that principle. The clause underlined that the convention could not prejudice the exercise of the right to self-determination and independence, by peoples struggling against colonialism, alien domination, foreign occupation, or apartheid.[105] After some last minute negotiations, the Chair's proposal was accepted on the understanding that the new convention would always be published together with the text of the enabling resolution.[106] Thus, on 14 December 1973 and on the basis of these agreements, the General Assembly adopted by consensus the

---

[102] U.N.G.A. Sixth Comm., *Report*, at 19, ¶ 131, Doc. A/9407, (Dec. 10, 1973) in U.N. GAOR 28th Sess. Annexes No. 90.

[103] Mali, "Statement," U.N. GAOR 28th Sess. Sixth Comm. 1439th mtg., at 223, ¶9, U.N. Doc. A/C.6/SR.1439 (Nov. 15, 1973).

[104] U.N. GAOR 28th Sess. Sixth Comm. 1439th mtg., at 224, ¶ 20, U.N. Doc. A/C.6/SR.1439 (Nov. 15, 1973).

[105] U.N. GAOR 28th Sess. Sixth Comm. 1450th mtg., at 293, ¶60, U.N. Doc. A/C.6/SR.1450 (Nov. 29, 1973).

[106] U.N.G.A. Sixth Comm., *Report*, *supra* note 102, at 22 - 23, ¶ 151 – 155; U.N. GAOR 28th Sess. Sixth Comm. 1457th mtg., at 335 - 339, U.N. Doc. A/C.6/SR.1457 (Dec. 6, 1973); 1973 U.N.Y.B. 770 - 777.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.[107]

For its part, the idea of launching negotiations at the General Assembly on an international convention on the taking of hostages was put forward, for the first time, in 1976, in the context the Entebbe crisis.[108] On 12 July 1976, during one of the Security Council's meetings to consider the hijacking of the Air France plane and the subsequent Israeli raid in Uganda, the Federal Republic of Germany argued that the international community had, so far, failed to create effective mechanisms to combat terrorism and, in particular, hostage-taking. West Germany then urged the General Assembly to consider, as a matter of priority, the preparation of a convention on international measures against the taking of hostages ensuring the prosecution or the extradition of whoever commits it.[109] It should be noted that Federal Republic of Germany itself had suffered a major hostage-taking crisis just the year before, when there had been a terrorist attack against its embassy in Stockholm.[110] At the time, however, the Council took no decision on this

---

[107] Convention on Internationally Protected Persons, *supra* note 1.

[108] On 27 June 1976, four members of the Popular Front for the Liberation of Palestine hijacked an Air France plane in Athens, Greece, with 258 passengers on board. The plane was flown to Entebbe, Uganda, where the four original hijackers were joined by six additional hijackers, including some of German origin. The hijackers demanded the release of 53 persons detained in Israel, Kenya and Europe. After Israel agreed to negotiate, the 149 non-Jewish passengers were freed. On July 4th, without authorization from the government of Uganda, an Israeli airborne commando made a raid to free the remaining 109 hostages. In the ensuing battle, seven hijackers, three hostages, 20 Ugandan soldiers and an Israeli commando were killed. The incident was considered at the United Nations Security Council between 9th and 14th July 1976, following a formal complaint against Israel's "act of aggression" against Uganda, made by the Prime Minister of Mauritius, on behalf of the Organization of African Unity. MIPT Terrorism Knowledge Base, *"Other Group and Popular Front for the Liberation of Palestine (PFLP) attacked Airports and Airlines Target (June 27, 1976, Greece),"* database on line available from http://www.tkb.org/Indicent.jsp?incID=1761 accessed on Mar. 13, 2006; 1976 U.N.Y.B. 317 – 320.

[109] Federal Republic of Germany, "Statement," U.N. SCOR 31st year, 1941st mtg, at 6, U.N. Doc. S/PV.1941 (July 12, 1976).

[110] On 24 April 1975, seven West German nationals seized the embassy of the Federal Republic of Germany in Stockholm, Sweden, taking 12 hostages. The hostage-takers demanded the release of 26 prisoners detained in Germany and a ransom of $500.000. The German government rejected those

matter, as it was divided between those who sought to condemn Israel for violating Uganda's sovereignty and territorial integrity and those who wanted to call upon the international community to consider further means to ensure the safety of civil aviation.[111] A couple of months later, this proposal was formalized in a letter from the Minister of Foreign Affairs of the Federal Republic of Germany to the president of the General Assembly requesting the inclusion of a new item in the agenda of the Assembly entitled "Drafting of an international convention against the taking of hostages."[112] The Assembly agreed to this request, and assigned the new item to the Sixth Committee.[113]

In the committee, the West German representative argued that hostage-taking posed an intolerable threat to innocent people from all nations. In his government's view, the United Nations had to take resolute action against it by adopting effective measures such as a legal instrument based on the principle that all states should either prosecute or extradite those who take hostages. He stressed that his proposal was of a purely humanitarian and legal nature, aimed only at protecting innocent people and safeguarding the good relations between states, and that it should not be construed as directed against any group. He also emphasized that it was necessary to solve the technical issues outside the sphere of political controversy and acknowledged that it was necessary to dissipate any doubts on the possible political consequences of such a convention. He then

---

demands. After 12 hours, the hostage-takers blew the embassy building. During the incident, two hostages and two hostage-takers died. The remaining 5 hostage-takers surrendered to the Swedish police without a struggle. MIPT Terrorism Knowledge Base, "Baader-Meinhof Group attacked diplomatic target (Apr. 24, 1975, Sweden)" database on line available from *http://www.tkb.org/Indicent.jsp?incID=1457* accessed on Mar. 10, 2006.

[111] 1976 U.N.Y.B. 319 – 320

[112] Federal Republic of Germany, "Letter from the Vice-Chancellor and Minister of Foreign Affairs to the President of the General Assembly requesting the inclusion of a new item in the agenda," U.N. Doc. A/31/242 (Sept 28, 1973).

[113] 1976 U.N.Y.B. 834.

suggested that the best way to avoid those controversies was to appoint an expert, *Ad Hoc* Committee to prepare a draft of the proposed convention.[114]

The reaction to this proposal was threefold.[115] A first group of delegations, including Sweden, Japan, the United States, Portugal, and Nicaragua, supported the proposal, noting that hostage-taking was a threat to international peace and security and that it should be condemned without exception. In their view, since International Humanitarian Law already prohibited hostage-taking during times of war, hostage-taking should also be banned without exceptions in times of peace.[116] A second group of delegations, such as Algeria, Bulgaria, Kenya, and Tanzania, argued that hostage-taking should be addressed in the broader contexts of international terrorism and that any efforts to deal with the effects of terrorism without addressing its causes were vitiated from the outset.[117] Finally, a third group of delegations, including China, Tunisia, and Ukraine, while supportive of West Germany's initiative, stressed that the proposed convention should not impair in any way the rights of national liberation movements and the right of self-determination of peoples.[118] After some consultations, on 10 December 1976, the Sixth Committee adopted by consensus a resolution establishing an *Ad Hoc* Committee for the drafting of an international convention on the taking of hostages.[119] Notably, the resolution acknowledged that the taking of hostages violates human dignity. It also

---

[114] U.N. GAOR 31st Sess. Sixth Comm. 55th mtg., at 2 - 3, U.N. Doc. A/C.6/31/SR.55 (Nov. 26, 1976).

[115] See 1976 U.N.Y.B. 835.

[116] U.N. GAOR 31st Sess. Sixth Comm. 55th mtg., at 3 - 5, U.N. Doc. A/C.6/31/SR.55 (Nov. 26, 1976); U.N. GAOR 31st Sess. Sixth Comm. 59th mtg., at 4 - 6, U.N. Doc. A/C.6/31/SR.59 (Dec. 1, 1976).

[117] U.N. GAOR 31st Sess. Sixth Comm. 57th mtg., at 9, 11-18, U.N. Doc. A/C.6/31/SR.57 (Nov. 29, 1976).

[118] *Ibid*., at 12; U.N. GAOR 31st Sess. Sixth Comm. 58th mtg., at 6–7, 9-11, U.N. Doc. A/C.6/31/SR.58 (Nov. 30, 1976).

[119] 1976 U.N.Y.B. 835 - 836.

contained a rather oblique reference to the root causes of terrorism; it recalled that "freedom, justice, and peace in the world are inseparable from the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family."[120]

The *Ad Hoc* Committee met in New York from August 1st to 19th, 1977.[121] At the outset, the Federal Republic of Germany submitted a draft convention defining the crime of hostage-taking as the seizure or detention of any person, when accompanied by a threat of death, severe injury, or continued detention, for the purpose of compelling a third person, corporate body, government or international organization to do or to abstain from doing something. It called upon state parties to cooperate in the prevention of such offences, to take appropriate measures to secure the release of hostages, to prosecute or to extradite any person accused of hostage-taking, and to impose severe penalties on those who commit this crime. It did not mention the right of self-determination.[122]

At the *Ad Hoc* Committee, several African delegations argued that it was necessary to distinguish between criminal hostage-taking and the acts carried out in the process of national liberation. Algeria, for example, maintained that the new convention had to protect, above all, the rights of peoples engaged in violent action against colonial, racist, and alien regimes, in an effort to regain their legitimate rights.[123] Libya went further by suggesting that the populations under colonial, racist, and foreign domination

---

[120] G.A. Res. 31/103, pr. para. 2–4, U.N. Doc. A/RES/31/103 (Nov. 28, 1976).

[121] 1977 U.N.Y.B. 971 - 972.

[122] Federal Republic of Germany, "Working paper," in U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, Annex II.A, at 106–107, UN Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39 [hereinafter 1977 Hostages Ad Hoc Comm. Report].

[123] 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, at 30.

were also hostages.[124] Following this line of though, Tanzania proposed excluding from the concept of hostage-taking any acts carried out by liberation movements recognized by the United Nations or any regional organization, in a process of national liberation from colonial rule, or from racist or foreign regimes.[125] Western delegations, on their part, found unacceptable any broad exception for self-determination movements, such as the one proposed by Tanzania.[126] The United States argued that the taking of hostages was such a repugnant act that no noble goal or cause could justify it.[127] West Germany, noting that international humanitarian law already condemned hostage-taking regardless of whoever committed it, contended that the new convention should extend to peacetime the prohibitions already applicable in wartime.[128] As a possible way out, Mexico, recalling that the then recently adopted 1977 Protocols to the Geneva Conventions already recognized the struggle for national liberation as a form of armed conflict,[129] proposed excluding from the scope of the convention those acts covered by the rules of

---

[124] *Ibid*., at 37; Libyan Arab Jahamiriya, "Working paper," in 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, Annex II.G, at 112.

[125] 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, at 49; Lesotho and the United Republic of Tanzania, later joined by Algeria, Egypt, Guinea, the Libyan Arab Jamahiriya and Nigeria, "Working paper," in 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, Annex II.C. at 111.

[126] 1977 U.N.Y.B. 972.

[127] 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, at 52 - 53.

[128] *Ibid*., at 70 - 71.

[129] See Protocol Additional to the Geneva Conventions of 12 August 1943, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 1.3 and 1.4, *adopted on* June 8, 1977, 1125 U.N.T.S. 3-608: "3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those conventions. 4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

international humanitarian law applicable to armed conflict.[130] Mexico's proposal was attractive because it brought, in fact, the solution found for the 1977 Protocols into the new instrument on hostage-taking. Nevertheless, since the *Ad Hoc* Committee was unable to conclude the draft convention on hostages at its 1977 session, it recommended to the General Assembly that it should be reconvened the following year to continue its work. That fall, the General Assembly agreed, by consensus, to do so.[131]

At its second session, held in Geneva from the 6th to 24th of February 1978, the *Ad Hoc* Committee continued its efforts to solve the question of self-determination movements. As in the previous year, Algeria and Nigeria argued that the new convention should exempt self-determination movements. They proposed a new article stating that the provisions of the new convention would not apply to acts committed in the course of an armed conflict to the extent the 1949 Geneva Conventions and their 1977 Protocols were applicable. Meanwhile, France, the Netherlands, and the United States argued, on the contrary, that the new convention should create a comprehensive regime, encompassing all acts of hostage-taking, including those committed during an armed conflict. Thus, they proposed that the new convention should supplement the Geneva Conventions and their Protocols.[132] Being unable to reach an agreement, the *Ad Hoc* Committee recommended, once again, that it should meet the following year.[133]

---

[130] 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, at 52; Mexico, "Working paper," in 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, Annex II.D., at. 111.

[131] G.A. Res. 32/148, U.N. Doc. A/RES/32/103 (Dec 16, 1977); 1977 U.N.Y.B. 972-973.

[132] 1978 U.N.Y.B 966–967; See also France, "Working paper," in 1977 Hostages Ad Hoc Comm. Report, *supra* note 122, at. 5-6.

[133] The General Assembly adopted this recommendation by consensus. G.A. Res. 33/19, U.N. Doc. A/RES/33/19 (Nov. 29, 1978).

The *Ad Hoc* Committee met for the third time from 29 January to 16 February 1979, in Geneva. This time, it was recognized that an agreement on the question of self-determination movements was a precondition for agreeing on the other pending issues. Consequently, a working group was established to look primarily at this question. After consultations, it was agreed that the new treaty would not apply to those acts of hostage-taking committed during an armed conflict, including national liberation wars, to the extent that the Geneva Conventions and their protocols were applicable, and insofar as the state parties to those instruments were bound to prosecute or to extradite hostage-takers.[134] Consequently, this formulation created an exception for those legitimate combatants struggling for self-determination that observe the laws of war, as sought by the African delegations, while it did not create an area of impunity for hostage-takers, as was feared by Western delegations. Moreover, this text gave the African delegations an important political point: that the activities of national liberation movements were not to be presumed, *prima facie,* to be criminal. At the same time, the Western delegations obtained a reaffirmation of the principle "extradite or prosecute." This formulation was eventually adopted by the General Assembly and included in the final text of the Convention.[135] Notwithstanding this agreement regarding self-determination, the *Ad Hoc*

---

[134] U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, at 5-8, UN Doc. A/34/39, U.N. GAOR 34st Sess. Supp. No. 39 [hereinafter 1979 Hostages Ad Hoc Comm. Report].

[135] Hostages Convention, *supra* note 2, art. 12:

> In so far as the Geneva Conventions of 1949 for the protection of war victims or the Protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as State Parties to this Convention are bound under those Conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts, mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles on International Law concerning

Committee was unable to agree on the question of political asylum. Some delegations feared that the new convention would curtail their right to grant political asylum and, consequently, sought to include a new article stressing that the new instrument would not impair that right. Others objected because, in their view, no hostage-taker should ever be given asylum. In an effort to find an agreement, two proposals were made. Jordan proposed that states should be able decline an extradition if there were grounds for believing that the position of the alleged offender would be affected by his nationality, race, religion, or political opinion. Others suggested balancing the reaffirmation of the right of asylum with a reiteration of the obligations under the new convention.[136] As there was no agreement on these proposals, the committee submitted to the General Assembly a draft convention with the provisions on asylum pending.[137]

In the fall of that year, the Sixth Committee examined the *Ad Hoc* Committee's draft. The chairman of the Sixth Committee held a series of consultations on the question of asylum. At the end he suggested introducing both a Chilean formulation, borrowed from the 1973 Convention on the Internationally Protected Persons, to protect the right of asylum when recognized by treaties in force, and the Jordanian suggestion.[138] The Chilean proposal was acceptable to all delegations but the Jordanian formula was not. Members of the Eastern bloc felt that the Jordanian text would undermine the application of the convention when it involved extradition between states with different political

---

Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

[136] 1979 Hostages Ad Hoc Comm. Report, *supra* note 134, at 8, ¶ 24: "None of the provisions of this Convention shall be interpreted as impairing the right of asylum. This provision shall not however affect the obligations of Contracting States under the Convention".

[137] *Ibid*., at 8, ¶ 22; 1979 U.N.Y.B. 1140.

[138] 1979 U.N.Y.B. 1140–1.

views.[139] Thus, on 7 December 1979, the Sixth Committee voted on the inclusion of the Jordanian proposal, on self-determination, as article 9 of the convention. It was adopted by 103 votes in favor, 10 against and 4 abstentions; with most of the Eastern bloc voting against it.[140] The differences of view on the Jordanian formula did not prevent, however, the adoption of the Convention as a whole by consensus. Thus, on 17 December 1979, the plenary of the General Assembly finally concluded the International Convention against the Taking of Hostages.[141]

D) Building consensus gradually: 1979 – 1992

As noted above, while the General Assembly was making progress on the Hostages Convention, it was deadlocked on the broader topic "Measures to Combat International Terrorism." Nevertheless, beginning in 1979, there was a gradual shift in the discussion. The more ambitious proposals were gradually abandoned. Instead, more emphasis was given to urging states to cooperate voluntarily. Some basic understandings were slowly reached, even though the issues remained divisive. Eventually, the item was bi-annualized, thus avoiding a bitter and fruitless confrontation every year. Moreover, the international environment also changed gradually: the wave of terrorist attacks of the seventies had run its course, thus easing the pressure to make progress, while the remaining colonial possessions in Africa had attained independence, thus reducing the demands for self-determination.

---

[139] U.N. GAOR 34th Sess. Sixth Comm. 62nd mtg., at 9-12, U.N. Doc. A/C.6/31/SR.62 (Dec. 7, 1979).

[140] Bulgaria, Byelorussian SSR, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukraine SSR, and the USSR.

[141] Hostages' Convention, *supra* note 2.

Pursuant to the 1977 General Assembly's decision,[142] *Ad Hoc* Committee on Terrorism met, for the third time, from March 19 to April 6, 1979. The mandate of the committee was twofold: first, to study the underlying causes of terrorism, and then to recommend practical measures to combat it. Once more, there was no agreement on the underlying causes of terrorism,. The Non-Aligned Movement put forward a list of political and economic causes of terrorism which included: colonialism, racial discrimination, and apartheid; aggression, the use of force in a manner contrary to the U.N. Charter, occupation, interference in the internal affairs of other nations, fascism, expansionism, and hegemonic policies; the persistence of an inequitable economic order; foreign exploitation of a country's natural resources, and other forms of political, social, and economic exploitation; massive violations of human rights such as torture, massive imprisonments, poverty, hunger, misery; and frustration in general.[143] This group stressed that, in its view, the struggle of liberation movements fell within the purview of the Geneva Conventions and their Protocols and that it could not be identified with terrorism. This approach, however, was not acceptable to Western delegations, who argued that the proposed list did not correspond to the complexity of terrorist phenomena. They noted, in particular, that there was no direct causal relation between the situations of oppression and the resort to unacceptable forms of violence. They also stressed that intervening factors, such as the perception of a grievance and the availability of legal means to address it, had to be taken into account. For some delegations, the right of self-

---

[142] G.A. Res. 32/147, *supra* note 68, ¶ 7.

[143] Algeria, Barbados, India, Iran, Nigeria, Panama, Syria, Tunisia, Venezuela, Yugoslavia, Zaire, and Zambia, "Working paper on the underlying causes of international terrorism," U.N. Doc. A/AC.160/WG/R.1, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 20–21, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. (no. 37) [hereinafter 1979 Terrorism Ad Hoc Comm. Report].

determination could not constitute an explicit, an implicit, or even an apparent, exception to the absolute rejection of all terrorist acts. [144]

On the second topic: the consideration of practical measures to combat terrorism, the United Kingdom suggested a series of measures that the committee could recommend to the General Assembly. They included, *inter alia*, that the Assembly invite states to consider becoming parties to then existing conventions against terrorism; that regional organizations consider measures to combat terrorism within their spheres of competence; that states strengthen their own domestic measures to combat international terrorism; that governments cooperate more closely in the exchange of information relating to terrorist activities; that the Secretary-General prepare a compilation of national legislation on terrorism; that both states and international organizations design more effective security measures to protect vital services and installations; and that the General Assembly reaffirm the duty of all states to refrain from organizing, instigating or participating in acts of civil strife or terrorist acts.[145] Most delegations found these suggestions acceptable in principle. For its part, the United States, reiterated its longstanding proposal for a broad convention against all forms of terrorism. It proposed, in particular, that the committee recommend to the General Assembly the drafting of a new international convention, based on the principle "to prosecute or to extradite," to prohibit acts of international terrorism against the life, integrity or liberty of another person as well as those acts which result in the violent destruction of property or of vital

---

[144] 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 21–24; PERERA, *supra* note 4, at 58-59.

[145] United Kingdom, "Elements for possible recommendations for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.2, in 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 26-27.

installations.[146] The reactions to this proposal were mixed. Some delegations supported it. Others argued that it was too broad and that it should be limited to especially heinous crimes. Some others argued that the proposed instrument should both condemn state-terrorism and exclude from its scope peoples fighting against colonial domination and foreign occupation, as the Hostages Convention had done in its article 12.[147] A further group of delegations feared that the new instrument would overlap with the existing conventions, thus creating unnecessary confusion. The United States then clarified that the new convention should address only those acts not already covered by the preexisting legal instruments.[148] Surprisingly, twenty years later, these same arguments were repeated during the negotiation of the comprehensive convention. Meanwhile, Sweden proposed that the committee should highlight the fact that international human rights mechanisms contribute to the elimination of the causes of terrorism[149] while Uruguay suggested that the Secretary-General should collect statistical information on the number and impact of terrorist acts and as well as take additional measures to ensure the security of United Nations premises against terrorist attacks.[150]

Towards the end of the session, it was felt that, despite the lack of agreement, the *Ad Hoc* Committee had to take some concrete steps to save the innocent victims from terrorism. The representative of India, who chaired the meeting, proposed a draft resolution trying to bring on board the various points of view. This draft expressed

---

[146] United States, "Recommendation for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.3, in 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at. 28.

[147] Hostages' Convention, *supra* note 2, art. 12.

[148] 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at. 28-29.

[149] Sweden, "Proposed recommendation for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.4, in 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 29.

[150] Uruguay, "Working paper," U.N. Doc. A/AC.160/WG/R.5, in 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at. 29-30.

concern, not for all acts of terrorism, but for those involving the unwarranted sacrifice of innocent human lives. It also endorsed the Non-Aligned list of causes of terrorism by drawing the attention of states to the causes referred to in the committee's report. In addition, it urged states to contribute to the elimination of those causes and to seek just solutions to those situations that give rise to terrorism. In parallel, the chairman's draft recommended to states all the practical measures to combat terrorism discussed during the meeting. Finally, it requested states and regional organizations to introduce new measures, both nationally and regionally, to combat international terrorism and stated that the question of an additional convention to prohibit acts of international terrorism deserved further study.[151] The chairman's draft then served as the basis for intensive negotiations. After consultations, the *Ad Hoc* Committee agreed, by consensus, to recommend to the General Assembly that it should: first, condemn unequivocally all acts of terrorism which endanger or take human lives or jeopardize fundamental freedoms; second, take note of the study of the underlying causes of terrorism contained in the Ah Hoc Committee's report; third, urge all states to contribute, unilaterally, in cooperation with each other, and through the United Nations Organs, to the progressive elimination of the causes of terrorism; fourth, call upon all states to refrain from organizing or supporting terrorist acts in the territory of other states; fifth, appeal to all states to become parties to the relevant international conventions against terrorism; sixth, invite all states to take appropriate measures at the national level against terrorism; seventh, ask relevant specialized agencies and regional organizations to consider measures against terrorism within their competence; eight, urge all states to exchange relevant information and to

[151] India, "Draft resolution," U.N. Doc. A/AC.160/WG/R.6, in 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 31.

adopt bilateral treaties to ensure the extradition or prosecution of international terrorists; ninth, request the Secretary-General to draw up a compilation of national legislation on terrorism; and, tenth, consider the need for an additional convention based on the principle of extradition or prosecution and the possibility of including a provision on self-determination movements similar to the one contained in the Hostages Convention. In addition, the committee recommended that the General Assembly and the Security Council should pay attention to those situations, including colonial situations, alien occupation and racism, which could give rise to terrorist acts with a view to applying the relevant provisions of the U.N. Charter, including Chapter VII.[152]

These recommendations are noteworthy for two reasons. First, because they were the first substantive decisions agreed by consensus in the context of the General Assembly on the broad topic "measures to eliminate international terrorism." Second, because they reflected an effort to give the maximum possible to all delegations. Western delegations obtained, for the first time, a broad and "unequivocal" condemnation of all acts of terrorism, and their practical suggestions were endorsed. On their part, the Non-aligned delegations welcomed the recognition that situations of alien occupation, colonialism, and racism may give rise to terrorism and, consequently, that they merited forceful action from the international community. In addition, the Non-Aligned delegations welcomed the fact that the exception for self-determination movements included in the Hostages Convention was reaffirmed. On the negotiation of new legal instruments, those who favored a sectoral approach obtained a call to regional organizations and specialized agencies to consider further measures, while those who

[152] 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 32 - 34.

supported the negotiation of a broader convention obtained a call to the General Assembly was consider the need of such an instrument. These mutual concessions formed a delicate package deal.[153] Unfortunately, when *Ad Hoc* Committee's recommendations were considered by the General Assembly, the fragile package deal unraveled. Several Non-aligned delegations submitted a draft resolution in which they highlighted the question of self-determination.[154] The proponents of the draft resolution included a preambular paragraph upholding the right of self-determination and independence of peoples under colonial and racist regimes, and other forms of alien domination, and reaffirming the legitimacy of their struggle against those forms of oppression. They also added an operative paragraph condemning the continuation of repressive and terrorist acts by colonial, racist, and alien regimes denying peoples their legitimate right to self-determination.[155] These texts were a far cry from the *Ad Hoc* Committee's carefully drafted recommendation that the General Assembly and the Security Council should pay attention to all situations, including colonialism, terrorism and occupation, which may give rise to international terrorism.[156] Not surprisingly, the new paragraphs on self-determination were not acceptable for Western delegations. They felt that the Non-aligned draft resolution had tilted the carefully balanced agreement reached at the *Ad Hoc* Committee. The United States argued that all acts of terrorism deserved to be condemned, that self-determination should be advocated for all peoples, and that the General Assembly should not condemn some regimes while ignoring the

---

[153] See Perera, *supra* note 4, at 62-63.

[154] Afghanistan, Algeria, Benin, Guinea, India, Libya, Morocco, Mozambique, Niger, Tanzania, Tunisia, Uganda, Venezuela, Yugoslavia, Zaire, and Zambia, "Draft resolution," U.N. Doc. A/C.6/34/L.20, later adopted as G.A. Res 34/145, U.N. Doc. A/RES/34/145 (Dec. 17, 1979).

[155] *Ibid*., at pr. para. 6 and ¶ 4.

[156] 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, at 33-34.

reprehensive actions of others. For its part, the European Community argued that those paragraphs introduced extraneous issues in a resolution that should focus on terrorism.[157] As there was no agreement, the draft resolution was adopted by a vote. Most western delegations abstained.[158]

Notwithstanding the lack of agreement on the question of self-determination, the 1979 General Assembly resolution on terrorism reflected the recommendations of the *Ad Hoc* Committee regarding the negotiation of new instruments. It recommended that specialized agencies and regional organizations consider measures to combat international terrorism within their respective spheres of work and it invited states to submit observations and proposals for the need of an additional convention or conventions on terrorism.[159] This broad language accommodated the different preferences on how to proceed, where some delegations[160] advocated for drafting a global convention, others[161] preferred a step-by-step approach, a third group[162] favored the implementation of the existing instruments, and a fourth group[163] proposed to focus on the individual responsibility of each state.[164] Finally, the 1979 General Assembly

---

[157] 1979 U.N.Y.B. 1148 – 1149.

[158] G.A. Res 34/145, *supra* note 154, was adopted on 17 December 1979 by 118 votes in favor, none against, and 22 abstentions. Belgium, Canada, Denmark, France, Federal Republic of Germany, Greece, Guatemala, Iceland, Ireland, Israel, Italy, Japan, Jordan, Luxemburg, Netherlands, Norway, Portugal, Sierra Leone, Spain, Turkey, the United Kingdom, and the United States abstained. 1979 U.N.Y.B. 1149.

[159] G.A. Res 34/145, *supra* note 154, ¶¶ 10, 12.

[160] Argentina, Indonesia, Italy, Spain, Turkey, and Uruguay.

[161] Brazil, Pakistan, and Sweden.

[162] Afghanistan, Hungary, and Mongolia.

[163] Byelorussia, Ukraine, and the USSR.

[164] 1979 U.N.Y.B. 1147.

resolution did not reconvene the *Ad Hoc* Committee on international terrorism and deferred the consideration of the topic for two years, until 1981.[165]

In 1981, the Sixth Committee found itself, once again, divided on the question of the relationship between terrorism and self-determination. Non-aligned delegations maintained that the activities of national liberation movements were not terrorist acts because they were governed by the international law applicable to armed conflicts and, in particular, by the 1949 Geneva Conventions and their 1977 Additional Protocols. Western delegations, on their part, argued that the right of self-determination could not condone or justify terrorism.[166] In this context, delegations could not agree to repeat the resolution adopted in 1979.[167] There was no agreement either on the negotiation of a global convention against terrorism. Paraguay and China supported such an approach, while the German Democratic Republic and Pakistan objected. Pakistan, in particular, advocated a step-by-step approach. Meanwhile, the United States seemed to have abandoned the idea of a comprehensive convention.[168] In an effort to find consensus, several Non-Aligned delegations submitted a shorter resolution simply reaffirming the practical recommendations of the *Ad Hoc* Committee and calling upon states observe them. This draft contained neither an operative paragraph on self-determination nor an express condemnation of all terrorist acts. Its preamble reaffirmed the right of self-determination and the legitimacy of the struggle against racist and colonial regimes as

---

[165] G.A. Res 34/145, *supra* note 154, ¶ 15.

[166] 1981 U.N.Y.B 1220-1221.

[167] Cuba and Mongolia submitted a draft resolution that followed closely the main lines of the 1979 resolution, but they decided not to put it to the vote. *Ibid*., at 1219.

[168] *Ibid*., at 1221.

well as against foreign occupation.[169] As the most controversial paragraph of the 1979 resolution had been eliminated, Western delegations were able to accept this text, even if they still had reservations on the preambular section.[170] Thus, the Non-aligned proposal was adopted without a vote.[171] To a certain extent, the adoption of the 1981 resolution without a vote seems attributable to a change in the strategy of the Non-aligned group, which now was ready to forgo part of its preferred language in exchange for the added legitimacy of a decision adopted by consensus containing a reference to self-determination.

In 1983, when the General Assembly considered again the question of international terrorism, it was able, once more, to adopt a resolution without a vote.[172] This time, Cuba, Laos, Czechoslovakia, and Mongolia, proposed a text which merged the elements acceptable to all delegations from both the 1979 and the 1981 resolutions. Thus, the new resolution took both its preamble, with its stress on the question of self-determination, and its reaffirmation of the recommendations of the *Ad Hoc* Committee from the 1981 resolution.[173] Meanwhile, it borrowed 5 substantive paragraphs from the 1979 resolution[174] including: a call to all states and international organizations to contribute to the progressive elimination of the underlying causes of terrorism; an invitation to states to implement their international obligations regarding the prevention of acts of terrorism; a call to refrain from organizing, assisting or participating in acts of

---

[169] Cuba, Egypt, Libya, Niger, Togo, Yugoslavia, Zaire, Zambia, and Zimbabwe, "Draft resolution," U.N. Doc. A/C.6/36/L.30/Rev.1, later adopted as G.A. Res. 36/109, U.N. Doc. A/RES/36/109 (Dec. 10, 1981).

[170] 1981 U.N.Y.B 1220.

[171] G.A. Res. 36/109, *supra* note 169.

[172] G.A. Res. 38/130, U.N. Doc. A/RES/38/130 (Dec. 19, 1983); See also 1983 U.N.Y.B. 1113-1114.

[173] G.A. Res. 36/109, *supra* note 169.

[174] G.A. Res. 34/145, *supra* note 154, ¶¶ 6 – 9, 11.

terrorism or acquiescing to such activities on their territories; an appeal to states to become parties to the existing international convention on terrorism; and, an invitation to states to cooperate more closely in the prevention and punishment of acts of terrorism, including through the conclusion of special treaties.[175] The sponsors also added a statement deploring the loss of innocent human lives and the pernicious impact of international terrorism on international relations.[176] Hence, by borrowing the acceptable elements of the previous resolutions, the sponsoring delegations expanded the area of agreement.

In 1985, the question of international terrorism acquired renewed prominence due to new wave of terrorist acts,[177] including the hijacking of the *Achille Lauro*,[178] and several high profile attacks against civil aviation.[179] This new political environment led

---

[175] G.A. Res. 38/130, *supra* note 172, ¶¶ 2-6.

[176] *Ibid*., ¶ 1.

[177] US, Department of State, Patterns of Global Terrorism 1985, (Washington D.C., 1986), 1:

> *International terrorists had a banner year in 1985.* They carried more attacks than in any year since the decade began; caused more causalities – especially fatalities – over that same period (329 alone occurred when an Air India jetliner was blown up in June); conducted a host of spectacular, publicity-grabbing events that ultimately ended in cold-blooded murder; increasingly turned to business and more accessible public targets as security at official and military installations was strengthened against terrorism, and, in doing so, counted among their victims a record number of innocent bystanders; and, finally, gave pause to international travelers worldwide who feared the increasingly indiscriminate nature of international terrorism. (Emphasis in the original).

[178] On October 7th, 1985, four members of the Palestine Liberation Front seized an Italian cruise liner, the *Achille Lauro*, off the coast of Egypt. There were 511 passengers on board. The terrorists demanded the release of 50 Palestinian prisoners held in Israel, as well as freedom for other Palestinians imprisoned elsewhere. One American passenger, a disabled person in a wheelchair, was shot and thrown overboard. After several days of sailing in the Mediterranean, the hostage-takers surrendered to Egyptian authorities and were promised safe passage out of Egypt. Later, when the hijackers were being flown out of Egypt, the Egyptian plane in which they were traveling was intercepted by U.S. navy jets and it was forced to land in Italy where the hijackers were charged with murder and kidnapping. MIPT Terrorism Knowledge Base, "*Palestinian Liberation Front attacked maritime target (Oct. 7, 1985)*" database on line available from http://www.tkb.org/Indicent.jsp?incID=4402, accessed on Apr. 26, 2006.

[179] On June 7th, 1985, two Hezbollah gunmen hijacked a TWA Boeing 727 en route from Athens to Rome. After several stops, the plane finally landed in Beirut where an American passenger was killed. While most passengers were released, 41 were taken hostage in various locations around Lebanon. The terrorist demanded the release of several high profile prisoners, including 766 Shiites held in Israel, in exchange for

the Security Council to adopt, on 18 December 1985, a resolution condemning unequivocally all acts of hostage-taking, appealing to all states to ratify all the international conventions against terrorism, and urging them to develop and adopt new measures to facilitate the prevention, prosecution and punishment of "all acts of hostage-taking and abduction as manifestations of international terrorism."[180] In parallel, there was also growing anxiety over the involvement of states in terrorist activities. This concern arose, *inter alia*, from the *Rainbow Warrior* incident,[181] and the situation in Nicaragua.[182] New Zealand, in whose waters the *Rainbow Warrior* had been destroyed, argued, for example, that nothing was more damaging to the international community's efforts to curb terrorism than the involvement of states in those activities, and that, as a consequence, any comprehensive convention against terrorism had to make provision for the international responsibility of those states organizing, instigating, assisting, or

---

those hostages. Eventually, on June 30th, the terrorists released the hostages thanks to the mediation of the Syrian government. Meanwhile, on June 23rd, 1985, an Air India plane flying from Toronto, Canada, to Shannon, Ireland, was destroyed over the North Atlantic. The 329 persons on board were killed. Several Sikh organizations claimed responsibility. MIPT Terrorism Knowledge Base, "Hezbollah attacked Airports and Airlines target (June. 7, 1985, Greece)" database on line available from http://www.tkb.org/Indicent.jsp?incID=4209, accessed on Apr. 26, 2006; US, Department of State, *supra* note 177, at 27, 37.

[180] SC Res. 579 (1985), ¶ 5, U.N. Doc. S/RES/508 (Dec. 18, 1985).

[181] See *supra* Chapter 1.B.2.b.

[182] Between 1981 and 1990, the ´Fuerza Democrática Nicaraguense´ (FDN) and the ´Alianza Revolucionaria Democrática´ (ARDE), commonly known as the ´contras´, conducted military operations against the Sandinista government of Nicaragua. Those operations included: laying mines in the Nicaraguan ports, attacking Managua's airport, and destroying several oil facilities. Initially, United States military advisors and CIA operatives provided covert assistance to those activities. From 1983 onwards, express provision was made in the United States´ Federal Budget to support "directly and indirectly military and paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual." In 1986, the International Court of Justice found that, in training, arming, equipping, financing, and supplying the contras, the United States had violated the international customary law obligation to not interfere in the affairs of other states. Military and Paramilitary Activities (Nicar. v. U.S.) 1986 I.C.J. ¶¶ 20, 76, 81, 95–101, 292; MIPT Terrorism Knowledge Base, database on line available from http://www.tkb.org/Category.jsp?catID=8574, searched on Apr. 26, 2006.

participating in terrorist acts.[183] However, the concept of state-terrorism itself was not well defined. According to Syria, activities as diverse as the Israeli raid against the PLO's headquarters in Tunisia; the diversion, by the US navy, of the Egyptian jetliner that was carrying the *Achille Lauro* hostage takers; the mining of the ports of Nicaragua by counterrevolutionary groups supported by the United States; South Africa's apartheid policies; Israel's invasion of Lebanon; Israel's bombing of both Iraq's nuclear reactor and the Palestinian refugee camps in southern Lebanon; and the detention of civilians without trial in occupied territories; were all examples of state-terrorism.[184] These concerns had already led the Non-Aligned group to push for adoption in the First Committee of the General Assembly, devoted to disarmament, of a resolution entitled "Inadmissibility of the policy of state-terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States".[185]

These questions undoubtedly had an impact on the Sixth Committee's discussions on terrorism. A group of developing countries, lead by Cuba, submitted a draft resolution stressing the questions of state-terrorism and self-determination. Their draft, while expressing concern for the increased frequency in which both international terrorism and military actions had been used in international relations, sought to condemn in strong terms "all policies, methods and practices of terrorism, *inter alia,* State-terrorism, as a

---

[183] New Zealand, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 8, U.N. Doc. A/C.6/40/SR.21 (Oct. 25, 1985).

[184] Syria, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 18, U.N. Doc. A/C.6/40/SR.20 (Oct. 24, 1985).

[185] G.A. Res. 39/159, U.N. Res. A/RES/39/159 (Dec. 17, 1984); Peterson, *supra* note 20, at 180.

criminal act against mankind, regardless of their form and modality,"[186] It also contained an operative paragraph condemning the continued repression and terrorist acts by colonial, alien, and racist regimes in denying peoples of their right of self-determination and other human rights.[187] For their part, western delegations considered that the main obstacles to the prevention of terrorism were the ideological differences within the international community and the unwillingness of some governments to comply with the existing treaties for the prevention and punishment of terrorist acts.[188] They proposed an alternative draft resolution which called upon "all states not to permit alleged political motivation or circumstances to obstruct the application of all appropriate law enforcement measures provided for in the relevant conventions to persons who commit acts of terrorism."[189] The Western draft also sought to condemn "unequivocally" all acts of terrorism, stressing that no reason could justify them; and stressed the importance of safeguarding basic human rights standards.[190]

Eventually, the chairman of the Sixth Committee held informal consultations to elaborate a generally agreeable text.[191] His draft[192] built upon the 1983 resolution but it

---

[186] Angola, Bolivia, Burkina Faso, Colombia, Congo, Cuba, Equatorial Guinea, Nicaragua, and Peru, "Draft resolution," UN Doc. A/C.6/40/L.2/Rev.1, ¶ 1, in U.N.G.A. Sixth Comm., *Report*, at 4, U.N. Doc. A/40/1003, U.N. GAOR 40th Sess. Annexes, No. 129.

[187] *Ibid*., ¶ 3.

[188] United States, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 19th mtg., at 9, U.N. Doc. A/C.6/40/SR.19 (Oct. 35, 1985); Belgium, "Statement on behalf of the European Community, Portugal and Spain," U.N. GAOR 40th Sess. Sixth Comm. 20th mtg., at 12-13, U.N. Doc. A/C.6/40/SR.20 (Oct. 24, 1985).

[189] Australia, Austria, Belgium, Canada, Denmark, Finland, the Federal Republic of Germany, Italy, Japan, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, the United Kingdom, and the United States, "Draft resolution," ¶ 6, U.N. Doc. A/C.6/40/L.3, *reproduced in*: Sixth Comm., *Report*, *supra* note 186, at 3.

[190] *Ibid*., pr. para. 8 and ¶ 1.

[191] Perera, *supra* note 4, at 71.

[192] *Draft resolution submitted by the Chairman*, U.N. Doc. A/C.6/40/L.31 in Sixth Comm., *Report*, *supra* note 186, at 4-5. This text was later adopted, with minor oral amendments, as G.A. Res. 40/61, U.N. Doc. A/RES/4061 (Dec. 9, 1985).

contained some important new elements. First, as sought by the western delegations, it condemned unequivocally as criminal all acts, methods and practices of terrorism wherever and by whoever committed,[193] without mentioning explicitly state-terrorism. However, the broad formulas: "all methods and practices" and "by whoever committed" were concessions to some developing nations that choose to interpret them as including state action.[194] In the following years, this formula was to acquire an almost canonical status, being repeated in all resolution and by most delegations. Second, following also a proposal of the western delegations, the chairman's draft contained a new paragraph urging all states not to allow that any circumstances obstruct the application of the appropriate law enforcement measures to those persons who commit acts of international terrorism.[195] Third, as sought by Non-aligned delegations, the draft contained a new operative paragraph urging states to contribute to the progressive elimination of the underlying causes of terrorism, paying special attention to situations of colonialism, racism, massive violations of human rights, and alien occupation that may give rise to international terrorism.[196] This paragraph followed closely the text of the recommendation agreed by of the *Ad Hoc* Committee in 1979.[197] Fourth, in response to the *Achile Lauro* incident and the terrorist attacks against the airplanes, the new resolution called upon both the International Civil Aviation Organization (ICAO) and the International Maritime Organizations (IMO) to make recommendations to prevent

---

[193] G.A. Res. 40/61, *supra* note 192, ¶ 1.

[194] See, *e.g.* Iraq, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 55th mtg., at 6, U.N. Doc. A/C.6/40/SR.55 (Dec. 6, 1985).

[195] G.A. Res. 40/61, *supra* note 192, ¶ 7.

[196] *Ibid.*, ¶ 9.

[197] 1979 Terrorism Ad Hoc Comm. Report, *supra* note 143, recommendation 11, at 33-34.

terrorism against civil aviation and shipping.[198] Lastly, the General Assembly stressed, for the first time in the context of the question of international terrorism, the importance of observing international human rights standards.[199] When this text was submitted for action to the Sixth Committee, Cuba demanded a vote arguing that it did not address state-terrorism as practiced by the United States against Cuba and Nicaragua, by Israel in the occupied Palestinian territories, and by South Africa against Angola. However, the great majority of delegations supported the chairman's text as a balanced package and the resolution was adopted with 118 votes in favor, 1 one against and 2 abstentions.[200] Later, the plenary of the General Assembly adopted this text without a vote.[201]

In subsequent years, the adoption of the 1985 resolution by the Plenary without a vote was seen as a major achievement as delegations believed that it had created common grounds to further the cooperation against international terrorism.[202] Thus, when the General Assembly revisited the topic of international terrorisms in 1987, it not only reaffirmed the content of the 1985 resolution but it explicitly mentioned the fact that it had been adopted without a vote.[203] Nonetheless, this consensus approach did not last long.

In 1987, right before the Forty-second session of the General Assembly began; Syria proposed that the already complex title of the agenda item be amended to include

---

[198] G.A. Res. 40/61, *supra* note 192, ¶¶ 11-13.

[199] *Ibid*., pr. para. 9.

[200] U.N. GAOR 40th Sess. Sixth Comm. 55th mtg., at 6, U.N. Doc. A/C.6/40/SR.55 (Dec. 6, 1985).

[201] U.N. GAOR 40th Sess. 108th plen. mtg., at 36, U.N. Doc. A/40/PV.108 (Dec. 9, 1985); 1985 U.N.Y.B. 1167.

[202] See *e.g*. Demark, "Statement on behalf of 12 members of the European Community," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 2, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985); Yugoslavia, "Statement," *Ibid*., at 4.

[203] G.A. Res. 42/159, pr. para. 2, U.N. Doc. A/RES/42/159 (Dec. 7, 1987).

the possibility of convening, under the auspices of the United Nations, a conference to define terrorism. Syria argued that, in order to cooperate effectively against terrorism, the international community required internationally agreed criteria to distinguish between terrorism, which deserved to be condemned, and people's struggle to achieve freedom and independence.[204] This proposal was endorsed by the Arab Group as a whole.[205] Thereafter, the General Committee and the Plenary of the General Assembly as a whole agreed to this seemingly innocuous procedural proposal.[206] Subsequent discussions would prove that this proposal had brought back to the negotiating table the question of the definition of terrorism as a precondition for progress on practical measures to combat it. Thus, when the Sixth Committee considered this topic, it was then faced with two proposals. On the one hand, western delegations submitted a draft resolution based mostly on the 1985 resolution but without any reference to the right of self-determination.[207] They deplored "the continuation of terrorist outrages, including those instigated or supported by States, involving assassinations, the taking of hostages, the hijacking of aircraft, bomb attacks, letter or parcel bombs and other criminal acts that

---

[204] Syria, "Letter to the Secretary-General, request for the inclusion of a supplementary sub-item in the provisional agenda of the forty-second session," UN Doc. A/42/193 (Aug. 14, 1987), U.N. GAOR 40th Sess. Annexes, No. 126, at 1-2.

[205] Kuwait, "Letter to the Secretary-General, on behalf of the Group of Arab States, in support of the request contained in document A/42/193" (Sept 2, 1987) U.N. GAOR 40th Sess. Annexes, No. 126, at 2.

[206] U.N.G.A. Sixth Comm., *Report*, at 2-3, UN Doc. A/42/832 (Dec. 3, 1987) in U.N. GAOR 40th Sess. Annexes, No. 126, at 2-3 [hereinafter 1987 Sixth Comm. Report]. The title of the agenda item now read:

> Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in the misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes:
>
> a) Report of the Secretary-General;
> b) Convening, under the auspices of the United Nations, of an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation.

[207] Australia, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the United Kingdom, "Draft resolution," UN Doc. A/C.6/42/L.2 in 1987 Sixth Comm. Report, *supra* note 206, at 3.

spread violence and terror (…)"[208] On the other hand, Zimbabwe, on behalf of the Non-Aligned group,[209] submitted a text which emphasized the question of self-determination by affirming that nothing in the resolution against terrorism could prejudice, in any way, either the right of peoples to struggle against colonial or racist regimes or their right to receive support in that struggle. In addition, the Non-Aligned draft sought to endorse, in principle, the Syrian proposal to convene a conference to define terrorism while requesting the Secretary-General to seek the views from states on how to proceed. [210] Finally, this draft contained a concept of terrorism that underlined state involvement. It deplored:

> the continuation of all terrorist acts, in particular those committed, directed, financed or otherwise instigated or supported by States, involving political assassinations, destabilization of duly constituted Governments, the activities of mercenaries, the taking of hostages, the hijacking of aircraft, bomb attacks, and other criminal terrorist actions which take toll of innocent human lives and jeopardize the normal functioning of international relations.[211]

In an effort to bridge the gap between delegations, the chairman convened several rounds of informal consultations. Even though those consultations were unable to find an agreement on a new draft resolution, they brought the positions closer. The resulting text was formally submitted by Yugoslavia, Cuba, Malta, and Czechoslovakia.[212] This new draft was mostly a repetition of the 1985 resolution but it contained several important

---

[208] *Ibid*., pr. para. 2.

[209] Perera, *supra* note 4, at 82.

[210] Zimbabwe, "Draft resolution," ¶¶ 13-14, UN Doc. A/C.6/42/L.7/Rev.1 in 1987 Sixth Comm. Report, *supra* note 206, at 5.

[211] *Ibid*., pr. para 6.

[212] Cuba, Czechoslovakia, Malta and Yugoslavia, "Draft resolution," UN Doc. A/C.6/42/L.24, in 1987 Sixth Comm. Report, *supra* note 206, at 5-6.

new elements. First and foremost, the new text included the formula proposed by the Non-Aligned that the new resolution could no prejudice the right of self-determination.[213] Second, it included a new premabular paragraph stressing that the "effectiveness of the struggle against terrorism could be enhanced by establishing an internationally agreed definition of international terrorism."[214] Third, it requested the Secretary-General to seek the views of states on the possibility of convening an international conference under United Nations auspices, as proposed by Syria, but without endorsing this proposal; and, fourth, it asked the International Civil Aviation Organization and the International Maritime Organization to intensify their efforts to develop new legal instruments against terrorism.[215] The draft resolution submitted by Yugoslavia and others was put to the vote. The United States abstained, Israel voted against, while all other delegations voted in favor.[216] The European Community, the Nordic countries, Canada, and Australia, in particular, cast a positive vote but they stressed that the inclusion of Zimbabwe's formula was unfortunate because it gave the impression that terrorism was justifiable if committed in pursuance of self-determination.[217] A few days later, this text[218] was adopted by the Plenary of the General Assembly by 153 votes in favor, 2 against, and 1 abstention.[219]

---

[213] *Ibid*., pr. para 14.

[214] *Ibid*., pr. para 17.

[215] *Ibid*., ¶¶ 9, 13.

[216] 1987 Sixth Comm. Report, *supra* note 206, ¶¶ 23, 25, 30.

[217] Demark, *supra* note 202, at 4-5; Finland, "Statement on behalf of Denmark, Finland, Iceland, Norway and Sweden," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985); Canada, "Statement," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985); Australia, "Statement," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

[218] G.A. Res. 42/159, U.N. Doc. A/RES/42/159 (Dec. 7, 1987).

[219] The United States and Israel voted against. U.N. GAOR 42nd Sess. 94th plen. mtg., at 42, U.N. Doc. A/42/PV.94 (Dec. 7, 1987); 1987 U.N.Y.B. 1065.

In 1988, the states made further progress in the codification of new norms against terrorism, albeit outside of the framework of the United Nations. Between the 9th and the 24th of February 1988, a conference of plenipotentiaries met in Montreal, under the auspices of the International Civil Aviation Organization, to further develop international aeronautical law.[220] That conference adopted, by consensus, the Protocol to the Montreal Convention on the Safety of Civil Aviation on terrorist acts committed in airports.[221] In early March 1988, the International Maritime Organization held in Rome a conference to consider new means to prevent terrorist acts on the high seas. That conference adopted the Convention on the Safety of Maritime Navigation,[222] and its Protocol on the Safety of Fixed Platforms located on the Continental Shelf.[223] These three new treaties followed the sectoral approach, that is, they sought to impose, on those states that ratify them, the obligation of criminalizing within their domestic legislation some concrete forms of terrorist acts with a view to facilitating the prosecution or extradition of any person accused of committing them. The next year, when the General Assembly considered again the topic of "Measures to prevent international terrorism (…)" it took special note of the adoption of those instruments and urged states to ratify them.[224]

---

[220] See The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, at 21, U.N. Doc. A/44/456 (Aug. 25, 1989) [hereinafter 1989 Secretary-General Report].

[221] 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, *adopted on* Feb. 24, 1988, ICAO Doc. 9518.

[222] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1.

[223] Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Self, *adopted on* March 10, 1988, IMO Doc. SU/CONF/16/Rev.2.

[224] G.A. Res. 44/29, pr. para 17, ¶¶ 5, 10-11, U.N. Doc. A/RES/44/29 (Dec. 4, 1989).

In 1989, pursuant to the 1987 General Assembly resolution,[225] the Secretary-General requested the views of states on means to combat terrorism, including the possibility of convening, under the auspices of the United Nations, an international conference to define it and to differentiate it from the struggle for national liberation. The replies were sharply divided. On the one hand, Syria, Saudi Arabia and Mongolia strongly supported convening such a conference.[226] On the other, the European Union, Turkey, Israel, Norway and Sweden were staunchly against it.[227] The European Union, in particular, argued that such a conference would be counterproductive as it was impossible to define terrorism as a whole and because it could erode the agreements reached in previous years. European delegations strongly favored the sectoral approach.[228] In addition, Mongolia proposed the negotiation of an instrument to deal specifically with acts of nuclear terrorism. In their view, the arms race created increased opportunities for nuclear material to fall into criminal hands. At the time, only Byelorussia supported this idea.[229]

Moreover, the 1989 Sixth Committee debate on terrorism acquired new intensity as most delegations sought to react to the bombing of the Pan-Am Flight 103 over Lockerbie[230] and of the Brazzaville-Paris UTA Flight over Chad.[231] Three different draft

---

[225] G.A. Res. 42/159, *supra* note 218, ¶ 12.

[226] 1989 Secretary-General Report, *supra* note 220, at 7, 13, 16.

[227] *Ibid*., at 10-11, 14, 19, 20; The Secretary-General, *Report on Measures to Prevent International Terrorism, Addedum 1, submitted to the General Assembly*, at 2, U.N. Doc. A/44/456/Add.1 (Oct. 10, 1989).

[228] 1989 Secretary-General Report, *supra* note 220, at 10.

[229] *Ibid*., at 14; Byelorussia, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 20th mtg., ¶ 9-10, U.N. Doc. A/C.6/44/SR.20 (Oct. 17, 1989);

[230] On December 21, 1998, Pan Am Flight 103, flying from London to New York, exploded in midair and crashed on the town of Lockerbie, Scotland. The 259 person on board and 11 persons on the ground were killed. Investigators found the remains of a suitcase-bomb that linked the attack to Libyan officials. In

resolutions were submitted. Western delegations presented a draft resolution that focused on practical measures to combat terrorism. They emphasized the ICAO and IMO conventions adopted during 1988 and urged states to ratify them. They also urged the ICAO to intensify its work on a new legal instrument on the marking of explosives to facilitate their detection. In addition, they reproduced most of the provisions of the 1987 General Assembly resolution except those that referred to self-determination and to the possibility of convening a conference to define terrorism.[232] The Non-Aligned group submitted a draft based on the text of the western delegation's draft but which included also all the references to self-determination that had appeared in the 1987 resolution. It incorporated, in particular, the provision that nothing in that resolution could prejudice the right of self-determination. Moreover, regarding the proposed conference, this draft simply requested the Secretary-General to seek, once again, the views of states on the possibility of convening such a meeting. Finally, the Non-Aligned draft incorporated a new element: an expression of concern for the growing links between terrorism and drug

---

1991, the former head of security for Libyan Arab Airlines, Mr. Al-Megrahi, and his assistant, Mr. Fhimah, were indicted for the attack. Libya rejected the request for extradition. In 1992, the Security Council, acting under Chapter VII of the U.N. Charter, imposed sanctions upon Libya. In April 1999, after several years of impasse, Libya agreed to hand the accused to a Scottish court meeting in the Netherlands. In May 2000, Al-Megrahi was found guilty and sentenced to life in prison. Fhimah was found not guilty. In October 2002, the Libyan government agreed to compensate the victims of the attack, and, in April 2003, Libya formally accepted responsibility for the bombing. MIPT Terrorism Knowledge Base, "Other Group attacked Airports and Airlines target (Dec. 21, 1988, United Kingdom)" database on line available from http://www.tkb.org/Indicent.jsp?incID=5728 accessed on June 1, 2006.

[231] On September 19, 1989, a plane of the French airline Union des Transports (UTA), flying from Brazzaville (Republic of Congo) to Paris exploded in midair over Chad. The 171 persons on board were killed. The Islamic Jihad claimed responsibility for this attack. MIPT Terrorism Knowledge Base, "*Hezbollah attacked Airports and Airlines target (Sept. 19, 1989, Chad)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=6022 accessed on June 1, 2006.

[232] Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Turkey, and the United Kingdom, "Draft resolution," UN Doc. A/C.6/44/L.2 in U.N.G.A. Sixth Comm., *Report*, at 2-6 UN Doc. A/44/762 (Dec. 1, 1989).

trafficking groups. [233] Finally, a third draft was presented by several members of the Eastern bloc. Their text focused on institutional aspects. It requested the Secretary-General to seek the views of states on the possibility of establishing, within the United Nations, a fact finding body to investigate terrorist incidents and to create a center, within the Secretariat, to collect and analyze information on the various aspects of the question of international terrorism.[234]

After extensive informal consultations, the chairman of the Sixth Committee was able to submit a draft resolution that was acceptable to all delegations. His text, which was based on the draft submitted by the Non-Aligned Group, contained all the references to self-determination that had appeared in the 1987 resolution, and the request to the Secretary-General that he seek the views of states on the possible conference to define terrorism.[235] Thus, it was acceptable to developing countries. On the other hand, as a concession to the western delegations, the chairman redrafted the provision on the right of self-determination. His draft stressed that the right of self-determination had to be legitimate and that it did not detract from the general condemnation of all forms of terrorism contained in the same resolution.[236] Moreover, as a concession to the Eastern

---

[233] Yugoslavia (on behalf of the member states of the Non-Aligned Movement), "Draft resolution," ¶¶ 8, 13, 15, UN Doc. A/C.6/44/L.4 in Sixth Comm., *Report*, *supra* note 232, at 7-11.

[234] Bulgaria, German Democratic Republic, Hungary, Poland, and the Union of Soviet Socialist Republics, "Draft resolution," UN Doc. A/C.6/44/L.4 in Sixth Comm., *Report*, *supra* note 232, at 6-7.

[235] The Chairman of the Sixth Comm., "Draft resolution," pr. para 15-18 and ¶¶ 6, 14, 17, UN Doc. A/C.6/44/L.22, Sixth Comm., *Report*, *supra* note 232, at 12, *adopted as* G.A. Res. 44/29, *supra* note 224.

[236] See, United States, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 48th mtg., at 3, U.N. Doc. A/C.6/44/SR.48 (Dec. 1, 1989); G.A. Res. 44/29, *supra* note 224, ¶ 17:

> 17. Considers that nothing in the present resolution could in any way prejudice the right of self-determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination, or the right of these peoples to struggle *legitimately* to this end

bloc, the chairman's text stressed the need to enhance the role of the United Nations in the fight against terrorism and it requested the Secretary-General to seek the views of states on how to achieve it.[237] On December 4, 1989, the General Assembly adopted the chairman's text without a vote.[238]

In 1991, when the General Assembly revisited the question of terrorism, the discussion focused, once again, on which additional measures could be taken to eliminate this crime, including the possibility of convening an international conference under the auspices of the United Nations to define it. The views of delegations were, once again, divided. A first group of delegations, mostly from developing countries,[239] supported the idea of convening an international conference to define terrorism and to distinguish it from the legitimate struggle for self-determination.[240] Some delegations sought to reactivate the *Ad Hoc* Committee on International Terrorism, as the best forum to study the possibility of convening the proposed conference.[241] A second group of

---

> and to seek and receive support in accordance with the principles of the Charter, the above-mentioned declaration and the relevant General Assembly resolutions, *including the present resolution*; [emphasis added].

[237] G.A. Res. 44/29, *supra* note 224, pr. para. 13 and ¶ 15.

[238] 1989 U.N.Y.B. 828.

[239] Algeria, Bolivia, Botswana, Colombia, Cuba, Ecuador, Ghana, Honduras, Iran, Jamaica, Kuwait, Libya, Lithuania, Madagascar, Morocco, Papua New Guinea, Syria, Tanzania, Tunisia, and Uganda.

[240] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, at 5, 11, 13–16, 23, U.N. Doc. A/46/346 (Aug. 30, 1991) [hereinafter 1991 Secretary-General Report]; U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 13, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991); U.N. GAOR 46th Sess. Sixth Comm. 14th mtg. ¶ 22, 58, U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991); U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 15, 25, 55, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991); U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 10, 35, 67, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991); U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 9, 13, 49, 62, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[241] Ukraine, Syria, and Tanzania. U.N. GAOR 46th Sess. Sixth Comm. 14th mtg. ¶ 3, 12, U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991); U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 15, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

delegations,[242] including the United States[243] and the European Community,[244] opposed the convening of such a conference. In their view, as it was likely to fail and it could distract from the adoption and implementation of practical measures to combat terrorism, these delegations favored the sectoral approach. Austria, for instance, argued that the legal framework for combating terrorism had been successfully developed and improved, without a general definition of the crime of terrorism, through the adoption of legal instruments which, in addressing particular aspects of terrorism, contained concrete definitions tailored to their particular fields of application.[245] For the United States, the juridical committee of the United Nations should not address all the real or imagined injustice in the world, which could lie at the root of terrorism, as those questions were being considered in the economic and political committees of the General Assembly.[246] Finally, a third group of delegations was cautious. They favored convening the conference but preferred either to limit its scope or to wait for consensus on its mandate and basic underpinnings.[247]

---

[242] Argentina, Canada, Chile, Czechoslovakia, Israel, the Nordic Countries, Turkey, Philippines, Guatemala, Austria, Japan, Canada, and Australia. 1991 Secretary-General Report, *supra* note 240, at 5, 9, 12, 15, 22, 24; U.N. GAOR 46th Sess. Sixth Comm. 12th mtg. ¶ 11, 16, U.N. Doc. A/C.6/46/SR.12 (Oct. 10, 1991); U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 19, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991); U.N. GAOR 46th Sess. Sixth Comm. 14th mtg. ¶ 18, U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991); U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 21, 33, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991); U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 28, 46, 36, 51, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

[243] United States, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 55, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[244] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, at 3-4, U.N. Doc. A/46/346/Add.1 (Oct. 1, 1991); Netherlands, *Statement on behalf of the 12 states members of the European Community*, U.N. GAOR 46th Sess. Sixth Comm. 12th mtg. ¶ 7, U.N. Doc. A/C.6/46/SR.12 (Oct. 10, 1991)

[245] Austria, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 43, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

[246] United States, "Statement," *supra* note 243, ¶ 57.

[247] Malta, Sri Lanka, Colombia, Uruguay, Venezuela, Ecuador, Cyprus, Lesotho, Thailand, Mali, Republic of Korea, and New Zealand. 1991 Secretary-General Report, *supra* note 240, at 21; U.N. GAOR 46th Sess.

For their part, some delegations advocated for the immediate development of new international law instruments to combat terrorism. Poland[248] suggested the negotiation, under the auspices of the United Nations, of new treaties to combat terrorism to fill any gaps in the existing legal regime.[249] Malta and Mozambique[250] proposed enlarging the scope of the existing anti-terrorism conventions by adding any new articles that might be necessary, and Albania favored the creation of a legal instrument that would define terrorism.[251] Ukraine advocated the preparation of a legal instrument for the physical protection of chemical and biological substances[252] while the Soviet Union suggested the possibility of preparing a new instrument for the prevention, suppression and elimination of terrorist acts involving nuclear weapons or nuclear material. The USSR noted that the Security Council could establish, upon recommendation of the General Assembly, a working group to examine, with the assistance of the International Atomic Energy Agency, the legal and technical aspects of this issue.[253] Finally, Colombia and Cuba[254]

Sixth Comm. 14th mtg. ¶ 37, 39, 55, 57, U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991); U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 44, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991); U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 61, 64, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991); U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 15, 25, 33, 65, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[248] Supported by Turkey and Austria. U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 32, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991); U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 43, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

[249] 1991 Secretary-General Report, *supra* note 240, at 18.

[250] 1991 Secretary-General Report, *supra* note 240, at 17; Mozambique, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 36, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

[251] Albania, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 28, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[252] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, at 6, *supra* note 244.

[253] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 2*, at 2, U.N. Doc. A/46/346/Add.2 (Oct. 8, 1991); USSR, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 22, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

[254] 1991 Secretary-General Report, *supra* note 240, at 11; Cuba, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 54, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

suggested the adoption of a legal instrument that would define terrorism and underscore the states' obligation to control, within their territory, the means and persons that encourage violence in the territory of other states. Colombia also proposed creating a system of sanctions that would punish those states that promoted or supported terrorist activities, either directly or through the unregulated sale of weapons and explosives.[255]

Several delegations focused on state-terrorism. Libya[256] argued that it was necessary to address the acts of terrorism committed by one state against another trying to impose alien domination or to create political instability.[257] Ghana and Uganda argued that state-terrorism included mercenary activities, armed intervention, colonial occupation, and alien domination, when used to destabilize constitutionally elected governments in developing countries. They also argued that it was inappropriate to condemn as terrorist the South African and Palestinian liberation movements when the South African and Israeli governments used violence against the civilian populations.[258] Nevertheless, Western delegations opposed the concept of state-terrorism. The United States argued that it was not necessary to characterize state conduct as terrorism in order to establish its illegality. In its view, a solid body of law addressing the use of violence by states already existed, including norms such as the prohibition of use of force contained in article 2.4 of the UN Charter. For the United States, the term "terrorism"

---

[255] 1991 Secretary-General Report, *supra* note 240, at 11.

[256] Supported by Iran, Mozambique, Pakistan, Sudan, Algeria, Kuwait, and Ghana. U.N. GAOR 46th Sess. Sixth Comm. 14th mtg. ¶ 20, U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991); U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 39, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991); U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 2, 6, 35, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991); U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 9, 12, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[257] Libya, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 14-15, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

[258] U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 12, 46, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

had to be reserved for heinous acts of violence committed by individuals or groups of persons.[259] Replying to Ghana, Canada and Australia stressed they could not accept as legitimate any "right" to resort to terrorism to advance political objectives.[260] Meanwhile, Israel argued that action should be taken against states which employed terror directly or through the sponsorship of terrorist groups.[261] Finally, Papua New Guinea proposed that any act aimed at creating anxiety or coercing a people through intimidation, such as the threat, by mining companies, of withdrawing their investments in an effort to extort concessions from a people, should be consider as terrorism.[262]

After some consultations, the chairman of the Sixth Committee proposed a draft resolution that was acceptable to all delegations.[263] The chairman's text was identical to the 1989 resolution,[264] but with one important difference: the long and controversial title:

> Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievances and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes:
>
> a) Report of the Secretary-General,
>
> b) Convening, under the auspices of the United Nations, of an international conference to define terrorism and differentiate it from the struggle of peoples for national liberation,[265]

---

[259] United States, "Statement," *supra* note 243, ¶ 56.

[260] U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 37, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

[261] Israel, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 31, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

[262] Papua New Guinea, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 7-12, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

[263] The Chairman of the Sixth Comm., "Draft resolution," U.N. Doc. A/C.6/46/L.4, *later adopted as* G.A. Res. 46/51, U.N. Doc. A/RES/46/51 (Dec. 9, 1991); U.N. GAOR 46th Sess. Sixth Comm. 23rd mtg. ¶ 112, U.N. Doc. A/C.6/46/SR.23 (Oct. 23, 1991).

[264] G.A. Res. 44/29, *supra* note 224.

[265] *Ibid*., ¶ 18.

was reduced to simply to: "Measures to eliminate international terrorism."[266] For western delegations this change was positive since it moved the discussion away from the conceptual differences that had plagued the negotiations during the 1970s and 1980s and towards a more practically oriented approach. The chairman's text was then adopted by consensus both by the Sixth Committee[267] and by the General Assembly.[268]

The General Assembly considered the question of terrorism once more in 1993. That year, however, the Assembly was unable to reiterate its regular biannual resolution condemning terrorism; it could only adopt a procedural decision. The Assembly seemed irremediably divided on how to address the question of international terrorism.[269] Some developing countries,[270] supported Syria's proposal of the convening an international conference to define terrorism, to differentiate it from the struggle of peoples for national liberation, and to study its root causes.[271] Sudan,[272] in particular, suggested reconvening the *Ad Hoc* Committee on International Terrorism, originally established in 1972, to prepare the work of such conference.[273] Meanwhile, Peru suggested instead convening, during 1994, a special plenary meeting of the General Assembly to deal with terrorism in

---

[266] G.A. Res. 46/51, *supra* note 263, ¶ 16.

[267] U.N. GAOR 46th Sess. Sixth Comm. 26th mtg. ¶ 47, U.N. Doc. A/C.6/46/SR.26 (Oct. 31, 1991).

[268] 1991 U.N.Y.B. 825.

[269] See The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, U.N. Doc. A/48/267 (Aug. 5, 1993) [hereinafter 1993 Secretary-General Report]; The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, U.N. Doc. A/48/267/Add.1 (Sept. 21, 1993).

[270] Jordan, Libya, Iraq, Qatar, Uganda, and Venezuela. 1993 Secretary-General Report, *supra* note 269, at 4–15; U.N. GAOR 48th Sess. Sixth Comm. 13th mtg. ¶ 52, 58, 70, 74, U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993); U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 26, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

[271] Syria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 60, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

[272] Supported by Cuba. U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 3, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

[273] Sudan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 9, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

depth.[274] Conversely, developed nations[275] opposed convening such a conference. Canada and Australia felt that a conference or a working group to define terrorism was likely to fail. In their view, nothing could be gained from a politicized debate on divisive issues such as state-terrorism and the distinction between terrorism and the legitimate exercise of the right of self-determination.[276] Similarly, the United States argued that such a conference would be counterproductive because it was unlikely that it could adopt any outcome by consensus. It also feared that such a conference would divert the attention of the international community from the real task of developing concrete, practical, and effective measures to against terrorism. [277] Meanwhile, Malta and Ecuador stressed that convening such a conference would only be useful if common understanding of the main issues was reached before hand.[278]

On the possibility of negotiating new legal instruments, India argued for drafting a binding convention prohibiting both international terrorism as well as its encouragement by states,[279] and Algeria advocated for establishing a working group to elaborate a convention to complement and strengthen the then existing 10 international instruments on terrorism, ensuring international cooperation on the basis of the principle of "prosecute or extradite" and of individual criminal responsibility. In Algeria's view,

---

[274] Peru, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 15, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

[275] *E.g.* Czech Republic, Japan, the United States and Turkey. U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 12, 58, 66, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993); U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 7, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

[276] Canada, "Statement, on behalf also of Australia," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 11, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

[277] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, *supra* note 269, at 2-3.

[278] 1993 Secretary-General Report, *supra* note 269, at 7, 10.

[279] India, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 49, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

such a convention might solve the question of the definition of terrorism by focusing, not on the conceptual aspects, but on the physical manifestations of terrorism.[280] Pakistan supported negotiating a convention to address all forms of terrorism,[281] while Iran argued that, before deciding on how to proceed, the General Assembly had to define terrorism and differentiate it from the exercise of the right of self-determination. Brazil, on the other hand, said that the time was not ripe for negotiating a general convention on terrorism. For them, progress had been made by proceeding gradually and, in consequence, it would be better to ensure the full implementation of the existing sectoral instruments and to develop new ones only when the need arose.[282] Similarly, the European Union[283] and Japan[284] argued that the best means to combat terrorism was to avoid generalities and to focus on specific terrorist acts. The Nordic countries believed that existing norms, both in international and in domestic law, sufficed to combat terrorism.[285] Finally, the United States contrasted the failure to find a general definition of terrorism, both by the League of Nations, in the 1930s, and by the United Nations *Ad Hoc* Committee, in the 1970s, with the success achieved in developing concrete measures

---

[280] Algeria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 16-17, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

[281] Pakistan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 13th mtg. ¶ 77, U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993).

[282] Brazil, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 53, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

[283] Belgium, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 45, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

[284] Japan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 57, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

[285] Sweden, "Statement on behalf of the Nordic Countries," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 63, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

when considering specific forms of this crime.[286] In its view, due of the difficulties experienced in previous efforts to agree on a generic definition of terrorism, the international community had chosen to follow the sectoral approach. It also noted that adopting an instrument that would distinguish terrorism from self-determination would send an ambiguous signal that would encourage the commission of terrorist acts.[287] Noting the wide divergence of views, Canada argued for a factual resolution containing only a summary of the international achievements in the struggle against terrorism. In its view, if consensus was impossible, it would be preferable for the Assembly to be silent.[288] Morocco and Cyprus[289] also emphasized that any further action had to be decided by consensus.

After the debate, the chairman of the Sixth Committee conducted extensive consultations on a draft substantive resolution on the item. Due to the differences of view on how to proceed, it proved however impossible to achieve agreement on such a resolution.[290] Consequently, it was decided that discussions continue the following year. In order to make this agreement operational, the Sixth Committee agreed, in a procedural decision,[291] to include the item of terrorism in the agenda of the next session of the General Assembly and to request the Secretary-General to seek the views of States on all

---

[286] United States, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 66, U.N. Doc. A/C.6/48/SR.12 (Oct. 19, 1993).

[287] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, *supra* note 269, at 2-3.

[288] Canada, "Statement, also on behalf of Australia," *supra* note 276, ¶ 11.

[289] Morocco, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 13th mtg. ¶ 41, U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993); Cyprus, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 11, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

[290] Virginia Morris and M. Christiane Bourloyannis-Vrailas, "Current Developments: The Work of the Sixth Comm. at the Forty-Eight Session of the UN General Assembly," 88 AM.J.INT'L.L 343, 348 (1994).

[291] U.N.G.A. decision 48/411 (Dec. 9, 1993).

the proposals made during the 1993 formal debate.[292] As part of the agreement, the chairman of the Sixth Committee made a short statement emphasizing that this procedural decision had been made in light of the request of further views by States.[293] When this decision was adopted, Algeria expressed the hope that it would be a first positive step towards more fruitful and effective action on terrorism, breaking with the sterile repetition of previous texts.[294]

E) A milestone: the 1994 Declaration on Terrorism

1994 was a turning point in the General Assembly's work on terrorism. That year, after a decade of little progress, the Assembly was able to set aside the differences of view on the definition of terrorism and on its relation to self-determination and to adopt, by consensus, a strong, substantive decision: the 1994 Declaration on Measures to Eliminate International Terrorism.[295] The importance of this Declaration for the General Assembly's subsequent efforts to strengthen the legal regime against terrorism cannot be overstated. For the first time, the General Assembly condemned terrorism in all its forms and manifestations without allowing for any justifications, such as the right of self-determination. The understandings and formulations reached during that year's negotiation became the point of departure for drafting of the Bombings,[296] Financing,[297]

---

[292] U.N.G.A. Sixth Comm., *Report, Measures to Eliminate International Terrorism*, ¶ 10, U.N. Doc. A/48/609 (Dec. 1993).

[293] *Ibid*., ¶ 7.

[294] Algeria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 39th mtg. ¶ 9, U.N. Doc. A/C.6/48/SR.39 (Dec. 3, 1993).

[295] 1994 Declaration, *supra* note 3.

[296] International Convention for the Suppression of Terrorist Bombings, *adopted* on Dec. 15, 1997, G.A. Res. 52/164 Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter Bombings Convention].

Nuclear,[298] and Comprehensive Conventions.[299] On the other hand, that year's debate also revealed that major differences on how to proceed thereafter persisted.[300]

In 1994, pursuant to the procedural decision taken at its previous session,[301] the Sixth Committee was to consider a report from the Secretary-General containing the views of States on the various alternatives on how to proceed in the future with the question of international terrorism. Not surprisingly, the report reflected, once again, the wide variety of views.[302] A first group of delegations argued, once again, for concluding a treaty that would address simultaneously all forms of terrorism. India, for instance, advocated for an "umbrella" convention that would recapitulate the agreements reached in the sectoral instruments and establish universal jurisdiction for terrorist offences.[303] Similarly, Algeria suggested, a treaty that would fill the gaps in the legal regime established by the sectoral conventions.[304] Algeria then suggested creating a working

---

[297] International Convention for the Suppression of the Financing of Terrorism, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999) [hereinafter Financing Convention].

[298] International Convention for the Suppression of Acts of Nuclear Terrorism, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005) [hereinafter Nuclear Convention].

[299] See Chapters 4, 5, 6, and 7.

[300] Virginia Morris and M. Christiane Bourloyannis-Vrailas, "Current Developments: The Work of the Sixth Comm. at the Forty-Ninth Session of the UN General Assembly," 89 AM.J.INT'L.L 607, 612 (1995).

[301] U.N.G.A. decision 48/411, *supra* note 291.

[302] The Secretary-General, *Report on Measures to Eliminate International Terrorism*, U.N. Doc. A/49/257 (July 25, 1994) [hereinafter 1994 Secretary-General Report]; The Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 1*, U.N. Doc. A/49/257/Add.1 (July 25, 1994) [hereinafter 1994 Secretary-General Report Addendum 1]; The Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 2,* U.N. Doc. A/49/257/Add.2 (Oct. 4, 1994) [hereinafter 1994 Secretary-General Report Addendum 2]; The Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 3*, U.N. Doc. A/49/257/Add.3 (Oct. 19, 1994) [hereinafter 1994 Secretary-General Report Addendum 3].

[303] 1994 Secretary-General Report, *supra* note 302, ¶ 12.

[304] *Cf*. League of Nations, Convention for the Prevention and Punishment of Terrorism, *supra* note 11, art. 1.2.

group of the Sixth Committee to negotiate this new instrument, to be followed, if necessary, by an *Ad Hoc* Committee.[305] A second group of delegations, mostly from developing countries,[306] reiterated their support for convening an international conference to address terrorism in all forms. Syria, for example, considered that any future work by the General Assembly on terrorism had to be devoted to preparing such a conference. In its view, only after that conference, and on the basis of its outcome, it might be possible to draft an international convention for the prevention of terrorism.[307] For its part, Libya, considered that the definition of terrorism should encompass state-terrorism.[308] A third group of delegations,[309] including the United States[310] and the European Union,[311] opposed both the convening of a conference to define terrorism and the negotiation of a broad convention, preferring instead practical measures to strengthen international legal cooperation, ensure prosecution and prevent new acts of terrorism. Finally, Tunisia suggested the adoption, in a General Assembly resolution, of an operational code of conduct containing: first, a condemnation of terrorism in all its form and manifestations; second, a pledge to undertake effective cooperation against terrorism; third, a commitment from States not to organize or sponsor terrorist activities; fourth, a vow to implement the existing conventions and to ensure the prosecution or extradition of

---

[305] 1994 Secretary-General Report, *supra* note 302, at 4-7.

[306] Belarus, Brunei Darussalam, Cuba, and Mauritius. 1994 Secretary-General Report, *supra* note 302, at 9-10; 1994 Secretary-General Report Addendum 1, *supra* note 302, at 2; 1994 Secretary-General Report Addendum 2, *supra* note 302, at 2.

[307] 1994 Secretary-General Report Addendum 1, *supra* note 302, at 5.

[308] 1994 Secretary-General Report Addendum 3, *supra* note 302, at 2.

[309] Argentina, Namibia, Poland, Sweden (on behalf of the Nordic countries), Tunisia, and Turkey. 1994 Secretary-General Report, *supra* note 302, at 7, 15-19, 21.

[310] *Ibid*., at 22-23.

[311] *Ibid*., at 11–12.

terrorists; and, fifth, a compromise to refrain from granting refugee status or political asylum to persons involved in terrorist acts. Furthermore, it suggested establishing within the Organization a new body that would report and identify terrorist acts and bring them to the attention of the General Assembly or the Security Council.[312]

Before the Sixth Committee had time to consider this report, two terrorist attacks set the tone for that year's discussion. On July 18th 1994, a car-bomb destroyed the Argentine Israelite Mutual Association, in Buenos Aires, killing 96 persons,[313] and on July 26th, a similar car-bomb exploded outside the Israeli Embassy in London, injuring 15 persons.[314] The Security Council condemned these attacks and stressed the need to strengthen international cooperation in order to take full and effective measures to prevent, combat, and eliminate all forms of terrorism.[315] It seems that the horror of these acts prompted many delegations to call for a renewed rejection of all forms of terrorism.

---

[312] *Ibid*., at 19-21.

[313] On July 18th, 1994, a suicide bomber detonated a car-bomb outside the building of the Argentine Israelite Mutual Association, in Buenos Aires, Argentina, which housed several leading Jewish organizations. The building was completely destroyed. 96 persons died and 236 were injured. A group called Ansar Allah, possibly linked with Hezbollah, claimed responsibility. However, suspicions focused on "Lebanese-based Islamic fundamentalists with ties to Tehran" An Argentine judge issued arrest warrants for four Iranian employees of the Iranian Embassy in Argentina for their involvement. MIPT Terrorism Knowledge Base, "Ansar Allah attacked other target (July 18, 1994, Argentina)" database on line available from *http://www.tkb.org/Indicent.jsp?incID=6022*, accessed on June 1, 2006.

[314] On July 26th, 1994, car bomb destroyed part of the Israeli Embassy in London. Various groups, including Hamas, the Movement of the Oppressed, and the Palestinian Resistance claimed responsibility for the attack. In January 1995, four Jordanians and a Lebanese national were charged with the bombing. MIPT Terrorism Knowledge Base, "Hamas and Palestinian Resistance attacked Diplomatic target (July 26, 1994, United Kingdom)" database on line available from *http://www.tkb.org/Indicent.jsp?incID=7432* accessed on June 1, 2006.

[315] U.N.S.C., President, "Statement," S/PRST/1994/40 (July 29, 1994).

In the debate, Syria[316] recalled its proposal for a conference to define terrorism[317] while India[318] renewed its call to negotiate a framework convention to address all forms of terrorism.[319] The European Union, the United States, and Egypt,[320] among others,[321] rejected those two proposals as counter productive and likely to fail. Meanwhile, the Russian Federation, expressing concern for smuggling of nuclear material, renewed the Soviet Union's proposal[322] of elaborating of a new sectoral convention to prohibit and punish terrorist acts perpetrated with nuclear arms and materials.[323] Meanwhile, and in parallel with the formal, Algeria and Tunisia circulated a draft declaration on measures to eliminate international terrorism.[324] This initiative had developed from Tunisia's suggestion, in the Secretary-General's report, that the General Assembly could adopt an operational code of conduct against terrorism.[325] The draft declaration included a forceful

---

[316] Supported by Nigeria, Nepal and Lybia. U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶¶ 67, 71, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 19, U.N. Doc. A/C.6/48/SR.15 (Oct. 21, 1994).

[317] Syria, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 18, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994)

[318] Supported by Syria, Algeria, Nigeria, and Nepal. U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶¶ 18, 27, 67, 71, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

[319] India, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 13, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

[320] Germany, "Statement on behalf of the European Union and Austria," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶¶ 57-58, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994); United States, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 29, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994); Egypt, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 37, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

[321] The Czech Republic, the Nordic Countries, Rumania, Venezuela, and Hungary. U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶ 7, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994); U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶¶ 18, 36, 59, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 40, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

[322] See *supra* note 253.

[323] Russian Federation, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶ 12, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994).

[324] Algeria, "Draft Declaration on Measures to Eliminate International Terrorism" (TD, non-paper, Oct. 13, 1994, on file with the author).

[325] 1994 Secretary-General Report, *supra* note 302, at 19 - 21.

condemnation of all acts, methods and practices of terrorism and stressed that those acts are not justifiable for any reason. It also called upon states to take "effective and resolute measures" to eliminate international terrorism, including by: refraining from organizing, financing or tolerating terrorist activities, ensuring prosecution or extradition of terrorists, providing each other with legal assistance and exchanging relevant information, implementing the conventions against terrorism to which they were parties, and ensuring that terrorists do not receive asylum or refugee status. It also encouraged states to review the existing legal provisions on terrorism to ensure that there was a comprehensive legal framework covering all aspects of this crime.[326] During the early stages of the preparation of this draft, before the text was widely distributed, the authors had sought inputs from the delegations of the United States, France, and the United Kingdom.[327]

The chairman asked the rapporteur of the Sixth Committee, Mrs. Sylvia Fernandez de Gurmendi, of Argentina, to coordinate the negotiations on the draft declaration. She held several rounds of informal consultations and bilateral contacts in an effort to find a broadly acceptable text. During those consultations, some delegations strongly argued that the text should condemn all acts of terrorism without exemption, that is, without making allowances for any justifications.[328] Conversely, other delegations believed that the declaration should contain a precise definition of terrorism

---

[326] Algeria, "Draft Declaration on Measures to Eliminate International Terrorism", *supra* note 324.

[327] Interview with Carolyn Wilson, Legal Advisor, Permanent Mission of the United States to the United Nations, in New York, NY, (December 11, 2005).

[328] The Czech Republic, Peru, Japan, Israel, and Canada made public statements to that effect. U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶¶ 7, 22, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994); U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶¶ 34, 44, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶¶ 48-49, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

distinguishing it from acts performed in exercise of the right to self determination.[329] Syria proposed a new paragraph, based on the 1989 and 1991 resolutions,[330] which stressed that the proposed declaration could prejudice the right of self-determination, freedom, and independence of peoples forcibly deprived of that right.[331] At the end, however, those who advocated for an unqualified condemnation of terrorism prevailed: the text adopted denounces as criminal all acts, methods, and practices of terrorism and declares that no political, ideological, racial, or religious consideration could justify them.[332] Even more, the declaration does not mention explicitly the right of self-determination. Its preamble only alludes to it through a general reference to the purposes and principles of the United Nations Charter, the Declaration of Principles of International Law, and the International Covenants on Human Rights.[333] Nevertheless, when the declaration was adopted, Syria, Pakistan, and Libya reiterated their view that terrorism must be distinguished from the legitimate struggle for self-determination and that the new declaration could not override the right of peoples to self-determination.[334]

On the question of state-terrorism, Sudan and Pakistan[335] argued that the declaration should address terrorist acts committed by states such as armed attacks to

---

[329] Sudan, Pakistan, Iran, and Libya. U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶¶ 5, 24, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶¶ 9, 19, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

[330] G.A. Res. 44/29, *supra* note 224, ¶ 7; G.A. Res. 46/51, *supra* note 263, ¶ 15.

[331] Syria, "Proposal, new operative paragraph" (TD, non-paper, Oct. 17, 1994, on file with the author).

[332] 1994 Declaration, *supra* note 3, ¶¶ 1, 3.

[333] *Ibid*., pr. para. 1, 2.

[334] U.N. GAOR 49th Sess. 84th plen. mtg. at 19, U.N. Doc. A/49/PV.84 (Dec. 9, 1994); U.N. GAOR 49th Sess. Sixth Comm. 39th mtg. ¶¶ 52, 55, U.N. Doc. A/C.6/49/SR.39 (Nov. 23, 1994).

[335] Sudan, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 5, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); Pakistan, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 24, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

overthrow a government and providing support to secessionist activities. The final text, however, uses the language adopted in previous resolutions by simply calling upon States to refrain from organizing, instigating, assisting in or otherwise condoning terrorist acts and to ensure that their territories are not used for the preparation of such acts.[336] In addition, there was some controversy on which measures were appropriate to ensure that refugees do not use their status to escape prosecution for terrorist acts. The first draft called upon states to apply strictly the 1951 Convention on Refugees[337] and to consult to each other before granting asylum, so as not to give that status to persons who had been engaged in terrorist activities.[338] Some delegations were concern that these provisions could undermine the protection provided by international law to refugees.[339] Consequently, the final text just calls upon States to take "appropriate measures" to ensure that refugee status is not given to terrorists and that such status is not abused.[340] This issue was to be revisited in 1996. Moreover, regarding the next steps, the declaration encouraged states to review the existing legal norms to ensure that those norms formed a comprehensive legal framework covering all aspects of terrorism, and asked the Secretary-General to examine the existing legal instruments on terrorism to determine if any of its aspects had not yet been addressed.[341] The Secretary-General was asked to report to the General Assembly on this matter during its Fiftieth session, that is,

---

[336] 1994 Declaration, *supra* note 3, ¶ 4.

[337] Convention relating to the Status of Refugees, *adopted on* July 28, 1951, U.N. Doc. A/CONF.2/108.

[338] Algeria, "Draft Declaration on Measures to Eliminate International Terrorism," *supra* note 324, ¶ 5.f, 5.g, 5.h.

[339] Malawi, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 61, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

[340] 1994 Declaration, *supra* note 3, ¶ 5.f.

[341] *Ibid*., ¶¶ 7, 10.c.

during 1995.[342] Finally, on November 23rd, 1994, and having reached an agreement, the Sixth Committee approved, by consensus, the Declaration on Measures to Eliminate International Terrorism, which was then adopted by the Plenary of the General Assembly on December 9th, 1994.[343]

In 1995, most states welcomed the adoption of the 1994 Declaration[344] and, in particular, its statement that terrorism is always unjustifiable, whatever political, philosophical, ideological, racial, ethnic, or religious consideration may be invoked to on its behalf. They also stressed the importance of implementing its provisions.[345] However, not all the delegations seemed satisfied by the 1994 Declaration. Syria[346] and Pakistan,[347] ignoring the Declaration's statement, argued that paragraph 14 of resolution 42/159 of 1987, on self-determination, was the necessary for international legitimacy in the combat against terrorism.

On how to proceed, the 1994 Declaration had requested the Secretary-General to present an analytical review of the exiting legal instruments on terrorism in order to assist states in identifying issues that had not been addressed in those instruments and in

---

[342] G.A. Res. 49/60 ¶ 5, U.N. Doc. A/RES/49/60 (Dec. 9, 1994).

[343] U.N. GAOR 49th Sess. Sixth Comm. 39th mtg. at 9-11, U.N. Doc. A/C.6/49/SR.39 (Nov. 23, 1994); U.N. GAOR 49th Sess. 84th Plen. mtg. at 19-21, U.N. Doc. A/49/PV.84 (Dec. 9, 1994).

[344] 1994 Declaration, *supra* note 3.

[345] Algeria, Spain (on behalf of the European Union), Brazil, Israel, Argentina, Russian Federation, Qatar, Togo, Kazakhstan, Sri Lanka, Uganda, India, Hungary, Turkey, Belarus, and Zaire. The Secretary-General, *Report on Measures to prevent international terrorism, Addendum*, ¶ 1, UN Doc. A/50/372/Add.1 (Sept. 26, 1995); U.N. GAOR 50th Sess. Sixth Comm. 6th mtg. ¶ 4, U.N. Doc. A/C.6/50/SR.6 (Oct. 2, 1995); U.N. GAOR 50th Sess. Sixth Comm. 7th mtg. ¶ 7, U.N. Doc. A/C.6/50/SR.7 (Oct. 3, 1995); U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶¶ 1, 5, 7, 10, 18, 23 U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995); U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶¶ 1, 5, 21, 37, 45, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995); U.N. GAOR 50th Sess. Sixth Comm. 10th mtg. ¶¶ 3, 13, 15, 30, U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

[346] The Secretary-General, *Report on Measures to prevent international terrorism*, at 13, UN Doc. A/50/372 (Aug. 24, 1995) [hereinafter 1995 Secretary-General Report].

[347] U.N. GAOR 50th Sess. Sixth Comm. 10th mtg. ¶ 10, U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

developing further a comprehensive legal framework to deal with terrorism.[348] It was felt that this request had given a new impetus to the sectoral approach.[349] Several delegations, while waiting for such review, expressed their willingness to consider the negotiation of additional, *Ad Hoc* conventions to close any gaps in the existing legal framework.[350] However, at the time, the Secretariat was not ready to present such analysis; it just expressed its intention to present, in the future, a descriptive review of the content of the existing legal instruments while leaving to the states the task of identifying any gaps in the legal framework.[351] Meanwhile, several states made their own suggestions on the best way forward. The Russian Federation reiterated its proposal of two new instruments: one on the suppression and prevention of acts of terrorism using nuclear weapons or materials, and another on the physical protection of chemical and biological materials with the view to prevent terrorists from gaining access to weapons of mass destruction.[352] Algeria reiterated its proposal for a convention in which states would commit themselves to refrain from organizing, assisting, inciting, or tolerating terrorist acts and strengthen international cooperation among them.[353] India advocated the immediate launching of negotiations on a legally binding instrument to complete the

---

[348] 1994 Declaration, *supra* note 3.

[349] See The Chairman of the Sixth Comm., "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 66, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

[350] Tunisia, Mexico, and Israel. U.N. GAOR 50th Sess. Sixth Comm. 7th mtg. ¶¶ 10, 14, U.N. Doc. A/C.6/50/SR.7 (Oct. 3, 1995); U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 2, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

[351] 1995 Secretary-General Report, *supra* note 346, at 7.

[352] Russian Federation, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 10, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

[353] The Secretary-General, *Report on Measures to prevent international terrorism, Addendum*, *supra* note 244, ¶¶ 8-9; U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶¶ 28-29, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

comprehensive legal regime against terrorism.[354] Iran[355] argued that counter-terrorist measures should cover not only acts of individuals but also acts by groups or states.[356] Finally, Pakistan argued that a comprehensive definition of terrorism was needed,[357] while Syria[358] renewed its proposal of convening an international conference to define terrorism and to distinguish it from the struggle of peoples for self-determination. In its view, the outcome of such a conference could serve as the basis for drafting an international convention against terrorism.[359] Most of these suggestions, however, did not elicit an immediate reply from other delegations. Only the Nordic Countries objected to the Syrian proposal since, in their view, such a conference would be of little use. They advocated for a change of focus, away from defining terrorism and towards practical measures to combat it and to protect innocent third parties.[360]

Meanwhile, in parallel with the discussions on terrorism but under a separate agenda item, the Sixth Committee considered a proposed draft code of crimes against the peace and security of mankind. This draft, prepared by the International Law Commission, was part of a long-standing effort to codify international criminal law on

---

[354] India "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 47, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

[355] Supported by Pakistan. Pakistan, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 10th mtg. ¶ 9, U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

[356] Iran, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶¶ 49-50, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

[357] Pakistan, "Statement," *supra* note 355, ¶ 10.

[358] Supported by Lesotho, Kyrgyzstan and Sudan. U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 42, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995); U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 13, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995); U.N. GAOR 50th Sess. Sixth Comm. 10th mtg. ¶ 26, U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

[359] 1995 Secretary-General Report, *supra* note 346, at 13; Syria, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶¶ 49-52, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

[360] Norway, "Statement on behalf of the Nordic Countries," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 36, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

the basis of the Nuremberg principles with a view to creating an international criminal court. That year, the rapporteur of the Commission had included terrorism as one of the crimes against peace and security of mankind defined as follows:

> Article 24: International Terrorism
> 1. An individual who, as an agent or representative of a State, or as an individual, commits or orders the commission of any of the acts enumerated in paragraph 2 of this article shall, on conviction thereof, be sentenced [to …]
> 2. The following shall constitute an act of international terrorism: undertaking, organizing, ordering, facilitating, financing, encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create a state of terror [fear or dread] in the minds of public figures, groups or persons or the general public in order to compel the aforesaid State to grant advantages or act in a specific way.[361]

Not all the experts sitting in the International Law Commission agreed to the inclusion of terrorism in the draft. Some felt that the definition lacked the necessary precision to be included in a criminal law instrument, while others believed that this crime was better dealt with in the already existing specific instruments and that, consequently, there was no need for its inclusion in the Code of Crimes. Others were of the view that not all acts of terrorism were of such magnitude that they could be considered crimes against the peace and security of mankind. Finally, some experts were concerned by the draft's inclusion of acts by state agents.[362]

During the Sixth Committee discussions of this draft, some delegations, including Algeria, Chile, and Pakistan,[363] supported the characterization of terrorism as a crime

---

[361] U.N. Int'L. Comm, *Report to the General Assembly*, 50 U.N. GAOR Supp. No. 10, at 58, n. 45, UN Doc. A/50/10 (1995).

[362] *Ibid*., ¶¶ 105-107; U.N. GAOR 50th Sess. Sixth Comm. 12th mtg. ¶ 18, U.N. Doc. A/C.6/50/SR.12 (Oct.1 2, 1995).

[363] Also Iran, Uruguay, Kazakhstan, Cyprus, India, and Slovenia. U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶¶ 51, 59, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995); U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 9, U.N. Doc. A/C.6/50/SR.9 (Oct. 9, 1995); U.N. GAOR 50th Sess. Sixth Comm. 13h mtg. ¶ 28, U.N. Doc. A/C.6/50/SR.13 (Oct. 13, 1995); U.N. GAOR 50th Sess. Sixth Comm. 15th mtg. ¶¶ 5, 60, 75, U.N. Doc. A/C.6/50/SR.15 (Oct. 16, 1995); U.N. GAOR 50th Sess. Sixth Comm. 16th mtg. ¶ 19, U.N. Doc.

against the peace and security of mankind while others, including France and the United States,[364] objected. Sri Lanka argued that terrorism, in view of its gravity, must be considered a even crime against humanity.[365] France argued, on the contrary, that terrorism should not be included in the Code of Crimes because there was no agreement among states on its definition.[366] The General Assembly referred this issue once again to the International Law Commission for its further consideration.[367] The following year, in view of the lack of agreement among its members, the Commission decided to leave the crime of terrorism out of its final version of the draft Code of Crimes against the Peace and Security of Mankind.[368] Thus, when this text was incorporated in the negotiating text of the Statute of the International Criminal Court, it did not include terrorism as a possible crime under the jurisdiction of that new tribunal.

At the end of the 1995 session, the Sixth Committee adopted a brief resolution on the agenda item of international terrorism, in which it reaffirmed the 1994 Declaration on Measures to Eliminate International Terrorism, urged states to implement it, and reiterated its condemnation of terrorism as criminal and unjustifiable.[369] No decision was made on how to proceed further. When this resolution was adopted, Syria, Pakistan and

---

A/C.6/50/SR.16 (Oct. 17, 1995); U.N. GAOR 50th Sess. Sixth Comm. 17th mtg. ¶ 53, U.N. Doc. A/C.6/50/SR.17 (Oct. 17, 1995).

[364] Also Romania and Greece. U.N. GAOR 50th Sess. Sixth Comm. 13th mtg. ¶ 64, U.N. Doc. A/C.6/50/SR.13 (Oct. 13, 1995); U.N. GAOR 50th Sess. Sixth Comm. 15th mtg. ¶ 36, 52, U.N. Doc. A/C.6/50/SR.15 (Oct. 16, 1995).

[365] Sri Lanka, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 26, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

[366] France, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 13th mtg. ¶ 35, U.N. Doc. A/C.6/50/SR.13 (Oct. 13, 1995).

[367] G.A. Res. 50/45, ¶ 3.a, U.N. Doc. A/RES/50/45 (Dec. 11, 1995).

[368] U.N. Int'L. Comm, *Report to the General Assembly*, 51 U.N. GAOR Supp. No. 10, ¶¶ 45-46, UN Doc. A/51/10 (1996).

[369] G.A. Res. 50/53 ¶¶ 1-4, U.N. Doc. A/RES/50/53 (Dec. 11, 1995).

Libya reiterated their view that the condemnation of terrorism in all of its forms and manifestations was to be understood without prejudice of the distinction between terrorism and the right of self-determination.[370]

As it has been seen in this chapter, by the end of 1995, that is, after more than twenty years of negotiation, the General Assembly had built a substantial agreement on a series of concrete measures to combat terrorism, which were contained in the 1994 Declaration.[371] However, there was no agreement on how to proceed further. In particular, there were various proposals for drafting new internationally legally binding instruments against terrorism but none of them had yet gathered enough support. I will descrive how the General Assembly agreed to launch a new round on negotiations on a new set of treaties against international terrorism will be the subject of the following chapter.[372]

[370] U.N. GAOR 50th Sess. Sixth Comm. 46th mtg. ¶¶ 4, 6-7, U.N. Doc. A/C.6/50/SR.46 (Oct. 29, 1995).

[371] 1994 Declaration, *supra* note 3.

[372] See *infra* Chapter 4.A.

Chapter 4 – The negotiation of the 1997 Terrorist Bombings Convention

This chapter provides a detail-rich narrative of the negotiation of the 1997 International Convention for the Suppression of Terrorist Bombings.[1] It focuses on the four core issues that formed the overall package deal that led to the successful adoption of that convention as a whole: the definition of the crime of terrorist bombing, the provisions on participation and complicity, the elimination of the political offence exception, and the exemption of the military forces from the scope of the convention. It also reviews the pre-negotiation phase, that is, the negotiations that were required for the General Assembly to agree to launch the negotiation of the Bombings Convention itself.

From a historical point of view, the negotiation of the Bombings Convention inaugurated the second round of negotiations on legally binding, counter-terrorism instruments at the United Nations' General Assembly. For almost twenty years, since the adoption of the Convention on Internationally Protected Persons[2] and Hostages Convention[3] in the 1970s,[4] the General Assembly had limited itself to the formulation of non-binding recommendations against terrorism. In negotiating the Bombings Convention, the General Assembly returned to a higher normative track, adopting norms that would eventually become obligatory upon states. It should also be noted that these negotiations were concluded successfully in just one year but that they borrowed heavily

---

[1] International Convention for the Suppression of Terrorist Bombings, *adopted* on Dec. 15, 1997, G.A. Res. 52/164 Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter Bombings Convention].

[2] Convention of the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *adopted on* Dec. 14, 1973, G.A. Res. 3166(XXVIII) Annex, 1035 U.N.T.S., [hereinafter Convention on Internationally Protected Persons].

[3] International Convention against the Taking of Hostages, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S. [hereinafter Hostages' Convention].

[4] See *supra:* Chapter 3.B.

on the agreements and formulae found in the previous negotiations. Thus, they provide evidence of the use of agreed-language and precedents in the conclusion of international legal instruments. They also illustrate the importance of creative leadership, linkages between issues, and use of a package deal, as essential elements for the success of the negotiation of legal instruments. Finally, the adoption of the Bombings Convention provides an example of the rationality of parties during an end game in a situation that gives a premium to consensus but where vote is still possible.

A) Agreeing to negotiate

As noted in the previous chapter, during the late 1980s and early 1990s, there was an increasing number of states that believed that elaborating new legally binding instruments to deal with those specific aspects of terrorism that were not adequately addressed by international law would be appropriate.[5] Thus, the 1994 General Assembly Declaration on Measures to Eliminate International Terrorism requested the Secretary-General to review the then existing counter-terrorism and to help states identifying those areas that could be the subject of new negotiations.[6] However, at the time, the General Assembly did not choose any particular topic for further codification.

The idea of negotiating a treaty to prevent and punish those acts of terrorism committed with bombs did not acquire prominence until the United States, following the bombing of an American military base in Saudi Arabia, assumed it and promoted it. On June 25th, 1996, a truck-bomb exploded outside a US Air force housing facility near the

[5] See *supra:* Chapter 3.D.

[6] Declaration on Measures to Eliminate International Terrorism, ¶ 10.c, G.A. Res. 49/60, Annex, U.N. Doc. A/Res/49/60/Annex (Dec. 9, 1994) [hereinafter 1994 Declaration].

city of Dhahran, Saudi Arabia. 19 American soldiers were killed and 502 other persons were injured.[7] Just two days later, on June 27th, 1996, the Heads of State and Government of the Group of Seven major industrialized countries plus the Russian Federation (G-7), meeting in Lyon, France, underlined that the Dhahran terrorist attack had strengthened their conviction that terrorism was a major challenge to all societies and States and decided to "examine and implement, in cooperation with all States, all measures liable to strengthen the capacity of the international community to defeat terrorism,"[8] and, to that end, they decided to convened a ministerial meeting on terrorism the following month. Thus, on a ministerial conference of the G-7 and the Russian Federation on terrorism, held in Paris on July 30, 1996, the United States proposed the adoption of an international convention for the suppression of acts of terrorist bombing. This proposal was accepted by the other major industrialized countries. Hence, among the 25 recommendations of the Paris meeting on terrorism, there was a call to "promote the consideration and development of an international convention on terrorist bombing or other terrorist acts creating collective danger for persons, to the extent that existing multilateral counter-terrorism conventions do not provide for cooperation in these areas."[9] Meanwhile, the Secretary-General's Report on Measures to Prevent

---

[7] Several groups claimed responsibility for this attack, including the "Brigades of the Martyr Abdallah al-Hudhaifi," "Hizballah al-Khalij," and the "Islamic Movement for Change." In June 1997, Canada deported a Saudi suspect, a member of the Iranian Revolutionary Guards, to the United States, in relation with this incident. MIPT Terrorism Knowledge Base, *Incident profile: Hezbollah and Islamic Movement for Change attacked Military target (June 25, 1996, Saudi Arabia)*, available on line: http://www.tkb.org/Indicent.jsp?incID=8027 accessed on May 15, 2006; United States, State Department, Office of the Coordinator for Counter-terrorism, *1996 Patterns of Global Terrorism Report* (April, 1997) http://www.state.gov/www/global/terrorism/1996Report/middle.html.

[8] Group of Seven Major Industrialized Countries, Lyon Summit, June 27–29, 1996, *Declaration on Terrorism* (June 27, 1996) available online: http://www.g8.utoronto.ca/summit/1996lyon/terrorism.html accessed on May 15, 2006.

[9] Group of Seven Major Industrialized Countries, Ministerial Conference on Terrorism, Paris, France, July 30, 1996, *Agreement on 25 Measures,* ¶ 17, U.N. Doc. A/51/261.

International Terrorism, dated September 6th, 1996, also suggested that states conclude a new treaty against terrorist bombings, since that form of criminal conduct that was not properly addressed in the then existing, counter-terrorism, legal instrument.[10]

On September 24, 1996, President Clinton urged all state-members of United Nations General Assembly to criminalize terrorist bombings. He said:

> "We also believe that all of us – the nations of the world working together – must do more to fight terrorism. (…) I call on every Member to ratify [the] 11 international conventions that would help prevent and punish terrorism and to criminalize the use of explosives in terrorist attacks." [11]

A few days later, on October 3, 1996, the United States formally proposed to the Sixth Committee the drafting of an international convention for the suppression of terrorist bombings. For the United States, such an instrument was necessary since most terrorist attacks involved the use of bombs or incendiary devices. It suggested that the General Assembly established an inter-sessional *Ad Hoc* Committee to elaborate that legal instrument. In addition, the United States noted that its proposal, together with the Russian suggestion of a convention against nuclear terrorism, had been both endorsed by the G-7 Paris ministerial meeting on terrorism.[12] In that context, the Russian Federation formally proposed the negotiation of a convention against nuclear terrorism.[13]

---

[10] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, ¶ 36, U.N. Doc. A/51/336 (Sept. 6, 1996) [hereinafter 1996 Secretary-General's Report].

[11] United States (William J. Clinton), "Statement," U.N. GAOR 51st Sess. 6th plen. mtg., at 4, U.N. Doc. A/51/PV.6 (Sept. 24, 1996).

[12] United States, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 3, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

[13] Russian Federation, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 48, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

Thereafter, France, as Chair of the G-7, circulated a draft resolution to launch the negotiation of the proposed bombings convention.[14] The Russian Federation immediately suggested amending the French draft to launch also negotiations on the proposed nuclear convention.[15] In the ensuing debate, a substantial number of delegations supported the United States' proposal of elaborating a convention on terrorist bombings, as a good way to strengthen the international, counter-terrorism, legal framework.[16] Some developing nations, though, preferred to work instead on a comprehensive treaty that would deal – at the same time – with all forms of terrorism.[17] Iran and Ethiopia, in particular, criticized the sectoral approach, notwithstanding its successes, because it did not provide an all-encompassing and homogeneous approach for combating the complex phenomenon of international terrorism.[18] Other delegations advocated for the negotiation of both additional sectoral treaties, such as the bombings convention, and a comprehensive convention.[19] India, for instance, believed that the negotiation of sectoral instruments was only a prelude to the adoption of a comprehensive convention. In its view, regional and sectoral approaches were insufficient because terrorist bombings,

---

[14] France, "Measures to Eliminate International Terrorism" ¶ 10, (TD, Draft resolution, Sept. 19, 1996, on file with the author).

[15] Russian Federation, "Amendments proposed by the Russian Federation, Draft resolution on Measures to eliminate international terrorism" (TD , Sept. 1996, on file with the author).

[16] Japan, Canada, Guatemala, Uruguay, Ukraine, Sudan, Switzerland, Cameroon, Belarus, Turkey, and Kyrgyzstan. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶¶ 11, 36, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 31, 47, 53, 67, 95, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996; U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 37, 48, 63, 119, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[17] Tunisia, Colombia, Botswana, Brazil, Algeria, Qatar, and Indonesia. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶¶ 7, 34, 58, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 3, 16, 35, 40, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996).

[18] Iran, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶ 84, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996); Ethiopia, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 107-108, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[19] Cameroon, Bangladesh, and Kyrgyzstan. U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 37, 77, 119, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

drugs and arms trafficking, smuggling of nuclear material, money laundering and the use of information technology for terrorist purposes were so inextricably linked that their eradication required a unified effort.[20] In an effort to focus the discussion on a comprehensive instrument, India submitted to the Sixth Committee a draft of a possible comprehensive convention on international terrorism.[21] Meanwhile, some Arab delegations and Cuba believed that it was necessary to define the concept of terrorism in a comprehensive manner, in order distinguish it from the legitimate exercise of the right to self-determination.[22] For them, before drafting new instruments, the United Nations had to convene an international conference to define terrorism.[23]

By the end of the debate, it became clear that most delegations were prepared to begin negotiations on the proposed convention against terrorist bombings but that they were not ready yet to commit themselves to the negotiation of a comprehensive convention on all aspects of terrorism. The Nordic countries, for instance, argued that negotiating a comprehensive convention would be such a difficult task that it would be impractical.[24] The question of how to proceed then was referred to informal consultations. There, it was agreed that the General Assembly would establish, upon

---

[20] India, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 31-34, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[21] India, "Letter to the Secretary-General, Annex, Draft international convention on the suppression of terrorism," U.N. Doc. A/C.6/51/6 (Nov. 1, 1996).

[22] Lebanon, Libya, Iraq, Sudan, Syria, United Arab Emirates, and Cuba. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 51, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 27, 38, 68, 93, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996); U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 61, 80, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[23] Lebanon, Egypt, Syria, and Libya. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 51, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 27, 61, 93, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996).

[24] Norway and Sweden. U.N. GAOR 51st Sess. Sixth Comm. 50th mtg., ¶¶ 27-28, U.N. Doc. A/C.6/51/SR.50 (Nov. 29, 1996).

recommendation of the Sixth Committee, an *Ad Hoc* Committee to elaborate first an international convention for the suppression of terrorist bombings, and, subsequently, an international convention for the suppression of acts of nuclear terrorism. After the completion of those two instruments, the Committee was to undertake the carefully defined task of addressing the "means of further developing a comprehensive legal framework of conventions dealing with international terrorism."[25]

B) **Proceedings**

The new *Ad Hoc* Committee met, for the first time, in New York from February 24 to March 7, 1997.[26] Just a few days earlier, the legal experts from the G7 and from the Russian Federation met in Paris and prepared a first draft of the bombings convention, which was to serve as the starting point of the negotiations.[27] The committee was open to the participation of all states-members of the United Nations and of those states, such like Switzerland, the Cook Islands, and the Holy See, that were members of some UN

---

[25] G.A. Res. 51/210, ¶ 9, U.N. Doc. A/RES/51/210 (Dec. 17, 1996):

> 9. *Decides* to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, 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;

[26] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report, ¶* 1-2, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997) [hereinafter 1997 Ad Hoc Comm. Report].

[27] France, on behalf of the Group of Seven major industrialized countries and the Russian Federation, "Preliminary working document: International Convention for the Suppression of Terrorist Bombings," U.N. Doc. A/AC.252/L.2, (Feb. 11, 1997) in 1997 Ad Hoc Comm. Report, *supra* note 26, Annex II, at 20–28 [hereinafter G-7 Preliminary working document].

specialized agencies or the International Atomic Energy Agency, even though they were not members of the United Nations.[28]

At its fist meeting, the committee elected its chair, Ambassador Philippe Kirsch, legal advisor of the Ministry of Foreign Affaires of Canada, and its bureau.[29] The chairman then invited both Ms. Silvia Fernandez de Gurmendi, of Argentina, who had chaired the negotiation of resolution 51/210, and the legal experts of the Canadian delegation, to participate as advisors in the meetings of the bureau. In addition, the committee decided to use the draft International Convention for the Suppression of Terrorist Bombings, submitted by France on behalf of the G7 and the Russian Federation,[30] as the basis for its work. Thus, between February 24 and 28, 1997, the *Ad Hoc* Committee discussed the draft convention for the first time. The French delegation introduced the text of the convention article by article and the other delegations reacted to the language proposed. Several delegations made written and oral proposals. The G-7 then proposed a revised version of some articles,[31] which the committee subsequently discussed. At the end of this first reading, and based on the comments made, the bureau prepared and circulated a consolidated, negotiating text of draft articles 1 to 12.[32]

---

[28] 1997 Ad Hoc Comm. Report, *supra* note 26, ¶¶ 1-2.

[29] Vice-chairpersons: Mr. Rohan Pereira (Sri Lanka), Ms. Samia Ladgham (Tunisia); and Mr. Carlos Díaz (Costa Rica); rapporteur: Mr. Martin Smejkal (Czech Republic). *Ibid., ¶ 5*

[30] G-7 Preliminary working document, *supra* note 27.

[31] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," U.N. Doc. A/AC.252/1997/WP.10 (Feb. 27ht, 1997) in 1997 Ad Hoc Comm. Report, *supra* note 26, at 32-33; Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 and 3," U.N. Doc. A/AC.252/1997/WP.12 (Feb. 28, 1997) in 1997 Ad Hoc Comm. Report, *supra* note 26, at 33-34.

[32] Bureau, "Revised texts of articles 1 to 12 ter, proposed on the basis of the discussions in the Working Group," in 1997 Ad Hoc Comm. Report, *supra* note 26, Annex I.B, at 15–24 [hereinafter Bureau, Revised text, March 3, 1997].

The chairman suggested that the committee worked with the understanding that all proposals, written and oral, had equal standing and that they would not be considered withdrawn until final agreement was reached.[33] The chairman stressed that any consolidated, negotiating text that the bureau may proposed was intended only facilitate the committee's work and that it was not to replace the proposals made by delegations.[34] These understandings sought to facilitate the search for creative solutions without forcing delegations to make irreversible concessions before they found a satisfactory overall package. Moreover, the chair encouraged delegations to present their proposals in writing with the view to ensuring a complete record of their positions.

On March 3, 1997, at the beginning of its second week of work, the committee began to consider the revised text proposed by the bureau.[35] Those discussions, chaired by a facilitator, were held in informal consultations. This change of format sought to promote real dialogue among interested delegations by discouraging both grandstanding and the restatement of the initial positions. On March 7, 1997, the facilitators reported to the working group of the whole results the informal consultations that they had chaired. At the same time, and based on those discussions, the bureau presented a further revised text of articles 1 to 12 ter.[36] Negotiations on the proposed convention continued between September 22 and October 3, 1997, within a working group of the Sixth Committee. Ambassador Kirsch continued chairing the negotiations and the bureau of the *Ad Hoc*

---

[33] 1997 Ad Hoc Comm. Report, *supra* note 26, ¶ 10.

[34] *Ibid.* ¶ 13.

[35] *Ibid.* ¶ 12.

[36] Bureau, "Revised texts of articles 1 to 12 ter proposed on the basis of the discussion in the informal consultations, reproduced together with the preamble and articles 13 to 17 of document A/AC.252/L.2," in 1997 Ad Hoc Comm. Report, *supra* note 26, Annex I.A, at 5–15 [hereinafter Bureau, Revised text, March 7, 1997].

Committee continued to assist him, as the "Group of Friends of the Chairman." The working group was open to the participation of all states, including those few that were not yet members of the United Nations.[37] At the outset, the working group used the last text circulated by the bureau of the *Ad Hoc* Committee as the basis for its work, on the understanding that all other proposals were still on the table.[38] The committed then discussed that text article-by-article and, in some cases, even paragraph-by-paragraph. The Friends of the Chairman kept moving the negotiations forward by presenting, on September 29,[39] September 30,[40] October 1,[41] and October 2, 1997,[42] four successive rolling texts. The chairman invited delegations to consult among themselves bilaterally and in small groups to solve the most contentious issues. When necessary, the Friends of the Chairman also held bilateral consultations. Moreover, some delegation, such as Finland and Canada, took the lead in mediating among various groups and in drafting possible solutions. By the end of its fall session, the working group had reached agreement on most of the draft convention except for article 3, on whether the provisions of the convention would apply to state armed forces and to self-determination

---

[37] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶¶ 1-4, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997) [hereinafter 1997 Working Group Report].

[38] *Ibid*. ¶ 5.

[39] The Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 2, 3, 5 and 6, art. 2 and art. 2 bis," U.N. Doc. A/C.6/52/WG.1/CRP.31 (Sept. 26, 1997) and U.N. Doc. A/C.6/52/WG.1/CRP.31/Add.1, (Sept. 29, 1997), in 1997 Working Group *Report*, *supra* note 37, at 32-38 [hereinafter Friends of the Chairman, Revised text, Sept. 29, 1997].

[40] The Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 1, 2, 3, 5 and 6 and arts. 2 and 2 bis and 13 to 17," U.N. Doc. A/C.6/52/WG.1/CRP.45 (Sept. 30, 1997), in 1997 Working Group *Report*, *supra* note 37, at 42-47 [hereinafter Friends of the Chairman, Revised text, Sept. 30, 1997].

[41] The Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 1, 2, 3, 5 and 6, and arts. 2 and 2 bis and 13 to 17," U.N. Doc. A/C.6/52/WG.1/CRP.45/Rev.1 (Oct. 1, 1997), in 1997 Working Group *Report*, *supra* note 37, at 48-52 [hereinafter Friends of the Chairman, Revised text, Oct. 1, 1997].

[42] The Friends of the Chairman, "Revised texts of the preamble and arts. 1-17," U.N. Doc. A/C.6/52/WG.1/CRP.45/Rev.2* (Oct. 2, 1997), in 1997 Working Group Report, *supra* note 37, at 53-57 [hereinafter Friends of the Chairman, Revised text, Oct. 2, 1997].

movements. Thus, on October 3, 1997, and following a recommendation of the Friends of the Chairman, the working group decided to submit to the Sixth Committee an incomplete text of the convention – the preamble, articles 1 and 2, and articles 4 to 17[43] – for its further consideration.[44] Thus, between October 3 and November 13, 1997, when the Sixth Committee formally met to consider the question of international terrorism and the proposed bombings convention, there were hectic informal meetings to find agreement on single the pending issue. The delegation of Costa Rica, being both an interested party the discussion and one of the Friends of the Chairman, mediated among the various groups to developed an agreeable solution.

On November 14, the chairman of the Sixth Committee tried to introduced a complete draft of the terrorist bombings convention, including a carefully drafted provision to address the question of armed forces. However, several delegations objected and he withdrew it. Consequently, Costa Rica, in its national capacity, submitted the complete text of the convention for adoption.[45] On November 17, 1997, the Sixth Committee held an informal meeting, chaired by Canada, in an effort to bring on board those delegations that still had objections to the text of the convention. At that meeting, it transpired that most delegations favoured the adoption of the text circulated by Costa Rica, even thought there was not full agreement.[46] Thus, on November 19, 1997, the Sixth Committee adopted, the without a vote, the draft terrorist bombing convention as

---

[43] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, "Revised texts of the preamble and articles 1 to 2, and 4 to 17 recommended by the Working Group established by General Assembly resolution 51/210 of 17 December 1996 to the Sixth Comm. for consideration" in Working Group Report, *supra* note 37, Annex I [hereinafter Revised text submitted to the Sixth Comm.].

[44] 1997 Working Group Report, *supra* note 37, ¶ 8.

[45] U.N. GAOR 52st Sess. Sixth Comm. 30th mtg., at 7, U.N. Doc. A/C.6/52/SR.30 (Nov. 14, 1996).

[46] U.N. GAOR 52st Sess. Sixth Comm. 32nd mtg., at 10, U.N. Doc. A/C.6/52/SR.32 (Nov. 19, 1996).

proposed by Costa Rica. However, those delegations that still had objections, made reservations or did not to participate in the adoption of the convention.[47] Finally, on December 15th, 1997, the General Assembly gave its final approval to the International Convention for the Suppression of Terrorist Bombings and opened it for signature from January 12, of the following year.[48]

C) Defining the crime

Human rights principles require that any criminal law instrument that seeks to make punishable certain behavior must provide a precise definition of the wrongful conduct. [49] The bombings convention could not be an exception. Thus, the first draft, submitted by France on behalf of the G-7 and the Russian Federation, provided the following definition of the crime:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates a bomb, explosive or incendiary device, or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:
>
> (a) With the intent to cause death or serious bodily injury; or
>
> (b) Under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death or serious bodily injury.[50]

---

[47] China, Iran, Lebanon, Libya, Pakistan, and Syria. U.N. GAOR 52st Sess. Sixth Comm. 33rd mtg., U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1996).

[48] G.A. Res. 52/164 ¶ 1 and Annex, U.N. Doc. A/RES/52/164 (Dec. 15, 1997).

[49] See *supra:* Chapter 1.B.2.a.

[50] G-7 Preliminary working document, *supra* note 27, art. 2.1.

In addition, some of the key terms contained in that article were themselves defined in draft article 1,[51] which, consequently, had to be read as an integral part of the definition of the crime.[52] As a whole, this was a very complex definition. It contained a description of the actor; an enunciation of the banned activities; a catalogue of the instruments that could be used to commit the crime; and a list of possible targets, each one defined separately. It also included a double intent requirement: that the wrongful action is intentional and that it is committed with criminal intent, recklessness, or gross negligence. In addition, this definition included a general legality requirement: that the whole action was unlawfully in concrete circumstances.[53] Moreover, this definition did not contain the words "terror," "terrorism" or "terrorist bombing." The sponsors avoided those terms in an effort circumvent the need to define terrorism, which had proved extremely difficult and controversial.[54]

It was impossible to discuss and negotiate this definition as a whole; it was too complex and unwieldy. It was therefore necessary to divide it into several discrete segments that members of the committee could consider separately. To begin with, the Chairman of the *Ad Hoc* Committee proposed to discuss the draft convention article by article. As each one of these articles was still too complex to discuss in its entirety, the Chairman then proceeded paragraph by paragraph. As a result, the Committee considered separately: the definitions of government facility, infrastructure facility, lethal device, place of general public use, public transportation system, the wrongful act (the

---

[51] *Ibid*., art. 1, ¶¶ 1–3, 5 and 6.

[52] The Rapporteur, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussion in the plenary and in the working group," 1997 Ad Hoc Comm. Report, *supra* note 26, Annex IV, ¶ 2, [hereinafter 1997 Rapporteur's Informal Summary].

[53] See *supra:* Chapter 1.B.2.a.

[54] See *supra:* Chapter 3.B.

chapeau of article 2.1), and the intent requirements (article 2.1, paragraphs a) and b).[55] Thus, the negotiation of the definition of terrorist bombings was broken, in effect, into seven separate negotiations along the structure of the G7 draft.

1) The possible targets

The first draft of the bombings convention defined the offence not by its victims but by the location or material target of the wrongful action. The G-7 draft stated that a person would commit an offence when he performed the illicit action "in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility."[56] During the negotiations, delegations did not question the need to pre-determine the possible targets or location of the bombing attacks. There were, however, two major dividing lines. First, most western nations sought to restrict the convention only to those attacks that would affect the community as a whole, while Russia, China and some developing countries sought to extend these definitions to cover all state property and personnel. Second, Islamic countries sought to exclude from the definitions targets located in occupied or disputed territories while western countries sought to make the convention applicable to those targets. The first cleavage evidences different concepts of who is the real victim of a terrorist act. Western delegations argued that the terrorist act had to affect the community as a whole, the "public," while developing countries believe that the state itself is the real victim of a terrorist attack. Since the proponents of the second view included several countries with a significant

[55] *See* 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 7.

[56] G-7 Preliminary working document, *supra* note 27, art. 2.1..

number of nationalized industries, this position probably responded to their desire to protect those properties. The second cleavage seemed to arise from the delegations' positions on the right of self-determination and on the territorial disputes in Palestine and Kashmir. Islamic states argued that the proposed convention should not protect governmental property unlawfully located in occupied territories, while western countries and Israel believed, on the contrary, that it should do so. These differences appeared clearly in the discussion of the text.

The first draft of the bombings convention defined "government facility" as follows:

> 1. "Government facility" includes any permanent or temporary facility or conveyance, wherever located, used or occupied by civilian or military employees of a governmental or administrative authority in connection with the employees' official duties, whether such facility is owned, leased, possessed or otherwise utilized by such authority. [57]

Several issues arose during the negotiation of this definition. First, whether it should cover only installations occupied by the executive branch of government, or whether it should include also installations used by the judicial and legislative bodies. Second, whether it should cover sites used by nationalized industries. Third, whether it should encompass installations located in occupied or disputed territories. Fourth, whether it should apply to military installations. Fifth, whether it should apply to temporary installations, and, sixth, whether it should include the offices of international, intergovernmental organizations.

At its first reading, on February 24, 1997, most delegations sought to expand the

---

[57] *Ibid*., art. 1.1.

definition proposed by the G-7. The United Kingdom and Pakistan argued that "government facility" should include the places of work of public officials. The Russian Federation advocated for the broader concept of "state" facility, which would have covered not only the offices of all the branches of government but also those of nationalized industries and commercial enterprises.[58] Later, Russia proposed that is should encompass all functionaries of the state at any level.[59] Meanwhile Germany proposed the more restricted term of "public facility." Malawi argued that the definition should to cover intergovernmental organizations,[60] while Guatemala suggested that it should encompass not only the buildings used for official activities but also any place used for social or recreational activities by public officials. Only Iran proposed restricting the concept. It suggested that "government facility" should refer only to offices or building located in the national territory of the state concerned. [61]

The G-7 then met to consider the suggestions made. They agreed to include in the definition of "government facility" those places used by employees of the legislative and judicial branches of government as well as by functionaries of intergovernmental organizations. Consequently, the definition now read:

> 1. "Government facility" includes any permanent or temporary facility or conveyance, wherever located,
>
> (a) That is used or occupied by civilian or military employees or officials, including legislative or judicial officials, of a State or any other public

[58] Supported by China, Greece, Iran, Macedonia, Malawi, Portugal, the United Kingdom, and Uruguay.

[59] Russian Federation, "Proposal on Article 1.1," U.N. Doc. A/AC.252/1997/WP.2 (Feb. 25, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 29.

[60] Supported by Germany, Guatemala, and the United States.

[61] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," at 2, (TD, summary of oral proposals made during the first reading, prepared for the use of the bureau, Feb. 24, 1997, on file with the author).

> authority, or by employees or officials of an intergovernmental organization; and
>
> (b) That is so used or occupied by any such employees or officials in connection with their official duties;
>
> whether such facility is owned, leased, possessed or otherwise utilized by such State, other public authority or intergovernmental organization.[62]

When the Committee considered this text, some delegations proposed to expand, once more, the concept of "government facility." Guatemala suggested the formula "government or intergovernmental facility," the Republic of Korea advanced "public facility,"[63] and China proposed "state facility."[64] Conversely, other delegations sought to restrict it. Iran argued that the definition should encompass only the facilities located within the state concerned; while Lebanon, Syria, and the Holy See argued that the definition should include only those facilities legitimately located in the territory in question.[65] Syria proposed that the convention should only apply to those buildings whose possession in the hands of the state concerned was lawful. Pakistan and Lebanon suggested that the convention should apply only within the internationally recognized borders of a state, thus excluding its application in the territories in dispute. Israel objected to these proposals. As a possible compromise, Argentina and Chile suggested deleting the reference to "wherever located," from the G-7 text, but the United States, Germany, Sweden, and Mexico preferred its retention.[66]

---

[62] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, art. 1.1.

[63] Supported by Lebanon, Germany and Spain but opposed by the United Kingdom.

[64] Supported by Colombia, Greece, Russia, Sweden, and Venezuela.

[65] Holy See, "proposal on art. 1," U.N. Doc. A/AC.252/1997/WP.19 (March 4, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 39.

[66] U.N. Codification Division, "Document WP. 10, 9:45, 3 March, 1997", at 2 (TD, summary of the oral proposals made during the second reading, prepared for the use of the bureau, March 3, 1997) (on file with the author).

On the potential occupants of the governmental facilities, most delegations preferred a comprehensive listing. Mexico, Korea, Greece,[67] the Holy See, and Guatemala proposed different formulations, in an effort to cover all the members and functionaries of the legislative and judicial branches of Government. In the same vein, Portugal, Argentina, and Ireland felt that the term "officials," contained in the G-7 draft, was too restrictive. Colombia suggested making explicit that the definition encompasses governmental employees at the federal, regional and local levels. Meanwhile, Egypt and Pakistan expressed reservations to the reference to military employees arguing that the broader concept of "government officials and employees" already covered them.[68] This position was probably linked to their stance on the exclusion of self-determination movements from the convention.[69] For their part, Finland, China, Venezuela, and Chile welcomed the addition of the facilities used by intergovernmental organizations, but suggested placing this concept in a separate paragraph. Uruguay proposed, without success, the exclusion of those organizations from the definition.[70] Moreover, Iran, Korea, and the Holy See recommended merging subparagraphs a) and b).[71]

The bureau met on March 3rd, 1997, to prepare a first consolidated, negotiating text. Since most delegations preferred a broad listing of the potential users of the governmental facilities, the bureau made the definition as inclusive as possible. The bureau chose: first, to speak of "government or other public facility;" second, to include

---

[67] Greece, "Proposal on art. 1," U.N. Doc. A/AC.252/1997/WP.14. (March 3, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 36.

[68] U.N. Codification Division, "Document WP. 10, 9:45, 3 March, 1997", *supra* note 66, at 2-3; 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 12.

[69] See *infra* subsections F.2 and F.3.

[70] Brazil opposed.

[71] U.N. Codification Division, "Document WP. 10, 9:45, 3 March, 1997", *supra* note 66, at 2-3.

the members of the judicial and legislative branches of government, using a formula proposed by Greece; third, to add a reference to the representatives of the state; and, fourth, to refer to any "public authority or entity." In addition, the bureau removed the references to the ownership or possession of the facility and to its location, which had met with objections. The new text read:

> 1. "Government or other public facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by civilian or military officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.[72]

In the following days, the Committee discussed, in informal consultations, the text prepared by the bureau as well as a revised text proposed by the Russian Federation,.[73] Germany and Spain could accept the bureau's draft but Russia, Poland, and Malawi preferred the text prepared the G-7. Several delegations advocated the deletion of the words "other public facility."[74] Some preferred the term "government facility,"[75] others "public facility,"[76] and a third group preferred "state facility."[77] Sudan proposed to use "means" rather than "includes" as the operative verb. This would have changed the

---

[72] Bureau, Revised text, March 3, 1997, *supra* note 32, art. 1.1.

[73] Russian Federation, "Proposal on art. 1.," U.N. Doc. A/AC.252/1997/WP.23, (March 6, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 41.

[74] China, Germany, Italy, Poland, Republic of Korea, Russian Federation, and the United States, but opposed by Spain.

[75] Italy, Poland, Russia, and United States.

[76] Germany, Poland, and Russia.

[77] China, Germany, Italy, Republic of Korea, Russia, and the United States.

listing from a non-exhaustive enunciation of examples into a restrictive definition. Canada and Germany, among others, objected to this change.[78]

There was an extensive debate on the concept of facilities located outside the territory of the state concerned. Israel and Sweden sought to reintroduce the words "wherever located." Pakistan, Syria, and Iran again suggested limiting the definition only to those facilities located within internationally recognized borders of the country concerned, but Germany and Japan objected. At the end, most delegations preferred not to reinsert the reference to "wherever located," but to leave it implicit.[79] There was also a discussion on the reference to civilian and military personnel. Egypt proposed deleting the reference to military personnel, thus limiting the protection of the convention only to civilian installations. Other delegations[80] suggested deleting the reference both to civilian and military personnel as redundant while the United States and Malawi argued for retaining them.[81] Although the United States and Sweden proposed deleting the reference to "public entity," most delegations welcomed that addition.[82] Guatemala suggested adding a reference to "any governmental agency," broadening further the scope of the possible governmental departments protected.[83] Meanwhile, Malawi proposed reinserting the reference to the facility being own, leased or utilized by the governmental entity, and Syria suggested that the protection should only be limited to the facilities used

---

[78] U.N. Codification Division, "Oral proposals regarding CRP. 3" at 2, (TD, summary of oral proposal made at the third reading, prepared for the use of the bureau, March 1997, on file with the author).

[79] Canada, Iran, Ireland, Italy, Japan, and Malawi. U.N. Secretariat, Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 2.

[80] Canada, China, Poland, Republic of Korea, and Syria.

[81] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 2.

[82] Argentina, Canada, China, Guatemala, Ireland, Italy, Malawi, and Poland.

[83] Supported by China and Poland. Guatemala, "Proposal in connection with art.1.1," U.N. Doc. A/AC.252/1997/WP.24 (March 6, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 42.

for the legitimate duties of the public officials. Finally, regarding intergovernmental organizations, Uruguay proposed clarifying that the provision was meant to protect international, intergovernmental organizations, and not NGOs.[84]

By the end of the 1997 spring session of the *Ad Hoc* Committee, the bureau prepared a new text. This time, the bureau changed only the definition of the term "state or government facility." The new text read:

> 1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by civilian or military officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.[85]

This text was considered in informal consultations on September 22, 1997. Once more, Syria and Pakistan sought to limit the protection of the convention only to those places where the presence of the officials was lawful. Syria also proposed limiting such protection to the places occupied in connection with the lawful duties of the governmental officials, and deleting the reference to the military personnel, thus limiting the protection to civilians.[86] Pakistan reintroduced its proposal to limit the definition only to those buildings located within the recognized borders of the state concerned. Western delegations objected to these proposals.[87] Germany, in particular, argued that

---

[84] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 2.

[85] Bureau, Revised text, March 7, 1997, *supra* note 36, art. 1.1.

[86] Supported by Egypt. Syria, "Proposals to arts. 1 and 3 (A/52/37, annex 1.A)," ¶ 2, sub-para. d, e, and f, U.N. Doc. A/C.6/52/WG.1/CRP.4 (Sept. 23, 1997) in 1997 Working Group Report, *supra* note 37, at 18.

[87] Canada, Costa Rica, France, Germany, Russia, and the United Kingdom.

the convention should cover state facilities located abroad.[88] Meanwhile, Australia and Portugal argued that it should include any facility occupied by public officials at the time of the crime, but France and the United States[89] believed that it should encompass only those facilities used by government officials on a regular or continuing basis, and not private installations occupied by them sporadically.[90]

The Group of Friends of the Chairman then prepared a new draft. This time, though, they left blank the definition of "state or government facility."[91] Thus, when the working group discussed the new rolling text, on September 30, 1997, there were no comments on the question of the protected facilities. Later that same day, the Friends of the Chairman prepared a new rolling text in which they included, without any change, the definition of "state and government facility" that they had suggested at the end of the spring session of the *Ad Hoc* Committee.[92] The Group of Friends then discussed this definition bilaterally with the most interested delegations. They tried, in particular, to convince Syria to accept it, in view of its reiterated proposals to limit the scope of the convention only to those facilities whose presence in the territory concerned was lawful.[93] Since the outcome of those discussions seemed to be favourable, the Friends of the Chairman included the same formulation in the next rolling text.[94] Thus, on October

---

[88] Germany, "Proposals on art. 2.1," UN. Doc. A/C.6/52/WG.1/CRP.5 (Sept. 23, 1997) in 1997 Working Group *Report*, *supra* note 37, at 19-20.

[89] United States, "Proposal, Revisions to definitions in article 1," ¶ 1, U.N. Doc. A/C.6/52/WG.1/ CRP.1 (Sept. 22, 1997) in 1997 Working Group *Report*, *supra* note 37, at 17.

[90] U.N. Codification Division, "Article 1. 24/9/97, 19:40" at 1 (TD, summary of oral proposals prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

[91] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39.

[92] Friends of the Chairman, Revised text, Sept. 30, *supra* note 40, art. 1.1.

[93] Carlos F. Díaz, Autograph notes on the negotiation of the Bombings Convention, taken down as an official representative of Costa Rica in those negotiations, Sept. 30, 1997, on file with the author.

[94] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 1.1.

2, when the working group considered it for the last time, there were no objections. Consequently, the working group submitted to the Sixth Committee the definition of "state or government facility" that the bureau had prepared on March 7, 1997.[95]

The definition of "infrastructure facility" was less controversial than that of "government facility." The G-7 first draft read:

> 2. "Infrastructure facility" includes any publicly or privately owned facility providing or distributing services for the benefit of the public, including water, sewage, energy, fuel or communications.[96]

During the first reading, this proposal did not elicit any comments,[97] and, consequently, the G-7 did not revise it.[98] During the second reading, Uruguay proposed including the facilities used for productive activities for the benefit of the public, but it received no support.[99] Consequently, the bureau retained, without any change, the G-7 language in its text of March 3rd, 1997.[100] During the third reading, Sudan proposed transforming this paragraph from a non-exhaustive list of examples into a strict definition. This proposal was not discussed at the time. However, since most delegations had rejected a similar suggestion in the context of the definition of "government facility," the bureau chose to not to take it on board.[101]

---

[95] Revised text submitted to the Sixth Comm., *supra* note 43, art. 1.1.

[96] G-7 Preliminary working document, *supra* note 27, art. 1.2.

[97] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 11-22; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 2.

[98] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, art.1.2.

[99] U.N. Codification Division, "Document WP. 10, 9:45, 3 March, 1997," *supra* note 66, at 3.

[100] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 1.2.

[101] Bureau, Revised texts, March 7, 1997, *supra* note 36, art. 1.2.

At the beginning of the fall session, the United States argued that the definition of "infrastructure facility" was "inadvertently broad."[102] It then proposed limiting it either to essential services or to services provided to the public. During consultations, Russia, Canada, Sri Lanka, Argentina, and Malawi supported the United States' suggestion of restricting the definition only to essential services. However, France, Turkey, and Cote d'Ivoire objected. In an effort to find a solution, Australia, rescuing Iran's suggestion, proposed turning this provision into a precise definition, rather than an open-ended list of examples.[103] Thus, on the revised text that the Friends of the Chairman circulated on September 29, 1997, they limited the scope of the definition of "infrastructure facility" by including both the Australian and the American proposals. The new text read:

> 2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.[104]

The working group met on September 30th, 1997, to consider this new draft. At this time, there were no comments. Consequently, the Friends of the Chairman included the same text in the three subsequent drafts[105] and it was recommended, without any change, to the Sixth Committee.[106]

Regarding the definition of "place of public use" as a possible target of the crime, the first draft of the Terrorist Bombings Convention proposed:

---

[102] United States, "Proposal, Revisions to definitions in article 1," *supra* note 89, ¶ 2.

[103] U.N. Codification Division, "Article 1. 24/9/97, 19:40," *supra* note 90, at 2.

[104] Friends of the Chairman, Revised texts, Sept. 29, 1997, *supra* note 39, art. 1.2.

[105] Friends of the Chairman, Revised text, Sept. 30, 1997, *supra* note 40, art. 1.2; Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 1.2; Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 1.2.

[106] Revised text submitted to the Sixth Comm., *supra* note 43, art. 1.2.

> 5. "Place of general public use" includes any building, land, street, waterway or other locations that are accessible or open to members of the public in whole or in part, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.[107]

When this text was considered, only Guatemala made a comment; it suggested excluding from the scope of the draft convention those places open to the public only occasionally.[108] Nonetheless, before the next round of discussions, the G-7 sought to simplify its draft by deleting the list of possible uses of the public places.[109] This was contentious. Developing countries found useful the list of possible uses.[110] Finland and Egypt argued that the convention should also cover private property but the United Kingdom disagreed. Finally, Mexico proposed deleting the word "general" from the term defined, as it was redundant.[111] After this reading, the bureau circulated a new draft, which contained a list of possible uses, as proposed originally by the G-7, but not the word "general," as Mexico had suggested.[112] At the third reading, there was broad agreement on the new definition proposed by the bureau. Only Malawi made a proposal. It suggested adding those places used for residential purposes.[113] This proposal, which would have extended the scope of the convention to wrongful acts performed against

---

[107] G-7 Preliminary working document, *supra* note 27, art. 1.5.

[108] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 2.

[109] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, art.1.5.

[110] Algeria, China, Colombia, Egypt, Iran, Mexico, and Pakistan.

[111] U.N. Secretariat, Codification Division, "Document WP. 10, 9:45, 3 March, 1997," *supra* note 66, at 4.

[112] Bureau, Revised text, March 3, 1997, *supra* note 32, art. 1.5.

[113] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 3.

private residences, received no support. Consequently, the bureau decided not to change its previous definition.[114]

At the beginning of the fall session, on September 22, 1997, delegations revisited the definition of "place of public use" proposed by the bureau. The United States then argued that it was too broad since it could cover areas not open to the public. It suggested amending the language to clarify that the convention would penalize only wrongful acts committed in public areas.[115] This proposal enjoyed substantial support,[116] but Malawi objected. Syria proposed mentioning sea and air routes, even though it recognized that terrorist acts committed on board ships and airplanes were already addressed in other anti-terrorism conventions.[117] Finally, Australia suggested that the targeted place should be open to the public at the time of the terrorist attack.[118] After these consultations, the Friends of the Chairman took on board both the United States' proposal to limit the definition to those areas actually open to the public and Syria's proposed reference to "sea lanes."[119] Since there was no time to discuss this draft, the Friends of the Chairman included it in their next rolling text.[120] However, after some bilateral consultations, the Friends of the Chairman decided to delete the reference to "sea lanes" and so, on October 1, 1997, they circulated the following draft:

> 5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public,

[114] Bureau, Revised text, March 7, 1997, *supra* note 36, art. 1.5.

[115] United States, "Proposal, Revisions to definitions in article 1," *supra* note 89, ¶ 3.

[116] Supported by the Russian Federation, Canada, Cote d'Ivoire, Sri Lanka, Argentina, France, and Turkey.

[117] Syria, "Proposals to arts. 1 and 3 of A/52/37, annex 1.A," *supra* note 86, ¶ 4.

[118] U.N. Codification Division, "Article 1. 24/9/97, 19:40," *supra* note 90, at 4.

[119] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 1.5.

[120] Friends of the Chairman, Revised text, Sept. 30, 1997, *supra* note 40, art. 1.5.

> whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.[121]

At this point, the group of Friends of the Chairman decided not scheduled any further consultations of this provision. Thus, the Friends of the Chairman included this final language in the text they prepared by on October 2, 1997,[122] and in the draft that the working group recommended to the Sixth Committee on October 3, 1997.[123]

Finally, according to the initial G-7 draft, terrorist bombing could be committed by placing of a bomb, explosive, or incendiary device "in, into or affecting (…) a public transportation system."[124] The draft defined "public transportation system" as follows:

> 6. "Public transportation system" includes all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for the transportation by ground, sea or air of persons or cargo.[125]

At the first reading of this text, some delegations sought to make it more comprehensive. Guatemala proposed the inclusion of those transportation systems that use lakes and rivers,[126] while the Republic of Korea suggested adding a reference to underground transportations systems.[127] Most delegations, though, found it acceptable.[128]

---

[121] Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 1.5.

[122] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 1.5.

[123] Revised text submitted to the Sixth Comm., *supra* note 43, art. 1.5.

[125] *Ibid*., art. 1.6.

[126] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 5.

[127] Supported by Pakistan and Malawi. Republic of Korea, "Amendments to arts. 1-8 and 10," art. 1.6, U.N. Doc. A/AC.252/1997/WP.13 (Feb. 28, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 34-35.

[128] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 2.

Soon after, the G-7 delegations revised this text. They deleted the reference to "ground, sea or air," since it was redundant. They also specified that the systems in questions had to be "publicly available" for transportation services.[129] Thus, they excluded from the scope of the convention any criminal attack against transport vehicles or facilities used exclusively for private purposes. When the *Ad Hoc* Committee considered this provision, on February 28, 1997, there were no comments.[130] Consequently, the same language was included, without any changes, in the negotiating text prepared by the bureau.[131] Once more, during the third reading, there were no comments on this paragraph.[132] Hence, since it appeared to be an emerging consensus on this language, the Bureau decided to incorporate it text in the consolidated draft circulated at the end of the *Ad Hoc* Committee's session.[133]

Delegations considered this text, once again, at the beginning of the fall session of the working group, on September 22, 1997. Once more, there were no comments. The Friends of the Chairman, however, modified the text: for reasons of consistency among all the definitions, they replaced the term "included" with the term "means," thus transforming this paragraph into a restrictive definition. Thus, the language circulated by the Friends of the Chairman on September 29, 1997 read:

---

[129] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, art. 1.6.

[130] U.N. Secretariat, Codification Division, "Document WP. 10, 9:45, 3 March, 1997," *supra* note 66, at 4.

[131] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 1.6.

[132] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 3.

[133] Bureau, Revised texts, March 7, 1997, *supra* note 36, art. 1.6:

> 6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.[134]

This text was not discussed in the consultations held on that day. Consequently, it repeated it in the next consolidated rolling text.[135] However, on September 30, Cuba argued that this provision was overly restricted. That evening, the Friends of the Chairman asked Cuba privately to be more flexibility.[136] Cuba eventually agreed and withdrew its objections. Therefore, the Friends of the Chairman repeated the same language in their subsequent drafts,[137] and in the final text that the working group recommended to the Sixth Committee.[138]

2) The instruments of the crime

The use of destructive instruments is the most distinguishing characteristic of the crime of the terrorist bombing. Hence, according to the first draft of the convention, to commit a crime of terrorist bombing, it was necessary that somebody delivered, placed, discharged, or detonated "a bomb, explosive, incendiary device, or lethal device."[139] The first draft, though, did not define the term "bomb;" it included only the following definition of "lethal device":

---

[134] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 1.6.

[135] Friends of the Chairman, Revised text, Sept. 30, 1997, *supra* note 40, art. 1.6.

[136] Díaz, Autograph notes, *supra* note 93, Sept. 30, 1997.

[137] Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 1.6; Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 1.6.

[138] Revised text submitted to the Sixth Comm., *supra* note 43, art. 1.6.

[139] G-7 Preliminary working document, *supra* note 27, art. 2.1.

> 3. "Lethal device" means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury through the release, dissemination or impact of:
> (a) Toxic chemicals;
> (b) Biological agents or toxins;
> (c) Radiation or radioactive material. [140]

During the first reading, China, Venezuela, Russia, and the Republic of Korea, were concerned that this definition went far beyond the common understanding of what a bomb is. They argued that it was necessary to define precisely the concept of "bomb." The G-7 replied that their draft was intentionally broad, in order to cover, for example, the use of a canister to release a toxic gas. For the United States, the term "bomb" did not require a definition since it was well understood. Cuba suggested adding a reference to lethal substances on the list of instruments contained in the draft, while Japan proposed adopting the same terminology used in the international conventions on chemical and biological weapons and on nuclear materials, to avoid inconsistencies. Meanwhile, some delegations felt that it was necessary to define "explosive device" and "incendiary device," since they were also mentioned in the definition of the offence.[141] Based on these reactions, the G-7 deleted the term "bomb," and used instead the formula "explosive device, incendiary device or lethal device."[142] It did not make, though, any change to its definition of "lethal device."[143]

---

[140] *Ibid*., art. 1.3.

[141] Cameroon, China, Macedonia, Malawi, Republic of Korea, Russian Federation, South Africa, and Venezuela. 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 13; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 2.

[142] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 and 3," *supra* note 31, art. 2.1.

[143] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, art.1.3.

When this text was discussed, on February 28 and March 3, 1997, some delegations welcomed the fact the proposed list of instruments of the crime went beyond the traditional concept of "bomb." India actually proposed broadening that list further by referring to any dangerous substance. China and Egypt, on the contrary, preferred the narrower concept of "bomb." China, in particular, suggested replacing it with the more restrictive: "explosive device or such a similar dangerous device."[144] Meanwhile, Cameroon and Venezuela believed that it was necessary to define the concepts of "explosive device," "incendiary device," and "bomb"[145] Regarding the definition of "lethal device," Iran suggested that such a device should not only be "intended" to cause death or injury but that it should also be "understood" as being able to do so. Finally, Algeria proposed mentioning any devices designed to produce material damage.[146]

The bureau then prepared a new draft. On the definition of the crime, it followed the G-7 by referring to "explosive device, incendiary device or lethal device".[147] On the definition of lethal device, it added a reference to lethal substances. Furthermore, it noted that the device could be intended to cause potential material damage, as suggested by Algeria.[148] However, some delegations criticized these changes. The Netherlands thought that the definition of "lethal device" already encompassed the concepts of explosive and incendiary devices. Consequently, it proposed replacing it with the concepts of "toxic device," "radioactive device," and "biological device" in the definition

---

[144] Supported by Cameroon and Pakistan. U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," (TD, summary of oral proposals, prepared for the use of the bureau, March 3, 1997, on file with the author); 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 32

[145] U.N. Codification Division, "Document WP. 10, 9:45, 3 March, 1997," *supra* note 66, at 4.

[146] *Ibid*., at. 4.

[147] Bureau, Revised text, March 3, 1997, *supra* note 32, art. 2.1.

[148] *Ibid.,* art. 1.3.

of the crime.[149] This proposal enjoyed substantial support,[150] but China, the United States, and Russia opposed it. The Netherlands also noted, if its proposal was accepted, it would have been necessary to define separately the concepts of "toxic device," "radioactive device," and "biological device."[151] On the definition of "lethal device," Japan, the United States, the United Kingdom, and Canada asked for the deletion of both "substance" and "material damage." Conversely, Poland, Egypt, and Uruguay welcomed the reference to material damage. Meanwhile, the Netherlands argued that the definition of "lethal device" should not contain any references to the intention of the author of the wrongful action since the element of intent should be addressed in the actual definition of the offence. Finally, China and Egypt sought, once more, to delete the definition of "lethal device" since, in their view, it widen too much the scope of the proposed Convention.[152]

After these inconclusive consultations, the bureau felt that it was not in a position to provide a new formulation. Therefore, its subsequent draft just repeated its previous proposal.[153] At the same time, the delegations of the Netherlands and the United States realized the need to find a common approach to address the technical problems identified by the Dutch delegation. After bilateral consultations, the two delegations proposed that the label "explosive or other lethal device" be used consistently to refer to the potential instruments of the crime. They also proposed to define those instruments in a

---

[149] Netherlands, "Proposal on arts. 1.3 and 2.1" U.N. Doc. A/AC.252/1997/WP.27 (March 6, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 43.

[150] It was supported by Argentina, Denmark, Finland, Iran, Italy, Japan, Malawi, Mexico, Portugal, South Africa, and Sweden.

[151] Supported by Argentina, Iran, Italy, and Japan.

[152] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 3.

[153] Bureau, Revised text, March 7, 1997, *supra* note 36, arts. 1.3 and 2.1.

comprehensive manner, to incorporate all explosives, incendiary devices, weapons, and release mechanisms. That definition read:

> 3. "Explosive or other lethal device" means:
> (a) An explosive or incendiary device that is designed, or has the capability, to cause death or serious bodily injury; or
> (b) A weapon or device that is designed, or has the capability, to cause death or serious bodily injury through the release, dissemination or impact of toxic chemicals, biological agents or toxins, or radiation or radioactive material.[154]

This proposal avoided the redundancy between "explosive devices" and "lethal device" found in the earlier drafts and removed the intentionality aspect from the definition of the instruments of the crime. The United States and the Netherlands also noted that, if the definition of the offence were to include the intentional destruction of property, it would have been necessary to amend the definition of the potential instruments of the crime to include an appropriate reference to their capability to cause material damage.[155] This proposal was circulated on the last day of meetings of the *Ad Hoc* Committee, and consequently, it could not be considered until fall session of the working group.

On September 22, 1997, the joint American-Dutch proposal enjoyed substantial support.[156] India and Japan found it acceptable, but wanted to add a reference to lethal substances.[157] Similarly, Guatemala, suggested adding a reference to weapons among the

---

[154] Netherlands and the United States, "Proposal," art. 1.3 U.N. Doc. A/AC.252/1997/WP.32 (March 7, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 44-45.

[155] *Ibid.,* n.

[156] It was supported by the Canada, France, Germany, Republic of Korea, Russian Federation, and the United Kingdom.

[157] Supported by Algeria, Malawi, Syria, and Venezuela but opposed by France, Germany, Netherlands, United Kingdom, and the United States.

list of incendiary instruments.[158] Finally, Canada and Guatemala supported the inclusion of a reference to material damage, as suggested by the sponsors of the proposal, but both Japan and France objected. In contrast, China and Syria had substantial objections to the text. China sought again to limit the potential instruments of the crime only to explosive and incendiary devices, thus excluding from the scope of the convention terrorist acts performed with other kinds of lethal instruments.[159] Syria proposed adding new definitions for "explosive device," "incendiary device," and "bomb." It also suggested expanding the definition of lethal device to include incendiary substances whose use does not require any special mechanism.[160] Finally, Japan noted the need to clarify the relationship between the proposed reference to radioactive material and the 1980 International Atomic Energy Agency Convention.[161]

After this round of consultations, on September 29, 1997, the Friends of the Chairman produced a new draft. First, they added to the proposal made by the United States and the Netherlands, a definition of lethal substance, to cover toxic materials. Second, having assessed that there was growing support for the inclusion of damage to property in the definition of the offence, the Friends of the Chairman included a reference to the capability of the instrument to cause material damage. The text then read:

> 3. "Explosive or other lethal device or substance" means:
> (a) An explosive or incendiary weapon, device or substance that is designed, or has the capability, to cause death, serious bodily injury or material damage; or

[158] Supported by Netherlands, Republic of Korea, and the United States.

[159] China, "Proposed amendments to art. 2.1," U.N. Doc. A/C.6/52/WG.1/CRP.6 (Sept 23, 1997), in 1997 Working Group *Report*, *supra* note 37, at 20.

[160] Syria, "Proposals to arts. 1 and 3 (A/52/37, annex 1.A)," *supra* note 86, ¶¶ 2.a, 2.b, 3.

[161] U.N. Codification Division, "Article 1. 24/9/97, 19:40," *supra* note 90, at 3.

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or radiation or radioactive material; or
(c) toxic chemical, biological agent or toxin, or radioactive material that has the capability to cause death, serious bodily injury or material damage through its release, dissemination or impact.[162]

When the Working Group considered this text, western delegations, Japan, and China rejected the changes made by the Friends of the Chairman. Japan proposed the deleting "substance" from the name of the concept being defined;[163] the Netherlands and Syria asked for the deletion of the whole subparagraph c), on toxic substances; while China argued, once again, that the list should be limited to explosive and incendiary devices. Japan, the United States, the United Kingdom, Israel, and Belgium, also proposed deleting the reference to "material damage," while Chile suggested qualifying it as "serious" damage. Finally, Japan and Syria asked that "toxic chemicals" and "radioactive material" be defined. Only Egypt seemed to support the text proposed by the Friends of the Chairman.[164] Because this text found such strong opposition, the Friends of the Chairman decided to go back to the language proposed by the Netherlands and the United States. The only change they made, in their next rolling text, was the inclusion of a reference to "weapons" in the list of incendiary devices.[165]

On October 1, 1997, in a separate discussion, the working group decided that the convention would apply not only to those attacks that caused personal loss but also to

---

[162] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 1.3.

[163] Supported by Belgium, China, Israel, Netherlands, United Kingdom, and the United States, but opposed by Egypt and New Zealand.

[164] U.N. Codification Division, "Article 1. 30/9/97, 16:30" at 1 (TD, summary of oral proposals prepared for the use of the Friends of the Chairman, Sept. 30, 1997, on file with the author).

[165] Friends of the Chairman, Revised text, Sept. 30, 1997, *supra* note 40, art. 1.3.

those acts that resulted in substantial material destruction.[166] Consequently, the Friends of the Chairman felt that the definition of "lethal device" could include once again a reference to "substantial material damage." In bilateral consultations, they also found that it would be possible to expand slightly the reference to toxins, to include a somewhat broader range of deadly substances. The amended definition read:

> 3. "Explosive or other lethal device" means:
>
> (a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or
>
> (b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.[167]

At the last moment, on October 3, 1997, China proposed deleting subsection b) to restrict the scope of the convention to the narrower concept of bomb. At this late time, however, this proposal did not receive any support.[168] Consequently, the last text prepared by the Friends of the Chairman was recommended to the Sixth Committee.[169]

3) The definition of the offence

The key provision in the draft Bombings Convention was the technical description of the criminal offence of terrorist bombing. In the first draft, it read:

---

[166] *See infra* p. 11.

[167] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 1.3.

[168] Díaz, Autograph notes, *supra* note 93, Oct. 3, 1997.

[169] Revised text submitted to the Sixth Comm., *supra* note 43, art. 1.3.

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates a bomb, explosive or incendiary device, or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:
>
> (a) With the intent to cause death or serious bodily injury; or
>
> (b) Under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death or serious bodily injury.[170]

Two aspects of this definition are noteworthy. First, the definition did not use the word "terrorism" nor define the crime as "terrorist bombing." Only the title of the convention called the offence "terrorism."[171] Second, this definition mixed in the same paragraph, the chapeau of article 2, the subjective element the crime: the intention to perform the wrongful act; and its objective element: the description of the wrongful act itself. Subsequent subparagraphs added further intent requirements. Moreover, procedurally, the bureau organized negotiations around the structure of the proposed text. Since the first draft contained in the same paragraph the subjective and objective elements of the offence, the negotiations on the wrongful act and on the intent requirements proceeded in tandem. As the negotiations developed, the coordinators occasionally organized the discussion further by asking delegations to comment first on the chapeau of article 2, which contained mainly the objective elements of the offence, and, later, on the subparagraphs, that contained most of the subjective or intent elements of the crime. However, the negotiation of these issues occurred the same time and that they were closely interrelated.

---

[170] G-7 Preliminary working document, *supra* note 27, art. 2.1.

[171] *Ibid.,* title: "International Convention of the Suppression of Terrorist Bombings".

The objective element of the crime, that is, the wrongful conduct, consisted, according to the first draft, the crime of terrorist bombing, in one of the following acts: the unlawful delivery, placement, discharge or detonation of a bomb, explosive, incendiary device or lethal device in a public space or infrastructure facility.[172] When the *Ad Hoc* Committee considered this provision for the first time, on February 24, 1997, several delegations suggested expanding the list wrongful acts. Algeria proposed adding the unlawful manufacture of explosives for criminal purposes.[173] Mexico and Japan suggested the unlawful import and export of bombs and other lethal devices. Turkey put forward the illegal supply of explosive and bombs. The Republic of Korea proposed the unlawful acquisition or possession of explosives.[174] Australia suggested the "operation" of a lethal device, while Malawi proposed the "launching" or "posting" of such a device. Finally, Syria suggested extending the definition to cover the shooting or the firing of a weapon with a terrorist purpose. The United States objected to any reference to the manufacture of explosive, which, in its view, should not be regulated by a counter-terrorism convention. For their part, Slovakia, Malawi and India argued that requiring that the wrongful act be "unlawful" was redundant. France, Canada and Iran underlined, on the contrary, that such precondition was indispensable to exclude from the scope of the convention lawful actions, such as the use of explosives during legitimate police operations. Egypt argued that the criminal activity had to be committed "in violation of international law." This proposal sought to exclude from the scope of the convention

---

[172] *Ibid.,* art. 2.1 chapeau.

[173] Supported by Canada, Japan, Malawi, Mexico, Tunisia, and Turkey.

[174] Republic of Korea, "Amendments to arts. 1-8 and 10," *supra* note 127, art. 2.1.

legitimate acts of self-determination recognized by international law but not by domestic law.[175]

After this first reading, the G-7 made no changes on the question of the legality of the wrongful act.[176] Not surprisingly then, when the *Ad Hoc* Committee revisited this text on March 3, 1997, Slovakia, India, and Pakistan, requested again deleting the precondition of the unlawfulness of the wrongful conduct. For them, domestic law and not the convention, should determine whether an act is lawful or not. Argentina, the United States, and Ireland, on the contrary, advocated for the language proposed by the G-7, since, in their view, it would exclude from the convention the legitimate use of explosives in cases such as the demolition of buildings, controlled explosions, and the rescue of hostages. The United States advised delegations to concentrate only on the most serious offences to facilitate reaching consensus. [177]

Later, on March 3, 1997, and based on the two first rounds of discussions, the bureau revised the definition of the offence. The bureau chose to maintain, without any change, the language on wrongful act proposed by the G7: a person commits the crime if he "unlawfully and intentionally delivers, places, discharges or detonates"[178] a lethal device. The bureau included, though, the manufacture and possession of explosives with criminal intent as a separate form of the offence:

---

[175] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 23 - 24; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 4 - 5.

[176] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 and 3," *supra* note 31, art. 2.1, chapeau.

[177] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 2; 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 30-31.

[178] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 2.1, chapeau.

> 2. Any person also commits an offence if that person manufactures, possesses, transfers or acquires an explosive device, incendiary device or lethal device with the intent that such device be used for the commission of an offence as set forth in paragraph 1.[179]

When the *Ad Hoc* Committee considered this text, India proposed again removing the requirement that the punishable acts be carried out unlawfully. China, Iran, and Pakistan, on their part, sought to replace it with a reference to the terrorist purpose of the wrongful act. Besides, most delegations thought that the new paragraph on the manufacture and procession of lethal devices was not necessary since those actions were properly addressed in the provisions on preparatory crimes and the attempt.[180] Thus, when the bureau circulated a revised definition of the offence, it did not change the *actus reus*: the unlawful delivery, setting, discharge or detonation of a lethal device in a public space or infrastructure facility. It deleted, though, the provision on the manufacture of explosives.[181]

The working group returned to this issue on September 23, 1997. At that time, Cote d'Ivoire proposed adding the verb "uses" to the list of wrongful behaviours. France, Turkey, and Pakistan proposed deleting the requirement that the action had to be "unlawful", but the Russian Federation, Ukraine, Costa Rica and Argentina preferred to keep it. Sweden and Finland argued that the references to the delivery and setting of a lethal device were unnecessary, but Costa Rica objected to their deletion. Finally, Japan and Malawi argued for restoring the provision on the manufacture of explosives.[182]

---

[179] *Ibid.,* art. 2.2.

[180] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 5.

[181] Bureau, Revised text, March 7, 1997, *supra* note 36, art. 2.

[182] U.N. Codification Division, "Article 2. 23/9/97, 22:40" at 2 (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 23, 1997, on file with the author).

Based on those consultations, the Friends of the Chairman circulated a new draft on September 29, 1997. They retained, once more, the same list of wrongful acts: "Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device (…)."[183] They did not include, though, Japan's proposal for a separate paragraph on the manufacture of explosives, since it had not received enough support.

Thus, on September 30, 1997, when the Working Group considered this revised text, the only comments came from Pakistan and China who requested the deletion of the requirement of unlawfulness.[184] Since most delegations seemed to support this language, the Friends of the Chairman decided to include it in their next three consolidated rolling texts.[185] On the last day of the meeting of the working group, though, China reiterated its proposal to substitute the terms "unlawfully and intentionally" with a reference to the terrorist purpose.[186] At this late stage, however, this proposal did not receive any support. Consequently, the language proposed by the Friends of the Chairman was included in the set of articles recommended for the consideration of the Sixth Committee.[187]

Meanwhile, regarding the subjective elements of the crime, the definition of the offence contained in the first draft of the bombings put forward a double intent requirement. First, the delivery, placement, discharge, or detonation of bomb had to be

---

[183] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 2.1. chapeau.

[184] U.N. Codification Division, "Article 1. 30/9/97, 16:30," *supra* note 164, at art. 2.

[185] Friends of the Chairman, Revised text, Sept. 30, *supra* note 40, art. 2.1. chapeau; Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 2.1. chapeau; Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 2.1. chapeau.

[186] Díaz, Autograph notes, *supra* note 93, Oct. 3, 1997.

[187] Revised text submitted to the Sixth Comm., *supra* note 43, art. 2.1. chapeau.

performed intentionally.[188] Second, the actor had to "intent to cause death or serious bodily injury,"[189] or act "under circumstances which indicate that the person knew or should have known that his conduct would create a substantial risk of death or serious bodily injury."[190] Three issues dominated the negotiation. First, whether the wrongful act had to be committed with the specific purpose of causing terror. For some delegations, especially from developing countries, such intent was the defining characteristic of a terrorist act. For other delegations, mainly from developed nations, such intent was difficult to prove in court and could lead to a fruitless discussion on the definition of terrorism itself. Second, whether to include in the scope of the convention acts directed at causing material damage. This was a question of policy preferences regarding whether acts directed exclusively to causing material to property were serious enough to be addressed at an international level and, if so, under which conditions. Third, whether it was possible to draft the provisions on recklessness and gross negligence so that they could be workable in the various legal systems of the world. The formulations proposed in the first draft relied on the actor's knowledge of the possible consequences of his wrongful act. This approach is used in some common law countries and, particularly, in the United States' criminal law system. However, it is alien to the criminal law system of those countries that follow the civil law tradition, where the actor's knowledge falls either into his criminal intent or into his acceptance of the risks entailed by his conduct.[191]

---

[188] G-7 Preliminary working document, *supra* note 27, art. 2.1, chapeau.

[189] *Ibid*., art 2.1.a

[190] *Ibid.,* art. 2.1.b.

[191] See *supra:* Chapter 1.B.2.a; Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), 164.

During the first reading, held on February 24, 1997, Slovakia, Malawi, and India argued that the general intent requirement was redundant and that it should be deleted. France, supported by Canada and Iran, noted, on the contrary, that this precondition was necessary to excluded accidents from the scope of the convention. They also noted that similar language appeared in earlier international legal instruments.[192] Meanwhile, several delegations proposed that the crime of terrorist bombing be characterized by the actor's intent of to terrorize the population. Thus, Greece and India, proposed stating at the outset that the wrongful action had to seek causing terror. Cuba and others[193] suggested, instead, adding the intention to cause panic among the civilian population to the first subparagraph, making it one of the possible goals of the wrongful action but not a necessary precondition for the application of the draft convention. The United States rejected these two proposals.[194]

On the criminal intent (subparagraph a), Sri Lanka and Portugal suggested adding the intention to cause psychological suffering. China proposed covering acts directed at disturbing the public order, and the Netherlands sought to include actions intended "to cause serious disruption to social and economic life."[195] Uruguay proposed the inclusion of the intention to cause serious damage to property as one of the possible subjective elements of the offence. Most delegations supported the inclusion of a reference to property, but noted that it should be qualified as "extensive" to denote the gravity

---

[192] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 24; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 4.

[193] Algeria, Argentina, Canada, China, Greece, Malawi, and Syria.

[194] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 4-5.

[195] Supported by Nigeria, Turkey, and Uruguay. Netherlands, "Proposals on arts. 2.2, 3.1 and 9.bis," at art. 2.1, U.N. Doc. A/AC.252/1997/WP.9 (Feb. 27, 1997), in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 31-32.

required of any act for it to fall within the scope of an international instrument.[196] Argentina, however, proposed that a threshold higher be used.[197]

Regarding the provision on recklessness and gross negligence, several delegations proposed higher or more objective thresholds. Australia proposed requiring simply that the actor willed the delivery or use of a lethal device in circumstances where it was likely to have negative effects. Thus, it suggested replacing the knowledge of the risk of negative consequence with the objective likelihood of those negative consequences occurring. Australia noted that the Conventions on Internationally Protected Persons[198] and on the Safety of Maritime Navigation[199] used similar formulations. For its part, France suggested raising the threshold. In its view, the convention should cover only the gravest cases of gross negligence, that is, those cases where the actor not only should have known of the possible negative consequences of his actions but where he could not fail to have known about them because of the amount of damage that the wrongful action would cause.[200] The Netherlands suggested including the potential risk of causing serious disruption to economic and social life, in consonance with its proposal to incorporate social disruption as one of the possible effects of the crime.[201] Finally, Syria

---

[196] Algeria, Canada, China, Cuba, Egypt, Gabon, India, Iran, Ireland, Lesotho, Macedonia, Mexico, Nigeria, Pakistan, Portugal, Republic of Korea, Slovakia, Sudan, Switzerland, Syria, Tunisia, Turkey, United Kingdom, and the United States.

[197] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 24; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 5-6.

[198] Convention on Internationally Protected Persons, *supra* note 2, art. 2.1.

[199] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1., art. 3.1.b.

[200] France, "Proposal on art. 2," at art. 2.1.b, U.N. Doc. A/AC.252/1997/WP.1 (Feb. 24, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 29.

[201] Netherlands, "Proposals on arts. 2.2, 3.1 and 9.bis," *supra* note 195, at art. 2.1.c.

proposed deleting the whole paragraph, thus excluding, in effect, the possibility that the crime of terrorist bombing be committed through recklessness or gross negligence.[202]

After this round of consultations, the G-7 prepared a new draft. The authors took on board both the possibility that the wrongful action was intended to cause destruction of property and the Australian proposal to replace recklessness and gross negligence with an objective criterion. The new text read:

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of general public use, a government facility, a public transportation system or an infrastructure facility:
>
> (a) With the intent to cause death or serious bodily injury;
>
> (b) With the intent to cause extensive destruction of property likely to endanger persons; or
>
> (c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury to persons.[203]

From the point of view of the intentionality, this text contained three different elements. First, the chapeau retained a general intent requirement in the commission of the wrongful act. Second, subparagraphs a) and b) referred to the offence committed with criminal intent; and, third, subparagraph c) referred to recklessness. However, subparagraph b) included the intent to cause damage to property only to the extent that it was likely to endanger persons, while subparagraph c) replaced the notion of the actor's "knowledge" with the actor's acceptance of the risk involved in the concrete situation.[204]

---

[202] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 5-6.

[203] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 and 3," *supra* note 31, art. 2.1.

[204] For a general discussion of the relationship between knowledge, intent, and recklessness in international criminal law, *see* Cassese, *supra* note 191, at 164.

When the *Ad Hoc* Committee considered this text, Slovakia, India, and Pakistan, proposed again deleting the general intent requirement included in the chapeau since – in their view – it was redundant. Argentina, the United States, and Ireland believe, on the contrary, that it contained the necessary mental element required for the commission of any criminal offence. China suggested replacing the worlds "unlawfully and intentionally" with the words "for a terrorist purpose," and India proposed adding a reference to the intention to cause a state of terror among the population. Later, India and Cameroon proposed transforming the intent requirements into result requirements. Accordingly, the crime would be defined by the actual consequences of the wrongful action, and not by the intent of its author.[205] Regarding the criminal intent to destroy property, India and Pakistan proposed adding a reference to both public and private property, while Uruguay and Tunisia suggested including the intention to disrupt economic and social life. India advanced also the idea of criminalizing any acts directed at disrupting the cultural life. Finally, several delegations proposed assigning a separate paragraph to the issue of property.[206] The United States and Ireland objected to these proposals because they would internationalize crimes of minor import, which, in their view, should be governed by national law.[207] Finally, regarding subparagraph c), which now established the objective circumstances that give rise to recklessness, the Netherlands proposed adding those circumstances in which extensive destruction of property was likely. Meanwhile, China and Pakistan suggested that it should include

---

[205] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 31; U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 2;.

[206] China, Netherlands, Pakistan, Sudan, and Tunisia.

[207] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 33-35; U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 2-3.

actions that are likely to create panic among the public. However, most delegations seemed to agree with the new approach.[208] At the end of this second reading, on March 3, 1997, the bureau prepared a new draft. In doing so, the bureau sought to incorporate the majority of the suggestions made. The new text included the reference to public and private property suggested by India; the intent to cause disruption of social and economic life, proposed by Uruguay; and the reference to situations likely to create panic, put forward by China. The new text read:

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of public use, a government or other public facility, a public transportation system or an infrastructure facility:
>
> (a) With the intent to cause death or serious bodily injury; or
> (b) With the intent to cause extensive destruction of public or private property likely to cause serious disruption of economic, social and cultural life; or
> (c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury to persons; or
> (d) Under circumstances in which his action is likely to create panic among the general public.[209]

In preparing this draft, the bureau was proactive in reorganizing the language and combining proposals. On subparagraph b), it used the Uruguayan proposal as a qualifier of the level of destruction required for the convention to apply in cases of destruction of property, and not as a separate result, as originally proposed. On paragraph d), the bureau included the actor's intention to act in circumstances likely to cause panic among the general population. The bureau, however, did not create a separate heading for those situations where the actor's main goal was to cause panic.

---

[208] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 3.

[209] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 2.1.

When the Committee considered this text in informal consultations, China, Iran, and Pakistan, proposed, once again, replacing the general intentionality requirement, reflected in the chapeau, with a reference to the terrorist purpose of the act. Meanwhile, there were no comments on subparagraph a), regarding the criminal intent to cause death or bodily injury, indicating growing consensus on that provision.[210] On the criminal intent to cause damage to property, views were divergent. Some delegations sought to eliminate or restrict the role of the potential damage to property as a separate intent heading. They argued that a treaty designed to combat international terrorism should not internationalize acts directed exclusively at causing minor property damage. France proposed deleting the whole subparagraph. The United States,[211] argued that the damage to property had to be connected to the potential damage to persons. For Argentina and the Netherlands, it had to be linked to the damage to public infrastructure; while, for Canada and Malawi, it had to cause serious economic loss. As an alternative, the Netherlands and Malawi proposed using the actual disruption to social and economic life resulting from the wrongful action as the threshold for triggering the application of the convention. In addition, the United States proposed eliminating the reference to private property.[212] Conversely, other delegations sought to lower the threshold of the potential damage to property that would be required to trigger the application of the convention. Japan and the United Kingdom proposed deleting the link to serious disruption of social or economic life.[213] Sudan advocated for eliminating the requirement that the damage

[210] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 5.

[211] Supported by Germany, Portugal, Sweden, and Finland.

[212] Supported by Iran, Portugal, and South Africa.

[213] Supported by Australia, Denmark, Mexico, and South Africa.

had to be "extensive" or "serious," and Cote d'Ivoire suggested adding the possible criminal intent to damage to infrastructure facilities. Finally, China and Tunisia supported the language proposed by the bureau.[214] On subparagraph c), regarding recklessness towards the life or physical integrity of persons, the United Kingdom and Malawi suggested deleting the word "persons" as redundant. Meanwhile, the Netherlands sought to extend this provision to cover recklessness towards property or social and economic life, and Germany expressed reservations to the words "under circumstances."[215] Finally, most delegations advocated the deletion of the last paragraph, on the potential panic among the population.[216] Among them, Iran and Pakistan argued that the terrorist intent should apply to the whole offence and not only to one of its forms.[217] Others argued that it was difficult to define the concept of "panic." India, China, and Tunisia, on the contrary, upheld the text proposed by the bureau. As the discussion advanced, some delegations proposed alternative language. Portugal suggested replacing this provision with a reference to psychological damage in the previous paragraph. Tunisia, Portugal, and Algeria suggested the words "to spread terror," and Malawi and Turkey proposed referring to the criminal intent to cause "a state of terror or panic among the general public which, in fact, produces such terror."[218]

At the end the spring session of the *Ad Hoc* Committee, the bureau circulated the following revised definition of the offence:

---

[214] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 5.

[215] *Ibid.*

[216] Argentina, Australia, Canada, Cote d'Ivoire, Denmark, Finland, France, Germany, Iran, Japan, Mexico, Netherlands, Pakistan, Russia, South Africa, Sweden, United Kingdom, and the United States.

[217] They had suggested including in the chapeau of art.2.1 a reference to the terrorist purpose.

[218] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 5.

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive device, incendiary device or lethal device in, into or affecting a place of public use, a government or other public facility, a public transportation system or an infrastructure facility:
> (a) With the intent to cause death or serious bodily injury; or
> (b) With the intent to cause extensive destruction of public or private property likely to cause serious disruption of economic life; or
> (c) Under circumstances in which his action is likely to create a grave risk of death or serious bodily injury; or
> (d) Under circumstances in which his action is likely to create a state of terror among the general public.[219]

This text followed closely the previous draft prepared by the bureau. Regarding the actor's intent, this proposal contained only small two changes. First, the bureau restricted the criminal intent to cause extensive destruction of property only to that destruction likely to cause serious disruption of economic life. Thus, the references to social and cultural life were deleted. Second, the bureau replaced the words "panic" with the words "a state of terror" in the last subparagraph.

The working group of the Sixth Committee considered these issues again at the beginning of its fall session. The Republic of Korea proposed deleting the general intentionality requirement included in the chapeau,[220] but Russia, Ukraine, and Argentina objected. Israel suggested replacing the word "intentionally" with the word "knowingly" and China[221] reiterated its proposal to refer to a general terrorist purpose.[222] There were no comments on the provision on the criminal intent to cause death or bodily injury to persons. However, there was an extensive discussion on the provision on the criminal

[219] Bureau, Revised text, March 7, 1997, *supra* note 36, art. 2.1.

[220] Republic of Korea, "Proposals on arts. 2, 5, 6, 7, 8, 10, 10.bis, 12, 12.bis," at art. 2, U.N. Doc. A/C.6/52/WG.1/CRP.14 (Sept. 24, 1997) in 1997 Working Group *Report*, *supra* note 37, at 25-26.

[221] China, "Proposed amendments to art.2.1," *supra* note 159.

[222] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 2.

intent to destroy property. Some delegations sought to broaden the scope of this provision by lowering the threshold. South Africa[223] propose deleting the condition that the destruction had to be "extensive." Tunisia[224] proposed deleting the link to the "disruption of the economic life," and Germany argued, in particular, that the concept of "disruption of the economic life" was too vague to be incorporated in domestic law.[225] In its view, it was necessary to use the value of the property to define the threshold for triggering the application of the convention. Consequently, it preferred extending the scope of the convention to cover any destruction of property of significant value.[226] Other delegations, on the contrary, sought to raise the threshold of required damage in order to restrict the scope of this provision. France, Belgium, and Sweden proposed, once again, linking the destruction of property to the likelihood that it will endanger the life or personal integrity of persons. Most delegations, however, rejected this proposal.[227] Finally, the United States,[228] supported by Canada and Norway, suggested limiting this provision only to the wrongful actions directed against the public places, and public works mentioned in the chapeau of the same article.[229] France[230] proposed deleting subparagraph c), concerning the commission of the offence through recklessness towards persons. However, a substantial number of delegations spoke in favour of this

---

[223] Supported by Mexico, Turkey, and Algeria.

[224] Supported by the United Kingdom, Mexico, Israel, and Sri Lanka.

[225] Germany, "Proposals on art. 2.1," *supra* note 88, ¶ 2.

[226] Supported by Finland, Italy, Norway, and the Republic of Korea. U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 2.

[227] Cote d'Ivoire, Israel, Italy, Mexico, Nigeria, Republic of Korea, Sri Lanka, Tunisia, Turkey, and the United Kingdom.

[228] United States, "Proposal on art. 2 of A/52/37," U.N. Doc. A/C.6/52/WG.1/CRP.5 (Sept. 22, 1997) in 1997 Working Group *Report*, *supra* note 37, at 18.

[229] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 2.

[230] Supported by Belgium, Germany, Sweden, and the United States.

provision.[231] In addition, the Republic of Korea[232] and Norway suggested going back to the concept of the knowledge of the actor at the time of the wrongful action.[233] In addition, most delegations[234] wanted the deletion of the provision concerning acts intended to cause a state of terror. Germany, in particular, argued that the intention to cause terror among the general population is the *raison d'être* of all terrorist acts and that, as such, it would be better addressed in the preamble.[235] Meanwhile, several developing countries, and Italy,[236] argued for its retention. Malawi proposed adding a separate paragraph stressing that criminal acts intended to cause terror in the public are unjustifiable. Finally, Syria,[237] proposed the inclusion a definition of "terrorist bombings."[238]

In a further effort to find an agreement, on September 29th, 1997, the group of Friends of the Chairman circulated a new draft definition of the offence which read:

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device or substance in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
>
> (a) With the intent to cause death or serious bodily injury; or
>
> (b) With the intent to cause extensive destruction of such a place, facility or system, which results in or is likely to result in major economic loss; or

---

[231] Canada, Côte d'Ivoire, Israel, Italy, Mexico, Nigeria, Sri Lanka, Tunisia, Turkey, and the United Kingdom.

[232] Republic of Korea, "Proposals on arts. 2, 5, 6, 7, 8, 10, 10.bis, 12, 12.bis," *supra* note 220, at art. 2.

[233] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 3.

[234] Argentina, Belgium, Canada, Cote d'Ivoire, Finland, France, Germany, Japan, Mexico, Netherlands, Norway, Russia, Sweden, United Kingdom, and the United States.

[235] Germany, "Proposals on to article 2.1 of A/52/37, annex 1.A," *supra* note 88, ¶ 2.

[236] Algeria, Italy, Malawi, Nigeria, Tunisia, and Turkey.

[237] Supported by China and Pakistan. Syria, "Proposals to arts. 1 and 3 (A/52/37, annex 1.A)," *supra* note 86, at 2.a.

[238] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 2-3.

(c) [deleted]
(d) Under circumstances in which that person knew or should have known that the person's action would create a state of terror among the general public.[239]

Regarding the acts intended to damage property, this text combined the American and German proposals, thus limiting scope of this provision only to those public places and facilities already mentioned in the chapeau of the article whose destruction may result in a major economic loss. The Friends of the Chairman also maintained the reference to the circumstances that create a state of terror but took on board the Korean suggestion of using the concept of "knowledge." Finally, the group of Friends, assessing that there was no possible agreement, deleted subparagraph c, on the criminal responsibility of those who cause death or bodily injury caused through recklessness.

The working group met to consider this text on September 30th, 1997. On the general intent requirement, included in the chapeau, there were only two comments: China reiterated its proposal to replace it with a reference to the terrorist purpose, and Pakistan requested its outright deletion.[240] There were no comments either on the provision on the criminal intent to cause death or bodily injury or on the deletion of the provision on recklessness. Consequently, there appeared to be agreement on those two issues. On the revised provision concerning the intention to cause damage to property, the range of comments became more limited. Most delegations appeared to agree with the general thrust of the draft provision. Mexico, Spain, Argentina, and Turkey suggested replacing the term "extensive destruction" with "significant" or "substantive destruction." Ukraine proposed expanding the provision to cover damage short of the

[239] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 2.1.

[240] U.N. Codification Division, "Article 1. 30/9/97, 16:30", *supra* note 164, at 3.

total destruction of the property. Japan, Syria, and Spain proposed deleting the reference to mayor economic loss. Finally, Spain suggested again including public and private property.[241] Regarding subparagraph d), on the criminal responsibility that could arise from acting in circumstances that could cause terror among the general population, views were divided. Most delegations[242] favoured its deletion. Canada noted that its deletion would not prevent states from taking stricter measures at the national level, and proposed the addition of a saving clause in this regard.[243] The Netherlands suggested referring to the intent to cause terror in the preamble.[244] India and Algeria, on the contrary, advocated for the retention of the formula proposed by the Friends of the Chairman.[245] For their part, Ukraine, Malawi, Egypt, and Turkey suggested transforming the text from an objective reference to "circumstances" of the wrongful act into a criminal intent provision. In essence, they sought to include in the convention situations in which the actor expressly intended to cause terror as such. The Russian Federation[246] made a similar proposal noting that the key term should be "intimidating" the public.[247] Ukraine proposed leaving the determination of this issue to the domestic courts, and New Zealand suggested replacing this provision with an interpretative clause that would have allow

---

[241] *Ibid.*

[242] Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Demark, France, Germany, Italy, Japan, Netherlands, Norway, Pakistan, Sweden, Switzerland, Syria, United Kingdom, and the United States.

[243] Supported by Austria, Cote d'Ivoire, Netherlands, and the United Kingdom. Canada, "Proposal on art. 2.4" U.N. Doc. A/C.6/52/WG.1/CRP.42, (Sept. 30, 1997)) in 1997 Working Group *Report*, *supra* note 37, at 41.

[244] Netherlands, "Proposal for a new preambular para." U.N. Doc. A/C.6/52/WG.1/CRP.43 (Sept. 30, 1997) in 1997 Working Group *Report*, *supra* note 37, at 41.

[245] U.N. Codification Division, "Article 1. 30/9/97, 16:30," *supra* note 164, at 3.

[246] Supported by Sri Lanka.

[247] Russian Federation, "Proposal on art. 2," U.N. Doc. A/C.6/52/WG.1/CRP.44, in 1997 Working Group *Report*, *supra* note 37, at 42.

judges to asses the intention of the criminal actor from the fact that a state of terror might, actually, have been created.[248]

The Friends of the Chairman met that afternoon to prepare a new text. Based on the discussion, they concluded that there was no agreement to include in the draft convention a provision on the criminal responsibility that might arise from acting in circumstances that could cause terror among the population. Consequently, they decided not to include such a provision in the revised text. However, Friends of the Chairman realized the need to give some concession to those delegations that wished to see reflected in the text the terrorists' intention to cause terror among the population. Consequently, they merged the Canadian proposal for a saving clause with a Dutch suggestion for the preamble in following text:

> Article 4 bis
>
> Each State Party shall adopt such measures as may be necessary to ensure that criminal acts within the scope of the present Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic or religious nature and are punished by penalties consistent with their grave nature.[249]

The Friends of the Chairman left unchanged rest of provision on the subjective elements of the crime. Thus, their October 1st, 1997 text read:

> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device or substance in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

---

[248] U.N. Codification Division, "Article 1. 30/9/97, 16:30," *supra* note 164, at 3.

[249] Friends of the Chairman, Revised text, Sept. 30, *supra* note 40, new art. 4.bis.

(a) With the intent to cause death or serious bodily injury; or
(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss; [250]

The next morning, some delegations raised objections, in bilateral consultations with some of the Friends of the Chairman, to the use of the word "extensive" to qualify the destruction of property. Consequently, in their next draft, the Friend of the Chairman reverted to the term "substantial."[251] On the other hand, delegations accepted the inclusion of the new article on the intent to cause terror and the deletion of the corresponding provision from the subjective elements of the crime. However, some delegation suggested adding a reference to the adoption of stricter measures through each state's domestic legislation.[252] The revised draft was circulated on the evening of October 1st, 1997. However, after a new round of bilateral consultations, the group of Friends of the Chairman decided to revert to the word "extensive," which was preferred by most delegations. Thus, the revised text of draft article 1.1, circulated by the end of October 2nd, 1997,[253] was identical to the one issued two days before.

The working group considered this revised text on October 3rd, 1997. At that time, China reiterated its proposal to substitute terms "intentionally and unlawfully" with a reference to the terrorist purpose, and proposed that the term "extensive" be changed to the word "significant."[254] At that late stage of the negotiations, however, these proposals did not receive any support. There were no objections, either, to the inclusion of the

[250] *Ibid*., art. 2.1.

[251] Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 2.1.

[252] *Ibid.,* art. 4 bis.

[253] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 2.1.

[254] Díaz, Autograph notes, *supra* note 93, Oct. 3, 1997.

saving clause on the adoption of stricter measures. Consequently, the text proposed by the Friends of the Chairman was included in the revised text recommended by the Working Group to the Sixth Committee of the General Assembly.[255]

D) Participation and attempt

As noted previously,[256] criminal law instruments frequently attribute criminal responsibility to those who participate, contribute, incite, initiate or attempt a wrongful act. The bombing convention was no exception. Its first draft contained both a provision on the attempt and a separate paragraph on participation, complicity, conspiracy, and instigation of the crime of terrorist bombing. It read:

> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
>
> 3. Subject to the constitutional principles and the basic concepts of the legal systems of States Parties, a person also commits an offence if that person engages in conduct which constitutes participation in, association or conspiracy to commit, or aiding, abetting, facilitating or counselling the commission of an offence as set forth in paragraph 1.[257]

This provision, based on the language used in the 1988 Narcotics Convention,[258] left the specific definition of the various types of accessory crimes to each state's legal system.

---

[255] Revised text submitted to the Sixth Comm., *supra* note 43, arts. 2.1 and 4.bis.

[256] See *supra:* Chapter 1.B.2.a.

[257] G-7 Preliminary working document, *supra* note 27, arts. 2.2-2.3.

[258] United Nations convention against illicit traffic in narcotic drugs and psychotropic substances, *adopted on* Dec. 19, 1988, art. 3.1.c iv.

The *Ad Hoc* Committee considered, for the first time, the draft provisions on accessory offences on February 24th, 1997. At the time, most delegations favoured the inclusion of the idea of the attempt. Malaysia, though, argued that it was necessary to define it and Sri Lanka proposed adding the notion of the "preparation" of the crime. Meanwhile, several delegations[259] suggested adding, as a separate offence, the threat to commit a terrorist bombing, following the precedents of the 1973 Convention on Protected Persons and the 1988 Convention on the Safety of Maritime Navigation.[260] On paragraph 3, Spain and France noted that concepts such as "conspiracy" and "association" have different meanings in the various legal systems. In their view, it was necessary to define the concepts clearly to avoid confusion and to comply with the *nullum crimen sine lege* principle.[261] France sought to limit this provision only to complicity, which it defined in some detail.[262] Mexico argued that the provision on complicity should have the same meaning for all states parties, and not be subject to each state's constitutional principles. Tanzania advocated for the inclusion of the notions of "incitement" and "ordering," while Greece proposed deleting the participation through "counselling" and "association." Finally, the Republic of Korea[263] proposed to restrict the accessory crimes only to complicity and conspiracy.[264]

---

[259] Egypt, Netherlands, South Africa, Sri Lanka, and Switzerland.

[260] Convention on Internationally Protected Persons, *supra* note 2, art. 2.1.c.; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *supra* note 199, art. 3.2.c; U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 6.

[261] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 27.

[262] France, "Proposals on art. 2," at art. 2.3, U.N. Doc. A/AC.252/1997/WP.1 (Feb. 24, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 29.

[263] Republic of Korea, "Amendments to arts. 1-8 and 10,", *supra* note 127, art. 2.3.

[264] U.N. Codification Division, "Working group of the whole, 21:25, 24 Feb. 1997," *supra* note 61, at 6.

Based on these discussions, the G-7 and Russia prepared a new draft. They did not changed to the provision on attempt. However, regarding the other forms of participation, they deleted the reference to the basic principles of each state's legal system. In addition, following the 1994 Convention on the Safety of United Nations Personnel,[265] they added the planning and ordering of the offence. Thus, the new draft read:

> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person participates as an accomplice in an offence as set forth in paragraph 1 or 2, or organizes or directs others to commit such an offence.[266]

The *Ad Hoc* Committee considered the revised G-7 draft on March 3rd and 4th, 1997. At the time, France, speaking on behalf of the G-7 and the Russian Federation, noted that their new draft did not make an express reference to the manufacture, possession, transfer or acquisition of lethal devices because those preparatory acts were already covered by the provisions on attempt and on accessory participation. However, as a concession to those delegations that thought that the manufacture and possession should be mentioned expressly, France suggested the following language:

> Any person also commits an offence if that person manufactures, possesses, transfers or acquires an explosive device, incendiary device or lethal device with the intent that such device be used for the commission of an offence as set forth in paragraph 1.[267]

---

[265] Convention on the Safety of United Nations and Associated Personnel, art. 9.1.e., G.A. Res. 49/59 annex, U.N. Doc. A/RES/49/59, annex (Dec. 9, 1994).

[266] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 and 3," *supra* note 31, art. 2.2-2.3.

[267] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 3.

Ireland, Egypt, and Nigeria immediately supported this proposal. France itself, the United States, Uruguay, and Tanzania believed, on the contrary, that this provision was not necessary. The United States argued that any person who manufactures or possesses a lethal device to carry out a terrorist bombing is an accomplice. Tanzania believed that the notion of planning and organizing a terrorist offence, already included in the G-7 text, would be covered those actions. Meanwhile, Japan and Canada argued that the manufacture and possession of lethal devices should not be covered by the attempt provision. For these delegations, the convention should not criminalize acts too far removed from the actual terrorist acts, such as the unsuccessful attempt to manufacture a lethal device. Thus, Japan and Canada suggested placing the new language after the language on the attempt. Japan suggested further to expanding the language to make clear that it included the import and export of lethal devices with terrorist purposes.[268] The Republic of Korea suggested reinserting the concept of conspiracy. Germany and Portugal preferred instead criminalizing the membership in a criminal association. Canada advocated for the inclusion of both concepts: conspiracy and criminal association. Japan, however, preferred the concept of conspiracy since the Japanese legal system did not utilize the notion of criminal association. However, if any of those concepts were to be included in the convention, Japan insisted that they be subject to each state's legal principles. At this point in the discussion, the United States advised delegations to seek agreement on the concrete types of actions that should be covered in the convention rather than discussing the various legal concepts. For the United States, to

[268] *Ibid.;* U.N. Codification Division, Autograph notes on the negotiation of the bombings convention, for the use of the bureau, (photocopy, Feb. 23 – March 4, 1997, on file with the author).

be punishable, participation in a criminal association required not only membership in a group but also actual agreement to commit an offence and some actions that evidence the seriousness of the members' intention to fulfil their agreement.[269] Hence, the United States proposed the following language:

> 4. Any person also commits an offence if that person agrees with another person to commit an offence as set forth in paragraph 1, and one of those persons takes a concrete action in furtherance of the agreement that manifests the intent of those persons that such crime be committed.[270]

Italy welcomed this proposal because it avoided the conceptual discussion on conspiracy and criminal enterprise. The United Kingdom agreed, even though it preferred the concept of conspiracy, which, it argued, all delegation had already accepted in the 1988 Narcotics Convention. Meanwhile, France argued that this provision should be limited only to the actual participation and planning of terrorist acts, and the Netherlands thought that the concept of "agreeing' was imprecise. Moreover, France and Italy argued that the convention should criminalize only those forms of participation where there is substantial link between the participant and the offence of terrorist bombing. Italy, in an effort to reach consensus, proposed a broad formulation to cover all those who organize, direct, or participate in the planning or preparation of an act of terrorist bombing by

---

[269] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 3; U.N. Codification Division, Autograph notes on the negotiation of the bombings convention, *supra* note 268.

[270] United States, "Proposal on a new art.2.4" U.N. Doc. A/AC.252/1997/WP.17 (March 3, 1997).

group acting pursuant to a common purpose.[271] Finally, the Netherlands suggested including the notion of incitement.[272]

In preparing a revised text, the bureau took on board the G-7 suggestion on manufacture and possession of lethal devices and the Italian proposal on complicity and participation in the planning or preparation of an act of terrorist bombing by a criminal enterprise. Thus, the bureau's text read:

> 2. Any person also commits an offence if that person manufactures, possesses, transfers or acquires an explosive device, incendiary device or lethal device with the intent that such a device be used for the commission of an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 4. Any person also commits an offence if that person:
> (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 3;
> (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 3;
> (b) bis In any other way participates in the planning or preparation of the commission, by a group of persons acting with a common purpose, of one or more offences as set forth in paragraph 1 or 3 and takes a concrete step in furtherance of the commission of such an offence.[273]

The bureau avoided the term "conspiracy." It also underlined the substantial link between the participation in a common criminal design and the actual commission of the terrorist offence. Thus, the bureau's text required, first, that the actor participate in planning or preparing the commission of the offence; and, second, that some concrete actions to further the criminal design be taken.

---

[271] Supported by Tunisia. Italy, "Proposal on new art.2.3," U.N. Doc. A/AC.252/1997/WP.18 (March 4, 1997).

[272] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 3; U.N. Codification Division, Autograph notes, *supra* note 268.

[273] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 2.2 – 2.4.

When the *Ad Hoc* Committee considered the draft prepared by the bureau, most delegations sought to delete the provision on the manufacture of explosives. [274] Mexico and Cote d'Ivoire had reservations while Germany, the United Kingdom, and Portugal could accept it, but believed that it was not necessary. For Italy, the manufacture of explosives had to be connected to an actual terrorist attack. However, Turkey, Malawi, and the Republic of Korea supported the retention of this provision.[275] There were no comments on the paragraph on attempt. There seemed to be consensus on the formulation proposed. Similarly, there were no comments on the subparagraph on complicity. On the provision on accessory participation, Sweden and Demark preferred the G-7 revised formulation, while Italy suggested making clear that the participation had to be intentional. Mexico proposed criminalizing those who "order" a terrorist bombing.[276] In contrast, there was an ample discussion on participation in a common criminal design. Japan, Russia, and Iran advocated the deletion of this concept, while the Netherlands and Turkey preferred the Italian formulation that combined the participation in a common design with the actual planning and directing of a terrorist offence.[277] Conversely, others sought to broaden the scope of this provision. The United States and Germany[278] proposed removing the requirement that there should be concrete steps to further the commission of the terrorist bombing offence. Canada argued that any action taken should simply serve as evidence of the seriousness of the criminal intent. For Australia, the concrete steps to further the common criminal purposes need to be performed by only

---

[274] France, United States, Argentina, Iran, Sweden, Finland, Pakistan, and Denmark.

[275] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 6.

[276] *Ibid.*

[277] Italy, "Proposal on new art. 2.3," *supra* note 271.

[278] Supported by Canada, Italy, Netherlands, Portugal, South Africa, Turkey, and the United Kingdom.

one of the members of the criminal group, and not by all. For its part, the United Kingdom proposed to criminalize, as a separate offence, the participation in a criminal enterprise, regardless whether an act of terrorist bombing was committed or not. Only Tunisia supported the text as proposed by the bureau.[279] Based on these discussions, the bureau prepared the following draft:

> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person:
>
> (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2;
>
> (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2;
>
> (b) bis. In any other way participates in the planning or preparation of the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose.[280]

This text followed closely the structure of the bureau's previous draft. However, the bureau deleted both the reference to the manufacture and possession of lethal devices and the requirement of concrete action in the context of a criminal enterprise. This text was then referred to fall session of the working group, for further negotiation.

After a six-month recess, the working group returned to this issue on September 23rd, 1997. Once again, there were no comments of the attempt provision. Japan and Malawi sought again to criminalize the possession and manufacture of explosives, while Botswana proposed a formula to simplify the evidentiary requirements. According to Botswana, in cases of attempt, the actor's intention to cause extensive property damage could be inferred from the damage that would have resulted if the offence had been

---

[279] U.N. Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 7.

[280] Bureau, Revised texts, March 7, 1997, *supra* note 36, art. 2.2. and 2.3.

completed.[281] The United Kingdom and Mexico, in an effort to overcome conceptual differences, proposed that the provisions on participation be subject to the basic legal principles of each state party. This proposal was, in essence, the same as the original G-7 draft. France proposed defining complicity as aiding, abetting, or facilitating the commission of the principal offence. These proposals, however, did not receive any support.[282] Once again, on the paragraph 3.b, France and Belgium argued that, in order to punish the participation in a common criminal design, some concrete actions in furtherance of that plan had to be taken. In their view, states should not punish anyone for the simple fact of making a plan. Conversely, Italy and Sri Lanka preferred the bureau's text. Finland proposed penalizing any person who contributed to a terrorist bombing by a group of persons acting with a common purpose, if that contribution was intentional and if it was made with knowledge of the general criminal purpose of the group or its intention to commit acts of terrorist bombing.[283] This proposal, based on the 1996 Extradition Treaty between the members of the European Union,[284] contained two important elements. First, it required a concrete contribution from the accused to the execution of terrorist act, and not just his agreement to a common design. Second, it established that the accused did not need to be aware of the organization's specific intention to commit terrorist acts; it was enough if he knew of the general criminal nature

---

[281] Botswana, "Proposal new 2.4" U.N. Doc. A/C.6/52/WG.1/CRP.26 (Sept. 25, 1997) in 1997 Working Group *Report*, *supra* note 37, at 31; U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 4.

[282] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 3.

[283] Finland, "Proposal on art. 2.3," U.N. Doc. A/C.6/52/WG.1/CRP.12 (Sept. 23, 1997) in 1997 Working Group *Report*, *supra* note 37, at 24.

[284] Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, (Sept. 23, 1996), Official Journal C 313, art 3.4.

of the group's activities. In the European context, this formulation served to punish the Italian Mafia in those legal systems that did not recognize the notions of conspiracy or criminal association.[285]

Based on this round of discussions, on September 29th, the Friends of the Chairman put forward the following revised draft:

> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person:
> (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2;
> (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2;
> (b) bis. In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and made in the knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.[286]

On the attempt, the complicity, and the ordering of a terrorist act, this draft used the same language as the bureau's text of March 1997. On the provision on participation in a common criminal design, the Friends of the Chairman adopted the Finnish proposal.

On September 30th, 1997, the working group considered the text prepared by the Friends of the Chairman. Syria proposed the inclusion of a definition of the concept of attempt, but no other delegation supported this idea. Similarly, no delegation supported Japan when it reiterated its proposal to include, as a separate offence, the manufacture and possession of explosive devices for terrorist purposes.[287] There were no comments either on the Friends' draft on complicity or on the directing a terrorist offence. Japan

---

[285] U.N. Codification Division, "Article 2. 23/9/97, 22:40", *supra* note 182, at 3.

[286] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, art. 2.2-2.3.

[287] U.N. Codification Division, "Article 1. 30/9/97, 16:30," *supra* note 164, at 4.

proposed limiting the scope of the provision on a criminal enterprise but Italy, the United States, Argentina, Australia, and Egypt defended the formula proposed by Finland. Meanwhile, Switzerland, Mexico, and Syria proposed that that provision be subject to the basic legal principles of each party.[288] After this round of negotiations, the Friends of the Chairman felt that delegations were close to agreement on this language. Consequently, they repeated it, without any change, in their next revised text.[289]

The next day, October 1st, 1997, Switzerland proposed amending slightly the Finnish formula by requiring that the participant's conduct be aimed at furthering the general criminal activity of the group or be done in the knowledge of the group's concrete intention to commit terrorist acts.[290] This proposal raised slightly the level of intentionality required. In addition, by introducing this proposal, Switzerland abandoned its request to subject this paragraph to each state's domestic law principles. The group of Friends took on board this suggestion in their next draft, which read:

> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person:
> (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or
> (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or
> (b) bis. In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.[291]

---

[288] *Ibid.*

[289] Friends of the Chairman, Revised text, Sept. 30, *supra* note 40, art. 2.2-2.3.

[290] Switzerland, "Proposal on art. 2.3.b.bis" U.N. Doc. A/C.6/52/WG.1/CRP.46 (Oct. 1, 1997) in 1997 Working Group *Report*, *supra* note 37, at 24.

[291] Friends of the Chairman, Revised text, Oct. 1, 1997, *supra* note 41, art. 2.2–2.3.

At this point, there seemed to be agreement on these provisions. There were no comments on them neither on the bilateral consultations held on October 2nd, nor in the meeting of the Working Group of October 3rd, 1997. Consequently, the Friends of the Chairman repeated this formulation in their last draft.[292] This text was then included in the consolidated text that the Working Group recommended to the Sixth Committee.[293]

E) The political offense exception and the principle of non-refoulement.

The negotiation of any counter-terrorism extradition treaty has to address the question of the political offence exception, that is, to what extent the requested state may decline the extradition of a presumed terrorist based on the political nature of the crime.[294] The first draft of the Terrorist Bombings Convention adopted a strictly prosecutorial approach: the requested state could not deny the extradition of the accused person based either on the political nature of the acts being prosecuted or on the treatment that accused is likely to receive in the requesting state. If the requested state was unable to extradite, it was obliged to prosecute. Article 7.1 of the G-7 draft affirmed that:

> The State Party in the territory of which the offender or the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.[295]

---

[292] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art. 2.2–2.3.

[293] Revised text submitted to the Sixth Comm., *supra* note 43, art. 2.2–2.3.

[294] See *supra:* Chapter 1.B.3.

[295] G-7 Preliminary working document, *supra* note 27, art. 7.1.

In addition, draft article 8 required state parties to deem terrorist bombing a crime extraditable under all the extradition treaties to which they are parties, while article 9 required them to provide each other, without conditions, the greatest measure of police and judicial assistance regarding criminal investigations and prosecutions. Finally, article 8 amended all previous extradition treaties among the state parties, to the extent that they were incompatible with the new convention.[296] These provisions, when applied together, precluded the requested state from using the political offence exception or the principle of non-refoulement to deny an extradition.

On February 26th, 1997, the *Ad Hoc* Committee considered, for the first time, the provisions on extradition contained in the draft terrorist bombings convention. When the relationship between the new convention and pre-existing extradition treaties was considered, France proposed recognizing the non-refoulement principle.[297] Based on the European anti-terrorism convention,[298] France proposed:

> 6. No provision of this Convention shall be interpreted as an obligation to extradite if the State Party has serious reasons to believe that the extradition request arising from an offence referred to in article 2 was submitted for the purposes of prosecuting or punishing a person on the grounds of race, religion, nationality or political opinions, or that the situation of the said person is liable to be exacerbated for one or another of these reasons.[299]

---

[296] *Ibid*., arts. 8.1, 8.5, and 9.

[297] Supported by Greece, Netherlands, and Portugal. U.N. Codification Division, "Article 7, 21:00, 26 Feb, 1997," at 7, (TD, summary of oral proposals, prepared for the use of the bureau, Feb. 26, 1997, on file with the author); 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 88–91.

[298] European Convention on the Suppression of Terrorism, January 27th, 1977, UNTS v. 1137, No. 17828, art. 5.

[299] France, "Proposal on art. 8.5 and new 8.6," at art. 8.6, U.N. Doc. A/AC.252/1997/WP.5 (Feb. 26, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 30.

Iran and Egypt immediately rejected this proposal while India proposed, on the contrary, that the crimes falling under the scope of the new convention should never be considered political offences or politically motivated offences, thus eliminating the political offence exception. The United States, the United Kingdom, and the Russian Federation, among others,[300] supported the India's idea. Meanwhile, other delegations could accept both the French and the Indian proposals as a package deal.[301] In the meantime, the Republic of Korea suggested that the requested state should consider, when examining an extradition request, whether the right of the accused to be visited by a representative of the state of its nationality, enshrined in the same convention, would be observed in the requesting state.[302] According to this proposal, the requested state could deny the request for extradition if visits to the accused were not possible.[303] Finally, Pakistan, based on the 1979 Hostage Convention,[304] proposed that the principles on political asylum should only apply between to those state that are parties to asylum treaties.[305] In addition, when article 9, on mutual legal assistance, was considered, France proposed that the requested state should have the right to refuse to provide assistance if it believes that the prosecution is politically motivated, but Poland, Turkey and the United States opposed this idea.[306]

---

[300] Algeria, Canada, Malawi, Poland, Sri Lanka.

[301] Costa Rica, Germany, and Turkey.

[302] Republic of Korea, "Amendments to arts. 1-8 and 10," *supra* note 127, art. 8.

[303] U.N. Codification Division, "Article 7, 21:00, 26 Feb, 1997," *supra* note 297, at 8.

[304] Hostages' Convention, *supra* note 3, art. 15

[305] Pakistan, "Proposals," at ¶ 11, U.N. Doc. A/AC.252/1997/WP.16 (March 3, 1997), in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 37-38.

[306] U.N. Codification Division, "Article 9, 21:00, 26 Feb, 1997," at 7, (TD, summary of oral proposals, prepared for the use of the bureau, Feb. 26, 1997, on file with the author).

Based on these discussions, the bureau proposed a package that contained: first, a broad non-refoulement provision, as suggested by France; second, a reference to the right to visit, as suggested by Korea; and, third, a statement that the crimes under the scope of the convention were not to be deemed political offences or offences politically motivated. The text proposed by the bureau read:

> 6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall consider whether there are any substantial grounds for believing:
>
> (a) That the request for extradition for an offence set forth in article 2 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion; or
>
> (b) That person's position may be prejudiced:
>
> (i) For any of the reasons mentioned in subparagraph (a) of this paragraph, or
>
> (ii) For the reason that communication with that person by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.
>
> 7. For the purposes of extradition between States Parties, none of the offences set forth in article 2 shall be regarded as a political offence or as an offence connected with a political offence or as offence inspired by political motives.[307]

The bureau's paragraph 6, regarding the non-refoulement principle, was based on the Hostages Convention.[308] The bureau, however, toned down the language used in that Convention so that, instead of affirming the duty of the requested state to deny an extradition due to humanitarian concerns, it just asked the requested state to consider whether the accused person was being persecuted.

In early March, the *Ad Hoc* Committee discussed, in informal consultations, the text proposed by the bureau. Colombia objected to this text because it did not affirm

[307] Bureau, Revised texts, March 3, 1997, *supra* note 32, art. 8.6 and 8.7.

[308] Hostages' Convention, *supra* note 3, art. 9.

clearly the right of the requested state to deny an extradition if it was discriminatory or politically motivated. It proposed going back to the stronger language used in the Hostages Convention.[309] France called for the deletion of the provision that purported to exclude terrorism from the political offence exception.[310] Most delegations, however, supported the abolition of that exception.[311] As an alternative, France made a complex proposal. It suggested, first, to make clear that the requested state had the right to deny an extradition on humanitarian grounds; second, to recognize the right of states to make a reservation preserving the political offence exception; and, third, to protect the right of states to grant asylum under international refugee law.[312] For their part, Italy, Finland, Ireland, and Sweden reserved their position until an acceptable solution on the question of the non-refoulement was found.[313] Specifically on the elimination of the political offence exception, Pakistan suggested the language found in General Assembly resolution 51/210 that made it optional for the requested state to consider terrorism a political offence.[314] Mexico, Costa Rica, and Sri Lanka suggested preserving the political offence exception for those states that recognize it in their constitutional laws.[315] Finally, India and Malawi proposed to raising the profile of this provision by moving it to article 2, while the

---

[309] Colombia, "Amendments to WP.10, WP.12, CRP.1 and CRP.2," art. 8.6, U.N. Doc. A/AC.252/1997/WP.20 in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 39-40.

[310] Supported by Syria and Pakistan. France, "Proposal on art. 8.7," option 1, U.N. Doc. A/AC.252/1997/WP.21 (March 5, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 40-41.

[311] Algeria, Canada, China, Egypt, India, Japan, Malawi, Poland, Russian, Spain, Sri Lanka, Turkey, United Kingdom, United States, and Uruguay. U.N. Codification Division, "14:00, March 5, 1997," at 8, (TD, summary of oral proposals, prepared for the use of the bureau, March 5, 1997, on file with the author).

[312] France, "Proposal on art. 8.7," *supra* note 310, option 2.

[313] U.N. Codification Division, "14:00 March 5, 1997," *supra* note 311, at 8.

[314] Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, ¶ 6, G.A. Res. 51/210, annex, U.N. Doc. A/RES/51/210, annex (Dec. 17, 1996) [hereinafter 1996 Additional Declaration].

[315] Mexico, "Proposal on art. 8 and 8.bis" U.N. Doc. A/AC.252/1997/WP.31 (March 5, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at art. 8.

Netherlands recommended making it a separate article.[316] Later, when the article on mutual legal assistance was considered, France argued that states should have the right to refuse assistance if they believe that the prosecution is politically motivated or discriminatory. This proposal was supported by Finland, who suggested that this paragraph should be placed in a separate article together with the provision on the non-refoulement principle. Japan and the United States, though, rejected these proposals.[317]

The bureau then revised its earlier draft. In its efforts to find an agreeable formula, the bureau moved slightly towards the position of France and Colombia, and proposed a clearer statement of the non-refoulement principle. This time, the bureau, following the 1977 European Convention, proposed that the convention did not create an obligation to extradite if the accused person was likely to be discriminated against. The bureau, however, did not modify its previous draft on the elimination of the political offence exception.[318] Consequently, the text proposed by the bureau read:

> 6. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence set forth in article 2 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion, or that that person's position may be prejudiced for any of these reasons.[319]

On September 24th and 25th, 1997, when negotiations resumed, delegations made numerous proposals on these issues. Italy and Portugal sought to preserve the political offence exception by deleting the proposed provision on the political offence and

---

[316] U.N. Codification Division, "14:00 March 5, 1997," *supra* note 311, at 8.

[317] *Ibid.*

[318] *Ibid*., art. 8.7.

[319] Bureau, Revised text, March 7, 1997, *supra* note 36, art. 8.6.

maintaining the language on the non-refoulement principle. Sweden, Norway, and Denmark, also trying to preserve that exception, suggested deleting both paragraphs. Other delegations, led by Mexico, sought to retain the offence exception insofar as it was recognized in the constitution of the requested state.[320] Most delegations, however, favoured eliminating the exception and, consequently, supported the bureau's text.[321]

Since it became evident that the final text of the convention was likely to eliminate the political offence exception, Sweden[322] proposed that states parties should be able reserve, when signing or ratifying, the right to invoke it.[323] Sweden's proposal, inspired by the European Convention on the Suppression of Terrorism,[324] tempered the right of the reserving state to raise the political offence exception with a duty to consider any aggravating circumstances. However, there was no agreement on it either.[325] Meanwhile, other delegations sought to strengthen the non-refoulement principle. Mexico proposed a separate article stressing that a state which has received an extradition request but which has grounds to believe it discriminatory or politically motivated, has a positive duty not to extradite.[326] Malawi sought to make explicit that the requested state could refuse the extradition and Finland proposed that the requested state should be

---

[320] Costa Rica, Malawi, Portugal, and the United Kingdom.

[321] Algeria, Argentina, Canada, China, Egypt, Germany, Israel, Republic of Korea, Sri Lanka, Sudan, Turkey, Ukraine, United States, and Venezuela. U.N. Codification Division, "Art. 8.6-8.7, 25/9/97 15:00," at 3-4, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 25, 1997, on file with the author).

[322] Supported by Norway and Portugal, but opposed by Canada, Costa Rica, Egypt, Germany, Sri Lanka, and the United Kingdom.

[323] Sweden, "Proposal on art. 8.7 and new art. 14.bis," U.N. Doc. A/C.6/52/WG.1/CRP.23 (Sept. 25, 1997) in 1997 Working Group *Report*, *supra* note 37, at 29-30.

[324] European Convention on the Suppression of Terrorism, of 27 January 1977, art. 13.

[325] U.N. Codification Division, "Art. 8.6-8.7, 25/9/97 15:00," *supra* note 321, at 5.

[326] Supported by Costa Rica and Finland.

entitled also to deny judicial assistance if the request was politically motivated.[327] South Africa[328] suggested that the extradition should not be granted if the accused could be subject to torture, inhuman treatment, or any other violation of his due process rights under the International Covenant on Civil and Political Rights.[329] Other delegations, though, supported the weaker formulation of the non-refoulement principle proposed by the bureau.[330] Germany, the Republic of Korea, and Turkey argued that the application of this principle should not impinge on the duty of the requested state to prosecute if it does not extradite.[331] The Netherlands objected, arguing that this would create the obligation on the requested state to prosecute even when the request for extradition was clearly discriminatory or politically motivated. Finally, several delegations sought to clarify the relationship between the two provisions by reversing the order of paragraphs, that is, by making the elimination of the political offence a general norm and the non-refoulement just an exception to it.[332]

When the working group discussed the provision on judicial assistance, Austria[333] argued that this provision should reflect both the elimination of the political offence exception and the non-refoulement principle,[334] as in the case of the European

---

[327] Supported by Belgium and Costa Rica. Finland, "Proposals on art. 8.6 and new art. 9.bis," U.N. Doc. A/C.6/52/WG.1/CRP.24 (Sept. 25, 1997) in 1997 Working Group *Report*, *supra* note 37, at 30.

[328] Supported by Costa Rica.

[329] South Africa, "Proposal on art. 8.6.bis" U.N. Doc. A/C.6/52/WG.1/CRP.17 (Sept. 24, 1997) in 1997 Working Group *Report*, *supra* note 37, at 26.

[330] Argentina, Canada, Egypt, Germany, Sri Lanka, Sudan, Turkey, Ukraine, and the United States.

[331] See Germany, "Proposals on art. 2.1," *supra* note 88, ¶ 3.

[332] Austria, Belgium, France, Malawi, Netherlands, Germany, South Africa, Sri Lanka, United Kingdom, and the United States. U.N. Codification Division, "Art. 8.6-8.7, 25/9/97 15:00," *supra* note 321, at 2.

[333] Supported by Belgium, France, and the Netherlands.

[334] Austria, "Proposal on art. 9" U.N. Doc. A/C.6/52/WG.1/CRP.20 (Sept. 24, 1997) in 1997 Working Group *Report*, *supra* note 37, at 28.

Convention on terrorism.[335] Several delegations that were opposed to the abolition of the political offence exception objected to this proposal.[336] Finally, Uruguay and Botswana proposed that states should take all appropriate measures before granting asylum to ensure that the asylum seeker has not committed any terrorist bombing. France responded with a proposal to make clear that nothing in this convention would impair the right of asylum.[337] At the end of these consultations, the Friends of the Chairman felt that they were not ready to propose a new formula for consensus. Thus, the Group of Friends purposely left blank the provisions on the political offence exception and on the non-refoulement principle in their next rolling text.[338]

On Monday September 29th, 1997, the working group considered the revised text prepared by the Friends of the Chairman. Delegations did not discuss the interrelated issues of the political offence exception and the non-refoulement principle because those provisions were not included in the draft. However, the Friends of the Chairman asked interested delegations to conduct bilateral consultations on these questions. Meanwhile, in the meeting, France proposed a package on the issue of refugee status that both underlined the right of states to grant asylum and required them to ensure, before granting

---

[335] European Convention on the Suppression of Terrorism, of 27 January 1977, art. 8.

[336] Malawi, Mexico, Norway, and Sweden. U.N. Codification Division, "Art. 9, 24/9/97 21:10," at 3-4, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

[337] Supported by Belgium and Liechtenstein. U.N. Codification Division, "Art. 8.6-8.7, 25/9/97 15:00," *supra* note 321, at 3; U.N. Codification Division, "New art. (24/9/97 21:35)," (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

[338] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39, p. 34.

refugee status, that the asylum seeker had not taken part in any act of terrorist bombing. New Zealand opposed and, thus, there was no agreement on this proposal.[339]

That afternoon, Finland proposed a new package that, in separate articles, eliminated the political offence exception as a valid ground for denying an extradition request, and restated the non-refoulement principle. The Finnish proposal also stated unambiguously that the requested state could refuse the extradition, if it believed that the request was discriminatory. On mutual legal assistance, it stressed that such assistance could not be refused "on the sole grounds" that it concerned a political offence.[340] This meant *a contrario sensu* that states could refuse mutual assistance on other grounds, such as the non-refoulement principle. After some private bilateral consultations, Finland revised its proposal. On the key question of how to acknowledge the right of the requested state to deny an extradition without highlighting it, its revised draft used again the ingenious formula "on the sole grounds." Finland also simplified its proposal by treating mutual legal assistance and extradition in the same paragraph. Thus, the new Finish proposal read:

> Article 9 bis
>
> None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
>
> Article 9 ter

---

[339] Supported by Belgium and India. U.N. Codification Division, "Art. 4, 29/9/97 17:00," at 11, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 29, 1997, on file with the author).

[340] Finland, "Art. 9.bis and 9.ter 29 Sept. 1997 pm (1st version)" (TD, non-paper, Sept. 29, 1997, on file with the author).

> Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.[341]

Since this draft seemed to be acceptable to most delegations, the Friends of the Chairman included it in the new set of revised articles, which they circulated to all delegations on Tuesday September 30th, 1997.[342] The working group considered this text on October 2nd, 1997. Since most delegations could accept it, they made no comments. Only Ethiopia, which had not been involved in the final round of negotiations, sought to delete article 9 ter, on the non-refoulement principle. However, this proposal did not receive any support.[343] Thus, this text was included, without further changes, in the final package that the working group submitted for the consideration of the Sixth Committee.[344]

F) Armed Forces

The most conflictive issue during the negotiation of the Bombings Convention was whether the proposed treaty would cover members of the armed forces and self-determination movements. The question arose because the acts defined as a crime in the draft convention: the delivery, placement, and detonation, of an explosive device in a

[341] Finland, "Art. 9.bis and 9.ter 29 Sept. 1997 pm (2nd version)" (TD, non-paper, Sept. 29, 1997, on file with the author).

[342] Friends of the Chairman, Revised text, Sept. 30, *supra* note 40, p. 7.

[343] Díaz, Autograph notes, *supra* note 93, Oct. 3, 1997.

[344] Revised text submitted to the Sixth Comm., *supra* note 43.

place of public use or governmental facility with the intention to kill;[345] are normal and lawful activities of armed forces waging war. As a matter of consistency, if the use of bombs by military forces during an armed conflict is lawful under international humanitarian law, the proposed convention should not prosecute them as terrorist. Moreover, not all uses of bombs by military forces during an armed conflict are lawful. The use of bombs by military personnel in a disproportionate or indiscriminate manner, or against civilian targets, constitutes a war crime, which must be prosecuted.[346] Therefore, the negotiators also had to consider whether the new convention should provide a basis of prosecuting those uses of bombs that breach the laws of war. Finally, there are various interpretations of who belongs to the military forces and regarding when they can use bombs lawfully, depending on the various interpretations of the right of self-determination and the legitimacy of the use of force. [347]

At the G-7 Paris meeting of experts on terrorism, where the first draft of the Bombing Convention was prepared, delegations were already familiar with the need to include a provision on armed forces. It seems that the French and American experts advocated for a broad exclusion for all the activities of governmental armed forces. Both delegations sought to prevent the criminal prosecution of their military personnel and military leaders for acts that, in their interpretation of international law, are attributable to the state itself. Other experts, however, noted that such an exclusion would give the wrong impression that members of the military forces are exempted both from

---

[345] *C.f.* G-7 Preliminary working document, *supra* note 27, art. 2.1.

[346] Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12th, 1949, arts. 146 - 147; 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Forces, arts. 51 - 53 and 85.3; Rome Statute of the International Criminal Court, done in Rome, July 17th, 1998, art. 8.

[347] See *supra:* Chapter 1.B.2.c.

prosecution for war crimes and from the norms on the use of force among states.[348] Consequently, in their draft, the G-7 experts balanced the exclusion of the armed forces from the scope of the convention with a clause noting that the new instrument would not detract from the obligations of states under international humanitarian law. To add greater precision, they included a definition of "organized military forces of a State." The relevant articles of the draft convention read:

> Article 1
> (…)
> 4. "Organized military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national self-defence, and persons who are authorized to accompany those armed forces.
> Article 3
> 1. This Convention shall not apply to the delivery, placement, discharge or detonation of a bomb, explosive or incendiary device, or lethal device, by the organized military forces of a State.
> 2. Nothing in this Convention shall be interpreted as detracting from other obligations imposed upon States by international humanitarian law.[349]

On February 24th, 1997, when France formally introduced the first draft of the bombings convention to the *Ad Hoc* Committee, it stressed that the new treaty should not to apply to the activities of the armed forces of states because other norms of international law, including humanitarian law and the law of state responsibility, govern those activities. In its view, the new instrument sought to enhance law enforcement and judicial cooperation and not to govern the activities of the military. France underlined that the proposed exclusion from the convention did not exempt armed forces from the

[348] Díaz, Autograph notes, *supra* note 93, Sept., 1997.

[349] G-7 Preliminary working document, *supra* note 27, arts. 1.4, 3.1, and 3.2.

application of other norms of international law. Finally, it noted that the proposed exclusion would apply in peacetime, thus protecting peacekeepers from prosecution.[350]

The United States advocated the G-7 text, arguing that international humanitarian law, and not an antiterrorism instrument, should rule the activities of armed forces. It underlined that the exemption for governmental armed forces and the clause noting that the exception would not detract from the obligation of those forces to comply with international humanitarian law should be read together. For its part, Portugal preferred a functional approach whereby the exemption would apply not to a whole category of persons but to their behaviour. Similarly, the Republic of Korea and Mexico suggested limiting the exclusion only to the activities of the military in connection with their official duties. Syria, concerned by the situation of occupied territories, suggested that the exemption clause should apply only to those activities of the military in a territory where its presence is legitimate.[351] The United States objected to the Syrian proposal, noting that military forces engaged in peacekeeping operations work outside of the territory of their nationality.[352] The Netherlands and Sweden suggested that the exclusion should apply only to the activities performed in conformity with national and international law.[353] Costa Rica argued that the exemption should cover only the legitimate use of bombs during an armed conflict and that, in certain conditions, the use of bombs by members of non-state military forces is legitimate under international humanitarian law. Costa Rica suggested several formulations to address these issues. The United Kingdom

---

[350] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 40-43.

[351] Supported by Algeria, China, Egypt, and Iran.

[352] U.N. Codification Division, Autograph notes, *supra* note 268.

[353] Netherlands, "Proposals on arts. 2.2, 3.1 and 9.bis," *supra* note 195, art. 3.1.

and the United States responded that the proposed convention was not intended to adjudicate on the legality of the activities of military forces governed by international humanitarian law and the United Nations Charter. Meanwhile, Japan and China argued that the exclusion clause was not necessary. For Japan, it was not necessary because the definition of the crime already required that the use of the lethal device be unlawful. For China, a precise definition of terrorist bombing would make that exclusion redundant. Finally, Egypt proposed a separate paragraph establishing that states should not participate, organize or instigate the commission of acts of terrorist bombing.[354]

On the definition of "armed forces," positions varied. China and Mexico argued that definition, structure, and composition of the military forces should be left to domestic legislation. Russia argued that the definition should include not only the military forces devoted to national self-defence but also internal security and police forces.[355] Similarly, the Netherlands advocated a general formulation to include the civilian police forces. On the other hand, Canada argued that the exclusion clause could not refer to internal security or police forces because international humanitarian law does not govern them. The United States then noted that the definition of the crime already contained a reference to the unlawfulness of the use of a bomb in order to exclude from the scope of the convention the *bona fides* use of explosive devices by the police. Some delegations preferred a narrower definition of military forces, fearing that the one proposed could shield human rights abuses.[356] Pakistan, in particular, recalled the atrocities committed by military forces in occupied territories. South Africa and Malawi

---

[354] U.N. Codification Division, Autograph notes, *supra* note 268; 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 38-46.

[355] Supported by Algeria, China, Denmark, Egypt, and Turkey.

[356] Australia, Lebanon, Pakistan, and Syria.

proposed excluding renegade individuals and groups from the definition of military forces in order not to exempt them from the scope of the convention. Portugal questioned the inclusion in the definition of vague concepts such as "persons who accompany" the armed forces. Guatemala proposed that the definition specify that the concept of organized military forces should include persons that collaborate with those forces.[357] In addition, some delegations sought greater precision regarding the general reference to the states' obligations under international humanitarian law, contained in article 3.2. Portugal[358] suggested adding a reference to general international law. Argentina proposed that the text should refer, not to the obligations themselves, but to their implementation. Syria suggested a reference to the Charter of the United Nations, while Egypt proposed an express reference to the Geneva Conventions. Finally, Brazil suggested placing the saving clause in a separate article towards the end of the convention.[359] Most delegations used this first debate to learn about the issues. It seems that, at this stage, most delegations had not developed their national positions and were reacting spontaneously to the stance of other delegations. Moreover, with the exception of the G-7, there were no clear group positions or coalitions of states advocating the same position.

Based on the first round of discussions, the G-7 prepared a new draft. On the definition of the military forces of the State, the authors included a reference to the states' national security forces and clarified that any supporting personnel had to be under the

---

[357] U.N. Codification Division, Autograph notes, *supra* note 268; 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 14-17.

[358] Supported by Brazil, China, Iran, Japan, Mexico, Netherlands, Republic of Korea, and the United Kingdom.

[359] Supported by Guatemala and Netherlands. U.N. Codification Division, Autograph notes, *supra* note 268; 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 47-50.

command and control of the armed forces. On the saving clause, they added a reference to general international law and, on the exclusion clause, they deleted the word "bomb," for consistency with the changes they were making to the definition of lethal device. The revised draft read:

> Article 1
> (…)
> 4. "Organized military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.
> Article 3
> 1. This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the organized military forces of a State.
> 2. Nothing in this Convention shall be interpreted as detracting from other obligations imposed upon States by international law, including international humanitarian law.[360]

The *Ad Hoc* Committee considered this draft on March 3 and 4, 1997. This time the discussions focused on four key questions: first, the possible exclusion from the scope of the convention of the activities of the military forces of states; second, the possible exclusion from the application of the convention of the activities of non-state armed forces; third, the definition of the military forces of the state; and, fourth, the saving clause.[361] Egypt, China, and Venezuela argued that the exemption for governmental armed forces was unnecessary since the proposed definition of the crime already contained a general requirement on the legality of the acts. Others argued that the exemption would render not punishable the unlawful use of bombs by the military and

---

[360] Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, and 6," *supra* note 31, arts. 1.4 and 3.

[361] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶¶ 18, 20, 51-54.

therefore sought to restrict the exemption to varying degrees. Thus, Costa Rica proposed deleting the whole provision, and the Republic of Korea[362] reintroduced its proposal of limiting the exemption only to acts performed in connection with the official duties of the armed forces.[363] Egypt suggested limiting the exemption only to those acts performed in combating terrorism. Finally, Pakistan proposed several paragraphs[364] emphasizing the principle of non-intervention and territorial integrity and limiting the scope of activities of armed forces in peacetime.[365] Pakistan proposed the following language, based on the 1979 Hostages Convention,[366] to exclude the use of bombs by self-determination movements from the scope of the convention:

> This Convention shall also not apply in the course of armed conflicts, as defined in the Geneva Conventions of 1949 and article 1, paragraph 4, of Additional Protocol I of 1977 thereto, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[367]

Similarly, Switzerland, supported by Pakistan, proposed that the definition of military forces be aligned with the definition of armed forces contained in the Third Geneva Convention and in its 1977 I Additional Protocol.[368] These proposals, if adopted,

---

[362] Supported by Canada, and Portugal, Sweden.

[363] Republic of Korea, "Amendments to arts. 1-8 and 10," *supra* note 127, art. 3.

[364] Pakistan, "Proposals," *supra* note 305, art. 2. new para. 4–6.

[365] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 4; U.N. Codification Division, Autograph notes, *supra* note 268.

[366] Hostages' Convention, *supra* note 3, art. 12.

[367] Pakistan, "Proposals," *supra* note 305, art. 3.1.bis.

[368] Geneva Convention Relative to the Treatment of Prisoners of War, art. 4, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 135-285; Protocol Additional to the Geneva Conventions of 12 August 1943, and relating to the

would have rendered the use of bombs by legitimate self-determination movements not punishable under the new convention. Other delegations objected, noting that not all states were parties to the Geneva Conventions and their Protocols.[369] On the third issue, the revised definition of military forces, Algeria, China and Iran welcomed the addition of national security forces, but China proposed again that the determination of who belongs to the military forces should be left to each state's national legislation. The Republic of Korea proposed deleting the word 'organized'[370] while Colombia[371] and Venezuela proposed limiting the exemption only to the regular armed forces, in order not to give protection to mercenaries and rogue elements.[372] On the fourth issue, the saving clause, Canada favoured making it more general and broad. Argentina[373] suggested adding a reference to the rights of states, Egypt proposed a reference to the general principles of international law, and the Netherlands[374] proposed again separating this provision from the issue of the exclusion of the military forces, by placing it in a separate article. Finally, Sudan suggested the deletion of the reference to international

---

Protection of Victims of International Armed Conflicts (Protocol I), art. 43.1, *adopted on* June 8, 1997, 1125 U.N.T.S. 3-608:

> The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia,* shall enforce compliance with the rules of international law applicable in armed conflict.

[369] 1997 Rapporteur's Informal Summary, *supra* note 52, ¶ 31; U.N. Codification Division, Autograph notes, *supra* note 268.

[370] Supported by Canada, Malawi, and Mexico. Republic of Korea, "Amendments to arts. 1-8 and 10," *supra* note 127, art. 2.1. art 1.4.

[371] Colombia, "Amendments to WP.10, WP.12, CRP.1 and CRP.2," *supra* note 309, art. 1.4.

[372] U.N. Codification Division, Autograph notes, *supra* note 268.

[373] Supported by Malawi, Portugal, and the Republic of Korea.

[374] Supported by Guatemala and Pakistan.

humanitarian law, as redundant. This proposal would have rendered the savings clause more general and weakened its connection with the issue of armed forces.[375]

In an effort to find an agreement, the bureau prepared a revised text following closely the second draft prepared by the G-7 and the Russian Federation. On the definition of military forces and on the exclusion clause, the Bureau deleted the word "organized," as suggested by the Republic of Korea. It placed the saving clause in a separate article, at the end of the convention, thereby extending its scope. Finally, it added a reference to the rights of the states and used the broad term "affecting" instead of the more restrictive "detracting from" their obligations under international law. Thus, the text proposed by the Bureau read:

> Article 1
>
> 4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.
>
> Article 3
>
> This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the military forces of a State.
>
> Article 12 ter
>
> Nothing in this Convention shall be interpreted as affecting the rights and obligations deriving from international law, in particular international humanitarian law.[376]

This new text was discussed on March 5, 1997. The positions of delegations, however, had barely changed in the few days since the second reading. On the definition of military forces, delegations agreed to the deletion of the word "organized" as proposed

---

[375] U.N. Codification Division, "Article 1, paragraph 2, 19:15, 3 March, 1997," *supra* note, 144, at 4; U.N. Codification Division, Autograph notes, *supra* note 268.

[376] Bureau, Revised texts, March 3, 1997, *supra* note 32, 1.4, 3 and 12 ter.

by the bureau. Switzerland stressed that the definition should reflect the provisions of the Geneva Conventions and their Additional Protocols, so that that the activities of non-state military forces would fall outside the scope of the convention.[377] Switzerland also proposed the deletion of the reference to security forces. China demanded that the definition of armed forces be left to the state concerned. Finally, Pakistan argued that the definition should explicitly exclude counter-insurgency groups, mercenaries and rogue elements.[378] On the exclusion of governmental armed forces, points of view diverged. The United States, the United Kingdom, and the Russian Federation accepted the language proposed by the Bureau. Conversely, China, Costa Rica, Mexico, Egypt, and New Zealand preferred the deletion of this provision. As an alternative, some states[379] proposed restricting the exemption only to the official duties of military forces. Switzerland proposed that the exemption be limited only to the acts performed during an armed conflict and in conformity with international humanitarian law.[380] Accordingly, any use of bombs by the military in peacetime or in contravention of international humanitarian law would become punishable under the new convention. Pakistan supported this last proposal but the United States and the Russian Federation rejected it.[381] Regarding the exemption of self-determination movements, Costa Rica and Pakistan argued that the exemption should be consistent with international humanitarian law. Consequently, Pakistan reiterated its proposal for a new paragraph giving a detailed

---

[377] Supported by Costa Rica and Pakistan.

[378] U.N. Secretariat, Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 3.

[379] China, Mexico, Nigeria, Pakistan, Portugal, Republic of Korea, and South Africa.

[380] Switzerland, "Proposal on art. 3," U.N. Doc. A/AC.252/1997/WP.30, (March 6, 1997) in 1997 Ad Hoc Comm. *Report*, *supra* note 26, at 43.

[381] U.N. Secretariat, Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 7.

exemption for self-determination movements.[382] Meanwhile, on the saving clause, most of the discussion was devoted to fine-tuning the language. The United States argued that the new convention would create new rights and obligations, thus any saving clause should refer only to those rights not affected by the new convention.[383] Portugal argued that the saving clause should refer only to the possible negative impact of the convention on pre-existing obligations. Finally, China and Egypt argued that such saving clause was not necessary and asked for its deletion.[384]

The bureau then prepared a new draft. On the exclusion clause, the it adopted Korea's proposal to limit the exemption only to the activities of military forces performed in connection with their official duties. This text had received substantial support. On the savings clause, the bureau took on board the Unites States' precision in that the new convention would not to affect rights and obligations *other* than the ones created by the terrorist bombing convention itself. Finally, the bureau did not make any change to the definition of military forces. Thus, the bureau's revised draft read:

> Article 1.4
>
> 4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their command and control.
>
> Article 3
>
> This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the military forces of a State in connection with their official duties.
>
> Article 12 ter
>
> Nothing in this Convention shall be interpreted as affecting other rights and obligations under international law, in particular international humanitarian

[382] Pakistan, "Proposals," *supra* note 305, art. 3.1 bis.

[383] Supported by Nigeria and United Kingdom.

[384] U.N. Secretariat, Codification Division, "Oral proposals regarding CRP. 3," *supra* note 78, at 8.

law.[385]

After a six-month recess, the negotiations continued in late September 1997. This recess gave delegations time to elaborate further their positions and build some coalitions. Thus, when the working group considered the Bureau's text, several delegations proposed the deletion of the definition of armed forces. Some delegations sought to delete this definition because they objected to the proposed exemption of the military forces.[386] Others, like Egypt, Pakistan and Syria objected to it because it did not include national liberation movements. Syria and Pakistan proposed adding a reference to the legitimate presence of the military forces in the territory while China proposed either to delete this definition or to state that every country has an exclusive right to define who belongs to its own military forces.[387] A substantial number of delegations proposed the deletion of the exemption for military forces.[388] Some, like Mexico and Switzerland, thought that the exclusion was too broad while others, like Syria and Iran, were concerned that it did not include the self-determination movements. These concerns began to overlap as both referred to the complex legal regime on combatants. Meanwhile, another group of delegations sought to retain the exclusion clause as proposed by the bureau.[389] Notwithstanding these differences, no delegation objected to the reference to official duties. This was, in fact, a concession from those delegations that

---

[385] Bureau, Revised texts, March 7, 1997, *supra* note 36, art. 1.4, 3 and 12 ter.

[386] Costa Rica, Belgium, Liechtenstein, and Netherlands.

[387] U.N. Codification Division, "Article 1. 24/9/97, 19:40," *supra* note 90, at 3.

[388] Belgium, China, Costa Rica, Egypt, Iran, Iraq, Kuwait, Liechtenstein, Mexico, Netherlands, Nigeria, Sudan, Switzerland, Syria, Venezuela, and Yemen.

[389] Austria, Canada, France, Germany, India, Sweden, United Kingdom, and the United States.

sought an absolute exemption for the military forces.[390] Since there was no agreement on the deletion of the whole provision, delegations tried to limit the scope of the exclusion by referring to international law. New Zealand proposed:

> Article 3
>
> This Convention shall not apply to the delivery, placement, discharge or detonation of an explosive device, incendiary device or lethal device by the military forces of a State in connection with their official duties and in accordance with international law. [Underlined in the original][391]

This proposal enjoyed substantial support.[392] Switzerland[393] proposed that international humanitarian law be emphasized. Malawi, for its part, sought to replace the reference to official duties with a reference to national and international law. However, the United State, the United Kingdom, France, and Venezuela objected to these proposals.[394] Other delegations tried to find a solution by avoiding an explicit mention of the military forces. The Netherlands proposed that the convention should not apply to the lawful use of bombs in terms of both national and international law.[395] Portugal suggested placing this formulation in the preamble[396] and Switzerland proposed excluding from the convention only those acts governed by the laws of armed conflict.[397] A further group of

---

[390] U.N. Codification Division, "Art. 3, 24/9/97 19:50," at 1, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

[391] New Zealand, "Proposal on art. 3" U.N. Doc. A/C.6/52/WG.1/CRP.3 (Sept. 22, 1997) in 1997 Working Group *Report*, *supra* note 37, at 18 (Underline in the original).

[392] Supported by Australia, Austria, Belgium, Germany, Indonesia, Italy, Liechtenstein, Malaysia, Nigeria, Republic of Korea, Russia, South Africa, Sweden, and Ukraine.

[393] Supported by Egypt, Kuwait, and New Zealand.

[394] U.N. Codification Division, "Art. 3, 24/9/97 19:50," *supra* note 391, at 1.

[395] Supported by Belgium, Costa Rica, and Italy. Netherlands, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.15 (Sept. 24, 1997) in 1997 Working Group *Report*, *supra* note 37, at 26.

[396] Opposed by Argentina and China.

[397] South Africa and Switzerland, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.27, (Sept. 25, 1997), in 1997 Working Group *Report*, *supra* note 37, at 31.

delegations tried to create a consensus formula by including a saving clause in the same paragraph. Canada proposed adding a reference to the fact that the rights, responsibilities, and actions of states are subject to existing provisions of international law.[398] Canada also suggested substituting the reference to the use of a lethal device by the military with a reference the offence defined in the convention.[399] Syria and China, concerned with the situation in occupied territories and the activities of armed forces abroad, proposed restricting the exception only to the legitimate official duties of the armed forces in their states' territory.[400]

On the possible exemption of self-determination movements, Syria and Pakistan reiterated their proposal for a broad exemption inspired by the Hostages Convention.[401] In addition, Syria sought to include a positive reference to the right of self-determination in the preamble.[402] Meanwhile, Belgium, Argentina, and New Zealand suggested referring explicitly to the 1977 Additional Protocols to the Geneva Conventions.[403] Later, Belgium merged all these approaches in a comprehensive draft that, on one hand, limited the exemption only to those acts attributable to the state and performed in accordance with national and international law, while, on the other hand, extended it to self-determination movements insofar as they do not violate international humanitarian

---

[398] Opposed by Egypt, New Zealand, and Switzerland.

[399] Supported by Russia, United Kingdom, and the United States, but opposed by Argentina, Egypt, New Zealand, and Switzerland. Canada and the Russian Federation, "Art. 3" (TD, photocopy, non-paper, Sept. 295, 1997, on file with the author).

[400] Syria, "Proposals to arts. 1 and 3 of A/52/37, annex 1.A," *supra* note 86, ¶ 5.a; U.N. Codification Division, "Art. 3, 24/9/97 19:50," *supra* note 391, at 1-2.

[401] Syria, "Proposals to arts. 1 and 3 of A/52/37, annex 1.A," *supra* note 86, ¶ 5.b.

[402] Syria, "Proposals for the preamble," new pr. para. 9, U.N. Doc A/C.6/52/WG.1/CRP.9 (Sept. 23, 1997), in 1997 Working Group *Report*, *supra* note 37, at 21-22.

[403] U.N. Codification Division, "Art. 3, 24/9/97 19:50," *supra* note 391, at 1-2.

law.[404] Most delegations[405] requested that the saving clause, which the bureau made a separate article, be placed next to the exemption clause for military forces, to facilitate agreement. On its text, China proposed the deletion of the reference to international humanitarian law, Belgium proposed simplifying the language,[406] and Egypt proposed stating that the new convention should not affect negatively that right to self-determination.[407]

After the inconclusive fourth reading in informal consultations, the Friends of the Chairman felt that the issue was not ripe for them to propose a new draft. Consequently, they left blank the provisions regarding armed forces in the draft articles that they circulated on September 29th, 1997.[408] The Chairman limited himself to encourage delegations to continue discussing these issues informally. Thus, in the following days, there were intensive efforts to find an agreeable formulation. Many delegations submitted for publication the proposals that they had either presented orally or circulated as non-papers. China introduced a new version of its proposal to leave the definition of military forces to national legislation,[409] while Germany proposed including the police forces in that definition.[410] Syria submitted an ambitious formulation of the saving clause

---

[404] Belgium, "Proposals on arts. 1.4, 3, 5, 2.bis, 10.bis and 12.ter," art. 3, U.N. Doc. A/C.6/52/WG.1/CRP.11 (Sept. 23, 1997) in 1997 Working Group *Report*, *supra* note 37, at 23-24.

[405] Canada, France, Indonesia, Italy, Malawi, Mexico, Nigeria, Portugal, Republic of Korea, Russian Federation, Ukraine, United Kingdom, and the United States.

[406] Supported by Austria, Italy, and the Russian Federation. Belgium, "Proposals on arts. 1.4, 3, 5, 2.bis, 10.bis and 12.ter," *supra* note 404, art. 12. ter.

[407] Supported in principle by China, Costa Rica, Iran, Netherlands, and Pakistan.Egypt, "Proposal on art. 12.ter." U.N. Doc. A/C.6/52/WG.1/CRP.28 (Sept. 25, 1997) in 1997 Working Group *Report*, *supra* note 37, at 31; U.N. Codification Division, "Art. 3, 24/9/97 19:50," *supra* note 391, at 5.

[408] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39.

[409] China, "Proposal on art. 1," U.N. Doc. A/C.6/52/WG.1/CRP.33 (Sept. 26, 1997) in 1997 Working Group *Report*, *supra* note 37, at 38.

[410] Germany, (non-paper on art. 1.4) (TD, photocopy, Sept., 1997, on file with the author).

with a detailed reference to self-determination movements.[411] Belgium proposed a maximalist formulation to exempt from the scope of the draft convention all those activities that are lawful either under general international law or under the law of armed conflicts.[412] Thus, this proposal would have excluded from the convention the activities of self-determination movements governed and in accordance with the law of armed conflict. For its part, the United States rejected all proposals designed to limit the exemption only to situations of armed conflict. It argued that such approach would leave unaddressed some situations beyond the normal understanding of armed conflict where, nonetheless, the use bombs by armed forces outside of their national territory might be necessary. In its view, these situations included: multilateral peace operations, such as peacekeeping, peace enforcement and peace building; humanitarian assistance operations, such as the evacuation of an embassy's staff and civilians from third countries during periods of unrest and the provision of relief assistance in hostile environments; police and security functions, both invited by the host government in need of domestic support or not, in times of civil unrest; and, acts of self-defence short of armed conflict, such as repelling cross-border intrusions.[413] Accordingly, on September 30th, 1997, the United States' circulated the following proposal on the exclusion clause:

> This Convention does not apply to activities of armed forces during an armed conflict, as those terms are understood under the international law of armed conflict, which are governed by that law, or to activities of military forces of a State which are undertaken in connection with their official duties including peace operations, police and security functions, humanitarian assistance operations and

[411] Syria "Proposal on new art. to follow art. 12.ter," U.N. Doc A/C.6/52/WG.1/CRP.25 (Sept. 25, 1997) in 1997 Working Group *Report*, *supra* note 37, at 30.

[412] Belgium, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.39 (Sept. 30, 1997) in 1997 Working Group *Report*, *supra* note 37, at 40.

[413] United States, (Non-paper art. 3) (TD, photocopy, Sept., 30, 1997, on file with the author).

acts of self-defence.[414]

This proposal was a turning point in the negotiation because, by leaving the definition of armed forces during an armed conflict to international humanitarian law, it contained a major concession to those who sought to exclude self-determination movements from the scope of the convention. This language eventually became the basis of the agreement regarding the exemption of self-determination movements from the scope of the convention. On the question of governmental military forces, though, the American draft still purported to create a broad exemption while listing just some examples of what those official duties might be. Notwithstanding these concessions, in the following informal-informals, several delegations rejected the United States' proposal. For those delegations, international humanitarian law already governed adequately the activities listed by the United States, and, that consequently, those activities should comply with that law. Other delegations found valuable the idea of making an express mention of peacekeeping operations while linking their legality to the United Nations' Charter.[415] The United States then amended its draft to incorporate a reference to operations performed through regional or global security arrangements.[416]

During the last three days of meetings, there were hectic efforts to find a solution to this issue. On October 2nd, 1997, the Friends of the Chairman, introduced a new draft that limited the exemption for the military forces only to their activities carried out in pursuit of the principles and purposes of the United Nations Charter. On self-

---

[414] United States, "Proposal on art. 3, 1st draft, Sept. 30, 1997" (TD, photocopy, Sept., 30, 1997, on file with the author).

[415] Netherlands, "proposal on art. 3" (TD, photocopy, non-paper, Sept., 30, 1997, on file with the author)

[416] United States, "Proposal on art. 3, 2nd draft, Sept. 30, 1997" (TD, photocopy, Sept., 30, 1997) (on file with the author).

determination movements, and following the American draft, the Friend's text left the task of delineating the extent of the exemption to international humanitarian law. Finally, on the savings clause, they made an indirect and somewhat cryptic reference to the principle of self-determination through a mention of the principles of the UN Charter. This draft read:

> Article 3
>
> This Convention shall not apply to activities of armed forces governed by international humanitarian law, nor shall it apply to activities of military forces of a State, including those undertaken through international or regional arrangements, carried out in pursuit of the purposes and principles of the Charter of the United Nations.
>
> Article 12 ter
>
> Nothing in this Convention shall affect other rights and obligations under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.[417]

The United States and France rejected this text and introduced an alternative formulation that would have extended the exemption to all the activities of the military forces carried out in connection with their official duties.[418] At this point, the delegation of New Zealand threatened to put the question to the vote. Such vote was averted by the personal intervention of the chairman who convinced the Ambassador of New Zealand that a vote would endanger the adoption of the whole convention.[419]

Meanwhile, other delegations were building possible formulae for consensus by offering variations of the main proposals. Australia suggested a new text that contained

---

[417] Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, 3 and 2 ter.

[418] United States "Proposal on art. 3" U.N. Doc. A/C.6/52/WG.1/CRP.49 (October 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 58.

[419] New Zealand, (Amb. Michel Powles), "Statement," U.N.G.A. Sixth Comm. Working Group established pursuant to General Assembly Resolution 52/210 of 17 December 1996, (Oct. 3, 1997) (TD, photocopy, on file with the author).

an exemption for the states' military forces somewhat more restricted than the one proposed by the United States. It limited the exemption only to official activities of the military forces and not to all their activities carried in connection with the official duties.[420] The Australian proposal, though, did not provide any exemption of the activities of self-determination movements. Germany, after intense negotiation among the members European Union, made the following proposal:

> This Convention does not apply to activities of armed forces during an armed conflict as those terms are understood under the international law of armed conflict, which are governed by that law, nor shall it apply to activities of military forces of a State including those undertaken through the United Nations, international or regional arrangements carried out in accordance with the purposes and principles of the Charter of the United Nations.[421]

This proposal appeared, at first glance, to restrict the exclusion of the peacetime activities of the military forces only to those activities undertaken in accordance principles and purposes of the UN Charter. However, the German formulation contained some intentional ambiguity. Because the text lacked a comma after "regional arrangements," it was possible to construe its reference to the United Nations Charter not as a general legal requirement but simply as part of an example and, consequently, to understand the text as a broad exemption for the states' military forces. On self-determination movements, the German proposal used the more nuanced language, originally suggested by the United States, which left the definition of their exemption to international humanitarian law. This nuanced formulation started to gather support. For

---

[420] Australia, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.50 (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 58.

[421] Germany, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.51 (Oct. 3rd, 1997) in 1997 Working Group *Report*, *supra* note 37, at 58.

its part, Iran also suggested a formula to limit the exemption of the military forces to those activities undertaken in accordance with the United Nations Charter.[422] The Iranian language did not make any provision for non-state forces. In addition, the Holy See proposed making clear in the German proposal that only the legitimate activities of the armed forces, carried out in accordance with the United Nations Charter, were exempted.[423]

On the last day of meetings, October 3rd, 1997, the Republic of Korea proposed the addition of a clause stressing that the exemption for the activities of military forces from the scope of the convention neither prejudged, in one way or a the other, their legality, nor precluded their prosecution under other norms.[424] New Zealand, in an effort to retain on the negotiating table the text proposed by the Friends of the Chairman the previous day, decided to reintroduce it formally under its own name. In introducing the Friends' text formally, New Zealand noted that, from its point of view, that text reflected the position of most delegations.[425] There was no agreement on any of these proposals.

In a last minute effort, Switzerland and France negotiated a proposal that restricted the exclusion clause to the activities of the states' military forces to the activities undertaken in the exercise of their official duties and the rights and obligations of states under the UN Charter. This formulation, introduced formally by the delegation of Costa Rica in its capacity as a Friend of the Chairman, provided a broad exemption for

---

[422] Iran, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.52, (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 59.

[423] Holy See, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.53 (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 59.

[424] Republic of Korea, "Proposal on art. 3," art. 3.2, U.N. Doc. A/C.6/52/WG.1/CRP.54, (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 59.

[425] New Zealand, "Proposal on art. 3," at art 3 and n., U.N. Doc. A/C.6/52/WG.1/CRP.56 (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 60.

the military forces but not an absolute one. On self-determination movements, the proposal followed the language created originally by the United States, which continued to gather support even if not yet consensus.[426] This proposal contained concessions both from France, who abandoned its demand for an absolute immunity for its armed forces, and from Switzerland, who dropped its demand that the exemption be limited only to those acts fully in accordance with international law. However, as the session of the working group was coming to an end and there was no agreement on this issue, the chairman proposed that the working group recommend to the Sixth Committee, for its consideration, the text of the whole convention leaving blank the space for those provisions on military forces.[427] Delegations accepted the chairman's recommendation; consequently, the Sixth Committee received an unfinished draft.[428]

During the Fifty-second session of the General Assembly, the plenary of the Sixth Committee was scheduled to discuss the question of international terrorism on November 13th and 14th. In addition, the Sixth Committee was supposed to adopt the yearly resolution on that topic, including, if possible, the new convention against terrorist bombings, by the third week of November 1997. Consequently, between the end of the session of the working group, on October 3rd, 1997 and November 13th, there were intensive efforts, both in capitals and in New York, to find a solution and to sway delegations to accept one formulation or another. The United States asked its embassies,

---

[426] Costa Rica, "Proposal on art. 3" U.N. Doc. A/C.6/52/WG.1/CRP.55 (Oct. 3, 1997) in 1997 Working Group *Report*, *supra* note 37, at 59.

[427] The text recommended left blank the definition of "military forces," art. 1.4, and the exclusion clause, art. 3. The draft, however, did contain the text of a saving clause, art. 12. ter. identical to the text issued on October 2nd, 1997. Friends of the Chairman, Revised text, Oct. 2, 1997, *supra* note 42, art 12 ter.

[428] Recommendations of the working group, *Measure to eliminate international terrorism, report of the working group*, U.N. Doc. A/C.6/52/L.3 para. 8; Revised text submitted to the Sixth Comm., *supra* note 43.

both in Europe and in Latin American, to lobby their host states in favour of the American position. In those demarches, the United States argued that the proposed convention should not provide a basis for domestic courts to judge whether the use of force by state military forces is lawful. It noted that the offences covered by the convention, while appropriate to address sporadic acts of terrorism by private individuals, encompassed a broad range of normal and accepted activities of the military. It added that states with military forces were unlikely to ratify a law enforcement instrument that would subject their military personnel to political judgements on the legality of their use of force.[429] The last statement was an implied threat not to ratify the convention unless a solution satisfactory to the United States was adopted. In its demarche, the United States reiterated its proposal of September 30th, and suggested a new formulation that made clear that the exemption for the military forces was justified by the fact that those activities were governed by other provisions of international law. In order to avoid the impression that the convention would condone unlawful conduct by the state or by its military, the United States suggested the addition of a paragraph to the enabling resolution in this regard.[430] In parallel, the Swiss delegation circulated a new formulation that provided an absolute exception for the activities of governmental military forces during situations of armed conflict while providing them only a qualified exemption during peacetime "insofar as" their activities were governed by other norms of international law.[431] Accordingly, in a real life case, a domestic court could judge whether international humanitarian law had governed the use of bombs by members the

[429] United States, "UN Convention on terrorist bombing" (TD, photocopy, *Aide memoire* for demarches in capitals, Oct., 1997, on file with the author).

[430] *Ibid.,* p. 4-5.

[431] Switzerland, "Art. 3" (TD, photocopy, late Oct., 1997, on file with the author).

states' armed forces in the concrete circumstances of that case and, if not, the court could prosecute them as a terrorist act. Meanwhile, on October 31st, 1997, New Zealand proposed the following complex package deal:

> Chair's Statement
>
> The exclusion from the scope of the Convention of certain actions of armed forces in no way affects an important principle. That principle is that members of armed forces may be held criminally responsible whether or not the State of which they are nationals is also responsible for their actions. The applicability of that principle is made very clear first in the preamble and second in the operative provisions.
>
> Preamble
>
> Noting that the conduct of military forces of States is governed by bodies of law outside the framework of this convention and that the exclusion of certain actions of military forces from the scope of the Convention does not mean that members of those forces may not be subject to prosecution for conduct which is unlawful;
>
> Article 3
>
> This Convention does not apply to activities of armed forces during an armed conflict, as those terms are understood under international law of armed conflict, which are governed by that law, or to the activities of military forces of a State (including those acting through international or regional arrangements in accordance with their own constituent instruments) which are undertaken in connection with their official duties such as peacekeeping operations carried out in accordance with the purposes and principles of the Charter of the United Nations.
>
> Article 4
>
> Nothing in this Convention shall affect other rights and obligations of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.[432]

This proposal incorporated: first, the German formulation on the activities of governmental military forces; second, the American language on non-state armed forces; third, the clarification that the exemption did not preclude criminal prosecution under other norms; and, fourth, a strong interpretative statement to be made by the Chairman

[432] New Zealand, "Non-paper, Oct. 31, 1997" (TD, photocopy, Oct., 31, 1997, on file with the author).

during the adoption of the Convention. On November 3rd, Denmark proposed deleting the exclusion clause and mentioning instead, in a saving clause, that the activities of the armed forces carried out in connection with their official duties are subject to the norms on jurisdiction and prosecution already provided by international humanitarian law.[433] Most delegations rejected this proposal because it was ambiguous: it could be interpreted both as creating an absolute exception for the military forces or none at all. Later, the Danish delegation suggested a new formulation that made clearly provided a broad exemption for the activities of governmental armed forces, while avoiding the use of the words "this convention does not apply to (...)," since those words were being perceived as an implicit acceptance of the lawfulness of peacetime bombings by the armed forces. Thus, this proposal would also become part of the final agreement. [434]

During the first week of November, there were intensive discussions between the delegations of the United States and Costa Rica to find a formula that could be acceptable to both those that sought an absolute exemption and those who advocated for a limited exclusion of the activities of armed forces in peacetime. Working on the basis of the Swiss proposal of late October, the discussions focused on the requirements to provide the exemption.[435] Eventually, they elaborated the following formula:

> This convention does not apply to activities of military forces of a state, including those acting through international or regional arrangements, which are undertaken in the exercise of their official duties in as much as those activities are governed by other provisions of international law.[436]

---

[433] Denmark, " Non-paper, Nov. 3, 1997" (TD, photocopy, Oct., 31, 1997, on file with the author).

[434] Denmark, "D" (TD, photocopy, Non-paper on armed forces, Nov, 1997, on file with the author).

[435] Díaz, Autograph notes, *supra* note 93, Nov, 1997.

[436] Costa Rica, "First draft, Terrorist Bombing Convention, art. 3, Nov. 1997" (TD, Nov, 1997, on file with the author).

This formulation was acceptable to both sides because they interpreted it differently. The United States interpreted the words "in as much as" as meaning "because," following the American usage. According to this interpretation, the exemption is quite broad and the reference to other provisions of international law is simply an explanation. Costa Rica, New Zealand, and Switzerland interpreted the words "in as much as" as meaning "in so far as," which implied that the exemption was limited only to those activities which are in fact governed by other norms of international law. Both sides could claim that their interpretation was correct and unambiguous.[437] The delegations of the United States and Costa Rica formed a broader package deal by adding to this formulation the solution already found to refer to self-determination movements and a preambular paragraph noting that the exemption does not make lawful otherwise unlawful conduct, first suggested by the United States.[438] This package was accepted immediately neither by New Zealand and Switzerland nor by France and the United States. Switzerland and New Zealand preferred a formulation that would limit unambiguously the exclusion of the governmental armed forces. They also preferred the Danish format that was somewhat vague in recognizing the exemption for the activities of military forces. Washington and Paris rejected it because it limited the exemption only to those activities carried out "in exercise" of the official duties of the military forces.[439] Then, Costa Rica,, acting as a mediator, after consultations with Switzerland and New Zealand circulated a new draft taking on board the position of these delegations. The new draft read:

---

[437] Díaz, Autograph notes, *supra* note 93, Nov. 1997.

[438] *Ibid*.

[439] Díaz, Autograph notes, *supra* note 93, Sept. 30, 1997.

> Article 12 ter
>
> 1. Nothing in this Convention shall affect other rights and obligations of States 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 military forces in the course of an armed conflict, as those terms are understood under the international humanitarian law, are governed by other rules of international law and not by this convention, and the activities undertaken by military forces of a state in the exercise their official duties in so far as they are governed by other rules of international law are not governed by this convention.[440]

This new proposal was not acceptable to the United States. This delegation objected to the exclusion being limited only "in so far as" the as the activities were governed by other norms of international law. They also objected to the exclusion being limited only to those acts carried out in exercise of the official duties. They preferred to broaden the exemption to all activities carried out in connection with the official duties. Consequently, on Friday November 7th, 1997, Costa Rica circulated a new draft stating that the activities of the military would be excluded from the scope of the convention "in that" they are governed by other rules of international law.[441]

Between November 10 and 11, 1997, the coalition led by Switzerland and New Zealand took a second look at the text circulated by Costa Rica and went back to the proposal of limiting the exemption using the words "in as much as". They also sought to fine-tune the preamble to downplay the exclusion of the activities of the armed forces. Meanwhile, those who sought a broader exemption amended the preamble to make clear

---

[440] Costa Rica, "Second draft, Terrorist Bombing Convention, art. 3, Nov. 1997" art. 12 ter (TD, Nov, 1997, on file with the author).

[441] Costa Rica, "Third draft, Terrorist Bombing Convention, art. 3, Nov. 7 1997" art. 12 ter (TD, Nov. 7, 1997, on file with the author).

that the convention in fact provided an exemption for states' military forces. Thus, On November 12th, 1997, Costa Rica circulated the following draft:

> Preamble
>
> Nothing that the conduct of military forces of States are governed by bodies of international law outside the framework of this convention and that any exclusion of military forces of states from the coverage of this convention does not condone or make lawful otherwise unlawful conduct of military forces of states.
>
> Article 12 ter
>
> 1. Nothing in this Convention shall affect other rights and obligations of States 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 military forces in the course of an armed conflict, as those terms are understood under the international humanitarian law, are governed by other rules of international law and not by this convention, and the activities undertaken by military forces of a state in the exercise of their official duties, in as much as they are governed by other rules of international law, are not governed by this convention.[442]

New Zealand's and Switzerland's acquiescence to use the package containing the formulation "in as much as," and the United States agreement to limit the exemption only to those activities undertaken by the military in exercise of their official duties and to use the Danish format, became the basis for a final agreement. The mediation by the Costa Rican delegation producing various drafts and shuttling between the two main coalitions also seems to have facilitated the parties making concessions and finding an agreeable language. Thus, the fourth draft circulated by Costa Rica became the formula solution to the negotiation of this issue. Nevertheless, while the main actors had agreed, in principle, to the formula circulated by Costa Rica, it was necessary to fine-tune the language and bring on board all the other participants.

---

[442] Non paper by Costa Rica, fourth draft, November 12th, 1997 (TD, Nov. 12, 1997, on file with the author).

On November 13th, 1997, the plenary of the Sixth Committee began its formal consideration of the item entitled "Measures to eliminate international terrorism." The chairman of the working group, Ambassador Kirsch, introduced the draft convention and explained that the provisions on armed forces had been left blank because it had been impossible to agree on the exemption of military forces in the time allocated. He expressed his hope that the discussions then underway would result in an agreement. Immediately thereafter, Costa Rica announced that its delegation had prepared a draft of the relevant provisions and offered it for the consideration of the other delegations.[443] Later in the day, a group of approximately thirty interested delegations met at the offices of the Permanent Mission of Canada to the United Nations to discuss the latest draft. The delegations of Egypt and Switzerland advocated several precisions to the exclusion of the activities of armed forces during an armed conflict. Meanwhile, the United States sought to modify the preamble to align it with the language of the exclusion clause. On the preamble, several delegations tried to tilt the balance towards their preferred outcome. New Zealand proposed that the preamble should recognize that members of armed forces could be prosecuted under other laws. France tried to emphasize the exclusion of the military forces, but New Zealand, Switzerland, and Costa Rica tried, on the contrary, to deemphasize that exemption. [444] Out of that meeting came a final draft acceptable, in principle, to all the delegations present. They still had, however, to submit this text to their capitals for final instructions. This draft read:

Preamble

---

[443] U.N. GAOR 52nd Sess. Sixth Comm. 27th mtg., at 2, U.N. Doc. A/C.6/52/SR.27 (Nov. 13, 1997).

[444] Díaz, Autograph notes, *supra* note 93, Nov. 13, 1997.

> 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.
>
> Article 12 ter
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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, and the activities undertaken by 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.[445]

After the meeting, the delegation of China informed other delegations that it could not accept the proposed text unless it included a definition of "military forces of a State" that recognized the role of domestic law.[446] Most delegations, however, had not discussed this issue since the fourth reading, when the bureau had left that provision blank.[447] Moreover, the package deal that they had been negotiating for several weeks did not contain such definition. In order to bring China on board, it was decided, after some bilateral consultations, to add the following definition to the package:

> 4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.[448]

---

[445] This is the text which was finally adopted. Bombings Convention, *supra* note 1, pr. para. 11 and art. 19.

[446] China, "Proposal on art. 1," *supra* note 409, art. 1.4.

[447] Friends of the Chairman, Revised text, Sept. 29, 1997, *supra* note 39.

[448] The Chairman of the Sixth Comm., "Draft resolution, International Convention for the Suppression of Terrorist Bombings" art. 1.4. U.N. Doc. A/C.6/52/L.13 and U.N. Doc. A/C.6/52/L.13/Corr.1. (withdrawn) (Nov. 14, 1997).

This text was, in essence, the one proposed by China. The only addition was the reference to "formal" command and "responsibility" to excluded rogue groups. The Swiss delegation reacted strongly against the inclusion of that definition and, in particular, to the reference to the internal law. Switzerland, however, did not withdraw its support for the whole text.[449] Consequently, by the end of the day, Costa Rica, believing that there was full agreement on the package deal, informed the chair of the Sixth Committee that the convention was ready for adoption, and asked the chair that he introduce it as his own proposal and under his own authority. The chairman agreed and, late on November 13th, 1997, he circulated the complete text convention as a draft resolution ready for adoption.[450]

G) The End Game

During the morning of November 14th, 1997, the Sixth Committee continued its debate on the topic of international terrorism. In their formal statements, Egypt, the Russian Federation, India, and Indonesia supported the efforts that were being made at the same time to find a satisfactory solution to issues of State terrorism and the right to self-determination. They also expressed their hope that the draft convention would be adopted during that same session of the General Assembly. Syria, Libya, Iraq, and Iran, for their part, asked for more time to consider the complex issue of the military forces.[451] Meanwhile, those delegations that had taken part in the meeting at the Canadian Mission were informing to those delegates that had not being present of its outcome. At the end

[449] Díaz, Autograph notes, *supra* note 93.

[450] The Chairman of the Sixth Comm., "Draft resolution," *supra* note 448.

[451] U.N. GAOR 52nd Sess. Sixth Comm. 29th mtg., U.N. Doc. A/C.6/52/SR.29 (Nov. 14, 1997).

of the meeting, Pakistan questioned the chairman on the formal status of the parallel consultations on article 3. He asked whether those consultations had been authorized, who were the participants, who will report, and what would the chairman do with any text that resulted from those meetings. He also requested the chairman not to insert any resulting text into the draft convention and to give time to discuss, in a formal setting, any text that might result from those consultations. Meanwhile, Iran asked for greater transparency in the debate. The chairman replied that there had been only an informal exchange of views among some delegations about drafting a text and about submitting it to the Sixth Committee. He emphasized that neither formal nor informal consultations had been held and that, if any text were submitted, delegations would be given time to express their opinions.[452]

That afternoon, at the end of the formal debate on topic of international terrorism, the chairman of the Sixth Committee sought to introduce the complete text of the draft convention under his own authority.[453] He requested the Secretariat to distribute the text to all delegations. However, before it was done, the delegations of Pakistan, Lebanon, Iran, and Cuba raised a series of points of order to prevent the Chairman from introducing the text. They argued that there was no agreement on the provisions on military forces and on self-determination. For their part, Australia, Venezuela, Netherlands, Costa Rica, and the United States requested the distribution of the text. [454] Faced with these objections, the Chairman decided to withdraw the text. Costa Rica, in order to avoid the collapse of the negotiations, explained that his delegation had been responsible for

---

[452] *Ibid.,* at 11.

[453] Draft resolution proposed by the Chairman of the Sixth Comm., International Convention for the Suppression of Terrorist Bombings, November 13th, 1997, U.N. Doc. A/C.6/52/L.13.

[454] U.N. GAOR 52nd Sess. Sixth Comm. 30th mtg., at 7, U.N. Doc. A/C.6/52/SR.30 (Nov. 14, 1997).

drafting the package deal on the issue of military forces and that it was prepared to sponsor the text alone. Costa Rica then requested the chair to circulate the complete draft convention as a Costa Rican proposal. After the Secretariat had manually adjusted the covering page to reflect the new sponsor, the delegation of Costa Rica proceeded to introduce formally to the Sixth Committee the text of the complete convention.[455] He noted that the new language was a good basis for its adoption by consensus. The chairman ended that day's meeting by announcing that the further discussions on the draft convention were going to be held at a later stage.[456]

On November 17th, 1997, the Sixth Committee held informal consultations on the complete draft convention, as requested by Pakistan, focusing mainly on the package deal related to military forces. Those consultations were chaired by the Canadian delegate to the Sixth Committee, Mr. John Holmes. Several Islamic States were critical of the compromise. Pakistan formally proposed the deletion of most of the new language and the introduction of a new formulation on the right to self-determination.[457] Meanwhile, most Latin American and Western Countries supported the compromise text.[458]

On November 19th, 2004, in reporting on the outcome of the Consultations to the Sixth Committee, Mr. Holmes noted that the reaction by most delegations to the complete draft convention was positive, that they found the text balanced, and that that it was unlikely that extending the negotiations will improve the text. He stressed that the Costa Rican draft provided a compromise solution. He noted in addition that most delegations

---

[455] Costa Rica, "Draft resolution, International Convention for the Suppression of Terrorist Bombings," U.N. Doc. A/C.6/52/L.13* (Nov. 13, 1997).

[456] U.N. GAOR 52nd Sess. Sixth Comm. 30th mtg., at 7, U.N. Doc. A/C.6/52/SR.30 (Nov. 14, 1997).

[457] Pakistan "Amendments to the draft resolution proposed by Costa Rica (A/C.6/52/L.13)" U.N. Doc. A/C.6/52/L.19 (Nov. 18, 1997).

[458] Díaz, Autograph notes, *supra* note 93, Nov. 17, 1997.

were in favour of adopting the draft resolution as proposed. Finally, he emphasized that any change would have to be offered to the sponsor, who "owned" the text. [459] In response, several Islamic States,[460] China, and Cuba argued that more time was needed to complete the negotiations and to incorporate the legitimate concerns of their delegations. They proposed that the General Assembly reconvene the *Ad Hoc* Committee in 1998, to continue the negotiations. Meanwhile, 31 delegations, including some members of the OIC,[461] advocated the adoption of the text without a vote. These delegations noted that, while the text was not perfect, it reflected a necessary compromise and that any delay in the adoption would unravel the delicate compromise.[462]

The chairman summarized the debate noting that most delegations, while not fully satisfied with the text, considered that it was time to take action against terrorism by adopting the convention. He also noted that the text seemed to be generally acceptable and that it had been the result of a long and difficult negotiation. Consequently, he proposed that the Sixth Committee adopted the draft convention without a vote. Before the adoption, Pakistan, Iran, Iraq, Syria and China made reservations to the text but not objected to its adoption. China announced that it was unable to participate in the adoption.[463] Consequently, the Sixth Committee adopted the draft terrorist bombing convention without a vote and decided to recommend it to the Plenary of the General

---

[459] U.N. GAOR 52nd Sess. Sixth Comm. 32nd mtg., at 10, U.N. Doc. A/C.6/52/SR.32 (Nov. 19, 1997).

[460] China, Cuba, Iran, Iraq, Lebanon, Lybia, Pakistan, and Sudan.

[461] Algeria, Argentina, Australia, Austria, Brazil, Chile, Colombia, Costa Rica, Czech Republic, Democratic Republic of Congo, Egypt, Finland, France, Germany, Greece, Guinea, Holy See, India, Italy, Japan, Netherlands, Nigeria, Norway, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, United Kingdom, United States, and Uruguay.

[462] *Ibid*., at 10-11; U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 1-4, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

[463] U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 4-7, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

Assembly for its final adoption. After the adoption in the Committee, several delegations stated for the record their understanding of the Convention. New Zealand argued that

> The exclusion of certain actions of military forces in no way affected an important general principle, namely, that members of the military forces of States could be held criminally responsible, as individuals, whether or not the State of which they were nationals was also responsible for their actions.[464]

Libya stressed that "nothing in the draft Convention should be interpreted as prejudicial to those who were struggling against foreign occupation," and that "[t]he draft Convention should not exempt illegitimate activities undertaken by States, such as occupation and aggression so as not to provide a cover for State terrorism."[465] Lebanon argued that the exception:

> [C]ould never be construed to mean that a State's military forces had the right to engage in unlawful activities, as was clear from the eleventh preambular paragraph. The words "inasmuch as they are governed by other rules of international law" in that paragraph could only mean that activities undertaken by the military forces of a State in the exercise of their official duties must not contravene the accepted rules of international law."[466]

Thus, on December 15th, 1997, the Plenary of the General Assembly formally adopted the International Convention for the Suppression of Terrorist Bombings. During the adoption, these delegations made, once more, interpretative statements on and reservations to the draft convention. Some delegations stated their reservations to the

---

[464] New Zealand, "Statement," U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 7, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

[465] Lybia, "Statement" U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 7-8, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

[466] Lebanon, "Statement" U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 8, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

package on armed military forces because, in their view, it gave absolute immunity to the state armed forces. For Iran, it could be interpreted as giving greater immunities to armed forces than is provided in general international law. Similarly, for Pakistan, Syria, and Jordan, it granted immunity to the activities of armed forces even if such activities amounted to terrorism.[467] Other delegations tried to interpret the agreement restrictively. For Lebanon, the Convention did not apply to acts of resistance to foreign occupation and, in particular, to the resistance to Israeli occupation of Lebanese territory. In its view, the agreement should not be interpreted as making lawful unlawful acts committed by the armed forces of any State, and it hoped that no state would take advantage of the ambiguity of the text to undertake unlawful military actions. Lebanon also placed on record its interpretation of the phrase "inasmuch as they are governed by other rules of international law" as meaning that the activities undertaken by military forces in exercise of their official duties are, in fact, governed by rules of international law.[468] In the same vein, Liechtenstein noted that:

> [t]he activities undertaken by military forces of a State in the exercise of their official duties do not fall within the purview of the Convention to the extent that they are the subject of other rules of international law. The Convention, thus, does not grant an overall exception to activities by military forces from the scope of application of the Convention.[469]

Similarly, New Zealand argued that:

---

[467] U.N. GAOR 52nd Sess. 72nd plen. mtg., at 13-14, 16-17, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[468] Lebanon, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 18, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[469] Liechtenstein, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 19, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

> [T]he Convention was carefully drafted, and reflects the view held by New Zealand and others that the exclusion of certain actions of military forces of a State from the Convention's ambit does not preclude members of the military forces of a State from legal jurisdiction and prosecution where their conduct has been unlawful. To the extent that those activities are governed by other law, that other law may apply. To the extent that they may not be governed by other law, this Convention may be applied.[470]

Mexico and Libya stated, for the record, similar interpretations.[471] Other delegations stated, on the contrary, that the Convention does, in fact, create a broad immunity for the activities of armed forces. For Turkey, the convention clearly does not apply to the activities undertaken by the military forces of a State. Similarly, the United States stated that the text of the Convention was clear in that it applies neither to the activities of armed forces in the course of an armed conflict nor to the activities of military forces of a State in the exercise of their official duties. The United States stressed that the text of Convention did not read "to the extent that" as it had been suggested by New Zealand in its interpretative statements.[472]

On the political exception and the non-refoulement principle, the Russian Federation argued that the non-refoulement principle had to be applied restrictively in order to ensure the effective punishment of the terrorist crimes.[473] Libya went further by noting that there was a contradiction between the obligation to provide mutual legal assistance regardless of the political motive of the crime and the provision that excludes assistance if the requested State believes that the extradition is discriminatory. The United States, on the contrary, welcomed the balance of the Convention in this regard

---

[470] New Zealand, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 20, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[471] U.N. GAOR 52nd Sess. 72nd plen. mtg., at 15, 20, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[472] U.N. GAOR 52nd Sess. 72nd plen. mtg., at 18, 20, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[473] Supported by Lebanon and Turkey.

because it disallows the political offence exception while preserving the right of the requested state to deny assistance if the request is based on some improper motivation.[474] Finally, Pakistan also made reservations because the text did not contain a comprehensive definition of terrorism and because the reference in article 2 to unlawfully character of the conduct could be construed as approving some forms of terrorism.[475] Thus, on December 15th, 1997, the International Convention for the Suppression of Terrorist Bombings adopted without a vote and opened it for signature from January 12th, 1998 to December 31st, 1999.[476]

[474] U.N. GAOR 52nd Sess. 72nd plen. mtg., at 17-18, 20-21, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[475] Pakistan, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 13-14, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

[476] U.N. GAOR 52nd Sess. 72nd plen. mtg., at 17, U.N. Doc. A/52/PV.72 (Dec. 15, 1997); G.A. Res. 52/164 ¶ 1, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997).

Chapter 5 – The Negotiation of the Nuclear Convention

On April 13th, 2005, the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism.[1] As the convention itself stated, it was intended to "enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators."[2] This instrument was adopted 15 years after it had been proposed, and following several years during which the negotiations had come to a standstill. However, once adopted, it received an unprecedented level of support. On the first three days it was open for signature, the new convention was signed by 82 nations, including the 5 permanent members of the Security Council.[3] This chapter will provide an overview of the negotiation of the main elements of the Nuclear Convention paying special attention to the reasons why these negotiations were deadlocked for 5 years, and how delegations overcame that stalemate and found an agreement.

A) Agreeing to negotiate

The idea of elaborating, within the General Assembly, a legally binding instrument to prevent and prosecute acts of nuclear terrorism was raised for the first time

---

[1] International Convention for the Suppression of Acts of Nuclear Terrorism, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005) [hereinafter Nuclear Convention].

[2] *Ibid*., pr. para. 12.

[3] United Nations, "Treaty event during United Nations Summit receives record number of treaty actions," (press release L/T/4391) Sept. 21, 2005.

by Mongolia in 1989.[4] At the time, however, only Byelorussia supported this idea.[5] That year, the General Assembly was divided between those delegations who wanted to convene an international conference to define terrorism and to address its root causes and those who advocated for a sectoral approach to address specific forms of terrorism.[6] However, in 1991, the Soviet Union took up Mongolian's idea. It suggested that the General Assembly should consider the possibility of preparing a new legal instrument for the prevention, suppression, and elimination of terrorist acts involving nuclear weapons or radioactive materials. The USSR, however, did not wish to engage in negotiations with all members of the United Nations but only with the members of the Security Council. It suggested that the Security Council establish, upon the recommendation of the General Assembly, a restricted working group to examine, with the assistance of the International Atomic Energy Agency (IAEA), the legal and technical aspects of the new convention.[7] There were, however, no were no reactions to this proposal.

The next time that the General Assembly considered the question of international terrorism, in 1993, the successor state to the Soviet Union, the Russian Federation, did not raise the idea of negotiating a new binding instrument to prevent acts of nuclear terrorism. Instead, Russia argued that no practical effort should be spared to prevent terrorists from acquiring nuclear, chemical, or biological weapons; that greater cooperation among states was need to prevent the smuggling of nuclear material, since

---

[4] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, at 10, U.N. Doc. A/44/456 (Aug. 25, 1989).

[5] Byelorussia, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 20th mtg., ¶ 9-10, U.N. Doc. A/C.6/44/SR.20 (Oct. 17, 1989).

[6] See *supra* Chapter 3.D.

[7] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 2*, at 2, U.N. Doc. A/46/346/Add.2 (Oct. 8, 1991); USSR, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 22, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

they could fall into the hands of terrorists; and that the international community should consider establishing, within the IAEA, new structures to facilitate operational coordination and cooperation against terrorism.[8] Once again, no other delegation supported these ideas. Regarding nuclear terrorism, the United States and Japan just emphasized the need for states to ratify and observe the Convention on the Physical Protection of Nuclear Material.[9]

By the end of 1994, several serious cases of smuggling of nuclear materials, mainly out of the former Eastern bloc, had become public knowledge. For instance, on July 8th, 1994, the Russian press reported the arrest of three Russian naval officers accused of stealing 4.5 kg of Uranium-238. On July 19th, the Turkish police seized 12 kg of weapons-grade uranium and arrested seven Turkish nationals for its possession; and, on August 10th, the German policy seized 363 grams of weapons-grade plutonium-239 at Munich airport.[10] Not surprisingly, during that year's General Assembly debate, several delegations stressed the need to make every effort to prevent the illicit traffic of nuclear materials and to ensure that those materials did not fall into the hands of terrorists.[11] The Russian Federation, speaking on behalf of the members of the Commonwealth of

---

[8] USSR, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 27, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

[9] U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶¶ 56, 64, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

[10] For a comprehensive list of smuggling incidents of nuclear materials between Nov. 1993 and March 1996 see: United States Senate, Permanent investigations subcommittee on global proliferation of weapons of mass destruction and illicit trafficking of nuclear materials, 1996 Congressional Hearings, Testimony of Mr. John Deutch, Director of the Central Intelligence Agency, March 20, 1996, annex, "Chronology of Nuclear Smuggling Incidents," *available from* http://www.fas.org/irp/congress/1996_hr/s960320c.htm, accessed on Jan. 5, 2006.

[11] The Russian Federation (on behalf of the Commonwealth of Independent States), the Czech Republic, Nigeria, and the United States. U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶¶ 5, 12, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994); U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 64, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994); U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 31, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

Independent States, expressed concern at the possibility that radioactive materials could be used in terrorist attacks and renewed the Soviet Union's proposal of a new sectoral convention to prohibit and punish terrorist acts carried out with nuclear weapons and materials.[12] Although there were no public reactions to the Russian proposal, the General Assembly encouraged states to review the existing counter-terrorism legal norms to ensure that all forms of the crime were addressed. The Assembly also requested the Secretary-General to produce an analytical review of all the existing legal instruments on terrorism to determine if there were any gaps in the counter-terrorism legal regime.[13] These decisions signaled a new willingness by the General Assembly to consider the possibility of elaborating new sectoral instruments against terrorism, such as the one contained in the Russian proposal.[14]

In 1995, Russia reiterated its proposal for negotiating a new legal instrument on the suppression and prevention of acts of terrorism that involved nuclear weapons or materials.[15] Although the United States expressed, at the time, some concern regarding the possible use of nuclear materials by terrorists,[16] no delegation expressly supported the Russian initiative. In contrast, 1996 was a turning point for the negotiation of the Nuclear Convention. On July 30th, the ministers of foreign affaires of the seven major industrialized countries and of the Russian Federation, meeting in Paris, committed

---

[12] Russian Federation, "Statement on behalf of the members of the Commonwealth of Independent States," U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶ 12, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994).

[13] Declaration on Measures to Eliminate International Terrorism, ¶¶ 7, 10.c, G.A. Res. 49/60, Annex, U.N. Doc. A/Res/49/60/Annex (Dec. 9, 1994) [hereinafter 1994 Declaration].

[14] See *supra* Chapter 3.D.

[15] Russian Federation, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 10, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

[16] United States, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 7th mtg. ¶ 1, U.N. Doc. A/C.6/50/SR.7 (Oct. 3, 1995).

themselves to "promote the consideration and development of an international convention on terrorist bombing or other terrorist acts creating collective danger for persons, to the extent that existing multilateral counter-terrorism conventions do not provide for cooperation in these areas."[17] Although this commitment focused on the American initiative to draft a new treaty on terrorist bombings,[18] in the following months, the Russian Federation linked, within the G-7, the consideration of own its proposal to that of the Bombings Convention, thus obtaining the formal support of the seven major industrialized countries for its own initiative. Thus, when the United States introduced to the Sixth Committee its proposal for a Bombings Convention, it stated that the G-7 ministerial had also endorsed the Russian initiative, even though the Paris Declaration had not mentioned it expressly.[19] The Russian proposal received further support from the 1996 Secretary-General's report on terrorism, which reviewed the existing counter-terrorism legal instruments and identified some gaps in then existing counter-terrorism legal regime for possible codification. In that report, the Secretary-General recommended that the General Assembly considered adopting new legal instruments to address, *inter alia*, the need to prevent the use of weapons of mass destruction by terrorists.[20]

On October 3rd, 1996, the Russian Federation reintroduced to the Sixth Committee its proposal for the elaboration of a convention against nuclear terrorism. It

---

[17] Group of Seven Major Industrialized Countries, Ministerial Conference on Terrorism, Paris, France, July 30, 1996, *Agreement on 25 Measures,* ¶ 17, U.N. Doc. A/51/261.

[18] See *supra:* Chapter 4.A.

[19] United States, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 1, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

[20] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, ¶ 36, U.N. Doc. A/51/336 (Sept. 6, 1996).

argued that, by criminalizing both the illegal acquisition of nuclear materials for terrorist purposes and any attack against nuclear power plants or nuclear-powered vessels, such a treaty would fill the existing gaps in the legal regime created by the 1979 Convention on the Physical Protection of Nuclear Material.[21] It noted, in particular, that the 1979 Convention did not protect nuclear facilities or materials destined to military use.[22] Thus, the proposed treaty should oblige states both to exercise jurisdiction over crimes of nuclear terrorism, and to incorporate in their criminal law a broad definition of "nuclear material" to criminalize terrorist acts involving nuclear materials destined to military use. Russia stressed that the new treaty would not address issues of nuclear non-proliferation, which were dealt with in separate body of law. Finally, the Russian Federation promised to submit a complete draft of the new convention for the consideration of delegations.[23] During the ensuing debate, the United States, Ukraine, Guatemala, Switzerland, Cameroon, Belarus, the United Arab Emirates, and Turkey supported the Russian proposal.[24] Canada, Qatar, the Rio Group, and India expressed concern for the possible use of nuclear devices by terrorists, without endorsing the Russian initiative;[25] while

---

[21] Convention on the Physical Protection of Nuclear Material, *adopted on* Oct. 26, 1979, 1456 U.N.T.S. [hereinafter Physical Protection Convention].

[22] *Ibid.,* art. 2.

[23] Russian Federation, "Statement'" U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 48, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

[24] U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 3, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg. ¶¶ 31, 53, 95, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996), U.N. GAOR 51st Sess. Sixth Comm. 30th mtg. ¶¶ 37, 48, 61, 63, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[25] U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 38, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg. ¶¶ 35, 47, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996), U.N. GAOR 51st Sess. Sixth Comm. 30th mtg. ¶ 33, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

Tunisia, Algeria, and Ethiopia preferred to negotiate a comprehensive treaty against all forms of terrorism rather than an instrument focused only on nuclear terrorism.[26]

In the following consultations, the G-7, lead by the United States, promoted the creation of an *Ad Hoc* Committee to begin negotiations on the proposed Bombings Convention. Nevertheless, as Russia had linked the negotiation of the Bombings Convention to its proposal of a Nuclear Terrorism Convention, the United States argued that the mandate of the new committee should include the negotiation of both instruments.[27] This proposal was accepted as part of broader package: the General Assembly decided to establish an *Ad Hoc* Committee to elaborate, first, a convention on terrorist bombings; then, a convention for the suppression of acts of nuclear terrorism; and, then to consider further means to develop a comprehensive legal framework against terrorism.[28] From this moment onwards, there was a clear commitment to negotiate the Nuclear Convention. Thus, on January 9, 1997, the Russian Federation submitted the first draft of the proposed Nuclear Terrorism Convention.[29] However, during 1997, the *Ad Hoc* Committee focused exclusively on the negotiation of the Bombings Convention.[30] Consequently, work on the proposed convention on acts of nuclear

---

[26] U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 7, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg. ¶ 16, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996), U.N. GAOR 51st Sess. Sixth Comm. 30th mtg. ¶ 108, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[27] United States, "Statement," *supra* note 19, ¶ 3.

[28] G.A. Res. 51/210, ¶ 9, U.N. Doc. A/RES/51/210 (Dec. 17, 1996); see *also, supra:* Chapter 4.A.

[29] Russian Federation, "Draft text of the convention on the suppression of acts of nuclear terrorism," U.N. Doc. A/AC.252/L.3 (Jan. 9, 1997), A/AC.252/L.3/Corr.1, and A/AC.252/L.3/Corr.2, [hereinafter Russia's First Draft] in U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* annex I, pp. 6-14, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998) [hereinafter 1998 Ad Hoc Comm. Report].

[30] See *supra:* Chapter 4.B.

terrorism did not begin until a year later, in February 1998, at the committee's second session.[31]

B) Defining the crime

The first draft of the convention on the suppression of acts of nuclear terrorism, proposed by the Russian Federation, was based on the principle *aut dedere aut judicare;* that is, it sought to oblige states to punish, under their domestic law, any acts of nuclear terrorism, and to extradite or prosecute any person accused of such crimes. Moreover, it also sought to fill the gaps, on criminal law matters, in the legal regime created by the Physical Protection Convention.[32] To achieve those goals, the Russian draft defined the "acts of nuclear terrorism" very broadly:

> Article 1.
> For the purposes of this Convention:
> 1. "An act of nuclear terrorism" means:
> (a) (i) The use or threat of the use of nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties;
> (ii) the use or threat of the use of any nuclear installations, nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components, including their destruction or the threat of their destruction, as well as the manufacture of home-made nuclear devices, for the purpose of causing death or serious injury to any person or harming his health, causing substantial damage to property or the environment, or compelling a natural or legal person, a group of persons, a State or an international organization to do or to refrain from doing any act;

---

[31] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶¶ 1, 8.

[32] Russia's First Draft, *supra* note 29, arts. 3, 7.1; Russian Federation, "Explanatory note to the draft convention on the suppression of acts of nuclear terrorism," ¶¶ 3-6, U.N. Doc. A/AC.252/L.3/Add.1, (Jan. 14, 1998) [hereinafter Russia, "Explanatory note"].

> (b) For the purposes set forth in subparagraph (a), the receipt or alienation without the permission of the competent authorities or through fraud, theft, forcible seizure, appropriation, possession, alteration or the transfer of any nuclear material, nuclear fuel, radioactive products or waste, or any other radioactive substances, any nuclear installations, nuclear explosive or radiation-dissemination devices and components thereof or objects of which they are components belonging to any of the States parties regardless of their location, as well as acts constituting a demand by threat or use of force or by any other form of intimidation for the release or transfer of such material, sources, substances, installations or devices and/or components thereof or objects of which they are components;[33]

As can be seen, this text sought to criminalize, first, any use or threat of use of nuclear material, nuclear fuel, radioactive products, or waste with toxic, explosive or dangerous properties, regardless of its purpose; second, the destruction of any nuclear installation or device, and the manufacture of home-made nuclear devices, with the intention of either causing death, serious bodily, substantial material, or environmental damage, or compelling a person, group of persons, a state, or an international organization to do or to refrain from doing something; and, third, the illicit acquisition of nuclear material or weapons through theft, fraud or appropriation as well as any threat or pressure made in an attempt to force somebody else to release or transfer of such materials.[34] The Russian Federation argued that the distinguishing element of the proposed crimes was their characteristic purpose.[35] From a technical-legal point of view, however, this text was unsatisfactory since it sought to criminalize, under the same heading, a variety of unrelated wrongful acts and accessory crimes with various intentionality degrees.

---

[33] Russia's First Draft, *supra* note 29, art. 1.1.

[34] *Ibid,* art. 1.1.

[35] Russia, "Explanatory note," *supra* note 32, ¶¶ 12-15.

Moreover, the Russian draft stated that the new convention would apply only to natural persons acting individually or as part of non-state groups, and not to persons acting on behalf of states. It emphasized that the proposed convention would not address the nuclear threats posed by states or by other subjects of international law, nor questions of non-proliferation of nuclear weapons.[36] In a separate explanatory note, the Russian delegation stressed that questions such as the conduct of states in peace and war, non-proliferation, and the lawfulness of the possession of nuclear weapons by subjects of international law belonged to others spheres of international law.[37] Finally, the Russian draft defined the key terms: "nuclear fuel," "radioactive products," "radioactive waste," "radioactive substances," "nuclear installation," "nuclear explosive device," and, "radiation-dissemination device," in separate paragraphs.[38]

The *Ad Hoc* Committee considered this text for the first time on February 17, 1998. On that occasion, Japan, Netherlands, Austria, and Syria expressed concern for the fact that the new instrument could overlap with the 1979 Convention on the Physical Protection of Nuclear Material, the 1996 Nuclear Test-Ban Treaty, and the 1997 Terrorist Bombings Convention.[39] They noted that the Physical Protection Convention already required the criminalization of various acts that fell within the broader concept of nuclear terrorism.[40] For those delegations, any conflict between the proposed treaty and the

---

[36] Russia's First Draft, *supra* note 29*,* art. 2.1.

[37] Russia, "Explanatory note," *supra* note 32, ¶ 23.

[38] Russia's First Draft, *supra* note 29*,* art. 1.2-1.9.

[39] Physical Protection Convention, *supra* note 21; Comprehensive Nuclear Test Ban Treaty, *adopted on* Sept. 10, 1996, by G.A Res. 50/245, annex, U.N. Doc. A/50/245/annex (Sept. 24, 1996); International Convention for the Suppression of Terrorist Bombings, *adopted on* Dec. 15, 1997*,* G.A. Res. 52/164, Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter Bombings Convention].

[40] Physical Protection Convention, *supra* note 21, art. 7:

1. The intentional commission of:

existing instruments would undermine the effectiveness of the legal regime against terrorism. To avoid such conflicts, they suggested that the new instrument could take the form of an additional protocol to the Physical Protection Convention or be negotiated within the IAEA.[41] The IAEA itself also expressed concern regarding a possible overlap between the 1979 Convention and the new instrument. The IAEA suggested three possible solutions: to make the new instrument an additional protocol to the Physical Protection Convention; to draft the new instrument in such a way as to eliminate any possible overlap; or to ensure that, in case of an overlap, the new convention would apply.[42] The Republic of Korea, Algeria, Egypt, and Portugal, on the contrary, preferred negotiating a separate treaty rather than amending the 1979 Convention. They noted that, in any case, the issue was already settled since the General Assembly had already requested the *Ad Hoc* Committee to negotiate a new convention on nuclear terrorism. In their view, the committee had make an effort to avoid overlaps and to focus on the measures to promote counter-terrorism cooperation not regulated by the then existing

---

a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
b) a theft or robbery of nuclear material;
c) an embezzlement or fraudulent obtaining of nuclear material;
d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
e) a threat:
   i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or
   ii) to commit an offence described in sub-paragraph b) in order to compel a natural person, international organization, or state to do or to refrain from doing any act;
f) an attempt to commit any offence described in paragraphs a), b) or c); and
g) an act which constitutes participation in any offence described in paragraphs a) to f);

shall be made punishable by each state under its national law.

[41] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶ 23; United Nations, "Ad Hoc Comm. begins considering draft convention to suppress nuclear terrorism acts," pp. 5-6, 8-9, (press release L/2854) Feb. 17, 1998, [hereinafter Press release of Feb. 17, 1998]; Philippe Kirsh, "Closing remarks by the Chairman of the Ad Hoc Comm.," ¶¶, 5-8, U.N. Doc. A/AC.252/1998/INF/3 (Feb. 27, 1998).

[42] International Atomic Energy Agency, *Comments of the Secretariat,* ¶¶ 23-34, U.N. Doc. A/AC.252/1998/L.5 (Feb. 27, 1998).

international treaties.[43] Meanwhile, France, Germany, the United Kingdom, Belgium, and Finland found that the definition proposed by the Russian Federation was too broad, lacked technical precision on the intentionality requirements, did not contemplate all the accessory forms of the crime, and could even unintentionally criminalize some lawful uses of radioactive materials. In their view, it was necessary to define precisely both the crime of nuclear terrorism and the scope of application of the new convention. Moreover, they believed that the language of the new instrument had to be aligned with that of the Bombings Convention which, in their view, contained the most up-to-date and refined counter-terrorism provisions.[44]

At the end of the general debate, the chairman of the *Ad Hoc* Committee proposed to discuss the Russian draft paragraph by paragraph, in a more flexible and informal context, without prejudice to a final decision as to whether the new instrument was to be an additional protocol to the Physical Protection Convention or a separate treaty.[45] In the ensuing discussions, there was broad agreement that the definition of the crime of nuclear terrorism should follow the general format of the definition of the offence incorporated in the Bombings Convention: that is, that it should be divided in two articles, one containing definitions of the key terms and another containing a technical description of the wrongful act.[46] In addition, most delegation believed that the definition of the crime should be drafted using the legal technique adopted in Bombings Convention: that is,

---

[43] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶¶ 25-26; Press release of Feb. 17, 1998, *supra* note 41, pp. 9-10.

[44] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶¶ 21-27; Press release of Feb. 17, 1998, *supra* note 41, pp. 3-8.

[45] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶¶ 11-12; Kirsh, *supra* note 41, ¶ 8.

[46] The Rapporteur, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussions the Working Group," 1998 Ad Hoc Comm. Report, *supra* note 29, Annex III, ¶ 7, [hereinafter 1998 Rapporteur's Informal Summary].

identifying the possible actors of the criminal behavior; giving a description of the criminal activity (*actus reus*) including an enunciation of the prohibited behavior, the possible targets, and the possible instruments of the crime; and prescribing the degree of intent required for the crime to be imputable (*mens rea*).[47] Australia,[48] the Republic of Korea,[49] the Netherlands,[50] Germany,[51] Belgium, and France,[52] made various attempts to redraft the Russian proposals on the model of the bombings convention. For instance, the Korean formulation read:

> Article 1.*bis*
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally uses or threatens to use [nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances], their radioactive properties or a combination of radioactive properties with toxic, explosive or other dangerous properties; uses or destroys, or threatens to use or destroy, [any nuclear installations], [nuclear explosive or radiation-dissemination devices] and components thereof or objects of which they are components; [or home-made nuclear devices]:
> (a) With the intent to cause death or serious bodily injury; or
> (b) With the intent to cause substantial damage to property where such damage results in or is likely to result in major economic loss.
> 2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.
> 3. Any person also commits an offence if that person:
> (a) Participates as an accomplice in an offence as set forth in paragraphs 1 or 2; or
> (b) Organizes or directs others to commit an offence as set forth in paragraphs 1 or 2; or

---

[47] *Ibid.,* ¶ 12.

[48] Australia, "Proposal" U.N. Doc. A/AC.252/1998/WP.3 (Feb. 19, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 16.

[49] Republic of Korea, "Proposal," U.N. Doc. A/AC.252/1998/WP.2 (Feb. 19, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 16.

[50] Netherlands, "Proposal," U.N. Doc. A/AC.252/1998/WP.5 (Feb. 20, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 17.

[51] Germany, "Proposals on art. 1 and 1.bis," art. 1.bis, U.N. Doc. A/AC.252/1998/WP.13 (Feb. 23, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 20.

[52] Belgium and France, "Proposal," art. 1.bis, U.N. Doc. A/AC.252/1998/WP.1 (Feb. 21, 1998).

> (c) In any other way contributes to the commission of one or more offences as set forth in paragraphs 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.[53]

These proposals had important commonalities. All of them described the actor of the wrongful act as "any persons;" all of them removed the term "terrorism" from the definition of the offence, all of them required that the wrongful act be performed "unlawfully and intentionally;" and, all of them foresaw provisions on ancillary crimes similar to those of the Bombings Convention. However, there were substantial differences in the way they described the wrongful act and the intent requirements. For Australia, the wrongful act was the use or the threat of use of nuclear material as well as the manufacture of "home-made nuclear devices."[54] For the Netherlands, the wrongful act consisted, instead, of delivering, placing, discharging, detonating or using "in any other way radioactive materials or devices."[55] The manufacture of nuclear devices was not included in the Dutch proposal. For Germany, the wrongful act was "the unlawful manufacture, treatment, storage, use, transport, export or import" of nuclear material.[56] Finally, for France and Belgium, the wrongful acts consisted just in the possession or use of nuclear material.[57] These proposals also diverged in their treatment of the intent requirements. The Republic of Korea, following closely the precedent of the Bombings Convention, limited the crime to those actions committed with the intent to cause death,

---

[53] Republic of Korea, "Proposal," *supra* note 49, art. 1.bis.

[54] Australia, "Proposal," *supra* note 48, art. 1.bis.1.

[55] Netherlands, "Proposal," *supra* note 50, art. 1.bis.1.

[56] Germany, "Proposals on art. 1 and 1.bis," *supra* note 51, art. 1.bis.

[57] Belgium and France, "Proposal," *supra* note 52, art. 1.bis.1.

serious bodily injury, or substantial property damage "likely to result in major economic loss."[58] Australia, France, and the Netherlands, following the original Russian proposal, extended the provision to criminalize those acts intended to cause damage to the environment or to compel a person, a state, or an international organization to do or to refrain form doing any act.[59] Finally, the German proposal made punishable the possession and manufacture of nuclear materials, regardless of their purposes, as well as those acts intended to expose a large number of people to ionizing radiation or to endanger the life or limb of a person through a nuclear explosion.[60]

The ensuing debate focused mostly on the questions of the threat, the damage to the environment, and the dumping of nuclear material. Sweden, Austria, the Republic of Korea, and Japan believed that the new convention should not penalize a person who threatens to use a nuclear device, while not possessing such a device, and the attempt to threaten, when the no actual threat was made. Consequently, they argued that the threat to use nuclear devices should not be considered a principal crime in itself, but a form of attempt. On the other hand, the great majority of delegations believed that threatening to use nuclear devices to compel a person, a government, or an international organization to do something, should itself be criminalized.[61] In an effort to find a solution, Italy suggested to criminalize the threat of use of nuclear weapons as a separate offence, in a separate paragraph, and only when the person who makes the threat actually possesses a

---

[58] Republic of Korea, "Proposal," *supra* note 49, art. 1.bis.1.

[59] Australia, "Proposal," *supra* note 48, art. 1.bis.1; Belgium and France, "Proposal," *supra* note 52, art. 1.bis.1; Netherlands, "Proposal," *supra* note 50, art. 1.bis.1.

[60] Germany, "Proposals on art. 1 and 1.bis," *supra* note 51, art. 1.bis.

[61] Chile, China, Egypt, Germany, Greece, Iran, Mexico, Netherlands, Russian Federation, Slovakia, Spain, Sri Lanka, Syria, Turkey, Ukraine, United Kingdom, and the United States.

nuclear devices or radioactive material.[62] The Netherlands proposed that the provisions on the attempt should not apply to the threat of use of nuclear weapons.[63] Finally, Mexico argued that the new convention should penalize those who use threats to obtain nuclear materials or the components of nuclear devices, since this was already criminalized under the Physical Protection Convention.[64]

Delegations were also divided on whether to criminalize acts directed at causing substantial damage to the environment, as proposed by the Russian Federation. Japan, the United States, and the Republic of Korea were strongly opposed. They felt that the concept of damage to the environment was too vague to be used to describe the crime. Most delegations,[65] however, were in favor of criminalizing acts directed against the environment.[66] Germany, for instance, sought to criminalize the use, possession, and transport of radioactive substances likely to cause "substantial damage to the quality of air, soil, water, animals, plants or property."[67] Moreover, there were also sharp divisions regarding the dumping of nuclear waste. Syria and Lebanon[68] proposed to criminalize the "burying of nuclear waste or materials in an illegal manner on the territory of a third

---

[62] Italy, "Proposal," U.N. Doc. A/AC.252/1998/WP.19 (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 23.

[63] See Netherlands, "Proposal," *supra* note 50, art. 1.bis.2.

[64] U.N. Codification Division, "26 February 1998, 3:00 p.m.", at 7-9, (TD, summary of the oral proposals on the draft Nuclear Convention made in close meetings of the Ad Hoc Comm.'s working group and in informal consultations, for the use of the bureau, Feb. 26, 1998) (on file with the author); 1998 Rapporteur's Informal Summary, *supra* note 46, ¶¶ 14, 17.

[65] Egypt, Finland, Germany, Mexico, Netherlands, Portugal, Slovakia, Solomon Islands, Sweden, Syria, Turkey, Ukraine, and the United Kingdom. Slovakia, "Proposal ," U.N. Doc. A/AC.252/1998/WP.14 (Feb. 23, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 21.

[66] U.N. Codification Division, "26 February 1998, 3:00 p.m.", *supra* note 66, art. 1.bis, p. 8; 1998 Rapporteur's Informal Summary, *supra* note 46, ¶ 16.

[67] Germany, "Proposals on art. 1 and 1.bis," *supra* note 51, art. 1.bis.a.ii.

[68] Lebanon, "Proposal," art. 1.1.b, U.N. Doc. A/AC.252/1998/WP.12 (Feb. 23, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 19.

party, or dumping such waste in the sea."[69] Similarly, Libya advocated penalizing the transport of such waste across several countries.[70] The United States, however, strongly opposed these suggestions.[71] It seems that the proactive Arab position on the question of the dumping of nuclear wastes arose from their concerns regarding possible contamination by Israel's nuclear program. Already in 1996, there had been unconfirmed reports of a leakage of radioactive waste from Israel's Dimona reactor, which prompted high-level consultations between the Presidents of Egypt and Syria and an emergency meeting of the Council of the Arab League. Later, in 1998, there were reports of Israel dumping nuclear waste in the occupied Gaza Strip and in the Mediterranean, activities which were condemned by the Ministers of the Environment of the Arab League.[72] In addition, and notwithstanding the growing support for a definition of the offence based on that of the Bombings Convention, Syria and Libya preferred the original Russian draft, as it began by calling the offence "an act of nuclear terrorism." This position was in line with their longstanding efforts to define the concept of terrorism. Moreover, Syria and Libya also sought to criminalize persons who use or threaten to use nuclear devices

---

[69] Syria, "Proposals," art. 1.1.b, U.N. Doc. A/AC.252/1998/WP.25 (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 26-27.

[70] Libyan Arab Jamahiriya, "Proposal," art. 1.b, U.N. Doc. A/AC.252/1998/WP.32/Rev.1 (Feb. 25, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 31-32.

[71] U.N. Codification Division, "26 February 1998, 3:00 p.m.", *supra* note 66, p. 8.

[72] D'vora Ben Shaul, "Where will radioactive waste be dumped? A nuclear energy push," *The Jerusalem Post,* May 13, 1991; "Israel nuclear contamination jitters hit Egypt," *Deutsche Presse-Agentur,* May 27, 1996, 14:39 CEuT; "Israel denies pollution from nuclear waste site" *Agence France Pressse,* March 28, 1996; "Arabs appeal for international help on Dimona Reactor," *Deutsche Presse-Agentur,* April 9, 1996, 15:49 CEuT; Hassan Tahsin, "Frankly speaking: Israeli reactor pollutes the Mediterranean," *Saudi Gazette,* March 14, 1997; "Israeli nuclear activity under discussion at Arab League," *Arabic News*, July 7, 1998; "Arab ministers warn of risks posed by Israeli nuclear reactor," *Arabic News*, Nov. 30, 1998.

on behalf of their governments, bringing into the discussion questions of state-terrorism and of the legality of the use and possession of weapons by states.[73]

After this round of consultations, Germany, on one side, and Belgium and France, on the other, revised their respective proposals, trying to move closer towards a possible solution. Both texts sought to criminalize the possession and use of radioactive materials for the purpose of causing substantial damage to the environment. In addition, the revised Belgian and French proposal made clear that a mere attempt to threaten to use a nuclear device would not be penalized in itself.[74]

In parallel with the negotiation of the definition of the offence, the *Ad Hoc* Committee discussed the need to define some of its key terms, such as "radioactive material," "nuclear material," "nuclear fuel," and "nuclear device." The initial Russian draft already defined some of those terms using language taken from the 1979 Physical Protection Convention and the 1963 Vienna Convention on Civil Liability for Nuclear Damage.[75] At the very first meeting, however, the representative of the IAEA noted that some of the definitions proposed by Russia were out of date or inconsistent. He argued that those definitions had to be updated in line with the most recent legal instruments on the protection of nuclear material and the technical terminology currently in use by his Agency.[76] Similarly, the United States delegation argued that the key terms had to be both consistent with the existing treaties, and broad enough to cover comprehensively all

---

[73] Syria, "Proposals," *supra* note 69, art. 1.1; Libyan Arab Jamahiriya, "Proposal," *supra* note 70, preamble and arts. 1.b, 2.1.

[74] Belgium and France, "Proposal," art. 1.bis, U.N. Doc. A/AC.252/1998/WP.1/Rev.2, in 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 14-15; Germany, "Proposal," art. 1.bis.1, U.N. Doc. A/AC.252/1998/WP.20/Rev.1, (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 23.

[75] Russia's First Draft, *supra* note 29, art. 1.2-1.9; Convention on Civil Liability for Nuclear Damage, *adopted in* 1963, 1063 U.N.T.S. No. 16197.

[76] Press release of Feb. 17, 1998, *supra* note 41, pp. 10-11.

forms of nuclear-related terrorism.[77] The IAEA representative proposed a series of concrete, technical amendments to the Russian text,[78] which were well received. There was agreement that the key terms should be based of the IAEA proposed language.[79] Belgium and France formally introduced the texts suggested by the Agency:

> Article 1
> For the purposes of this Convention:
> (a) "Radioactive material" means any material containing nuclides which disintegrate spontaneously (a process accompanied by the emission of one or more types of ionizing radiation, such as alpha, beta, gamma or neutron radiation) and which could pose a threat to human life or health and/or cause substantial damage to property or the environment.
> Radioactive materials include:
> (i) Nuclear material as defined in subparagraph (b);
> (ii) Nuclear fuel as defined in subparagraph (c);
> (iii) Radioactive products as defined in subparagraph (d);
> (b) (i) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; or any material containing one or more of the foregoing;
> (ii) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
> (c) "Nuclear fuel" means any material capable of producing energy by means of a self-sustaining nuclear fission chain reaction;
> (d) "Radioactive products" means any radioactive material or any substance that has become radioactive through radiation as a result of the production or use of nuclear fuel. These substances include materials, objects, instruments, equipment and products of biological origin containing nuclides whose concentrations or activities exceed those established by the standards of the competent State authorities;
> (e) "Devices" include:
> (i) "A nuclear energy-releasing device" means any device containing nuclear material, designed or having the capacity to release nuclear

---

[77] United States, "Nuclear Terrorism Convention: U.S. overview," (TD, speaking notes for the United States delegations, Feb. 18, 1998 [?]) (on file with the author), at 3.

[78] International Atomic Energy Agency, *Comments of the Secretariat, supra* note 42, ¶¶ 5-22.

[79] U.N. Codification Division, "26 February 1998, 3:00 p.m.", *supra* note 66, art. 1.

energy through an uncontrolled self-sustaining chain-reaction process of fission;

(ii) "A dissemination device" means any device designed or having the capacity to spread radioactive material with a view to contaminating a surface or a space;

(iii) "A radiation device" means any device designed or having the capacity to emit, from radioactive materials, radiation at a level exceeding that established by the standards of the competent State authorities.[80]

The ensuing discussion focused, not on the precise terminology, but on whether it was necessary to enter into such a level of detail in the context of a criminal law instrument. The United States proposed to simplify the text by using the generic terms of "nuclear material," "other radioactive material," and "radiation device."[81]

By the end of the February session, the chairman of the *Ad Hoc* Committee noted that, if delegations choose to adopt the Russian initiative as a self-standing treaty, they had to take into account the language of the Bombings Convention, which had been adopted just three months before. In his view, since the Bombings Convention was the most up-to-date counter-terrorism instrument, any departure from its "provisions relating to international criminal law [was] inconceivable."[82] He noted, however, that some of the provisions of the Bombings Convention were not technical but the result of a political balance, and that, therefore, delegations had to choose whether to maintain those compromises or to reopen those issues.[83]

---

[80] Belgium and France, "Proposal," *supra* note 52, art. 1; *reproduced in* 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 14-15.

[81] U.N. Codification Division, "26 February 1998, 3:00 p.m.", *supra* note 66, art. 1, p. 3; United States, "Proposal," U.N. Doc. A/AC.252/1998/WP.36 (Feb. 25, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 33-34.

[82] Kirsch, *supra* note 41, ¶ 14.

[83] *Ibid.,* ¶ 15.

Negotiations on the Nuclear Convention continued from September 28 to October 9, 1998, in a working group of the Sixth Committee.[84] At the beginning of the session, the Friends of the Chairman submitted a set of articles aligning the technical, criminal law aspects of the draft convention with those of the Bombings Convention. The Friends simply copied into their new text the relevant articles of the Bombings Convention, such as the articles on jurisdiction, criminalization in internal law, judicial and police cooperation, non-refoulement, and the elimination of the political offence exception, among others. They also included the least controversial proposals of the Russia Federation on bilateral cooperation for the protection of nuclear material. The Friends of the Chairman, however, did not include any definition of the offence.[85] For its part, the Russian Federation did revise the definition of the offence. Its new text read:

> Article 1.*bis*
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses or uses, including by making, delivering, placing, transferring, altering, discharging, detonating or dispersing radioactive materials or devices, or uses or damages a nuclear facility:
> (a) With the intent to cause death or serious bodily injury; or
> (b) With the intent to cause substantial damage to property or the environment; or
> (c) With the intent to compel a natural or legal person, an international organization or a State to do or to refrain from doing an act.
> 2. Any person also commits an offence if that person:
> (a) Credibly threatens to commit an offence as set forth in paragraph 1 of the present articles;
> (b) Demands the release or transfer of nuclear material by threat or use of force or by any other form of intimidation.
> 3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

---

[84] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶¶ 1-4, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998) [hereinafter 1998 Working Group Report].

[85] The Friends of the Chairman, "Discussion paper" U.N. Doc. A/C.6/53/WG.1/CRP.1 (Sept. 24, 1998) in 1998 Working Group *Report*, *supra* note 84, at 18-22 [hereinafter Friends of the Chairman, Discussion paper of Sept. 24, 1998].

4. Any person also commits an offence if that person:
   (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
   (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or
   (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.[86]

Several elements of this proposal are noteworthy. First, following the Bombings Convention, this text did not seek to define "nuclear terrorism," but simply to describe "the offence within the meaning of this convention." Second, it contained a long list of wrongful acts: "making, delivering, placing, transferring, (…) radioactive materials or devices" similar to that of the Bombings Convention, but including both the manufacture of nuclear devices and the inappropriate use or damage to nuclear installations. Third, it incorporated the intent to cause death, bodily injury, and damage to property, as the Bombings Convention had done, but it included also the intent to cause damage to the environment and to compel a person, a state, or an international organization to do something. Moreover, unlike the Physical Protection Convention[87] and some previous proposals,[88] this text set forth the characteristic terrorist purpose of trying to compel somebody to do something as a separate intent heading for the actual use of nuclear materials, independently from the concept of threat. In other words, this text made punishable the use of nuclear materials to compel somebody, regardless of whether a

[86] Russian Federation, "Proposal concerning art. 1.bis," U.N. Doc. A/C.6/53/WG.1/CRP.2 (Sept. 28, 1998) in 1998 Working Group *Report*, *supra* note 84, at 26 [underlined in the original].

[87] Physical Protection Convention, *supra* note 21, art. 7.1.e.ii.

[88] See Belgium and France, "Proposal," *supra* note 74, art. 1.bis.1.c; Germany, "Proposal," *supra* note 74, art. 1.bis.c.ii; Netherlands, "Proposal," *supra* note 50, art. 1.bis.1.c.

credible threat was actually made. In addition, following the Physical Protection Convention,[89] this proposal contained a separate article on the question of the threat, making punishable both a credible threat to use nuclear materials and any extortion to obtain those materials, while stressing that the provisions on the attempt would not apply to the threat. Moreover, this text included provisions on complicity and participation identical to those of the Bombings Convention.[90] Finally, the Russian Federation also submitted a revised article on the key definitions, following closely the United States' February suggestion to simplify the IAEA texts.[91]

The working group decided to work on the basis of the new Russian proposals. The chairman then asked the delegation of Finland to conduct informal consultations on the definition of the offence, and the delegation of the United Kingdom to work on the general definitions.[92] The ensuing discussions focused on four main topics: the list of possible wrongful acts, the level of damage to nuclear facilities, the damage to the environment, and the question of the threat. [93] On the description of the wrongful acts, some delegations, including Belgium, Finland, and Japan[94] feared that a detailed listing, such as the one proposed by Russia, might be interpreted restrictively; thereby unintentionally excluding from the convention some criminal actions that, in hindsight,

---

[89] Physical Protection Convention, *supra* note 21, art. 7.1.d-7.1.f.

[90] Bombings Convention, *supra* note 39, art. 2.

[91] Russian Federation, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.7 (Sept. 29, 1998) in 1998 Working Group *Report*, *supra* note 84, at 29-30. *Cf.* United States, "Proposal," *supra* note 77.

[92] U.N. Codification Division, "Introductory note to the discussion of CRP.1/Rev.1" (TD, talking notes prepared for the use of the Chairman, Oct. 6, 1998 [?]) (on file with the author).

[93] The Chairman, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussions in the Working Group," ¶¶ 22-30, in 1998 Working Group Report, *supra* note 84, Annex III [hereinafter 1998 Chairman's Informal Summary].

[94] Also Austria, Portugal, Sweden, and the United Kingdom.

should have been included. As a possible solution, Portugal[95] suggested reference to the possession or use "in any way" of radioactive materials. France[96] proposed the deletion of the reference to "devices," as being superfluous. For their part, Lebanon, Libya, and Syria[97] reiterated their proposal to criminalize the dumping of radioactive waste in the high seas and on dry land.[98] Most delegations believed that it was necessary to qualify the reference to the damage to nuclear facilities, to exclude from the convention minor damage caused to nuclear facilities in the context of peaceful, civil protest against nuclear power, that do not pose a real threat to those installations. Belgium[99] proposed criminalizing the causing of substantial damage to "a nuclear facility in a manner which releases or risks the release of radioactive material,"[100] France suggested penalizing the causing of "serious damage to the operation of a nuclear facility,"[101] and Germany[102] proposed to punish "causing substantial damage to a nuclear facility related to its nuclear components."[103] For its part, Australia[104] argued that the reference to nuclear facilities could be deleted as it was implicitly covered by the reference to the dissemination of

---

[95] Supported by El Salvador but opposed by Argentina and Malawi.

[96] Supported by Algeria and Malawi.

[97] Supported by Ecuador.

[98] U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," p. 2, (TD, summary of the oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Sept. 30, 1998) (on file with the author); 1998 Chairman's informal summary, *supra* note 93, ¶ 23.

[99] Supported by Argentina, Austria, Finland, Japan, Mexico, Peru, Portugal, Russian Federation, Sweden, and the United States.

[100] Belgium, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.9 (Sept. 30, 1998) in 1998 Working Group *Report*, *supra* note 84, at 30.

[101] France, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.5/Rev.1, art.1.bis.1 (Oct. 1, 1998) in 1998 Working Group *Report*, *supra* note 84, at 28.

[102] Supported by Argentina, Finland, Japan, Peru, and the United Kingdom.

[103] U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," *supra* note 98, at 2.

[104] Supported by Algeria, Argentina, and Finland but opposed by Malawi and the United States.

nuclear material.[105] Regarding damage to the environment, China, the Republic of Korea, Japan, and the United States felt that the concept was too imprecise and that its essence was implicitly covered by the references to damage to property and to the causing of death or serious bodily injury. The majority of delegations,[106] however, preferred its retention.[107]

On the question of the threat, positions were divided. Some delegations, including Belgium, the United Kingdom, and the United States,[108] welcomed the Russian formulation that made the intention to compel a separate intent heading under the principal crime. Others, such as Germany[109] and Japan,[110] preferred instead the previous approach, based on the 1979 Convention,[111] which had linked the intention to compel to the threat. France proposed using the same intent headings for both the principal crime and the threat, so that both the actual use of radioactive material and the threat of using them to cause death, bodily injury, damage to the environment, and to compel somebody, would be punishable.[112] Finally, some delegations[113] thought that it was not necessary to specify that the threat be credible, while others[114] emphasized that requirement.[115]

---

[105] 1998 Chairman's informal summary, *supra* note 93, ¶ 23(f); U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," *supra* note 98, at 2.

[106] Argentina, Australia, Belgium, El Salvador, Finland, Malawi, Mexico, Portugal, Sweden, and the United Kingdom.

[107] 1998 Chairman's Informal Summary, *supra* note 93, ¶ 25; U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," *supra* note 98, at 2-3.

[108] Also Australia, El Salvador, France, Malawi, and Portugal.

[109] Germany, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.3, art.1.bis.2.a (Sept. 29, 1998) in 1998 Working Group *Report*, *supra* note 84, at 27.

[110] Also Austria, China, Mexico, Peru, and Sweden.

[111] Physical Protection Convention, *supra* note 21, art. 7.1.e.ii.

[112] France, "Proposal," *supra* note 101.

[113] Austria, El Salvador, Japan, Portugal, and Sweden.

[114] Algeria, Belgium, and the United States.

After these consultations, the Finnish delegate, as coordinator on the definition of the offence, made several important changes to the Russian text. First, following Portugal's suggestion,[116] she decided to simplify the list of wrongful acts and to distinguish clearly between the crime of possessing radioactive material or a nuclear device, the crime of using it, and the crime of threatening to use it. Second, following France's suggestion, she gave each form of the crime its own intent requirements. Third, she chose to retain the reference to the damage to the environment, as it was supported by most delegations, and, fourth, she made the requirement of credibility of the threat easier to prove in court, by making possible such inference from the concrete circumstances of each case.[117] For its part, the United Kingdom prepared a revised version of the article on general definitions. The only substantial change to the Russian text was to specify that "device" meant any "radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment,"[118] thus excluding from the convention the use of low-level radiological devices that cannot cause real harm. Thus, on October 6, 1998, the Friends of the Chairman prepared a consolidated text of the Convention containing both Finland's and the United Kingdom's proposals on the definition of the offence and of the key terms. On

---

[115] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 26-27; U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," *supra* note 98, at 3.

[116] See *supra* p. 11.

[117] Finland, "Revised text prepared by the Coordinator as a result of informal consultations," U.N. Doc. A/C.6/53/WG.1/CRP.27, (Oct. 5, 1998) in 1998 Working Group *Report*, *supra* note 84, at 39-40.

[118] United Kingdom, "Revised text prepared by the Coordinator as a result of informal consultations," art. 1.4.b, U.N. Doc. A/C.6/53/WG.1/CRP.26, (Oct. 5, 1998) in 1998 Working Group *Report*, *supra* note 84, at 39.

the question of attempt and conspiracy, the Friends reproduced the language of the Bombings Convention.[119]

In the next round of consultations, there was growing support for the text prepared by Finland. Australia, the United Kingdom, the United States, and India had some reservations to determining the credibility of the threat through the circumstances of the case, but could accept the formulation as a whole. Japan sought to delete the reference to the use of devices, but did not receive any support, and Libya, Syria, and Sudan[120] reiterated their suggestion to criminalize the damage to the environment caused by the dumping of radioactive waste, but the United States strongly objected.[121]

On the last day of meetings of the working group, October 9, 1998, the Friends of the Chairman felt that there was growing consensus on the Finnish and the British proposals and decided to reproduce them in the final consolidated text of the draft Nuclear Convention. Thus, the final version of the definition of the crime read:

> Article 2
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
>   (a) Possesses radioactive material or makes or possesses a device:
>   (i) With the intent to cause death or serious bodily injury; or
>   (ii) With the intent to cause substantial damage to property or the environment;
>   (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

---

[119] The Friends of the Chairman, "Discussion paper" U.N. Doc. A/C.6/53/WG.1/CRP.1/Rev.1 (Oct. 6, 1998) in 1998 Working Group *Report*, *supra* note 84, at 23-25 [hereinafter Friends of the Chairman, Discussion paper of Oct. 6, 1998].

[120] Lebanon, Syria, Nigeria, Libya, and Sudan, "Proposal," A/C.6/53/WG.1/CRP.33 (Oct. 8, 1998) in 1998 Working Group *Report*, *supra* note 84, at 42.

[121] U.N. Codification Division, "CRP.1/Rev.1, Comments by delegations, Oct. 7, 1998, 18:30," (TD, summary of the oral proposals made in close meetings of the Working Group, for the use of the bureau, Oct. 7, 1998) (on file with the author); 1998 Chairman's Informal Summary, *supra* note 93, ¶ 31-33.

(i) With the intent to cause death or serious bodily injury; or
(ii) With the intent to cause substantial damage to property or the environment; or
(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:
   (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in subparagraph 1 (b) of the present article; or
   (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
4. Any person also commits an offence if that person:
   (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
   (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or
   (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.[122]

When this text was introduced, the only comments came from Sudan, Nigeria, and Libya who insisted on the need to include a reference to the dumping of nuclear wastes.[123] As there was no time for further discussions, the working group decided to submit this text, together with the observations of delegations, for the consideration of the Sixth Committee.[124] Seven and a half years later, on April 13, 2005, the General

[122] Friends of the Chairman, "Revised Text, Draft International Convention for the Suppression of Acts of Nuclear Terrorism," art. 2, U.N. Doc. A/C.6/53/WG.1/CRP.35/Add.1 (Oct. 9, 1998) in 1998 Working Group *Report*, *supra* note 84, at 4-15 [hereinafter Friends of the Chairman, Consolidated draft of Oct. 9, 1998].

[123] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 35-36; Carlos F. Díaz, Autograph notes on the negotiation of the Nuclear Convention, taken down as an official representative of Costa Rica in those negotiations, Oct. 9, 1998, 12:25 p.m., on file with the author.

[124] 1998 Working Group *Report*, *supra* note 84, ¶ 10.

Assembly was to adopt this text, without any change, as the key provision of the Nuclear Terrorism Convention.[125]

C) The return of the nuclear material and the compensation for any damages

When the Russian Federation introduced its first draft of the Convention on the Suppression of Acts of Nuclear Terrorism, it stressed that one of the most important elements of the new instrument was a provision on "post-crisis measures," that is, of a mechanism to ensure that any nuclear materials or components seized by the police after a terrorist incident be returned to its rightful owners. Russia noted that the provisions of the Physical Protection Convention already stipulated the restitution of nuclear material in case of theft.[126] However, in its view, those provisions were inadequate because they made the return both optional and subject to national legislation. Moreover, those

---

[125] Nuclear Convention, *supra* note 1, art. 2.

[126] Physical Protection Convention, *supra* note 21, art. 5.2:

> 2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, State Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:
>
> a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;
>
> b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawful taken nuclear material and shall:
>
> i) co-ordinate their efforts through diplomatic and other agreed channels;
>
> ii) render assistance, if requested;
>
> iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.
>
> The means of implementation of this co-operation shall be determined by the States Parties concerned.

provisions allowed the state that had seized the radioactive material to transfer it to any state that requested it. In Russia's view, the return of nuclear materials and, in particular, of weapons-related nuclear components, had to be mandatory and directed only to their rightful owner.[127] To address these deficiencies, Russia proposed the following text:

> Article 10
>
> 1. Upon the completion of the proceedings connected with an act of nuclear terrorism, if it is considered feasible, any nuclear material, nuclear fuel, radioactive products or waste or any other radioactive substances as well as nuclear installations, nuclear explosive or radiation-dissemination devices, including homemade devices and/or their components or objects of which they are components shall be returned to the State party, to which they belong or which was the State of their origin.
>
> 2. If the material, fuel, products, waste, substances, installations, devices, their components or objects of which they are components set forth in paragraph 1 of this article do not belong to any of the States parties, or if none of those States was the State of their origin, a separate decision concerning their use shall be taken after consultations between the States concerned.[128]

It should be noted that this proposal did not require either international cooperation for the management of the radioactive materials involved in a nuclear terrorism incident or the payment of compensation for any damage caused by such an incident. Those questions arose gradually in the course of the discussions.

When the *Ad Hoc* Committee considered the proposed article on the return of seized radioactive materials, the representative of the IAEA expressed some concerns. He noted that the proposed article could overlap with the legal regime developed by his organization on the safeguarding and management of nuclear materials, including not only the Physical Protection Convention but also the more recent Recommendations on physical protection; the Convention on the assistance in the case of a nuclear accident or

---

[127] Russia, "Explanatory note," *supra* note 32, ¶¶ 39-45; 1998 Ad Hoc Comm. Report, *supra* note 29, ¶ 20.

[128] Russia's First Draft, *supra* note 29, art. 10.

radiological emergency; and the Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management.[129] In his view, a possible contradiction between the new Nuclear Convention and those IAEA instruments could actually undermine the legal regime for the protection of nuclear materials. Consequently, he believed that is was necessary to ensure consistency between any norms included in the new convention and the existing IAEA recommendations.[130] The United States, the Republic of Korea, Japan, and the Netherlands shared the IAEA's concerns. The United States argued that the *Ad Hoc* Committee was not the best forum to consider issues related to the physical protection of nuclear material. In its view, those issues were outside the area of expertise of the committee, which was mandated only to consider criminal law measures against terrorism. For the United States, issues related to the protection and management of radioactive materials belonged to a review conference of the Physical Protection Convention, to be held under the IAEA's auspices. Similarly, the Republic of Korea argued that the *Ad Hoc* Committee should focus on the counter-terrorism measures and not on issues related to the physical protection of the nuclear material.[131]

After the general debate, the Russian draft was considered paragraph-by-paragraph. Article 10 was discussed on February 23, 1998. At that stage, delegations focused mainly on three questions: first, what would be the conditions for the return of

---

[129] IAEA, "Recommendations on Physical Protection," IAEA Doc. INFCIRC/225/Rev.3; Convention on the assistance in the case of a nuclear accident or radiological emergency, *adopted on* Sept. 26, 1986, IAEA Doc. INFCIRC/336 (Sept. 22, 1997); Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management, adopted on Sept. 5, 1997, IAEA Doc. GOV/INF/821-GC(41)/INF/12 (Sept.22, 1997).

[130] International Atomic Energy Agency, *Comments of the Secretariat, supra* note 42, ¶¶ 35-44; Press release of Feb. 17, 1998, *supra* note 41, p 11.

[131] United States, "Nuclear Terrorism Convention: U.S. overview," *supra* note 77, p. 3; 1998 Ad Hoc Comm. Report, *supra* note 29, ¶ 23; Press release of Feb. 17, 1998, *supra* note 41, pp. 8-10.

the nuclear material; second, what would actually be involved in the return of those materials; and, third, how would the IAEA contribute to the implementation of this provision. On the first topic, the conditions for the return of the nuclear material, Russia sought to make the obligation to return the seized material to its rightful owner unconditional, to the point where the state of origin was to be obliged to accept those materials back. The United States and China argued, on the contrary, that such an obligation had to be subject to the conditions imposed by each state's national legislation, since many nations were precluded, by their own laws, from exporting or transferring nuclear materials and components to third states. In this context, they recalled that the Physical Protection Convention already subjected the return of nuclear material to the domestic legislation of the requested state.[132] In addition, the United Kingdom, the United States, China, and Russia itself argued that the return of the seized materials had to be subject also to each state's obligations under the Non-Proliferation Treaty and the IAEA Safeguard Agreements not to transfer nuclear weapons, nuclear weapons components, or nuclear weapons-grade material to states that are not entitled, under those instruments, to posses them.[133] The Non-Proliferation Treaty, in particular, establishes that only the five declared nuclear powers, and no other, are entitled to possess nuclear weapons; and strictly forbids the transfer of those materials to non-nuclear states. [134] On

---

[132] Physical Protection Convention, *supra* note 21, art. 5.2.

[133] U.N. Codification Division, "Article 10, 26 February, 3:00 p.m.," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the bureau, Feb. 26, 1998) (on file with the author); 1998 Rapporteur's Informal Summary, *supra* note 46, ¶¶ 35-36.

[134] Treaty on the Non-Proliferation of Nuclear Weapons, arts. 1, 2, 3.2, July 1, 1968, IAEA Doc. INFCIRC/140 (22 April 1970) [hereinafter NPT]:

> Article 1
>
> Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any

the second question, the actual content of the obligation, France argued that it was necessary to address the responsibility of the state of origin of the nuclear material to pay for any damage that might have been caused by a terrorist attack as well as for the subsequent clean-up. Implicit in this proposal was the question of whether and to what extent the state that owned the nuclear material was legally and financially responsible for allowing that dangerous material to fall into the hands of a terrorist. Côte d'Ivoire and Belgium suggested a reference to promoting technical and financial cooperation for those states that might required it in order to return any seized radioactive materials; and Egypt noted that, in some cases, it might not be feasible to return those materials since they might have been dispersed or consumed.[135] In addition, most delegations sought to involve the IAEA in assisting states to implement this provision.[136] However, Russia believe that the IAEA should only be involved at the request of the states concerned while Pakistan believed that the return of the nuclear material had to be arranged at the

---

non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article 2

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Article 3

(…)

2. Each State Party to the Treaty undertakes not to provide: *(a)* source or special fissionable material, or *(b)* equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

[135] U.N. Codification Division, "Article 10, 26 February, 3:00 p.m.," *supra* note 133; 1998 Rapporteur's Informal Summary, *supra* note 46, ¶¶ 36-37.

[136] Australia, China, Egypt, Japan, Libya, Netherlands, Syria, and the United States. Libyan Arab Jamahiriya, "Proposal," *supra* note 70, art. 10.

bilateral level, without the involvement of the Agency.[137] Finally, at the end of the spring session of the *Ad Hoc* Committee, the Republic of Korea proposed a simplified formulation of article 10, which left most of the details of its actual implementation to the relevant IAEA instruments and recommendations.[138] This concise approach, however, did not receive any support. Thus, by the spring session, the debate had made delegations alert to the various problems that would arise from the management of the radioactive material after a nuclear terrorist incident occurred, but no clear solution was in sight.

At the beginning of the fall session of the working group, the Friends of the Chairman circulated a discussion paper aligning the criminal law provisions of the proposed Nuclear Convention with those of the Bombings Convention. However, they did not feel ready to propose any language on the question of the return of nuclear material or compensation for damages.[139] For its part, the Russian Federation used the intersessional period to revise article 10 and to address some of the concerns raised during the spring. Its new text read:

> Article 10
>
> 1. Upon the completion of any proceedings connected with an offence under article 1 *bis*, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned to the State Party to which it belongs or to the State Party whose natural or legal person is the owner of such material, device or facility, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained, after consultation with the States Parties concerned.
>
> 2. If national or international law prohibits a State Party from returning or accepting such radioactive material, device or nuclear facility in accordance with paragraph 1, the State Party in possession of it shall:

---

[137] U.N. Codification Division, "Article 10, 26 February, 3:00 p.m.," *supra* note 135; 1998 Rapporteur's Informal Summary, *supra* note 46, ¶ 36.

[138] Republic of Korea, "Proposal," U.N. Doc. A/AC.252/1998/WP.16 (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 22.

[139] Friends of the Chairman, Discussion paper of Sept. 24, 1998, *supra* note 85, art. 10, n. 19.

a) Ensure that any nuclear material is stored in accordance with applicable International Atomic Energy Agency safeguards;
b) Have regard to physical protection guidelines and health and safety standards published by the International Atomic Energy Agency;
c) Ensure, if it is not lawful for that State to possess such radioactive material, device or nuclear facility, that it is immediately placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 2 (a).

3. If the radioactive material, device or nuclear facility referred to in paragraphs 1 and 2 of the present article does not belong to any of the States Parties or to a natural or legal person of a State Party and was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such material, device or facility pursuant to paragraph 2 (c) of the present article, a separate decision concerning its disposition shall be taken after consultations between the States and any relevant international organizations concerned.

4. For the purposes of paragraphs 1, 2 and 3 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties and any relevant international organizations, including the International Atomic Energy Agency.

5. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Secretary-General of the United Nations of the manner in which such radioactive material, device or facility was disposed of or retained. The Secretary-General of the United Nations shall transmit the information to the other States Parties.[140]

The first paragraph of this proposal established clearly the legal duty to return the nuclear material to its rightful owner. The second paragraph addressed the situation where either domestic or international laws preclude the state from returning the seized materials. In those cases, the state was required to protect those materials in accordance with the IAEA guidelines. Paragraph 2.c addressed the situation where a state, having defused a nuclear terrorist attack, finds itself in possession of a nuclear weapon or component that it is not entitled to posses under the Non-Proliferation Treaty. In such

[140] Russian Federation, "Proposal," A/C.6/53/WG.1/CRP.13 (Oct. 1, 1998) in 1998 Working Group *Report*, *supra* note 84, at 32.

circumstances, the Russian proposal asked the state to transfer the material in question to a country entitled to posses it and who has committed itself to safeguard it in conformity with the IAEA standards. The third paragraph asked states to consult both among themselves and with the IAEA in case the radioactive material was produced by the terroristS themselves or where no state is willing to receive it. The fourth paragraph sought to facilitate the provision of financial and technical assistance to any state that might need it in order to implement this provision, as had been suggested by Côte d'Ivoire; and the final paragraph requested states to inform the Secretary-General of the United Nations of any actions they take pursuant to this provision. Although this proposal addressed many of the questions raised during the previous debate, it did not deal either with the question of the state of origin's responsibility for the damage arising from a nuclear terrorist incident or the question of who would pay for the cost of returning the nuclear material.

On October 2, 1998, the working group discussed this new revised draft. Some of the comments were of a drafting nature, such as specifying by name the IAEA whenever international organizations were mentioned;[141] but others were substantive. The questions of international cooperation for managing the radioactive materials and of compensation for the damages caused by the nuclear materials, as well as for their return, came to the fore.[142] On the fist question, Ecuador, Algeria and Portugal advocated strengthening the provision on technical and financial assistance, making it obligatory for

---

[141] See *e.g.* Austria, "Proposal," art. 10.6-10.7, A/C.6/53/WG.1/CRP.21 (Oct. 5, 1998) in 1998 Working Group *Report*, *supra* note 84, at 35-36.

[142] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 73-86; U.N. Codification Division, "Article 10, Oct. 2 1998, 17:00," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 2, 1998) (on file with the author).

states to reply positively to any request for such assistance.[143] Similarly, Germany made a detailed proposal establishing a duty to cooperate, in accordance with the 1986 Convention on assistance in case of a nuclear accident or radiological emergency, if an incident of nuclear terrorism occurred, and to facilitate the transmission of any request for assistance to all states.[144] France[145] proposed that a country that could not return the radioactive material to its owner must render it safe.[146] Austria[147] went further by arguing that the nuclear material had to be rendered safe, in accordance with the IAEA safeguards, as soon as it was seized, without waiting to determine whether it was possible to return it.[148] Portugal and Finland suggested that owner of the nuclear material had to be obliged to accept it back.[149] Pakistan, which had just tested its own nuclear weapons and objected to the NPT rule establishing that only the five declared nuclear powers could posses those weapons,[150] rejected paragraph 2.c, which referred implicitly to that rule. Pakistan suggested transforming that paragraph from an assessment of the state's legal obligations into a consideration of its technical capacity, or lack thereof, to hold the

---

[143] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 76, 79; U.N. Codification Division, "Article 10, Oct. 2 1998, 17:00," *supra* note 142, at 2-3.

[144] Germany, "Proposal," art. 10.1-10.3. A/C.6/53/WG.1/CRP.24 (Oct. 5, 1998) in 1998 Working Group *Report*, *supra* note 84, at 37-38.

[145] Supported by Algeria, Belgium, China, Finland, Germany, Mexico, Spain, United Kingdom, and the United States.

[146] France, "Proposal," art. 10.2.a, A/C.6/53/WG.1/CRP.13 (Oct. 1, 1998) in 1998 Working Group *Report*, *supra* note 84, at 33.

[147] Supported by Belgium, Republic of Korea, United Kingdom, and the United States.

[148] Austria, "Proposal," *supra* note 141, art. 10.1.

[149] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 76, 81; U.N. Codification Division, "Article 10, Oct. 2 1998, 17:00," *supra* note 142, at 2-3.

[150] On May 11 and 13, 1998, India conducted 5 nuclear tests. On May 28 and 30, 1998, Pakistan followed suit by testing its own nuclear weapons. On June 6, the Security Council condemned those tests, urged both nations to resume political dialog, and called them to stop their nuclear weapons programs. The Council recalled that neither India nor Pakistan could acquire the status of declared nuclear state under the NPT. See S.C. Res. 1171 (1998), ¶¶ 1, 5, 7, 11, U.N. Doc. S/RES/1172 (June 6, 1998).

seized radioactive material.[151] Austria argued that the state that owned the radioactive material had to bear the cost of its return.[152] France[153] and Italy[154] argued that the payment of both the cost of the return and the compensation for any damages had to be settled among the states concerned in conformity with the international rules on civil liability for nuclear damage and on state responsibility. China argued for a softer formulation of this obligation, so that, if there was a dissemination of radioactive materials, states should endeavor to return to a normal situation "within the framework of international law and practice."[155] Meanwhile, Belgium, the United States, the United Kingdom among others,[156] preferred not to address, in this convention, the question of which state would pay for the damages. As a possible solution, Germany suggested making explicit that this convention would not affect the legal norms on civil liability for nuclear damage.[157] Finally, Japan[158] and the United States proposed a clause noting that this article would not prejudice the rights of third parties.[159] It should be noted that the formulation of this provision was important because, at the time, there were no international norms addressing specifically the question of the responsibility of a state for terrorist acts committed using its nuclear materials. France was proposing to recognize,

---

[151] Pakistan, "Proposal," A/C.6/53/WG.1/CRP.22 (Oct. 5, 1998) in 1998 Working Group *Report*, *supra* note 84, at 36.

[152] Austria, "Proposal," *supra* note 141, art. 10.3.

[153] France, "Proposal," *supra* note 146, art. 10.5.

[154] Supported by Algeria, Finland, Germany, Mexico, Spain, and Switzerland.

[155] China, "Proposal" art. 10.5, alternative II, A/C.6/53/WG.1/CRP.19 (Oct. 2, 1998) in 1998 Working Group *Report*, *supra* note 84, at 35.

[156] Australia, Netherlands, and Ukraine.

[157] Germany, "Proposal," *supra* note 144, art. 10.8.

[158] Japan, "Proposal," A/C.6/53/WG.1/CRP.16 (Oct. 1, 1998) in 1998 Working Group *Report*, *supra* note 84, at 34.

[159] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 82-84; U.N. Codification Division, "Article 10, Oct. 2 1998, 17:00," *supra* note 142, at 3-4.

in principle, a duty to pay reparations while other delegations preferred to leave the question open, to be solved in each case on the basis of general principles law. As these discussions seemed to grow in complexity, the chairman of the working group asked the delegation of Australia to lead informal consultations on this provision, with a view to find an agreement. In addition, the Friends of the Chairman decided to leave this article blank in their next consolidated text.[160]

On October 5th, Australia prepared a consolidated text that contained some alternative formulations in brackets, indicating issues or formulations that needed to be further elaborated and agreed. This text contained several important changes to that prepared by Russia. First, it obliged any state unable to return the nuclear material to render it harmless, as suggested by France. Second, it called upon states and international organizations to consider favorably any request for assistance and cooperation from a state that found itself in possession of nuclear material as a result of a terrorist incident. Third, it established that, if some radioactive material was disseminated, the financial consequences of returning to normalcy would be governed by the general principles of international law, while, in a separate article, it provided that the new Convention would not affect in any way the rules of international law governing civil liability for nuclear damage.[161]

After another round of informal consultations, Australia prepared a further revision of article 10. It reorganized the text, as suggested by the Netherlands, to ensure that, as soon as a state seizes the nuclear material, it takes steps to render it harmless, to

---

[160] Friends of the Chairman, "Discussion paper of Oct. 6, 1998," *supra* note 119, art. 10; U.N. Codification Division, "Introductory note to the discussion of CRP.1/Rev.1," *supra* note 92, at 2.

[161] Australia, "Article 10 – Informals' rolling text – 5 October 1998," (TD, Oct. 5, 1998) (on file with the author).

hold it in accordance with the applicable IAEA safeguards, and to observe the IAEA recommendations on the physical protection of nuclear material and on heath and safety. This text suggested, in brackets, that any returned nuclear material would be used only for peaceful purposes. The revised text also encouraged states and international organizations to provide assistance and cooperation, "to the maximum extent possible," to any nation that might need it to safely manage the seized material; and, in a separate article, it stressed that the new convention would not affect the rules of international law regarding who would bear liability for the damage generated by the radioactive materials in case of their dissemination. This text did not mention, however, who would bear the cost for the return of the nuclear material. It provided, though, that the state that had seized the material and its owner had to consult on the modalities for its return, which was understood to include the need to agree on who would pay for it.[162] The new article on compensation read:

> Article 10.bis
>
> In the event of any dissemination in connection with an offence under article 1 *bis*, nothing in this Convention shall affect in any way the rules of international law governing [the regime of civil] liability for nuclear damage or other rules of international law. [163]

The Australian delegate introduced this text to the plenary of the working group on October 8, 1998. In her view, it formed a compromise which could enjoy the support of most delegations. Nevertheless, not all delegations were satisfied with this new text. France, Germany, Italy, and Switzerland argued that the question of civil responsibility of

---

[162] Australia "Revised text prepared by the Coordinator as a result of informal consultations," A/C.6/53/WG.1/CRP.31 (Oct. 7, 1998) in 1998 Working Group *Report*, *supra* note 84, at 41-42.

[163] *Ibid.,* art. 10.bis.

nuclear damage had to be addressed. They proposed that it state univocally that compensation for any damage must be provided, following consultations among the states concerned and in accordance with international law. Their proposal read:

> 5. Where the commission of the offences referred to in article 1 *bis* of this Convention causes nuclear damage, compensation shall be provided, following consultation and cooperation among the States Parties concerned, in accordance with the principles and rules of applicable international law.[164]

The United States, the United Kingdom, and Austria preferred, on the contrary the text proposed by the coordinator because it did not contained an *a priori* commitment by the state of origin of the radioactive materials to pay compensation for their criminal use.

Meanwhile, some delegations sought to reinsert a reference to the duty of the state of origin to pay the costs of the restitution of the nuclear material. Others, however, preferred the coordinator's text, believing that it was broad enough to accommodate those who would want to negotiate bilaterally and on a case-by-case basis the payment of the restitution expenses, without imposing a strict obligation to pay, which, in their view, could discourage the return of the seized nuclear materials. Mexico, Malawi, and Portugal sought to create a positive duty to provide cooperation and assistance with the state that had seized the radioactive material, something which was voluntary in Australia's text; but Japan and China objected. Mexico and others[165] stressed that the nuclear material returned was to be used only for peaceful purposes. Finally, Pakistan

---

[164] France, Germany, and Italy, "Proposal," A/C.6/53/WG.1/CRP.29 (Oct. 7, 1998) in 1998 Working Group *Report*, *supra* note 84, at 40.

[165] Belgium, China, Cuba, France, Malawi, Netherlands, Russia, and Switzerland.

maintained its proposal not to mention those situations where it was unlawful for a state to possess certain nuclear materials.[166]

On the basis of these consultations, and on the last day of meetings, October 9, the Friends of the Chairman proposed the following text:

> Article 18
>
> 1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of it shall:
>
> (a) Take steps to render harmless the radioactive material, device or nuclear facility;
>
> (b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and
>
> (c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.
>
> 2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.
>
> 3(1). Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3(2) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.
>
> 3(2). Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are as soon as possible placed in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such

[166] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 86-93; U.N. Codification Division, "8 October 1998," (TD, summary of debate in the working group, for the use of the Friends of the Chairman, Oct. 8, 1998) (on file with the author); U.N. Codification Division, "Article 10, CRP.31, 8 October 1998, 18:00" (TD, summary of proposals made in the working group, for the use of the Friends of the Chairman, Oct. 8, 1998) (on file with the author).

radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such item pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3(2) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.[167]

This text corresponded essentially to the last text prepared by Australia, with some minor drafting changes. The principal difference between the two texts was that the clause on liability for nuclear damage was included in this article, as paragraph 7, rather than in a separate one. The proposal by France, Germany, and Italy to refer explicitly to the obligation to pay compensation was not included.[168] In addition, the language requiring the peaceful use of any returned nuclear materials was maintained. As the

[167] Friends of the Chairman, Consolidated draft of Oct. 9, 1998, *supra* note 122, art. 18.

[168] U.N. Codification Division, "Introductory note to the revised text of the draft Convention for the Suppression of Nuclear Terrorism," (TD, speaking notes for the Chairman, Oct. 9, 1998) (on file with the author).

session of the working group was coming to a close, this text was forwarded to Sixth Committee for its further consideration.[169] In the following years, this article was not subject to further discussions. Consequently, on April 13, 2005, it was adopted, without any changes, as part of the Nuclear Terrorism Convention.[170]

D) The question of military forces and non-proliferation

One of the arguments raised by the Russian Federation to justify the negotiation of a new instrument on nuclear terrorism was the fact that the 1979 Physical Protection Convention applied only to radioactive materials used for peaceful purposes.[171] Consequently, at the time, there were no international norms providing for the criminalization and punishment of anyone who stole or used, for criminal purposes, nuclear materials and nuclear devices destined for military use.[172] To fill this gap in the legal regime, the Russian Federation proposed that there be no distinction between those materials, devices, and installations used for peaceful purposes and those meant for military purposes. As a consequence, all criminal acts involving nuclear materials would be treated on the same plane.[173] This proposal, however, brought into the draft convention a problem already faced during the negotiations of the Bombings Convention,[174] that is, that the wrongful act: the possession and use of nuclear materials to kill, destroy property, or to force a government to do or to abstain from doing

---

[169] 1998 Working Group *Report*, *supra* note 84, ¶ 10.

[170] Nuclear Convention, *supra* note 1, art. 18.

[171] Physical Protection Convention, *supra* note 21, art. 2.

[172] Russia, "Explanatory note," *supra* note 32, ¶ 4; Press release of Feb. 17, 1998, *supra* note 41, p. 3.

[173] Russia, "Explanatory note," *supra* note 32, ¶ 15; Russia's First Draft, *supra* note 29, art. 1.

[174] See *supra:* Chapter 4.F.

something; is precisely what military forces do when they possess nuclear weapons. Unavoidably, the new instrument had to differentiate between the lawful use and possession of nuclear materials by the military and the unlawful, criminal use of those same materials by terrorists. In addition, the proposed convention had to contend with the fact that, in accordance with international law, not all states are entitled to possess nuclear weapons and weapons-grade nuclear materials. The Non-Proliferation Treaty, which was binding upon most states, limited the right to posses nuclear weapons only to the five nations that had manufactured and exploded nuclear weapons before January 1, 1967: the United States; the Soviet Union, and its successor, the Russian Federation; the United Kingdom, France, and the Peoples' Republic of China.[175] However, despite the almost universal acceptance of the NPT; India, Pakistan, and Israel, never ratified it and claimed the right to develop their own nuclear arsenals. Moreover, the legality of the use of nuclear weapons by the military itself was in question. In late 1994, the General Assembly had sought an Advisory Opinion the International Court of Justice regarding whether the use or threat of use of nuclear weapons was permitted under international law.[176] Arguing before the Court, many non-nuclear states contended that the use or threat of use of such use was illegal, while nuclear states defended the legality of their possession. Eventually, on July 8, 1996, the Court determined unanimously that a "threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter[177] and that fails to meet all the requirements of Article 51,[178]

---

[175] NPT, *supra* note 134, arts 1, 9.3.

[176] G.A. Res. 49/75 K, ¶ 1, U.N. Doc. A/RES/49/75K, (Dec. 15, 1994).

[177] U.N. Charter, art. 2.4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

is unlawful,"[179] and, in divided vote of 7 against 7, with the President casting the decisive vote, the Court decided that:

> [T]he threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law. However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.[180]

To solve these problems, the Russian Federation proposed the exclusion from the scope of the Convention both those acts performed by individuals acting on behalf of states and all questions related to the non-proliferation of nuclear weapons and to international humanitarian law.[181] Russia proposed the following language:

> Article 2
>
> 1. This Convention shall apply exclusively to acts by specific natural persons (in an individual capacity or as part of non-State groups or other associations) and its scope shall not include the questions of the non-proliferation of nuclear weapons or nuclear threats posed by States, international intergovernmental organizations or other subjects of international law.
>
> 2. Nothing in this Convention shall affect the immunity of vessels and aircraft belonging to a State and operated by it for military, customs or police purposes, or of space objects. [182]

---

[178] *Ibid*. art. 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

[179] Legality of the threat or use of nuclear weapons, Advisory Opinion, 1996 I.C.J. (July 8), ¶ 105.C

[180] *Ibid.,* ¶105.E. In ¶ 105.F, the Court found, unanimously, that "[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

[181] Russia, "Explanatory note," *supra* note 32, ¶ 23;

[182] Russia's First Draft, *supra* note 29, art. 2.

The second paragraph simply sought to extend to the new convention the concept of immunity granted to governmental vessels and aircraft in previous counter-terrorism instruments.[183]

In general debate, the United Kingdom, France, and the United States endorsed the Russian approach to the question of state armed forces. The United Kingdom openly supported the idea of excluding from the scope of the convention those acts attributable to states. The others were more cautious, noting just that this was a very important question and that the new instrument had taken care not to make unlawful non-criminal activities. Brazil, Lebanon and Syria, on the contrary, expressed concern for the proposed exclusion of state-terrorism from the scope of the convention.[184]

The committee considered this proposal, in more detail, on February 20, 1998. Since delegations had just concluded the negotiation of very similar provision in the context of the Bombings Convention,[185] they were already familiar both with the underlying issues and with each others' positions. In an opening move, Iran, Egypt, Switzerland, Sudan, and Libya,[186] proposed making punishable acts performed on behalf of states. Almost immediately, however, Syria[187] and Sudan reduced their demands by

---

[183] Russia, "Explanatory note," *supra* note 32, ¶¶ 24-27. See Convention on Offences and Certain Other Acts Committed on Board Aircraft, art. 1.4, Sept. 14, 1963, 704 U.N.T.S.; Convention for the Suppression of Unlawful Seizure of Aircraft, art. 3.2, Dec. 16, 1970, 22 U.S.T. 1641, 869 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, art. 4.1, 974 U.N.T.S.; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, art. 2, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1.

[184] 1998 Ad Hoc Comm. Report, *supra* note 29, ¶ 29; Press release of Feb. 17, 1998, *supra* note 41, pp. 4, 7-8; United States, "Nuclear Terrorism Convention: U.S. overview," *supra* note 77, p. 2. 3.

[185] See *supra:* Chapter 4.F and G.

[186] Libyan Arab Jamahiriya, "Proposal," *supra* note 70, art. 2.1.

[187] Syria, "Proposals," *supra* note 69, art. 2.2.

proposing the inclusion in the Convention of only those acts of states which were unlawful under international humanitarian law. Nevertheless, this proposal did not receive much support. Brazil and Belgium, that in the context of the Bombings Convention had favored a limited exclusion, noted that, regarding nuclear weapons, they could accept, in principle, a broader the exclusion of the acts of states and intergovernmental organizations.[188] Belgium, proposed the following text:

> This Convention shall apply exclusively to acts by natural persons (in an individual capacity or on behalf of one or more other natural or legal persons), and its scope shall not include acts of States and international intergovernmental organizations;[189]

On the issue of self-determination movements, Syria sought to exclude from the convention the activities of groups governed by the 1949 Geneva Conventions and its 1977 Additional Protocols.[190] For their part, Belgium, Brazil, and Iran preferred a softer formulation, excluding from the scope the activities of armed forces during an armed conflict; covering, implicitly, legitimate national-liberation armed groups.[191] In this context, Switzerland proposed using the formulation already found in the Bombings Convention, that excluded both the activities of governmental armed forces "in the exercise of their official duties, inasmuch as they are governed by other rules of

---

[188] U.N. Codification Division, "Article 2, Feb. 26, 1998, 3:00 p.m." (TD, summary of the oral proposals made in the working group of the Ad Hoc Comm., for the use of the bureau, Feb. 26, 1998); 1998 Rapporteur's Informal Summary, *supra* note 46, ¶ 18.

[189] Belgium, "Proposal," art. 2.1.a, U.N. Doc. A/AC.252/1998/WP.6 (Feb. 20, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 18

[190] Syria, "Proposals," *supra* note 69, art. 2.3. This text was based on: International Convention against the Taking of Hostages, art. 12, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S.

[191] Belgium, "Proposal," *supra* note 189, art. 2.1.b.

international law,"[192] as well as the activities of other military forces in situations of an armed conflict. However, Pakistan, Iran, and Egypt objected to this language.[193] Austria[194] proposed the elimination of the reference both to the question of non-proliferation, and to the threats, made by states, to use nuclear weapons. As an alternative, Belgium and Korea[195] proposed adding language taken from the Bombings Convention[196] in the sense that the new instrument would not affect other rights and obligations of states. Iran[197] suggested, in particular, that this Convention should not affect the right of states to develop nuclear energy for peaceful purposes.[198] Moreover, some delegations were concerned that the exclusion of the use of nuclear weapons by states from the scope of the convention could be construed as acceptance of the legality of their possession and use for military purposes. To address those concerns, both Lebanon and Belgium suggested bringing into this convention a preambular paragraph taken from the Bombings Convention,[199] stressing that the exclusion of the activities of armed forces from the scope of this instrument would not make lawful otherwise

---

[192] Bombings Convention, *supra* note 39, art. 19.2.

[193] U.N. Codification Division, "Article 2, Feb. 26, 1998, 3:00 p.m." *supra* note 188; 1998 Rapporteur's Informal Summary, *supra* note 46, ¶ 18.

[194] Supported by Brazil, Egypt, Iran, Mexico, Sudan, and Switzerland.

[195] Supported by Austria, Brazil, Libya, Portugal, and Syria. Belgium, "Proposal," *supra* note 189, art. 2.2; Republic of Korea, "Proposal," art. 2.1, U.N. Doc. A/AC.252/1998/WP.38 (Feb. 26, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 18.

[196] Bombings Convention, *supra* note 39, art. 19.1.

[197] Iran, "Proposal," new pr. para., U.N. Doc. A/AC.252/1998/WP.38 (Feb. 26, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 35.

[198] U.N. Codification Division, "Article 2, Feb. 26, 1998, 3:00 p.m." *supra* note 188; 1998 Rapporteur's Informal Summary, *supra* note 46, ¶ 19.

[199] Bombings Convention, *supra* note 39, pr. para. 11.

unlawful acts.[200] Syria, Lebanon, and Libya proposed further to make reference, also in the preamble, to the advisory opinion of the International Court of Justice.[201] This debate revealed that, by the end of the spring session of the *Ah Hoc* Committee, there was a general trend to fall back into the formulation used in article 19 of the Bombings Convention, even though there were objections from some of the delegations that had not been satisfied by the package-deal adopted the previous year. Moreover, there were some concerns on the possible impact of this provision on the non-proliferation regime.

By the beginning of the fall session of the working group, neither the Russian Federation nor the Friends of the Chairman felt ready to submit a revised version of the provision on the exclusion of state activities from the scope of the convention.[202] Consequently, the discussion proceeded on the basis of the original Russian proposal and article 19 of the Bombings Convention.[203] At the outset, the nuclear states[204] advocated excluding from the scope of application of the new convention the activities of state armed forces. They were flexible on the actual formulation used to create this exemption, but they preferred to avoid the ambiguity inbuilt in article 19 of the Bombings Convention. Conversely, Syria, Libya, Iraq, Iran, and Pakistan argued that it was necessary to broaden the scope of the new convention to make punishable any acts of state-terrorism involving radioactive materials or nuclear devices. The majority of

---

[200] Lebanon, "Proposal," *supra* note 68, new pr. para. 8; Belgium, "Proposal," U.N. Doc. A/AC.252/1998/WP.23 (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, p. 24.

[201] Lebanon, "Proposal," *supra* note 68, new pr. para. 7; Syria, "Proposals on the preamble," new pr. para., U.N. Doc. A/AC.252/1998/WP.24 (Feb. 24, 1998) in 1998 Ad Hoc Comm. Report, *supra* note 29, pp. 24-25; Libyan Arab Jamahiriya, "Proposal," *supra* note 70, new pr. para.

[202] Friends of the Chairman, Discussion paper of Sept. 24, 1998, *supra* note 85, art. 2, n. 5.

[203] 1998 Chairman's Informal Summary, *supra* note 93, ¶ 37.

[204] France, Russia, United Kingdom, and the United States; supported by, Armenia, Argentina, and Australia.

delegations,[205] however, preferred to repeat the text of the Bombings Convention. Belgium and the United Kingdom noted that, if article 19 of the Bombings Convention was to be repeated, it would be necessary to include also the definition of "military forces of a state."[206] On the question of non-proliferation, Switzerland and Nigeria argued that it was necessary to take into account the contested question of the legality of the use of nuclear weapons during armed conflicts. Mexico[207] suggested amending the text of article 19.1 of the Bombings Convention to exclude from it all matters covered by the non-proliferation regime; while the International Committee of the Red Cross suggested that the chairman could make a statement for the record noting that the new convention should not be interpreted as "legitimizing the use of certain means or methods of warfare," and that weapons which, by their nature, "cause superfluous injury or unnecessary suffering or which are inherently indiscriminate remain prohibited."[208] Finally, some delegations[209] suggested adding to the developing package-deal the clause found in the preamble of the Bombings Convention to the effect that nothing in the new convention would make lawful otherwise unlawful acts.[210]

On October 6, 1998, after this round of consultations, the chairman asked delegations to continue consulting among themselves to find a formulation acceptable to

---

[205] Austria, Belgium, Finland, Germany, Japan, Malawi, Netherlands, New Zealand, Portugal, Republic of Korea, Sudan, Sweden, Tanzania.

[206] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 38-39, 41-43; U.N. Codification Division, "Article 2, Scope of application, Oct. 6, 1998, 13:30 p.m." (TD, summary of the oral proposals made in the Working Group, for the use of the Friends of the Chairman, Oct. 6, 1998) (on file with the author).

[207] Supported by India, Italy, and Switzerland.

[208] International Committee of the Red Cross, "Suggested Chairman's statement" (TD, non-paper, Sept. 29, 1998 [?]) (on file with the author); see *also* International Committee of the Red Cross, "Statement," U.N. Doc. A/C.6/53/WG.1/INF/1 (Oct. 9, 1998).

[209] Belgium, Finland, Germany, Malawi, and New Zealand.

[210] 1998 Chairman's Informal Summary, *supra* note 93, ¶¶ 40, 44; U.N. Codification Division, "Article 2, Scope of application, Oct. 6, 1998, 13:30 p.m.," *supra* note 206.

all. The Friends of the Chairman, once again, left blank the space for this provision in their revised consolidated text, pending the result of those consultations.[211] Two texts were submitted. Belgium proposed to use, without any change, the package-deal incorporated in the Bombings Convention:

> New preambular paragraph
>
> *Noting* that the activities of military forces of States are governed by rules of international law outside of 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.[212]
>
> Article 1, new paragraph
>
> "Armed forces of a State" means the forces which a State organizes, trains and equips in accordance with its domestic law for the purposes of national defence or national security, as well as persons acting in support of such armed forces and who are placed officially under their command, their authority and their responsibility.[213]
>
> Article 2
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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, and the activities undertaken by 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.[214]

For their part, Mexico, Switzerland, and Ukraine proposed a more limited exclusion of the armed forces from the scope of the new convention. They presented two

---

[211] The Friends of the Chairman, "Discussion paper," *supra* note 119, art. 2; U.N. Codification Division, "Introductory note to the discussion of CRP.1/Rev.1," *supra* note 92, at 1.

[212] Belgium, "Proposal," new pr. para., A/C.6/53/WG.1/CRP.4 (Sept. 29 [?], 1998) in 1998 Working Group *Report*, *supra* note 84, at 27-28.

[213] Belgium, "Proposal," A/C.6/53/WG.1/CRP.4/Add.1 (Oct. 7, 1998) in 1998 Working Group *Report*, *supra* note 84, at 28.

[214] Belgium, "Proposal," *supra* note 212, art. 2.

possible formulations, both of which limited that exclusion to the activities of armed forces performed during an armed conflict. Unlike the Belgian proposal, no immunity was provided for the activities of the military forces in peacetime. Their proposal read:

> Article 2
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
> 2. *Option A:* This Convention shall not apply to situations of international armed conflict, which shall be governed by international humanitarian law, nor shall it apply to issues of nonproliferation, which shall be governed by other rules of international law.
> 3. *Option B:* The activities of armed forces during an international armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.[215]

It seems that the intention of these delegations was to ensure that the new convention would not implicitly recognize the legality of the use and possession of nuclear weapons by states. Their proposal, however, could have a much broader effect: it could unintentionally criminalize the possession and threat of use of nuclear weapons by states in peacetime. If no sweeping exclusion of the activities of the armed forces was adopted, the question of whether the possession of nuclear weapons by the army in peacetime was criminal or not would depend on the interpretation given, in each case, to the requirement contained in the definition of the crime that the wrongful act be performed "unlawfully."[216] Since the legality of the possession of nuclear weapons was

---

[215] Mexico, Switzerland, and Ukraine, "Proposal," A/C.6/53/WG.1/CRP.30 (Oct. 7, 1998) in 1998 Working Group *Report*, *supra* note 84, at 41.

[216] Friends of the Chairman, Consolidated draft of Oct. 9, 1998, *supra* note 122, art. 1.1.: "Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally: (…)"

itself in question,[217] members of the armed forces of the nuclear states would risk being prosecuted and extradited, under the new convention, if they fall into the hands of a state, a judge, or a prosecutor that believed that the possession of nuclear weapons was illegal. Not surprisingly, therefore, this proposal was unacceptable to the nuclear states.

On October 8, 1998, the penultimate day of meetings, the Russian Federation informed the working group that it had continued consulting with delegations and that the majority supported the Belgian proposal. Immediately, however, Mexico noted that many delegations had supported its own proposal instead.[218] Thereafter, the chairman and the group of Friends took the lead in consulting bilaterally with delegations to find a solution. As the key difficulty for those who objected to the Belgian proposal was that it could be interpreted as legitimizing the possession of nuclear weapons, the Friends of the Chairman proposed adding, in the body of the convention, a clause that would stress that the convention should not be construed as making lawful otherwise unlawful acts or preventing their prosecution. They suggested the following language:

> Article 4
> (…)
> 3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.[219]

This text, based on the formula already contained in the preamble, together with the Belgian proposal, made a package-deal that was acceptable to all delegations but one, Mexico.

---

[217] See *supra* p. 11.

[218] U.N. Codification Division, "8 October 1998," *supra* note 166, at 2.

[219] Friends of the Chairman, Consolidated draft of Oct. 9, 1998, *supra* note 122, art. 4.3.

On October 9, 1998, the chairman introduced to the working group a consolidated text of the Nuclear Convention, including not only the new package-deal on the exclusion of armed forces but also the agreed formulations on the definition of the offence, police and judicial cooperation, the political offence, and the return of the nuclear material after a terrorist incident.[220] He hoped that this text would be acceptable to all delegations as a broad package, enabling the working group to recommend to the General Assembly a complete text of the convention, for its adoption.[221] At the last moment, however, Mexico insisted that it could not accept the package on armed forces, and Syria, while initially in favor of the text, asked for more time for consultations. Syria also requested the deletion of the preambular paragraph suggested by Belgium. Realizing that there was no agreement yet, the chairman suggested that delegations continue their consultations within the Sixth Committee.[222] As the session was coming to a close, the working group decided to submit this text, as part of its report, to the Sixth Committee, "on the understanding that several delegations have expressed their concerns on certain provisions of the draft International Convention for the Suppression of Acts of Nuclear Terrorism, including its scope of application."[223]

E) A failed end-game

By the end of the working group's session, on October 9, 1998, the adoption of the draft Nuclear Terrorism Convention seemed a matter of course. Most of its

---

[220] *Ibid.* arts. 1, 2, 4, 7, 13-16, 18.

[221] 1998 Chairman's Informal Summary, *supra* note 93, ¶ 46; U.N. Codification Division, "Introductory note to the revised text of the draft Convention for the Suppression of Nuclear Terrorism," *supra* note 168.

[222] Díaz, Autograph notes, *supra* note 123, Oct. 9, 1998, 12:25 p.m.

[223] 1998 Working Group *Report*, *supra* note 84, ¶ 10.

provisions had been agreed. The question of the military forces of the states was address by a package-deal supported by most delegations and opposed only by a couple of isolated, dissenting voices. Just the year before, a similar formulation had been adopted without a vote, in the context of the Bombings Convention, even though there had been many more delegations against it.[224] The following weeks, however, would see the opposition to the Nuclear Convention grow. During the last days of October, 1998, Mexico and Syria lobbied other developing countries with a view to adopting a common stance on the exclusion of governmental armed forces and on its potential impact on the legality of nuclear weapons.[225] It seems that two important decisions were made: first, to seek the advice of each delegation's disarmament experts; and, second, to endeavor to take a common position within one of the pre-existing negotiating blocs. Disarmament experts brought into the discussion not only their greater knowledge of the subject-matter but also a different approach to the negotiations, somewhat more polarized and less prone to cooperative solutions than the one to which the legal experts were accustomed. For its part, the adoption of a common position within the Non-Aligned Movement would eventually multiply the influence of the dissenting voices, by providing them with the automatic majority of that negotiating bloc.

By November 11, 1998, when the Sixth Committee held its formal debate on the question of International Terrorism, the Non-Aligned Group had taken a broad common position. In a statement by Zimbabwe, who coordinated the sub-group on legal issues, the NAM expressed concerns on the proposed convention including, "but not limited to," the package on armed forces. In NAM's view, the number of problematic issues was far

[224] See *supra:* Chapter 4.G.

[225] Díaz, Autograph notes, supra note 123, Oct., 1998.

too numerous for detailed discussion, requiring more time to continue the negotiations.[226] This position corresponded, in essence, to the position of Syria at the end of the working group. In the meantime, some developing countries[227] that had taken little or no part in the previous negotiations became vocal critics of the draft convention. Pakistan, for instance, argued that the proposed exception for state armed forces would "sanctify" state-terrorism. In its view, only those activities undertaken pursuant to chapters VI and VII of the United Nations Charter should be excluded from the scope of the new treaty. Pakistan also objected to draft article 18, on the return of seized nuclear materials. In its view, by referring to the duties enshrined in the Non-Proliferation Treaty, that article consolidated the NPT's discriminatory regime between nuclear states and non-nuclear states. In addition, Pakistan objected to the provisions on extradition and on the elimination of the political offence exception, and to the low number of ratifications required for the treaty to enter into force.[228] Mexico stressed that the new convention should not have a negative impact on the debate, then under way, on the lawfulness of the use and threat of use of nuclear weapons.[229] South Africa believed that the proposed exclusion of armed forces contradicted the efforts then being made to achieve non-

---

[226] Zimbabwe, "Statement in the Sixth Comm. on agenda item 155: Draft International Convention for the Suppression of Acts of Nuclear Terrorism" (TD, Nov. 11, 1998) (on file with the author); U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 9, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

[227] Tanzania, Pakistan, Yemen, Bangladesh, Libya, Tunisia, Indonesia, Egypt, and Cuba. U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 33, 53, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶¶ 7, 24, 32, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 28, 40, 56,U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

[228] Pakistan, "Statement in the Sixth Comm. on agenda item 155: Draft International Convention for the Suppression of Acts of Nuclear Terrorism" (TD, Nov. 11, 1998) (on file with the author); U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 30-33, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

[229] Mexico, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 10, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

proliferation and nuclear disarmament.[230] Yemen emphasized that the new convention should regulate the use of nuclear weapons during an armed conflict, and forbid their use to make threats in peacetime,[231] and Syria argued that it was inconsistent to criminalize nuclear terrorism and not to criminalize the use of nuclear weapons.[232] Conversely, the European Union, Turkey, India, Australia, and Japan could accept the text prepared by the Friends of the Chairman, as a satisfactory solution.[233] Croatia, for instance, could accept the proposed formula because, in its view, it did not absolve members of the armed forces from individual accountability and prosecution if they commit unlawful acts. For that delegation, the text put forward by the Friends of the Chairman did not contain an *a priori* presumption of the lawfulness of the actions of the governmental armed forces.[234] At the end of the debate, the Sixth Committee chairman asked the delegation of Canada to conduct consultations on the outstanding issues. Canada held then a series of meetings on November 16, 19, 20, and 23, 1998. In parallel, Non-Aligned delegations met on November 17, 18, 19, and 20, to coordinate their common stance in the negotiations. In this sense, the negotiating process became divided along two tracks: internal negotiations within the Non-Aligned Movement, under the leadership

---

[230] South Africa, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 17, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998)

[231] Yemen, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 42, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

[232] Syria, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 31, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[233] U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 7, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶ 5, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 3, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶¶ 14, 18, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[234] Croatia, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 5, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

of Zimbabwe; and informal consultations between the NAM and the rest of the membership of the United Nations, under the chairmanship of Canada.[235]

During the third week of November, 1998, Non-Aligned delegations held a series of coordination meetings. It seems that these meetings fulfilled three purposes: first, they ensured the unity of the group in the negotiation, so that any common position would enjoy the support of the broad majority of the membership of the General Assembly; second, they serve to develop a common strategy of how to conduct the negotiations; and, third, they were used to define, in concrete terms, the common position, including which proposals the group could back and which ones it would reject. Regarding internal unity, Lebanon called for unity within the group in order to maintain credibility in the negotiations. Malaysia stressed that the group should avoid situations where the members of the Movement may be tempted to break away, causing the defeat of the group's positions. Malaysia recalled, in particular, the adoption, earlier that year, of the Rome Statute of the International Criminal Court, where the developing world had been divided during the vote. Pakistan went further by noting that, during the negotiations of the Bombings Convention, developing countries had lost on the question of the exemption of the armed forces precisely because they had been divided. [236] Concerning a common strategy, the majority of NAM members favored a deferral of the negotiations until the 1999 meeting of the *Ad Hoc* Committee. Libya and Syria, for instance, argued that more time was necessary to consider in depth all the troubling elements of the proposed convention, and Pakistan stressed the need to consult with capitals. For their

---

[235] Permanent Mission of Costa Rica to the United Nations, Autograph notes on the negotiation of the Nuclear Convention, Nov., 1998, (on file with the author).

[236] *Ibid*., Nov. 16, 1998, 18 Nov. 1998.

part, Sri Lanka and India argued that the Movement should not obstruct the negotiations. In their view, the convention should and could be adopted promptly.[237] On the content of a possible common position, Pakistan and Libya advocated a broad stance, including not only the exemption of the armed forces, but also the criminalization of the dumping of nuclear waste, extradition mechanisms, the reference to the NPT in the context of the return of seized radioactive materials, and the number of required ratifications. Lebanon, on the contrary, argued that the group should focus only on the topics of common concern, in this case, the exemption of the armed forces from the scope of the proposed convention. The Chair agreed, as this had been the basic point of the contained in his statement of November 11.[238] More concretely, Tanzania, Libya, Malawi, South Africa, and Lebanon proposed deleting from the convention the exemption for the armed forces. India, on the contrary, strongly opposed any common position, noting that the NAM had never had a common stance on nuclear weapons. In its view, if some delegation had any objection to the proposed convention, it was free to make it in its national capacity. In this context, the NAM took the position that the best solution was to delete from the convention all the troubling paragraphs, without accepting further additions or amendments.[239] Towards the end of the consultations, the NAM found itself divided on the strategy to be followed. Some delegations wanted to defer the discussion until the following year while others advocated concluding the convention immediately. Moreover, the coordinator, Zimbabwe, was concerned that the Movement was perceived

---

[237] *Ibid*., Nov. 16, 1998, 18, Nov. 1998.

[238] *Ibid.,* Nov. 17, 1998.

[239] *Ibid*., Nov. 17, 1998, Nov. 18, 1998, Nov. 19, 1998; U.N. Codification Division, "Various proposals made by delegations for reaching compromise on the draft international convention for the suppression of nuclear terrorism, Nov. 23, 1998, 2nd draft," ¶ 1, (TD, summary of proposal, for the use of the coordinator, Nov. 23, 1998) (on file with the author).

as blocking progress. She feared this could lead to a vote on the convention, possibly dividing the group, and derailing the negotiation of the Comprehensive Convention, put forward by India and supported by NAM as a whole.[240]

In parallel with the meetings of the Non-Aligned Movement, Canada held meetings with the broader membership in an effort to find an agreeable solution. In those consultations, Mexico and South Africa argued that the essential problem of the proposed draft was that it could impact negatively on the discussions on nuclear disarmament. In their view, the new convention had to state explicitly that it would not impact on the question of the legality of nuclear weapons.[241] Switzerland, based on this suggestion, proposed the following package:

> Article 4
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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, and the activities undertaken by 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.
>
> 3. The exclusion of certain actions from the coverage of this Convention by the provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.
>
> 4. This Convention does not address and cannot be interpreted as addressing the issue of the legality of the use or the threat of use of nuclear weapons by States.[242]

---

[240] Permanent Mission of Costa Rica to the United Nations, Autograph notes, *supra* note 235, Nov. 20, 1998.

[241] *Ibid.,* Nov. 16, 1998, p.m.

[242] Switzerland, "Draft International Convention for the Suppression of Acts of Nuclear Terrorism, art. 4" (TD, photocopy, Oct. 17, 1998) (on file with the author); U.N. Codification Division, "Various proposals made by delegations," *supra* note 239, ¶ 2.

The key element of this proposal was paragraph 4, which tried to separate the exemption of armed forces from the question of the lawfulness of the use of nuclear weapons. Paragraphs 1 and 2 were identical to the text of the Bombings Convention while paragraph 3 was based on the proposal submitted by the Friends of the Chairman at the end of the working group, but amended to make explicit the link between the exclusion of the activities of the armed forces and their possible prosecution under other laws. This proposal was acceptable to Germany, Austria, Japan, the Russian Federation, Mexico and the United States.[243] The NAM, however, rejected it without further comment and argued that the best solution would be simply to delete paragraphs 2 and 3 of the consolidated text.[244] Zimbabwe, on behalf of the Non-Aligned Movement, reiterated the group's position that they had concerns including, but not limited to, the exclusion of armed forces and requested that more time be given, in 1999, to consider these questions. Lebanon, Pakistan, Syria, Cuba supported a deferral, noting that they needed to ask their capitals for further instructions.[245] In addition, those four delegations continued to oppose, as a matter of principle, both the granting of an exemption for governmental armed forces and the creation of a regime that would implicitly legitimize the possession of nuclear weapons by states. Pakistan argued that paragraph 2 was being rejected by the majority of the members of the United Nations. Moreover, in his view, the Bombings Convention did not constitute a valid precedent due to the irregular manner

[243] Permanent Mission of Costa Rica to the United Nations, Autograph notes, *supra* note 235, Nov. 19, 1998; Nov. 20, 1998.

[244] *Ibid.,* Nov. 19, 1998; Nov. 20, 1998.

[245] *Ibid,* Nov. 16, 1998.

in which that instrument had been adopted.[246] Argentina and the Russian Federation tried to break the impasse by replacing the exclusion of state armed forces in article 4 with a definition of "person" in article 2, with a view to limiting the application of the convention only to persons acting individually. These proposals were similar to the original Russian draft.[247] However, they were not accepted by those delegations that sought a deferral.[248]

On November 23, 1998, at end of the session of the Sixth Committee, Canada acknowledged that it had not been possible to solve the pending issues in the time available and that it would be necessary to continue the negotiations in the following session of the *Ad Hoc* Committee. He also noted that the outstanding problems were more of political than of a legal nature. Consequently, he recommended to the Sixth Committee negotiations continue the following year.[249] Thus, on December 8, 1998, the General Assembly decided to reconvene the *Ad Hoc* Committee from 15 to 26 March 1999 with a double mandate: to devote "appropriate time to the consideration of the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism," and to "initiate the elaboration of a draft international convention for the suppression of terrorist financing."[250]

F) A long winter

---

[246] *Ibid,* Nov. 23, 1998.

[247] Russia's First Draft, *supra* note 29, art. 2.1.

[248] U.N. Codification Division, "Various proposals made by delegations," *supra* note 239, ¶¶ 2, 5, 6.

[249] Permanent Mission of Costa Rica to the United Nations, Autograph notes, *supra* note 235, Nov. 23, 1998; Canada, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 12, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

[250] G.A. Res. 53/108, ¶ 12, U.N. Doc. A/RES/53/108 (Dec. 8, 1998).

The deadlock reached in late 1998 regarding the negotiation of the Nuclear Convention would last until early 2005. During most of this period, public discussions on the Nuclear Convention were avoided. It seems that the various chairmen of the Terrorism *Ad Hoc* Committee preferred to set these negotiations aside, to avoid unfruitful political confrontations. As far as possible, they engaged in quiet bilateral consultations to determine whether there was any likelihood of a breakthrough.

In early 1999, notwithstanding the General Assembly's decision that the *Ad Hoc* Committee was to devote appropriate time to address the pending issues, the committee held neither formal nor informal meetings on the draft Nuclear Convention. Instead, the committee devoted itself exclusively to the preparation of the Convention for the Suppression of the Financing of Terrorism.[251] Moreover, in the general discussion, very few delegations mentioned the Nuclear Convention. The Russian Federation called for its early completion, to enhance international security. It stressed that, in its view, the new instrument would not impinge on matters regulated by other norms of international law. Similarly, Germany argued that a failure to agree on the Nuclear Convention would send "the wrong signal" to the terrorist of the world.[252] For its part, Zimbabwe,[253] on behalf of the Non-Aligned Movement, reiterated the group's position against the exclusion of the military forces from the scope of the convention.[254] At the end of the

---

[251] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* ¶ 22, U.N. GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999) [hereinafter 1999 Ad Hoc Comm. Report].

[252] *Ibid.,* ¶¶ 19-20; United Nations, "Ad Hoc Comm. on instruments to combat international terrorism begins third session," pp. 2-3, (press release L/2915) March 15, 1999.

[253] Supported by Iraq and Syria.

[254] 1999 Ad Hoc Comm. Report, *supra* note 251, ¶ 23; United Nations, "Ad Hoc Comm. to prepare anit-terrorism instruments concludes third session at headquarters, 15-26 March," pp. 4-5, (press release L/2918) March 26, 1999.

session, the chairman invited delegations to continue consultations and to solve the outstanding issues before that year's session of the Sixth Committee.[255]

In the following months, delegations explored the possibility of redrafting the provision on the armed forces from an explicit exclusion from the scope of the convention into an implicit one, by stating that the convention would apply only natural persons acting individually. A small group of delegations prepared two alternative formulations.[256] The first one purported to replace the exclusion of the armed forces contained in draft article 4.2 by the following definition of "person":

> 6. "Person" means natural persons. The term does not include those individuals organized, trained and equipped under international law of a State for the primary purpose of national defense or security nor persons acting in their support who are under their formal command, control and responsibility; while acting in the exercise of their official duties, inasmuch as their activities are governed by other rules of international law.[257]

This text simply reframed the definition of "armed forces of a state" and the exclusion clause contained in the last consolidated text of the convention,[258] without changing their substance. The second proposal was a somewhat more ambitious. It also sought to restrict the scope of the convention by defining the term "person," but it stressed, in addition, that such limitation would not prejudge the criminal responsibility of the members of military forces nor the international responsibility of states for the use of nuclear weapons. This proposal read:

---

[255] 1999 Ad Hoc Comm. Report, *supra* note 251, ¶ 25.

[256] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 12, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999) [hereinafter 1999 Working Group Report].

[257] Permanent Mission of Zimbabwe to the United Nations, Note verbal to the Permanent Mission of South Africa in its capacity as Chair of the Non-Aligned Movement, (June 29, 1999), first non-paper, (TD, note enclosing 2 non-papers on issues related to the Nuclear Terrorism Convention) (on file with the author).

[258] Friends of the Chairman, Consolidated draft of Oct. 9, 1998, *supra* note 122, arts. 1.6, 4.2.

> Article 1
>
> 5. For the purpose of this convention, "persons" means: a natural person acting in an individual capacity or on behalf of a group.
>
> 6. For the purpose of this convention, "group of persons" means: two or more persons acting with the common purpose of committing an offence within the meaning of this convention.
>
> Article 3
>
> 1. An offence committed pursuant to article 2 of this convention entails individual criminal responsibility of persons.
>
> 2. The fact that the present convention provides exclusively for criminal responsibility of persons is without prejudice to the question of responsibility of members of the military forces acting in the exercise of official duties on behalf of a State under other rules of international law.
>
> 3. The fact that the present convention provides exclusively for individual criminal responsibility of persons is without prejudice to the question of responsibility of states under international law.
>
> 4. Nothing in this convention shall affect other rights, obligations and responsibilities of States and individuals under international law in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.[259]

These two proposals were considered by NAM, but they were not accepted. From a practical point of view, both proposals continued to exclude state activities from the scope of the convention.

The working group reconvened from September 27 to October 8, 1999. Once more, it held no formal meetings on the Nuclear Convention, but devoted most of its time to concluding the negotiation of the Financing Convention. The chairman, though, conducted a series of bilateral meeting with individual delegations from which he concluded that "the time was not opportune for the convening of informal consultations during the working group."[260] At the end of the session, the chairman appointed Ms. Cate Steains, from Australia, as coordinator on the pending issues regarding the Nuclear

[259] Permanent Mission of Zimbabwe to the United Nations, *supra* note 257, second non-paper.

[260] 1999 Working Group Report, *supra* note 256, ¶ 10.

Convention. She then offered to meet with delegations, either individually or in small groups, in the intervening period between the end of the working group and the end of the Sixth Committee sessions, to try to find a solution acceptable to all delegations. She also provided to all delegations the two drafts on the possible definition of "person" that had been discussed over the summer, for their information.[261]

That year, during the consideration of the agenda item on international terrorism, the Sixth Committee saw a repetition of the debate. Russia urged the conclusion of the convention and stressed that the formulas developed during the inter-sessional period could serve as the basis for agreement.[262] Syria, Lebanon, Pakistan, Libya, Iraq, and the Democratic Republic of Congo urged the inclusion of state-terrorism.[263] Iraq, for instance, argued that the proposed exclusion of state armed forces would not only be incompatible with the obligation of states to refrain from using nuclear weapons but it would also open the door to state-terrorism. It mentioned, as an example of state-terrorism, the use of ballistic shells made of depleted uranium against hardened targets during the 1991 Gulf War.[264] The Democratic Republic of Congo argued that any convention on terrorism, including the Nuclear Convention, should cover violations to international humanitarian law by state armed forces, such as the ones that the armies of Rwanda, Burundi, and Uganda were then perpetrating against the Congolese

---

[261] *Ibid.,* ¶¶ 12-13.

[262] Russian Federation, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., ¶ 42, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

[263] U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., ¶¶ 30, 43, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., ¶¶ 11, 31, 56-57, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999).

[264] Iraq, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶ 11, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999);

population.[265] The United States rejected these suggestions noting that question of the use and possession of nuclear weapons by nuclear powers lay outside the scope of the proposed convention.[266] Finally, some Non-Aligned, such as Peru, Malawi, and Sri Lanka, urged the most extreme positions to be flexible and to make greater efforts to find consensus.[267] At the end of the Sixth Committee debate, the coordinator on the Nuclear Convention said that, after consulting privately with various delegations, she had realized that major differences of opinion still remained, making unlikely an agreement during that session. In view of this fact, she decided not to convene any meeting of informal consultations open to all delegations.[268] Consequently, the Sixth Committee decided to reconvene the *Ad Hoc* Committee, this time only for one week, from February 14 to 18, 2000, to "continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument."[269]

In early 2000, the *Ad Hoc* Committee saw a repetition of the same views. Some delegations[270] advocated the prompt conclusion of the Nuclear Convention on the basis of the 1998 text; others[271] sought to include the activities or armed forces of states within the scope of the convention; and a last group of delegations[272] simply sought flexibility

---

[265] Democratic Republic of Congo, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., ¶¶ 56-57, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

[266] United States, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶ 10, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[267] U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶ 73, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., ¶¶ 12, 20, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999).

[268] Australia, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶ 19, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[269] G.A. Res. 54/110, ¶ 12, U.N. Doc. A/RES/54/110 (Dec. 9, 1999).

[270] United States and Uzbekistan.

[271] Cuba, Iraq, and Lebanon.

[272] Algeria, Portugal, Republic of Korea, and Switzerland,

from both contending sides.[273] Notably, at the end of the debate, the chairman of the Non-Aligned Movement reiterated the group's concerns on the scope of the draft convention.[274] The Coordinator held a series of bilateral meetings with interested delegations. Later, she reported that, in those private consultations, some delegations told her that the conclusion of the Nuclear Convention was not urgent, since most of its substance was already covered by other instruments. Other delegations felt that the fundamental question of the scope had become so polarized that a solution would not be found simply by redrafting the existing text.[275] Finally, some delegations rejected the formulas on the definition of "person," developed during the previous year; since, in their view, the only acceptable solution was the complete deletion of the exception for state armed forces. At the end, she concluded that the positions were so far apart that holding a meeting between the opposing sides would not be useful.[276]

The 2000 fall session followed a familiar pattern. The working group set aside, once again, the Nuclear Convention and began drafting the Comprehensive Convention against International Terrorism.[277] It was felt that progress on the Comprehensive

---

[273] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fourth session, Feb 14-18, 2000), *Report,* ¶ 20-21, U.N. GAOR 55th Sess. Supp. No. 37, U.N. Doc. A/55/37 (2000) [hereinafter 2000 Ad Hoc Comm. Report]; United Nations, "General Assembly's Ad Hoc Comm. on Terrorism begins general debate," (press release L/2941) Feb. 14, 2000; United Nations, "General Assembly's Ad Hoc Comm. discusses possible high-level conference," (press release L/2942) Feb. 15, 2000; United Nations, "General Assembly's Ad Hoc Comm. on Terrorism continues debate on proposed high-level conference," (press release L/2943) Feb. 16, 2000.

[274] United Nations, "Ad Hoc Comm. on Terrorism approves introductory segment of draft report," (press release L/2945) Feb. 18, 2000.

[275] A few months later, Cuba made this same argument at the Sixth Comm. Cuba, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 29, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

[276] 2000 Ad Hoc Comm. Report, *supra* note 273, ¶¶ 9-13; United Nations, "Ad Hoc Comm. on Terrorism hears report on consultations on draft Convention on Suppression of Acts of Nuclear Terrorism," (press release L/2944) Feb. 17, 2000.

[277] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶¶ 10-13, U.N. Doc. A/C.6/55/L.2 (Oct. 19, 2000) [hereinafter 2000 Working Group Report].

Convention could have a positive impact on the negotiations regarding the Bombings Convention.[278] In the debate, both in the working group and in the Sixth Committee, delegations reiterated their well-known positions: some promoted an exclusion of the armed forces from the scope of the convention; others advocated the inclusion of state-terrorism; and a third group called for greater efforts to find a solution.[279] There were, nonetheless, some changes. The Non-Aligned Movement became less active. The NAM ministerial meeting, held earlier that year, had not taken any common position regarding the negotiation of the Nuclear Convention, even though it had adopted a common stance on both the Comprehensive Convention and the proposed high-level conference on terrorism.[280] Consequently, South Africa, the chairman of NAM, did not restate the group's position in the negotiation. The Rio Group and Southern African Development Community (SADC), the sub-regional groups comprising respectively most Latin American and Southern African members of NAM, began signaling flexibility in the negotiation.[281] Moreover, the most vocal advocates for the inclusion of armed forces within the scope of the Nuclear Convention left to one side their arguments based on non-proliferation and emphasized instead the question of state-terrorism.[282] For its part, the

---

[278] Australia, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 14, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

[279] The Chairman, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the general discussion in the Working Group," ¶ 4-6, in 2000 Working Group Report, *supra* note 277, Annex IV, [hereinafter 2000 Chairman's Informal Summary].

[280] Non-Aligned Movement, 13th Ministerial Meeting (Cartagena, Colombia, Apr. 8-9, 2000), "Final document," ¶ 89, in Permanent Representative of Colombia, letter to the Secretary-General of the United Nations (June 6, 2000), U.N. Doc. A/54/917, Annex.

[281] Colombia, "Statement on behalf of the Rio Group," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 14, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000); Tanzania, "Statement on behalf of SADC," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 26, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

[282] See*, e.g.,* Cuba, Lebanon, Syria, U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶¶ 26, 29, 62, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 56, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

European Union seemed to have lost interest in this new instrument; it was not mentioned in the EU statement, while some recently adopted IAEA recommendations on nuclear sabotage were.[283] It seems that the parallel negotiations on the Comprehensive Convention did have some impact on the Nuclear Convention. In those negotiations, the exemption of armed forces also became contentious. There, however, the issues on non-proliferation were not contentious; the key problems were state-terrorism and self-determination. Moreover, in those discussions, the Organization of the Islamic Conference, and not the NAM, became the main negotiating group for those who sought to enlarge the scope of the Convention.[284]

Once again, the Coordinator on the Nuclear Convention held some private, bilateral meetings both within the working group and during the regular session of the Sixth Committee, but she decided not to call any informal consultations open to all delegations. She noted that there had not been agreement on a single proposal that could be used as the basis for those discussions.[285] In view of the lack of progress on the Nuclear Convention, the General Assembly gave priority to the Comprehensive Convention. It decided that the *Ad Hoc* Committee would meet in February 2001, to work on the text of the Comprehensive Convention "with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism."[286]

---

[283] France, "Statement on behalf of the EU," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 10, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

[284] See *infra:* Chapter 7.E and F.

[285] 2000 Ad Hoc Comm. Report, *supra* note 273, ¶ 8; Australia, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 4, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

[286] G.A. Res. 55/158, ¶ 14, U.N. Doc. A/RES/55/158 (Dec. 12, 2000).

In early 2001, the *Ad Hoc* Committee met for two weeks, from February 12 to 23, to continue the elaboration of the Comprehensive Convention. Once again, there were no open meetings on the Nuclear Convention; the Coordinator continued her bilateral, private contacts with interested delegations.[287] In the introductory debate, very few delegations mentioned this instrument; Russia, Japan and China called for its prompt conclusion while Lebanon reiterated its suggestion to include a reference to the dumping of nuclear waste.[288]

Before the negotiation resumed, in the fall of 2001, the terrorist attacks of September 11 occurred. In their wake, the plenary of the General Assembly held a general discussion on terrorism both to express condolences for that attack and to re-energize the United Nations counter-terrorism activities.[289] Of the 167 delegations that spoke, about a fourth, 44, called for greater efforts to promptly conclude the Nuclear Convention.[290] Notably, however, three-fourths of the speakers, including both the United States and most Arab delegations, did not mention the Nuclear Convention.[291]

---

[287] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* ¶¶ 8-15, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001) [hereinafter 2001 Ad Hoc Comm. Report]; United Nations, "Ad Hoc Comm. on terrorism concludes two-week headquarters session; continues consideration of draft comprehensive convention," p. 2, (press release L/2974) Feb. 23, 2001.

[288] The Chairman, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the general exchange of views," ¶ 4, in 2001 Ad Hoc Comm. Report, *supra* note 287, Annex V [hereinafter 2001 Ad Hoc Comm., Chairman's Informal Summary]; United Nations, "Comm. on terrorism takes up draft comprehensive anti-terrorism convention," pp. 5-7, (press release L/2971) Feb. 12, 2001.

[289] For a detailed exposition of the impact of September 11 on the counter-terrorism negotiations, see *infra:* Chapter 7.B.

[290] The European Union, Ukraine, and the United Kingdom, (U.N. GAOR 56th Sess. 12th plen. mtg., pp. 10, 15, 18, U.N. Doc. A/56/PV.12 (Oct. 1, 2001)); the Russian Federation, Mongolia, Argentina, Chile, France, and Nigeria, (U.N. GAOR 56th Sess. 13th plen. mtg., pp. 3, 7, 19, 21, 23, 29 U.N. Doc. A/56/PV.13 (Oct. 1, 2001)); Guatemala, Republic of Korea, Ireland, Malaysia, Japan, and Colombia, (U.N. GAOR 56th Sess. 14th plen. mtg., pp. 2, 4, 7, 11, 15, 24, U.N. Doc. A/56/PV.14 (Oct. 2, 2001)); Uruguay, and Lesotho, (U.N. GAOR 56th Sess. 15th plen. mtg., pp. 4, 8, U.N. Doc. A/56/PV.15 (Oct. 2, 2001)); Mauritania, Paraguay, Finland, Peru, Macedonia, and China, (U.N. GAOR 56th Sess. 16th plen. mtg., pp. 2, 8, 12, 14, 22, 27, U.N. Doc. A/56/PV.16 (Oct. 3, 2001)); Spain, Monaco, Mozambique, and Italy, (U.N. GAOR 56th Sess. 17th

The working group on Terrorism met just a few days later, on October 15, 2001. Once again it devoted most of its time to the drafting the Comprehensive Convention against Terrorism. This time, however, it held one session of informal consultations on the Nuclear Convention. First of all, the chairman had to appoint a new appointed a new coordinator, since the previous one, Ms. Steains, had left New York. He chose Ambassador Richard Rowe, Legal Advisor of the Ministry of Foreign Affairs of Australia.[292] Moreover, before the meeting, Mexico circulated a proposal making abundantly clear that the new instrument would not impact, one way or another, the question of the legality of nuclear weapons. This language, which had been suggested originally in late 1998,[293] read:

> Article 4, new paragraph 4
>
> 4. This Convention does not address, nor can it be interpreted as addressing, in any way the issue of the legality of the use or threat of use of nuclear weapons by States.[294]

The new coordinator decided to convene, on October 25, a meeting of informal consultations open to all delegations. At the outset, the Russian Federation stated: first, that the only pending issue in negotiation was the question of armed forces; second, that

---

plen. mtg., pp. 6, 15, 17, 23, 25 U.N. Doc. A/56/PV.17 (Oct. 3, 2001)); Poland, Slovakia, Lithuania, Namibia, and Canada, (U.N. GAOR 56th Sess. 18th plen. mtg., pp. 3, 5, 10, 21, 22, U.N. Doc. A/56/PV.18 (Oct. 4, 2001)); Niger, Maldives, Hungary, and Guyana, (U.N. GAOR 56th Sess. 19th plen. mtg., pp. 5, 7, 11, 25, U.N. Doc. A/56/PV.19 (Oct. 4, 2001)); Uganda, Uzbekistan, Tajikistan, Mali, and Samoa, (U.N. GAOR 56th Sess. 20th plen. mtg., pp. 7, 8, 12, 17, 21, U.N. Doc. A/56/PV.20 (Oct. 4, 2001)); Botswana, Latvia, and Benin, (U.N. GAOR 56th Sess. 21st plen. mtg., pp. 9, 10, 19, U.N. Doc. A/56/PV.21 (Oct. 5, 2001)).

[291] Lebanon mentioned the Nuclear Convention in passing but did not call for its conclusion. U.N. GAOR 56th Sess. 18th plen. mtg., p. 24, U.N. Doc. A/56/PV.18 (Oct. 4, 2001)

[292] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶¶ 16-17, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001) [hereinafter 2001 Working Group Report].

[293] See *supra* p. 11

[294] Mexico, "Proposal," A/C.6/56/WG.1/CRP.9 (Oct. 25, 2001) in 2001 Working Group *Report*, *supra* note 292, at 29.

any solution would have to accord with the formulas used in the Bombings Convention and in the Comprehensive Convention, then being negotiated; and, third, that it might be possible to include some clarification on the question of non-proliferation such as the one proposed by Mexico. South Africa[295] replied that it was not possible simply to transpose any solution use for armed forces in other conventions, since nuclear weapons are qualitatively different from conventional ones. In its view, the new instrument was not necessary since the Non-Proliferation Treaty, the Bombings Convention, and the Safeguards Agreements already addressed satisfactorily the same subject-matter. The declared nuclear states[296] supported the Mexican proposal but suggested that it be added to the preamble. Finally, Brazil, Ecuador and Nigeria, also supported the Mexican proposal but as part of a broader package; they stressed, though, that there was not a common NAM position.[297] As there was no agreement, the working group recommended that the coordinator should continue informal consultations after the end of the session.[298] Eventually, on the basis of a recommendation from the coordinator,[299] the Sixth Committee decided to reconvene the *Ad Hoc* Committee the following year to "continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with

---

[295] Supported by Cuba, Iraq, Lebanon, Libya, Mali, Morocco, Sudan, and Syria.

[296] China France, Russian Federation, United Kingdom, and the United States.

[297] Díaz, Autograph notes, *supra* note 123, Oct. 25, 2001, a.m.

[298] 2001 Working Group Report, *supra* note 292, ¶ 20.

[299] Australia (Amb. Rowe), "Statement," U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶ 69, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

international terrorism."[300] By this time, both the Nuclear Convention and the Comprehensive Convention were deadlocked on the same issue, the exclusion of armed forces from their scope.[301]

The *Ad Hoc* Committee met again in from January 28 to February 1, 2002. On January 30, the representative of the IAEA noted that the danger of nuclear terrorism did not arise from a possible use of nuclear weapons, since these were protected under the Non-Proliferation Treaty's safeguards regime, but from the possibility that radioactive material, not regulated under that regime, be used in a "dirty bomb." Russia then argued that the new instrument would complement the nuclear safeguards precisely by covering radioactive materials not protected under those safeguards.[302] In informal consultations, the United Kingdom, India, Australia, Belgium, Hungary, and Russia itself supported the Mexican proposal[303] as a compromise. The United States, for its part, could accept the Mexican language only as a final concession, and if put in the preamble. Conversely, Lebanon, Syria, Jordan, and Malaysia argued that the problem lay in the exclusion of armed forces and that it was necessary to find a new approach to the whole problem. Lebanon, in an implicit reference to Israel's nuclear program, noted that the Non-Proliferation Treaty was not universal and that there were states with nuclear capabilities

---

[300] G.A. Res. 56/88, ¶ 16, U.N. Doc. A/RES/56/88 (Dec. 12, 2001).

[301] See *infra:* Chapter 7.D.

[302] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report,* ¶ 11, U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002) [hereinafter 2002 Ad Hoc Comm. Report]; The Coordinator, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, "Report on the results of the informal consultations," ¶¶ 8-11, in 2002 Ad Hoc Comm. Report, Annex VI, pp. 20-21; Díaz, Autograph notes, *supra* note 123, Jan. 30, 2002.

[303] Mexico, "Proposal," *supra* note 294.

outside the framework of the safeguards regime. Finally, Lebanon reiterated its proposal[304] to criminalize the dumping of nuclear waste.[305]

In the fall of 2002, in view of the lack of progress foreseen in the negotiations of both the Nuclear Convention and the Comprehensive Convention, the bureau of the Sixth Committee decided that the Terrorism working group would meet only for two days, October 15 and 16, 2002.[306] The debate on the Nuclear Convention essentially repeated the one held at the *Ad Hoc* Committee. Western delegations,[307] India, and Russia preferred the text of the convention as it was, but could live with the Mexican proposal. Conversely, Islamic delegations[308] found unacceptable the exclusion of armed forces from the scope of the convention and rejected the Mexican text as a solution. The United States could go along with the Mexican language only if it was included in the preamble.[309] Meanwhile, the Russian Federation began to lobby in capitals to increase the political support for the prompt conclusion of the Nuclear Convention, preferably by the end of 2002 and simultaneously with the Comprehensive Convention.[310] These efforts seemed to have had some modest results since, during the Sixth Committee debate, most delegations mentioned in passing the need to conclude this new legal

---

[304] Lebanon, Syria, Nigeria, Libya, and Sudan, "Proposal," *supra* note 120.

[305] Díaz, Autograph notes, *supra* note 123, Jan. 30, 2002.

[306] *Ibid.,* Oct. 15, 2002; U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, U.N. Doc. A/C.6/57/L.9 (Oct. 16, 2002) [hereinafter 2002 Working Group Report].

[307] Bulgaria, Canada, the European Union, and Japan.

[308] Egypt, Lebanon, Malaysia, Pakistan, and Syria.

[309] The Coordinator, U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, "Report on the results of the informal consultations," ¶¶ 9-11, in 2002 Working Group Report, *supra* note 306, Annex II, at 8-9; Díaz, Autograph notes, *supra* note 123, Oct. 16, 2002.

[310] Permanent Mission of the Russian Federation to the United Nations, *note verbale* to all Permanent Missions and Observer Missions to the United Nations, August 21, 2002, ¶ 3, (TD, containing a description of Russia's positions and goals for the 57th General Assembly) (on file with the author).

instrument.[311] At the end of the debate, the General Assembly decided to reconvene the *Ad Hoc* Committee only for 3 days, from March 31 to April 2, 2003.[312]

Before the *Ad Hoc* Committee met in 2003, members of its bureau consulted interested delegations, including the United States, Pakistan, Egypt, France, Philippines, and Canada, on how to proceed. Those delegations felt that holding open meetings to discuss the pending issues paragraph-by-paragraph would not be conducive to reaching an agreement and could reopen sections of the draft convention that were already agreed.[313] To avoid the unraveling of the text, the bureau decided to work, during the *Ad Hoc* Committee, in the format of private, bilateral consultations.[314] In addition, a new coordinator on the Nuclear Convention was appointed: the delegate of South Africa, Mr. Albert Hoffmann.[315] His appointment was important because his nation was, at the time, the Chair of the Non-Aligned Movement. By accepting his appointment in a neutral role, he was confirming that the NAM was not any more an active player in these negotiations.

On April 1, 2003, the Coordinator held a series of private discussion with interested delegations. His report shows that the positions had not changed. Some delegations preferred the retention of article 4 of the draft convention. Others believed

---

[311] U.N. GAOR 57th Sess. Sixth Comm. 7th mtg., U.N. Doc. A/C.6/57/SR.7 (Oct. 2, 2002); U.N. GAOR 57th Sess. Sixth Comm. 8th mtg., U.N. Doc. A/C.6/57/SR.8 (Oct. 2, 2002); U.N. GAOR 57th Sess. Sixth Comm. 9th mtg., U.N. Doc. A/C.6/57/SR.9 (Oct. 3, 2002); U.N. GAOR 57th Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/57/SR.10 (Oct. 4, 2002).

[312] G.A. Res. 57/27, ¶ 18, U.N. Doc. A/RES/57/27 (Nov. 19, 2002).

[313] Carlos F. Díaz, Vice-chairman of the Ad Hoc Comm., email to Ms. Shiro Sgopallawa, legal officer at the Ministry of Foreign Affairs of Sri Lanka, advisor to Amb. Rohan Perera, Chariman of the Ad Hoc Comm., March 25, 2003, (TD, detailing the outcome of bilateral consultations on the method of work of the 2003 session) (on file with the author).

[314] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* ¶ 12, U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003) [hereinafter 2003 Ad Hoc Comm. Report];

[315] *Ibid.,* ¶ 10.

that the Mexican proposal was a good basis for agreement, and a third group argued that the new instrument should cover the activities of state armed forces. Moreover, some delegations preferred to focus on the negotiation of the Comprehensive Convention since, in their view, finding an agreement on the question of armed forces in the more general instrument would help in finding a solution in the context of the more specific one, the Nuclear Convention.[316] In his report, the Coordinator tried to give a positive turn to the lack of progress by noting that it was necessary both to "maintain momentum" and to preserve the progress attained in the current draft.[317]

The working group met the following fall, from October 6 to 10, 2003.[318] On October 7, the Coordinator held a short informal meeting open to all delegations. Very few delegations took the floor. The European Union, Russia, and the United States stressed the importance of adopting, by consensus, the proposed instrument. Syria reiterated its demand to include the activities of state armed forces within the scope of the new convention. The United States replied that such a demand would delay the conclusion not only of the Nuclear Convention but also of the Comprehensive Convention and the amendments to the Physical Protection Convention, then being negotiated in Vienna. Mexico reintroduced its proposal to clarify that the new instrument would not affect the legality of the use of nuclear weapons. The European Union and the United States accepted it, on the condition that it would lead to an agreement. Finally, Syria reaffirmed its proposal to include in the convention the question of dumping

---

[316] Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal bilateral consultations," ¶¶ 5-8, in 2003 Ad Hoc Comm. Report, *supra* note 314, Annex II.B, at 11-12.

[317] *Ibid.,* ¶ 11.

[318] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003) [hereinafter 2003 Working Group Report].

nuclear waste.[319] In essence, there was no change in the substantive positions, but just a reduction in the number of active delegations and a prevailing lack of interest in the Convention, which might indicate a widespread perception that the negotiations had failed. The Coordinator even suggested that the Sixth Committee could decided not to convene a meeting of the *Ad Hoc* Committee the following spring and revisit the topic, with fresh eyes, the following year.[320] Meanwhile, in the Sixth Committee, Cuba, Lebanon, Pakistan, Kuwait, Democratic Republic of Korea, Democratic Republic of Congo, and Libya stressed the question of state-terrorism, both in general terms and in the context of the Comprehensive Convention.[321] Mexico made an impassioned call to consider the Nuclear Convention separately from the Comprehensive Convention. He argued that each instrument had to be seen in its own context, and that a solution in one would not necessarily lead to a solution in the other.[322] At the end of the debate, the Sixth Committee decided to reconvene the *Ad Hoc* Committee the following year, but later than usual,[323] to give more time for delegations to consult on possible solutions for both conventions.

---

[319] Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," Annex II.B, *in:* 2003 Working Group Report, *supra* note 318, at 11-12; U.N. Codification Division, "Draft International Convention for the Suppression of Acts of Nuclear Terrorism, Informal consultations, Oct. 7, 2003," (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 7, 2003) (on file with the author).

[320] South Africa, "Statement," U.N. GAOR 58th Sess. Sixth Comm. 7th mtg., ¶ 70, U.N. Doc. A/C.6/58/SR.7 (Oct. 17, 2003).

[321] U.N. GAOR 58th Sess. Sixth Comm. 6th mtg., ¶¶ 21, 46, 73, U.N. Doc. A/C.6/58/SR.6 (Oct. 15, 2003); U.N. GAOR 58th Sess. Sixth Comm. 7th mtg., ¶ 61, U.N. Doc. A/C.6/58/SR.7 (Oct. 17, 2003); U.N. GAOR 58th Sess. Sixth Comm. 8th mtg., ¶¶ 46, 90, 96, U.N. Doc. A/C.6/58/SR.8 (Oct. 17, 2003).

[322] Mexico, "Statement," U.N. GAOR 58th Sess. Sixth Comm. 9th mtg., ¶ 24, U.N. Doc. A/C.6/58/SR.9 (Oct. 20, 2003).

[323] G.A. Res. 58/81, ¶¶ 15-16, U.N. Doc. A/RES/58/81 (Dec. 9, 2003).

In June 2004, the United States began consulting with the Group of Eight Major Industrialized Nations and the European Union on how to proceed. In view of the repeated failure, the United States proposed that the *Ad Hoc* Committee be convened once every two years. The European Union and India preferred shorter meetings rather than canceling them.[324] It seems that the major concern of both the United States and the European Union was not to give the impression that the international community had failed to take decisive measures against terrorism. Their dilemma was that either option: canceling the meetings or having unfruitful ones; conveyed a sense of failure.

H) A belated conclusion

After five years of little or no progress, by the June 2004, the negotiation of the Nuclear Convention began gaining momentum once more. This change was due to three factors: first and foremost, the renewed commitment by the Russian Federation and other major powers to conclude the negotiations; second, the parallel action by the Security Council to address forcefully the risk of nuclear terrorism; and, third, some decisive action by the bureau of the *Ad Hoc* Committee.

While the General Assembly was unable to reach an agreement on the Nuclear Convention, there was, nonetheless, continued concern that terrorist groups might obtain weapons of mass destruction. In September 2003, President Bush called for a Security Council resolution to prevent and criminalize the proliferation of weapons of mass destruction. In principle, he did not distinguish between horizontal proliferation: the

[324] Díaz, Autograph notes, *supra* note 123, June 17, 2004, June 24, 2004.

acquisition of weapons of mass destruction by states; and vertical proliferation: the acquisition of those weapons by non-state actors. He said:

> A second challenge we must confront together is the proliferation of weapons of mass destruction. Outlaw regimes that possess nuclear, chemical and biological weapons and the means to deliver them would be able to use blackmail and create chaos in entire regions. Those weapons could be used by terrorists to bring sudden disaster and suffering on a scale we can scarcely imagine. The deadly combination of outlaw regimes, terror networks and weapons of mass murder is a peril that cannot be ignored or wished away. If such a danger is allowed to fully materialize, all words, all protests, will come too late. (…)
>
> Because proliferators will use any route or channel that is open to them, we need the broadest possible cooperation to stop them. Today I ask the United Nations Security Council to adopt a new anti-proliferation resolution. That resolution should call on all Members of the United Nations to criminalize the proliferation of weapons of mass destruction, to enact strict export controls consistent with international standards and to secure any and all sensitive materials within their own borders.[325]

The United States brought this initiative to the Security Council; first, to the permanent members, who discussed it for over five months; and then, to the broader membership. Pakistan, who was then a non-permanent member of the Council, made sure that the new resolution would not cover horizontal proliferation; Pakistan explained that the new resolution should not apply to states like itself, which had obtained nuclear weapons outside the framework of the Non-Proliferation Treaty.[326] Thus, on April 28, 2004, the Security Council adopted its resolution 1540 containing the following decisions:

> *Acting* under Chapter VII of the Charter of the United Nations,

---

[325] United States (G.W. Bush), "Statement," U.N. GAOR 58th Sess. 7th plen. mtg., p. 11, U.N. Doc. A/58/PV.7 (Sept. 23, 2003).

[326] Pakistan, "Statement," U.N. SCOR 59th year, 4956th mtg, at 2-5, U.N. Doc. S/PV.4956 (April 28, 2004); Germany, "Statement," U.N. SCOR 59th year, 4956th mtg, at 10, U.N. Doc. S/PV.4956 (April 28, 2004).

> 1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;
>
> 2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;[327]

These decisions clearly overlapped with the scope of the proposed Nuclear Convention. By using its exceptional powers under Chapter VII of the Charter to take binding decisions, the Security Council imposed upon all states the legal obligation to prevent and criminalize terrorist acts carried out with nuclear, chemical, and biological weapons. Resolution 1540 was, in fact, intended to take the place of the Nuclear Convention, closing precisely the same the gap in the international counter-terrorism legal regime that the proposed convention had sought to address. This was made clear by the Ambassador of the United Kingdom who said:

> This resolution is an effective multilateral response to threats not covered by existing regimes. It is consistent with the goals of disarmament and the multilateral treaty framework. The resolution therefore requires all States to adopt robust national legislation that will criminalize attempts to acquire or traffic weapons of mass destruction and the requirement to establish controls that thwart such efforts.[328]

In a sense, through this resolution, the Security Council had short cut the negotiation of the proposed Nuclear Convention by legislating in its stead. Nevertheless,

---

[327] S.C. Res. 1540 (2004), ¶¶ 1-2, U.N. Doc. S/RES/1540 (April 28, 2004).

[328] United Kingdom, "Statement," U.N. SCOR 59th year, 4956th mtg, at 7, U.N. Doc. S/PV.4956 (April 28, 2004).

the obligation to criminalize contained resolution 1540 was rather general in nature. It did not contained a detailed description of the criminal act, such as the one included in the draft convention; nor did it contain specific provisions on judicial and police cooperation on extradition, exchange of information, and the return of seized radioactive materials. Thus, there was still some residual value in adopting the draft convention. On the other hand, resolution 1540 required all states to enact legislation immediately, without waiting for ratification of the proposed treaty; and to present, in just six months, a report to a Security Council committee proving their compliance.[329] Thus, the resolution was faster and more robust, in terms of implementation and verification, than the proposed convention. In addition, in resolution 1540, the Security Council dealt with the question of state armed forces by adopting precisely the solution that the General Assembly had been reluctant to agree upon: it created an exception for the activities of those forces out of the scope of the new obligations. The resolution limited the obligation to criminalize the acquisition and use of weapons of mass destruction only with regard to "non-State" actors, defined as any "individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution."[330] Moreover, the resolution stressed that it did would not contradict or affect the rights and obligations of states under the Non-Proliferation Treaty,[331] protecting implicitly the right of the declared nuclear states to possess nuclear weapons.

---

[329] S.C. Res. 1540 (2004), *supra* note 327, ¶ 4.

[330] *Ibid.,* n.

[331] *Ibid.,* ¶ 5.

The Terrorism *Ad Hoc* Committee met again from June 28 to July 2, 2004.[332] At the outset, the bureau took a bold step: it submitted a consolidated text of the draft Nuclear Convention, ready for adoption, including both the exemption of state armed forces, as drafted in 1998, and the Mexican proposal. The provision on armed forces read:

> Article 4
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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, and the activities undertaken by 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.
>
> 3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.
>
> 4. This Convention does not address, nor can be interpreted as addressing, in any way, the issue of the legality of the use or the threat of use of nuclear weapons by States.[333]

In introducing this text, the chairman of the *Ad Hoc* Committee stressed that it was intended to facilitate the discussion, "on the understanding that all proposals concerning the convention (…) continued to remain on the table for further consideration."[334]

---

[332] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* ¶ 1, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004) [hereinafter 2004 Ad Hoc Comm. Report].

[333] Bureau, "Consolidated text, draft International Convention for the Suppression of Acts of Nuclear Terrorism," art. 4, U.N. Doc. A/AC.252/L.13 (June 28, 2004) in 2004 Ad Hoc Comm. Report, *supra* note 332, Annex III, at 15-27.

[334] 2004 Ad Hoc Comm. Report, *supra* note 332, ¶ 10.

On June 28 and 29, 2004, the Coordinator held a series of bilateral, private consultations with the most interested delegations. As the reactions to the bureau's text were positive, on June 30, he decided to convene a meeting of informal consultations open to all delegations. [335] In those consultations, Mexico fully endorsed the text prepared by the bureau. It stressed that the new instrument was a law enforcement instrument which should not prejudge the question of the lawfulness of nuclear weapons. He argued that delegations should not hold the Nuclear Convention hostage to disarmament issues which it had not been possible to resolve in other fora. The Russian Federation, the European Union, the United States, among others,[336] supported the new text. Arab delegations, on the contrary, objected. Syria and Jordan proposed the deletion of paragraphs 2 and 3.[337] Egypt and Sierra Leone suggested, instead, deleting the whole article 4. In addition, Syria reaffirmed its proposal to criminalize the dumping of nuclear waste, and Jordan proposed amending the Mexican language to stress that it would not prejudge either the lawfulness of the possession of nuclear weapons.[338] At the end of the consultations, the United States noted that, while many delegations had supported the new text, the basic differences of opinion still remained. In his view, to continue discussing this convention, without a clear prospect of concluding it, would send the wrong signal to the international community by demonstrating the United Nations'

---

[335] Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," ¶ 1, in 2004 Ad Hoc Comm. Report, *supra* note 332, Annex II.B, at 13-14 [hereinafter Coordinator for the Nuclear Convention, June 2004 Report].

[336] Chile, Costa Rica, Switzerland, Kenia, and Malaysia.

[337] Syria, "proposal," U.N. Doc. A/AC.252/2004/WP.1, in 2004 Ad Hoc Comm. Report, *supra* note 332, at 27.

[338] Díaz, Autograph notes, *supra* note 123, June 30, 2004; Coordinator for the Nuclear Convention, June 2004 Report, ¶¶ 2-11, *supra* note 335, at 14.

inability to address serious issues of common concern.[339] Notwithstanding this position, the *Ad Hoc* Committee recommended to the Sixth Committee to "consider establishing a working group, if appropriate, to continue the elaboration of a draft comprehensive convention on international terrorism and a draft international convention for the suppression of nuclear terrorism."[340] The conditional, "if appropriate," was the only concession to the United States' concerns.

On September 1, 2004, before the negotiations on the Nuclear Convention resumed, over 331 persons, mostly children, were killed in a hostage-taking crisis the city of Beslan, in the south of Russia.[341] This attack re-energized Russia's foreign policy on terrorism. In the Security Council, Russia proposed a stringent resolution to strengthen the Council's counter-terrorism action, including the possibility of imposing sanctions against all terrorist groups, beyond Al-Qaida, that was already under sanctions, while, in the General Assembly, it renewed its lobbying efforts for the adoption of the Nuclear Convention. Consequently, on October 8, 2004, the Security Council adopted resolution 1566 condemning all terrorist acts "as a threat to international peace and security,"[342] and calling upon states "to cooperate fully in the fight against terrorism, (…) in order to find, deny safe haven and bring to justice, on the basis of the principle to extradite or

---

[339] Coordinator for the Nuclear Convention, June 2004 Report, ¶ 12, *supra* note 335, at 14; Díaz, Autograph notes, *supra* note 123, June 30, 2004.

[340] 2004 Ad Hoc Comm. Report, *supra* note 332, ¶ 14.

[341] On Sept. 1, 2004, thirty-five armed Chechen separatists seized a school in the Southern Russian town of Beslan, taking between 1,000 and 1,500 hostages, including children, their parents and teachers. On Sept. 3, when Russian forces were removing dead bodies from around the school, the militants opened fire and began detonating explosives. The armed forces returned fire and blew a whole in the side of the school gym to help the hostages escape; but the roof collapsed. At least 331 persons died and 727 were hospitalized *"Riyad us-Saliheyn Martyrs' Brigade attacked Educational Institutions target (Sept. 1, 2004, Russia)"* in MIPT Terrorism Knowledge Base, [database on line] available from http://www.tkb.org/Indicent.jsp?incID=19321 accessed on July 21, 2006.

[342] S.C. Res. 1566 (2004), ¶ 1, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

prosecute, any person" who participates in terrorist activities.[343] Regarding the Nuclear Convention, Security Council resolution 1566 contained an unprecedented call to the General Assembly to conclude the negotiations. It said:

> 5. *Calls upon* Member States to cooperate fully on an expedited basis in resolving all outstanding issues with a view to adopting by consensus the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism;[344]

This call was unprecedented on two grounds; first, because it seemed an undue intervention in the activities of an independent organ, the General Assembly, of equal standing; and, second, because it was made under Chapter VII, that is, having the highest normative character, even if it was not strictly binding since it only "called" for the adoption of the conventions instead of ordering their conclusion.[345] Moreover, it is noteworthy that the Council was calling for the conclusion of both conventions by "consensus," thus discouraging a possible vote. This aspect might have been a concession to Pakistan and Algeria, who, as members of the OIC, had major objections to the text of the Comprehensive Convention,[346] but also to European members of the Security Council who believed that "maintaining consensus in fighting international

---

[343] *Ibid.,* ¶ 2.

[344] *Ibid.,* ¶ 5.

[345] See Brazil, "Statement," U.N. SCOR 59th year, 5053rd mtg, at 7, U.N. Doc. S/PV.5053 (Oct. 8, 2004):

> I wish to reiterate our view that the current practice of the Council is one of excessive resort to the use of Chapter VII. In that regard, the fact that the entire operative part of the resolution just adopted remains under that chapter suggests that not enough emphasis has been given to the possibilities opened up by international cooperative action. We believe that such a tendency is both unnecessary and counterproductive. It is a matter of specific concern that the appeal to Member States contained in operative paragraph 5 is made under Chapter VII. During our negotiations, I noticed that this point was raised by several other delegations. In our view, no constraints should be imposed on States' freedom to negotiate the terms of international conventions.

[346] See *infra:* Chapter 7.F.

terrorism is of great value and is obviously in the interest of all United Nations Member States."[347]

In the meantime, the Sixth Committee convened the Terrorism working group for four days, from October 5 to 8, 2004.[348] On October 6, the Coordinator on the Nuclear Convention held informal consultations, open to all delegations.[349] In those consultations, the supporters of the Convention became more forceful. The Russian Federation, the European Union, and the United States[350] argued that the text was ready for adoption and that it should be submitted to the Sixth Committee for action. Syria, Cuba, Iran and Sierra Leone, advocated, on the contrary, the deletion of the exemption of state armed forces. Syria recalled that this was a common position of the Non-Aligned Movement, even if some members of the group had broken away. Syria also noted that its proposal to criminalize the dumping of radioactive waste should not be forgotten. At the end, Egypt said that it had some ideas to redraft the exclusion of armed forces in a "less negative" form.[351] However, after consulting with members of the OIC, Egypt preferred not to submit its proposals at that time, but promised to share those ideas with other delegations in the following weeks.[352] At the end of the working group's session, the Coordinator appealed to those delegations that had difficulties with article 4 to intensify their efforts to find a solution and stressed the importance of adopting the

---

[347] Germany, "Statement," U.N. SCOR 59th year, 5053rd mtg, at 6, U.N. Doc. S/PV.5053 (Oct. 8, 2004).

[348] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, U.N. Doc. A/C.6/59/L.10 (Oct. 8, 2004) [hereinafter 2004 Working Group Report].

[349] Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," ¶ 1, in 2004 Working Group Report, *supra* note 348, Annex B, at 5-7 [hereinafter Coordinator for the Nuclear Convention, Oct. 2004 Report].

[350] Supported by Costa Rica, Kazakhstan, Mexico, Republic of Korea, and Switzerland.

[351] Díaz, Autograph notes, *supra* note 123, Oct. 6, 2004.

[352] Coordinator for the Nuclear Convention, Oct. 2004 Report, *supra* note 349, ¶¶ 14-21.

Nuclear Convention promptly.[353] Later, in an open formulation prepared by the Friends of the Chairman, the working group recommended that the Sixth Committee should continue, during the following days, the work on the Nuclear Convention.[354]

In effect, during the following weeks, delegations continued exploring possible formulations in order to reach an agreement. The Russian Federation tried, unsuccessfully, to address Syria's concerns through additional language in the body of the resolution by which the General Assembly would adopt the text of the proposed treaty. Meanwhile, Egypt circulated informally the following preambular paragraph:

> Recognizing that the provisions of this Convention should be compatible with the requirements of international law applicable in armed conflicts, particularly those of the principles and rules of international humanitarian law.[355]

This language, based on one of the decisions of the International Court of Justice in its advisory opinion on the legality of nuclear weapons,[356] was intended to address the remaining concerns on non-proliferation. However, this suggestion could, theoretically, be construed as limiting the exemption for armed forces, allowing their prosecution if their activities were not in conformity with international humanitarian law.

---

[353] *Ibid.,* ¶ 22.

[354] 2004 Working Group Report, *supra* note 348, ¶ 10: "The Working Group also decided (…) to recommend that work continue with the aim of finalizing (…) the draft international convention for the suppression of acts of nuclear terrorism,"

[355] Díaz, Autograph notes, *supra* note 123, Oct. 2004.

[356] Legality of the threat or use of nuclear weapons, Advisory Opinion, *supra* note 179, ¶105.D:

> "D. Unanimously,
>
> A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

In parallel, the Sixth Committee held its annual debate on international terrorism. Unlike previous years, this time the majority of delegations called for the prompt conclusion of the Nuclear Convention.[357] Mexico summarized the general feeling by noting that agreement was "within the Committee's grasp (…) since points of consensus had been identified."[358] Nonetheless, an important group of delegations, including the European Union as a whole, Switzerland, Bangladesh, Algeria, Iran, and Tunisia stressed, though, that the adoption should be achieved by consensus.[359] Only Israel noted that consensus was not indispensable to find a way to move both conventions forward.[360] At the end, the Russian Federation noted that intensive consultations were being held on the Nuclear Convention. He said that a possible solution was like to be found in the following days and that it might be possible to adopt the Convention during that same session of the General Assembly, that is, before September 2005.[361] Hence, the General Assembly decided to reconvene the Terrorism *Ad Hoc* Committee in late March 2005, to continue "on expedited basis, (…) to resolve the outstanding issues relating to the

[357] The Rio Group, the European Union, Viet Nam, India, Republic of Korea, Tajikistan, the OIC, Cameroon, Indonesia, Australia, Switzerland, the Russian Federation, Democratic Republic of the Congo, and Bangladesh (U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., ¶¶ 7, 12, 14, 17, 20, 23, 24, 27, 39, 45, 49, 55, 58, 63, U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004)); Malaysia, Ecuador, Libya, Belarus, China, Iceland, Morocco, Monaco, Colombia, Sri Lanka, Cuba, Afghanistan, Costa Rica, Tanzania, and Japan (U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶¶ 4, 7, 9, 11, 22, 24, 28, 33, 45, 52, 53, 60, 62, 70, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004)); Peru, Kazakhstan, Singapore, Angola, Iraq, Sierra Leona, Jordan, Mongolia, Maldives, Zambia, Mali, Ukraine, and Mexico, (U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 9, 12, 19, 28, 34, 43, 48, 54, 66, 68, 71, 75, 77, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004)); Nigeria, Fiji, Nepal, Ethiopia, Lesotho, Iran, and Tunisia (U.N. GAOR 59th Sess. Sixth Comm. 10th mtg., ¶¶ 7, 11, 15, 20, 24, 31, 34, U.N. Doc. A/C.6/59/SR.10 (Oct. 20, 2004)).

[358] Mexico, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 9, 12, 19, 28, 34, 43, 48, 54, 66, 68, 71, 75, 77, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

[359] U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., ¶¶ 12, 49, 62, U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004); U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶ 74, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004); U.N. GAOR 59th Sess. Sixth Comm. 10th mtg., ¶¶ 31, 34, U.N. Doc. A/C.6/59/SR.10 (Oct. 20, 2004).

[360] Israel, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶ 41, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004).

[361] Russian Federation, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 27th mtg., ¶ 14, U.N. Doc. A/C.6/59/SR.27 (Nov. 19, 2004).

elaboration of the draft international convention for the suppression of acts of nuclear terrorism."[362]

By the end of 2004, the opposition to the Nuclear Convention had been reduced to a handful of delegations: Syria, Cuba, Iran, and Pakistan. The great majority of delegations could live with the consolidated text proposed earlier in the year by the bureau,[363] and was willing to proceed to its adoption. In the following months, those delegations that still had difficulties with the text submitted formal proposals in a last minute effort to sway the general balance of the treaty.[364] Pakistan suggested new language to protect nuclear installations from terrorist attacks.[365] Cuba proposed penalizing any person in command of state armed forces that orders the use of nuclear devices.[366] Iran sought to include a clause in the preamble, based on the Non-Proliferation Treaty,[367] stressing that all state parties had a right to access nuclear technologies and materials for peaceful purposes.[368] The United States, based on Security Council resolution 1540,[369] proposed, on the contrary, that the peaceful uses of

---

[362] G.A. Res. 59/46, ¶ 18, U.N. Doc. A/RES/59/46 (Dec. 2, 2004).

[363] Bureau, "Consolidated text, draft International Convention for the Suppression of Acts of Nuclear Terrorism," *supra* note 333.

[364] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex III.B, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005) [hereinafter 2005 Ad Hoc Comm. Report].

[365] Pakistan, "Proposal," U.N. Doc. A/AC.252/2005/WP.1 (Jan. 18, 2005) in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex III.B., at 30.

[366] Cuba, "Proposal: new art. 2.4.d," U.N. Doc. A/AC.252/2005/WP.2 (March 9, 2005) in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex III.B., at 30-31.

[367] NPT, *supra* note 134, art. 4.

[368] Iran, "Proposal," U.N. Doc. A/AC.252/2005/WP.5 (March, 2005) in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex III.B., at 31.

[369] S.C. Res. 1540 (2004), *supra* note 327, pr. para. 7:

> *Affirming* that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

nuclear energy should not be used as cover to acquire nuclear weapons.[370] Finally, Egypt submitted formally its language stressing that the new convention should be compatible with international humanitarian law.[371] In parallel, the Secretary-General tried to influence the negotiations by calling for the prompt conclusion of the draft Nuclear Convention in the context of the sixtieth anniversary of the United Nations. He said:

> 92. It is vital that we deny terrorists access to nuclear materials. This means consolidating, securing and, when possible, eliminating hazardous materials and implementing effective export controls. While the Group of Eight Major Industrialized Countries (G8) and the Security Council have taken important steps to do this, we need to make sure that these measures are fully enforced and that they reinforce each other. I urge Member States to complete, without delay, an international convention for the suppression of acts of nuclear terrorism.[372]

For their part, the Russian Federation and other members of the G-8 began to put pressure those countries that still had difficulties with the text, trying to convince them to withdraw their objections. [373] In the corridors, it was said that the that the Russian Foreign Minister was putting pressure on his Syrian and Cuban colleagues; while the Secretary of State of the United States was leaning on the Pakistani Foreign Minister. While these demarches were confidential in nature, their impact seems undeniable. For example, on March 15, 2002, the Russian Foreign Minister spoke on the phone with the

---

[370] United States, "Proposal," U.N. Doc. A/AC.252/2005/WP.4 (March, 2005) in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex III.B., at 31.

[371] See *supra* p. 11; Egypt, "Proposal: new pr. para. after the 13th pr. para.," U.N. Doc. A/AC.252/2005/WP.3 (March 24, 2005) in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex III.B., at 31.

[372] U.N. Secretary-General, "In larger freedom: towards development, security and human rights for all," ¶ 92, U.N. Doc. A/59/2005 (March 21, 2005) (emphasis in the original).

[373] See *e.g.* United States, White House, Office of the Press Secretary, "Joint Statement by President Bush and President Putin on Nuclear Security Cooperation," (press release of Feb. 24, 2005) in http://www.whitehouse.gov/news/releases/2005/02/20050224-8.html accessed on July 21, 2006.

United States' Secretary of State "on the necessity to take additional steps to speed up the adoption"[374] of the Nuclear Convention. Two days later, on March 17, the Secretary met with the Pakistani Foreign Minister, in Islamabad, to discuss, *inter alia*, the "global war on terrorism," and the alleged sale of nuclear technology by Pakistani scientists to Iran and North Korea.[375] A week later, on March 25, Pakistan formally withdrew its proposals to amend the draft Nuclear Convention.[376] Pakistan later explained that it had decided to withdraw its proposals in a spirit of compromise, for the sake of consensus.[377] Similarly, Syria, who had been the most vocal critic of the draft Nuclear Convention, suddenly announced, at the beginning of the *Ad Hoc* Committee, that it could now accept the text prepared by the Friends of the Chairman.[378]

The Terrorism *Ad Hoc* Committee met, for the ninth time, from 28 March to April 1, 2005. Mr. Hoffmann, the Coordinator on the Nuclear Convention, held informal consultations open to all delegations on March 28, 29, and 30.[379] During the consultations held on March 28 and 29, the four amendments remaining on the table were discussed. The Cuban proposal, on the criminal responsibility of the persons in command and control of armed forces, was supported only by Venezuela, but it was

---

[374] Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, "Russian Minister of Foreign Affairs Speaks to US Secretary of State Condoleeza Rice by Telephone" (press release 490-15-03-2005) March 15, 2005 (on file with the author).

[375] Embassy of the United States in Islamabad, Pakistan, "Embassy News: Remarks by Secretary of State Condoleezza Rice and Pakistani Foreign Minister Khursheed Mahmood Kasuri at Ministry of Foreign Affairs, Islamabad, Pakistan, March 17, 2005" (press release March 17, 2005) in http://islamabad.usembassy.gov/pakistan/secstate_rice_mfa_05_03_17.html, accessed on July 21, 2005.

[376] Permanent Mission of Pakistan to the United Nations, *note verbale* to the Secretariat of the Sixth Comm. of the United Nations, March 23, 2005, (on file with the author).

[377] United Nations, "Action needed on two draft conventions this year, Ad Hoc Comm. on terrorism told, as it begins current session," p. 10, (press release L/3081) March 28, 2005.

[378] *Ibid.,* p. 5.

[379] 2005 Ad Hoc Comm. Report, *supra* note 364, ¶¶ 1, 14

rejected by the European Union and India. The Egyptian proposal, stressing the principles of international humanitarian law, was supported by some Asian and African delegations,[380] as an effort to reach consensus; but it was rejected both by industrialized and by Latin American nations,[381] who noted that its legal effects were unclear and that it added nothing to the proposed treaty. The American proposal, on the use of peaceful nuclear energy technology to develop nuclear weapons, was rejected by most delegations;[382] not on its substance, but because it was not related to the question of terrorism. Similarly, some delegations[383] rejected the Iranian proposal on the right to access nuclear technology and materials for peaceful purposes, because it did not belong in a counter-terrorism criminal law instrument. At the end, both Cuba and Egypt said that they would seek further instructions from their capitals. The United States declared that it would withdraw its proposal if all other proposals were withdrawn, and Iran noted that he would not insist in its own proposal if the American text was withdrawn.[384]

In the afternoon of March 29, the Coordinator held a private meeting with the sponsors of the remaining proposals: Egypt, Cuba, Iran, and the United States. He explained that none of the proposals was likely to be agreed upon and that the draft convention would not be adopted as long as those proposals remained on the table. He suggested that all the proposals be withdrawn simultaneously, as a package-deal. After

---

[380] Indonesia, Jordan, Madagascar, Malaysia, Nigeria, Sierra Leona, and Syria.

[381] Denmark, the European Union, Japan, Mexico, Russian Federation, Switzerland, and Trinidad and Tobago.

[382] Belarus, Demark, the European Union, Iran, Malaysia, Mexico, Russian Federation, and Syria. Only Japan supported the proposal by the United States.

[383] The European Union and Jordan.

[384] Díaz, Autograph notes, *supra* note 123, March 29-30, 2005; Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," ¶¶1-2, in 2005 Ad Hoc Comm. Report, *supra* note 364, Annex II.A, at 22 [hereinafter Coordinator for the Nuclear Convention, April 2005 Report].

consulting with their capitals, the sponsors agreed. Thus, on March 31, the Coordinator informed the plenary of the *Ad Hoc* Committee that the text of the Nuclear Convention had been concluded and that it was ready for adoption.[385] On the question of the exemption of armed forces, the agreed text contained the consolidated draft prepared by the Friends of the Chairman in the summer of 2004, that is, the language of the Bombings Convention plus the Mexican provision that the convention would not affect the question of the legality of nuclear weapons.[386] On April 1, the *Ad Hoc* Committee decided to recommend to the General Assembly the adoption, during that same session, of the draft Nuclear Convention.[387] Since the Sixth Committee had already concluded its work, this recommendation was taken up directly by the plenary of the General Assembly which, on April 13, 2005, formally adopted by consensus the International Convention for the Suppression of Acts on International Terrorism.[388]

---

[385] Coordinator for the Nuclear Convention, April 2005 Report, *supra* note 384, ¶¶ 3-5; Díaz, Autograph notes, *supra* note 123, March 29-31, 2005;

[386] See *supra* p. 11.

[387] 2005 Ad Hoc Comm. Report, *supra* note 364, ¶ 19.

[388] G.A. Res. 59/290 (2005), U.N. Doc. A/59/290 (April 13, 2005)

NEGOTIATING TERRORISM: THE NEGOTIATION DYNAMICS OF FOUR UN COUNTER-TERRORISM TREATIES, 1997-2005

by

CARLOS FERNANDO DÍAZ-PANIAGUA

VOLUME II

A dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2008

Chapter 6 - The negotiation of the 1999 Terrorist Financing Convention

On December 9, 1999, the United Nations General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism.[1] This instrument was designed to criminalize the provision of funds to terrorist groups, in order to curtail their ability to carry out violent attacks. As the Convention itself noted, it was intended to supplement the pre-existing international counter-terrorism legal instruments since those treaties did not address expressly the question of the financing of criminal activities.[2] The negotiation of the Financing Convention was extremely successful. It took only sixteen months from the moment the idea was first introduced in the plenary of General Assembly to the moment it was adopted by consensus. While its text borrowed heavily from the language found in Bombings[3] and in the Nuclear Conventions,[4] it managed not to be bogged down by the thorny question of the exemption of armed forces and self-determination. Like the previous chapters, this section will provide an overview of the main elements of the negotiation, in order to elucidate why these negotiations were successful while the negotiations on the Nuclear and Comprehensive Conventions came to a standstill.[5]

---

[1] International Convention for the Suppression of the Financing of Terrorism, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999) [hereinafter Financing Convention].

[2] *Ibid.,* pr. para. 8, 11.

[3] International Convention for the Suppression of Terrorist Bombings, *adopted on* Dec. 15, 1997*,* G.A. Res. 52/164, Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter Bombings Convention].

[4] International Convention for the Suppression of Acts of Nuclear Terrorism, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005) [hereinafter Nuclear Convention].

[5] See *supra:* Chapters 5.F and *infra:* Chapter 7.F.

A) Agreeing to negotiate

Negotiations on the Terrorist Financing Convention formally began on September 23, 1998, when then Foreign Minister of France, Mr. Hubert Védrine, called upon the United Nations General Assembly to adopt a legal instrument to prosecute those who finance and instigate terrorist attacks. He said:

> [W]e must combat terrorism in all its forms, whoever the perpetrators and whatever their motivation. The recent International Convention for the Suppression of Terrorist Bombings is an important step forward, but that is not enough. We must also acquire the means to hunt down those who finance and instigate these attacks. France is proposing the negotiation of a universal convention against the financing of terrorism.
>
> We need to define concrete mechanisms for legal measures and mutual judicial assistance against those who finance terrorism. Effective sanctions, such as the seizure or the freezing of the assets of organizations or individuals that have participated in terrorist acts must be provided for. Innovative measures, such as making it impossible to invoke banking secrecy in judicial bodies investigating a terrorist attack, should be introduced. If we have the will to do this, we can launch this negotiation at the end of the present session of the General Assembly.[6]

However, the idea of elaborating a convention against the financing of terrorist activities was not completely new. A couple of years earlier, in 1996, Secretary-General had determined that the collection of funds for terrorist purposes was one of the topics not covered by the then existing legal framework against terrorism, and he had invited the General Assembly to consider the possibility of adopting a new treaty on this subject.[7] Nevertheless, it seemed, at the time, that the international community preferred leaving this question to the domestic legal system of each state. That year, the General Assembly

---

[6] France (H. Védrine), "Statement," U.N. GAOR 53rd Sess. 11th plen. mtg., p. 18, U.N. Doc. A/53/PV.11 (Sept. 23, 1998).

[7] The Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, ¶ 36, U.N. Doc. A/51/336 (Sept. 6, 1996).

just reaffirmed the importance of "taking all appropriate steps under domestic laws" to ensure that those who finance, plan, or instigate terrorist acts are brought to justice,[8] while the G-7 simply called upon states to:

> Prevent and take steps to counteract, through appropriate domestic measures, the financing of terrorist organizations, whether such financing is direct or indirect through organizations which also have, or claim to have charitable, social or cultural goals, or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing, and racketeering. These domestic measures may include, where appropriate, monitoring and control of chase transfers and back disclosure procedures.[9]

During the 1998 Sixth Committee debate, France explained in more detail its proposal. It argued that a "terrorist group's ability to strike, acquire a powerful arsenal, make itself known, and recruit and train its members depends on its sources of funding,"[10] so that terrorist acts could be prevented by depriving criminal groups of their financial resources. The French delegation noted, however, that international law did not provide means for tracing and punish effectively those who contribute financially to terrorist organizations. Thus, it proposed not only the criminalization of fund-raising for terrorist purposes, but also the lifting of the veil of banking secrecy, to allow the identification and confiscation of those funds.[11] France then circulated a first draft of its

---

[8] Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, ¶ 5, G.A. Res. 51/210, annex, U.N. Doc. A/RES/51/210, annex (Dec. 17, 1996) [hereinafter 1996 Additional Declaration].

[9] Group of Seven Major Industrialized Countries, Ministerial Conference on Terrorism, Paris, France, July 30, 1996, *Agreement on 25 Measures,* ¶ 19, U.N. Doc. A/51/261.

[10] France, "Working document: Why an international convention against the financing of terrorism?" ¶ 1, *later reproduced as:* U.N. Doc. A/AC.252/L.7/Add.1 (March 11, 1999).

[11] *Ibid.,* ¶ 2; France, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 20, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

proposed convention, to illustrate to all delegations the formulations it had in mind.[12] From the outset, this initiative was supported by most delegations, including the European Union, the Russian Federation, and the United States.[13]

Regarding the procedure, France asked that the negotiation of the Financing Convention be given priority over any other instrument. In addition, France requested that the same amount of time that had been allocated to the negotiation of the Bombings and the Nuclear Conventions be given to the consideration of its proposal.[14] These requests, however, presented a problem. In 1996, when the General Assembly had establish the Terrorism *Ad Hoc* Committee, it had agreed, as part of a package-deal, on a sequence of instruments to be negotiated. The Assembly had decided that the Committee would, first, negotiate the Bombings Convention; second, discuss the Nuclear Convention; and, third, "address means of further developing a comprehensive legal framework of conventions dealing with international terrorism."[15] For developing countries, the third stage meant that, after concluding the Nuclear Convention, the *Ad Hoc* Committee would negotiate a Comprehensive Convention against all forms of Terrorism, as proposed by India and supported by the Non-Aligned Movement as a whole.[16] From this point of view, France was, in effect, asking that its proposal be given

---

[12] Alain Dejammet, Permanent Representative of France to the United Nations, Letter to the Secretary-General of the United Nations dated Nov. 4, 1998, Annex: "Draft international convention for the suppression of terrorist financing," U.N. Doc. A/C.6/53/9 (Nov. 4, 1998) [hereinafter France, First draft].

[13] Supported also by Turkey, Macedonia, New Zealand, Croatia, Philippines, Egypt, Hungary, Poland, Uganda, Sri Lanka, Uruguay, Ukraine, Australia, Japan, and Haiti. U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 8, 12, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶¶ 3, 25, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶¶ 16, 20, 28, 30, 42, 48, 60, 69, 71, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶¶ 4, 9, 15, 21 and 24, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[14] France, "Statement," *supra* note 11, ¶ 22.

[15] G.A. Res. 51/210, ¶ 9, U.N. Doc. A/RES/51/210 (Dec. 17, 1996).

[16] See *supra*: Chapter 4.A.

precedence over an initiative dear to the developing world. On the other hand, the General Assembly was not really bound to begin negotiations on the Comprehensive Convention. The language used in 1996 to describe the mandate of the Committee was intentionally vague and open; "addressing means to further develop a comprehensive legal framework" could be done either through a comprehensive legal instrument or through a series of additional sectoral treaties. During the 1998 debate, Japan and the United States restated their reservations on the possible negotiation of a Comprehensive Convention. They favored a step-by-step approach.[17] Conversely, some developing countries preferred to begin immediately the negotiation of a Comprehensive Convention instrument rather than creating a new sectoral instrument, such as the one proposed by France.[18] In this context, India offered a trade-off. It was willing to agree that the French proposal be considered first, "on the understanding that the next item to be taken up by the *Ad Hoc* Committee would be the draft international convention presented by India." [19]

After extensive discussions,[20] India's proposal was agreed; the Committee would negotiate first the proposed Financing Convention, in exchange for considering immediately thereafter "means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority

---

[17] U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 30, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 22, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[18] Algeria, South Africa, Tunisia, Iran, and Angola. U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 27, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶¶ 18, 30, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 36, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 27, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[19] India, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 4, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); see also *infra:* Chapter 7.A.

[20] Argentina, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 14, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

basis, the elaboration of a comprehensive convention on international terrorism."[21] Moreover, in order to ensure compliance with the second part of the deal, it was agreed that the *Ad Hoc* Committee would meet both in 1999 and 2000.[22] Thanks to this agreement, on December 8, 1998, the General Assembly formally launched negotiations on the proposed Convention on the Suppression of the Financing of Terrorism "to supplement related existing international instruments."[23] The *Ad Hoc* Committee met from March 15 to 26, 1999, to begin discussions on the French proposal.[24] Meanwhile, on December 7 and 8, 1998, a group of governmental, counter-terrorism experts from the major industrialized nations met in London to discuss ways to address terrorist fund-raising both at the national and the international levels, including through the adoption of the proposed Financing Convention. They agreed to work together towards the early conclusion of the new treaty. This decision was later endorsed by the Ministers of Justice of the G-8.[25] For its part, France produced a revised draft of the convention,[26] based on the observations received at the expert meeting.[27] This revised draft was to be later used as the basis for the negotiations in the *Ad Hoc* Committee.

---

[21] G.A. Res. 53/108, ¶ 11, U.N. Doc. A/RES/53/108 (Dec. 8, 1998).

[22] *Ibid.,* ¶ 12.

[23] *Ibid.,* ¶ 11.

[24] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* ¶¶ 1, 10-14, U.N. GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999) [hereinafter 1999 Ad Hoc Comm. Report].

[25] Canada, Department of Justice, "G8 Justice and Interior Ministers' Virtual Meeting on Organized Crime and Terrorist Funding, December 15, 1998" (press release for background, December 15, 1998) http://www.g8.utoronto.ca/terrorism/terror98.htm, accessed on July 25, 2006.

[26] France, "Working paper: Draft International convention for the suppression of terrorism," U.N. Doc. A/AC.252/L.7* (March 11, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, Annex II, at 14-23 [hereinafter France, Second draft].

[27] Virginia Morris and Arnold Pronto, "Current Developments: The Work of the Sixth Comm. at the Fifty-Fourth Session of the UN General Assembly," 94 AM.J.INT'L.L 582, 585, n. 17, (2000).

B) Defining the Crime

Defining the crime terrorist financing was a complex task. In and of itself, providing funds is not a wrongful action; it can be a legitimate investment, the payment for goods or services, or a philanthropic act. Transferring funds is a criminal act only insofar as it is directed towards assisting the commission of another crime, in this case, a terrorist attack. In this sense, the crime of terrorist financing is, in fact, a preparatory crime, a form of complicity in the crime of terrorism. Thus, to define "terrorist financing" it is necessary to define, not only the act of "financing," but also the related crime of "terrorism." The first draft of the Financing Convention, circulated by France in November 1998, sought to be as broad as possible by defining terrorism twice: once conceptually, and once through reference to the offences recognized in pre-existing counter-terrorism treaties. The proposed definition read:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person intentionally organizes or proceeds with the financing of a person or group of persons who, to his or her knowledge:
>
> (a) Commits, or proposes to commit, in connection with an individual or collective undertaking aiming to disrupt public order, acts with the intent to:
>
> (i) Cause death or serious bodily injury;
>
> (ii) Cause extensive destruction of property or of the environment; or
>
> (iii) Threaten to cause death or serious bodily injury; or cause extensive destruction of property or of the environment; or to compel a person, an international organization or a State to do or abstain from doing any act; or
>
> (b) Commits, or proposes to commit, one of the offences within the scope of the following Conventions, subject to its ratification by the State Party:
>
> (i) Convention on Offences and Certain Other Acts Committed On Board Aircraft, done at Tokyo on 14 September 1963;
>
> (ii) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
>
> (iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

(iv) 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;
(v) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
(vi) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
(vii) 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, done at Montreal on 24 February 1988;
(viii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
(ix) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;
(x) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

2. Within the meaning of this Convention, acts of embezzlement, conversion or transfers of property or sums of money, in whole or in part, carried out by a person knowing such acts are to be used for committing offences referred to in this article, are also considered offences.[28]

Several aspects of this definition are noteworthy. First, subsection 2.1.a) was an attempt to define terrorism comprehensively, on the basis of the elements that were, at the time, being discussed in the context of the Nuclear Convention, such as the damage to the environment and the threat to compel a person, a state, or an international organization to do something. This language was, in fact, based on a joint French and Belgian proposal for the Nuclear Convention.[29] Second, the long list of counter-terrorism treaties contained in subsection 2.1.b) established, as possible goals of the financing, the various

[28] France, First draft, *supra* note 12, art. 2.1-2.2

[29] Belgium and France, "Proposal," art. 1.bis, U.N. Doc. A/AC.252/1998/WP.1/Rev.2, *in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* annex I, pp. 14-15, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998). See *supra:* Chapter 5.B.

offences already defined in those treaties. Those definitions, however, would have been included in the scope of the new convention only insofar as each state had ratified a particular treaty. Thus, if adopted, this proposal would have created a heterogeneous legal regime: the actual meaning of "terrorist financing" would have changed from one state to the other depending on which treaties each nation had ratified. Third, paragraph 2 contained what seemed a repetition of the crime, declaring an offence the transferring of funds for carrying out terrorist attacks. However, this provision was necessary because the initial draft defined "financing" narrowly: requiring always the participation of an intermediary:

> For the purposes of this Convention:
> (a) "Financing" means any contribution aimed at providing by direct or indirect methods funds to third parties, including through organizations which also have or claim to have charitable, cultural or social goals; such contributions may be public or private, and result from lawful or unlawful activities such as:
> – Donations and fund raising,
> – Commercial activities,
> – Organized traffic in goods and persons,
> – Robbery, racketeering, abduction and hostage-taking,
> – Swindles, fraud, embezzlement of assistance or subsidies;[30]

This definition of "financing" revealed what seems to have been France's main concern: the use of networks, both legitimate and criminal, to move funds from Europe into the hands of terrorist abroad.

After the London meeting of G-7 counter-terrorism experts, France made several improvements to its text. First of all, France defined "financing" as "the transfer or reception of funds, assets or other property, whether lawful or unlawful, by any means,

[30] France, First draft, *supra* note 12, art. 2.1.a.

directly or indirectly, to or from another person or another organization."[31] By using this broader definition, paragraph 2 of the previous text was no longer necessary. Second, France decided that it was not necessary to define terrorism twice, but that it would suffice to refer to the offences set forth in the existing conventions. Consequently, the conceptual definition of terrorism was removed. However, France realized that the legal regime created by those instruments still had a major gap: it did not criminalize homicide with terrorist purposes. In effect, the then existing counter-terrorism legal instruments criminalized the assassination of diplomats and other internationally legal persons as well as any murder carried out with a bomb. However, they did not consider an act of terrorism a homicide performed with a terrorist purpose if the victim was not a diplomat and if the attack had not been carried out with a bomb. Consequently, France supplemented the list of counter-terrorism treaties with an additional offence of murder for terrorist purposes. To simplify the text further, the revised text set out the list of conventions in an annex.[32] Thus, the new draft read:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of a person or organization in the knowledge that such financing will or could be used, in full or in part, in order to prepare or commit:
>
> a) An offence within the scope of one of the Conventions itemized in the annex, subject to its ratification by the State Party; or
> b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a government or the civilian population.[33]

[31] France, Second draft, *supra* note 26, art. 1.1.

[32] 1999 Ad Hoc Comm. Report, *supra* note 24, ¶¶ 26-29.

[33] France, Second draft, *supra* note 26, art. 2.1.

As this was a rather complex definition, the *Ad Hoc* Committee considered it section-by-section.[34]

1) The wrongful act

The first question to be negotiated was the definition of "financing," the first paragraph of the first article of the proposed convention. As noted before, France had defined "financing" simply as "the transfer or reception of funds, assets or other property, whether lawful or unlawful, by any means, directly or indirectly, to or from another person or another organization."[35] However, during the first reading, several questions arose: first, whether the reference to the "transfer or reception of funds" would suffice; second, whether the transferring of funds had to be, in itself, unlawful or not; and, third, whether this definition would cover fund-raising activities. Regarding the actual behaviour involved in financing, most delegations thought that transferring funds, that is, just moving assets around, would not encompass the real meaning of financing: providing assets to another person so that he could control and use them. Consequently, delegations suggested instead the words: "provision,"[36] "making available,"[37] and "supply."[38] Only the United States, Ecuador, and Malawi preferred using the term "transfer of funds."[39]

---

[34] 1999 Ad Hoc Comm. Report, *supra* note 24, ¶¶ 10-11.

[35] France, Second draft, *supra* note 26, art. 1.1.

[36] China, Egypt, Italy, Netherlands, New Zealand, and Poland.

[37] Cameroon, Egypt, Germany, India, Ireland, Sierra Leone, Singapore, Sri Lanka, Sweden, and the United Kingdom.

[38] Egypt, Italy, and New Zealand.

[39] U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m.," at 1, (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 17, 1999) (on file with the author); The Rapporteur, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussions the working

There were also questions on the propriety of including the concept of the reception of funds. In essence, terrorist financing consists in providing funds to a terrorist. The end-recipient of the funds is not financing terrorist activities but committing them. Austria,[40] Guatemala,[41] South Africa, China, and Mexico,[42] believed that it was not necessary to criminalize the terrorist both for his terrorist acts and for receiving funds to commit them. Other delegations, such as the United States, Russia, and Cuba,[43] favoured the retention of the concept of receiving financial resources, to punish any intermediaries or administrators of those funds.[44] Moreover, most delegations believed that qualifying the transfer of funds as "lawful or unlawful" did not add much to the text. Australia[45] suggested deleting this phrase completely, while others[46] preferred to qualify as lawful or not, not the transfer of funds but their acquisition. Only the United States supported the text proposed by France.[47] Switzerland proposed including, as a form of financing, the "organization and implementation of all types of fund-raising," except in those cases where "it can be demonstrated or it is recognized that the property is also used for

---

group, First reading of arts. 1-8, 12.3, 12.4 and 17 on the basis of doc. A/AC.252/L.7" 1999 Ad Hoc Comm. Report, *supra* note 24, Annex IV.A, ¶ 2, [hereinafter 1999 Rapporteur's Informal summary of the first reading].

[40] Austria, "Proposal," art. 1.1, A/AC.252/1999/WP.6, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 27.

[41] Guatemala, "Proposal," art. 1.1, A/AC.252/1999/WP.8, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 28.

[42] Also Egypt, Germany, Ireland, Italy, Malawi, Poland, Republic of Korea, Sierra Leone, Sri Lanka, and Sweden.

[43] Also Algeria, India, Iran, Peru, and Tunisia.

[44] U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m," *supra* note 39, at. 1; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 3.

[45] Australia, "Proposal," art. 1.1, A/AC.252/1999/WP.9, (March 15, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 27.

[46] Belgium, Ecuador, Germany, India, Ireland, Italy, Malawi, Sweden, and the United Kingdom.

[47] U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m," *supra* note 39, at. 1-2; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 5.

humanitarian purposes by the beneficiary."[48] This proposal pointed to one of the key problems behind the convention: the use by terrorist groups of real or spurious charitable institutions to collect funds. The European Union, for instance, had argued that one of the tasks of the Committee was to alert those who donate funds for what they believe are charitable or humanitarian purposes that their contributions were being used to finance terrorist acts in other countries.[49] Nevertheless, the inclusion of fund-raising in the convention brought to the fore two additional problems: first, that in many cases, those who contribute to a charitable organization do so in good faith, without being aware that their donations may end up in the hands of terrorist organizations; and, second, that in many cases, legitimate organizations are aware that part of their humanitarian assistance is likely to end, through embezzlement, in the hands of criminals groups and even accept that fact as an unavoidable cost of working in distressed areas. The International Committee of the Red Cross had noted that:

> [W]hen a small group of armed persons hides among hundreds of thousands of innocent civilians, women and children, for example in a refugee camp, it may be impossible to provide assistance to the latter without part of the assistance being diverted by those few undesirable individuals. This perverse effect, which may result from humanitarian assistance, is recognized as inevitable in such situations.[50]

The office of the United Nations High Commissioner for Refugees (UNHCR) added that:

---

[48] Switzerland, "Proposal," art. 1.1, A/AC.252/1999/WP.1, (March 15, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 26.

[49] United Nations, "Ad Hoc Comm. on instruments to combat international terrorism begins third session," p. 3, (press release L/2915) March 15, 1999.

[50] International Committee of the Red Cross, "Statement of March 19, 1999," in U.N. Doc. A/AC.252/1999/INF/2, Annex (March 26, 1999).

> In effect, the reality of humanitarian work admits the possibility – the word "possibility" is used because this is not always the case – that material assistance we provide may find its way into the hands of the guilty. We may be aware of the possibility, but have no option to suspend our work of saving lives in that moment. (…) In the scenario I have described, the effect of the draft convention is that it might criminalize the legitimate mandated activities of the UNHCR and other humanitarian agencies. This is an undesirable result, not least because it will restrict the scope of our role, and work against the interest of refugees, internally displaced persons and others of concern for the humanitarian community.[51]

To avoid this undesirable result, Switzerland proposed excluding from the scope of the convention any contributions that are used, at least in part, for humanitarian purposes. However, most delegations believed that the exception proposed by Switzerland was too restrictive and that it would limit the effectiveness of the new convention. Those delegations included both nations where funds are collected, such as Germany, the United States, and Australia;[52] and countries to which those funds are sent, such as Algeria, Sri Lanka, and Ireland.[53] Meanwhile, India, Syria, Bahrain, and Libya, supported the exclusion, while Belgium and Costa Rica believed that it should be drafted in a more precise manner.[54] At the end of the debate, the United Kingdom argued that it was not necessary at all to define the concept of "financing." In its view it would suffice to identify the relevant wrongful acts in the definition of the offence.[55] Thus, by the end

---

[51] United Nations High Commissioner for Refugees, Liaison Office at the United Nations Headquarters, "Comments on the draft convention for the suppression of the financing of terrorism," (TD, *aide memoire* circulated to delegations, Oct. 6, 1999) (on file with the author).

[52] Also Austria and New Zealand.

[53] Also Cuba, the Russian Federation, Sierra Leone, Tunisia, and Turkey.

[54] U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m," *supra* note 39, at. 2-3; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 9.

[55] U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m," *supra* note 39, at. 2; United Kingdom, "Proposal," A/AC.252/1999/WP.20, (March 17, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 34-35.

of the spring session of the France submitted a working paper with a revised definition of the offence. This new text simply defined financing as "the transfer [or reception] of funds."[56] The question of the reception of funds was put in brackets to indicate that it needed to be further discussed during the fall session of the working group.

On 27 September 1999, when the working group met to discuss this issue again,[57] it saw a repetition of the previous debate. The United Kingdom[58] believed that it was not necessary to define "financing," since it is a well understood term, and any details could be included in the definition of the offence. Others considered that "the transfer of funds" was too vague and preferred instead the words: "providing funds" or "making funds available."[59] The inclusion of the concept of receiving funds was contentious. Some delegations objected to it since it could criminalize those who received funds in their bank accounts without being aware of it. They also argued that this reference was not necessary to capture the intermediaries since they were covered by the concept of transferring funds. The supporters of this reference argued that it was necessary to facilitate state action against the middle-men who might be captured before they had time to convey the funds to their final recipients. The Netherlands[60] suggested using the term

---

[56] France, "Working paper on arts. 1-2," art. 1.1, in 1999 Ad Hoc Comm. Report, *supra* note 24, Annex I.B, at 12-13.

[57] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 4, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999) [hereinafter 1999 Working Group Report].

[58] United Kingdom, "Proposal," art. 1.1, U.N. Doc. A/C.6/54/WG.1/CRP.16 (Sept. 30, 1999) in 1999 Working Group Report, *supra* note 57, at 35.

[59] The Chairman, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussions in the working group," ¶¶ 31-35, 1999 Working Group Report, *supra* note 57, Annex III, [hereinafter 1999 Chairman's informal summary].

[60] Netherlands, "Proposal," art. 1.1, U.N. Doc. A/C.6/54/WG.1/CRP.2 (Sept. 27, 1999) in 1999 Working Group Report, *supra* note 57, at 18.

"acquisition," to avoid criminalizing a completely passive action of receiving funds without any knowledge of it.[61]

After the debate, on September 28, 1999, France suggested a new definition of the term "financing" with several options: ""Financing" means providing / making available or obtaining / accepting / receiving funds"[62] Nonetheless, France noted that the working group had to decide whether to include this definition or not.[63] It seemed, however, that there was growing support for the British approach of incorporating the description of the wrongful act in the definition of the offence. Hence, on October 4, 1999, Colombia, Costa Rica, and Mexico proposed a new definition of the offence following the United Kingdom's suggestion. It stated that "[a]ny person commits an offence within the meaning of this Convention if that person voluntarily provides, accepts or collects funds by any means, directly or indirectly (…)"[64]

2) The actor and the intentionality requirements

The revised French draft established that "[a]ny person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of a person or organization in the knowledge that such financing will or could be used, in full or in part, in order to prepare or commit" a terrorist act.[65] From a

---

[61] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 35-40.

[62] France, "Proposal," art. 1.1, U.N. Doc. A/C.6/54/WG.1/CRP.9 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 20.

[63] *Ibid.,* n.1.

[64] Colombia, Costa Rica, and Mexico, "Proposal," art.2.1, U.N. Doc. A/C.6/54/WG.1/CRP.27 (Oct. 4, 1999) in 1999 Working Group Report, *supra* note 57, at 38.

[65] France, Second draft, *supra* note 26, art. 2.1, chapeau.

criminal law point of view, this provision set out several elements of the crime: its actor, the degree of intentionality required, and a general precondition of legality. These three elements were discussed on 16 and 17 March, 1999. The question of who could commit an act of financing of terrorism was not very contentious. Most delegations accepted the French suggestion that the crime could be committed by any natural person. Lebanon and India, however, suggested that legal entities could also commit the crime. Most legal systems, though, do not consider criminal law applicable to corporate entities. Moreover, a separate article in the draft treaty requested states to ensure the liability of legal corporations used to carry out the crime of terrorist financing. That provision left the question of whether the liability of the legal person was to be of a criminal, a civil, or an administrative nature to each State's domestic legal system.[66] Bahrain sought to expand this provision to include state-terrorism, but this proposal did not receive any support at the time.[67] Meanwhile, on the question of the intent, France proposed criminalizing some degree of negligence; that is, that a person would commit a crime if he makes a financial entity aware that his funds could, perhaps, be used for terrorist purposes. Several delegations[68] sought to raise this threshold by requiring either criminal intent or, at least, recklessness. Switzerland proposed that the person who provides the funds should at least know that those funds are in fact going to be used to commit terrorist

[66] France, Second draft, *supra* note 26, art. 5.1, 5.2.

[67] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," at 2, (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 17, 1999) (on file with the author); 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 16.

[68] Austria, Egypt, Germany, Russian Federation, Switzerland, and the United States.

acts.[69] Germany and Austria[70] suggested that the person should either: know that his funds are actually going to be used to commit a terrorist acts, or intend his funds to be used to perform such a crime.[71] Austria argued that the formulation proposed by France was too broad because, theoretically, any funds could be used to commit criminal offences. Moreover, proving in court the knowledge of the actor at the time of the crime would be extremely difficult.[72] Similarly, Germany argued that "the intention of the offender to finance a terrorist act is an essential element of the crime and should therefore be referred to explicitly in the text."[73] Based on these observations,[74] that United Kingdom proposed the following formula:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person provides funds by any means, lawful or unlawful, directly or indirectly, to any person or organization, either:
> (a) With the intention that the funds should be used for the preparation or commission of terrorist offences; or
> (b) In the knowledge that the funds are to be used for such purposes; or
> (c) When there is a reasonable likelihood that the funds will be used for such purpose.[75]

This proposal required either criminal intent, in subparagraphs a) and b); or recklessness, in subparagraph c). In addition, the orgininal French draft also required that

---

[69] Switzerland, "Proposal," A/AC.252/1999/WP.2, (March 15, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 26.

[70] Supported by China, Egypt, Finland, Lebanon, Malawi, and the United States.

[71] Germany, "Proposal," A/AC.252/1999/WP.26, art. 2.1.chapeau, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 26; Austria, "Proposal," art. 2.1.chapeau and rationale, A/AC.252/1999/WP.11, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 28-30.

[72] Austria, "Proposal," *supra* note 71, at rationale, 1.b.

[73] Germany, "Proposal," *supra* note 71, at rationale, 1.a.

[74] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," *supra* note 67, p. 2; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶¶ 17-18.

[75] United Kingdom, "Proposal," *supra* note 55, art. 2.

the financing be done "intentionally and unlawfully."[76] For many delegations,[77] putting these elements as general conditions of the provisions of funds was redundant. For them, the criminal intent did not reside in the intention to provide the funds but in the subjective knowledge of the consequences of the financing. Similarly, they believed that requiring, as a precondition, the unlawfulness of the provision of funds was unnecessary since the same convention was going to declare it unlawful.[78] Other delegations[79] preferred retaining those words, to avoid criminalizing those situations were it was lawful to provide funds.

On March 22, France submitted a further revision of draft of article 2. The definition of the offence now read:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person [unlawfully and intentionally] provides financing with the knowledge or intent that such financing will be used, in full or in part, to commit [or to prepare the commission of]:
> (a) An offence as defined in annex 1; or
> (b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, is designed to intimidate a Government or the civilian population.[80]

This new text tried to address some of the observations made during the first reading. The threshold of intentionality was raised; the new text required criminal intent: that the funds are provided with the intention that they be used to commit a terrorist

---

[76] France, Second draft, *supra* note 26, art. 2.1, chapeau.

[77] Argentina, Cote d'Ivoire, Egypt, Finland, Germany, Guatemala, Papua New Guinea, Russia Federation, Slovakia, Turkey, and Ukraine sought to delete "unlawfully." Austria, Egypt, Germany, Guatemala, Iraq, Malawi, and Slovakia sought to delete "intentionally."

[78] Germany, "Proposal," *supra* note 71, at rationale, 1.a.

[79] Algeria, Austria, Belgium, China, India, Iraq, Italy, Lebanon, Malawi, Netherlands, and the United States, supported the retention of "unlawfully."

[80] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," art. 2.1, A/AC.252/1999/WP.45, (March 22, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 47-49.

attack, or knowing that they will be used to commit such an attack. Accordingly, the crime could not be committed through negligence or recklessness. Moreover, this draft treated terrorist financing as a self-standing an offence, that is, it did not require that a terrorist act be committed or even attempted. The person who provides the funds could be guilty of terrorist financing even if the receiver never had a real intention of carrying out a terrorist act. In addition, France put within brackets the references to the lawfulness and intentionality, since the opinion of delegations on those issues seemed equally divided. In the ensuing debate, the majority of delegations[81] welcomed the fact that the text treated terrorist financing as a principal offence in itself. However, Austria, Japan, Belgium, Denmark, Sweden, and Switzerland had serious reservations to criminalizing it if no terrorist act is committed or at least attempted.[82] They suggested linking the new offence to the actual commission of a terrorist act.[83] Views were also divided on the reference to "intentionally and unlawfully." Finland, the United Kingdom, and Mexico, among others,[84] proposed to deletion of "unlawfully" since it was redundant. The United States, Switzerland, Malawi, Ireland, and Italy proposed, instead, its retention. Meanwhile, most delegations[85] sought to delete "intentionally" since it was already

---

[81] Australia, China, Cuba, France, Germany, India, Ireland, Malawi, Mexico, Nigeria, Poland, Russia, Sri Lanka, Tunisia, United Kingdom, and the United States.

[82] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," at 1-2, (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 22, 1999) (on file with the author); The Rapporteur, U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, "Informal summary of the discussions the working group, Second reading of arts. 1-8, 12, and 17 on the basis of doc. A/AC.252/WP.45, 47, and 51," 1999 Ad Hoc Comm. Report, *supra* note 24, Annex IV.B, ¶¶ 84, 87, [hereinafter 1999 Rapporteur's informal summary of the second reading].

[83] Austria, Belgium, Japan, Sweden, and Switzerland, "Proposal," art. 2.1, A/AC.252/1999/WP.49, (March 23, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 51-52.

[84] Nigeria, Cuba, Slovakia, Iran, and Russia.

[85] Cuba, Finland, Iran, Ireland, Italy, Malawi, Mexico, Nigeria, Russia, Slovakia, South Africa, Sri Lanka, Switzerland, United Kingdom, and the United States.

covered by the intent element of the crime.[86] Very few delegations commented on the intent requirement. Switzerland sought to raise the threshold of the intent requirement by deleting the possibility that the crime could be committed only with the knowledge that the funds would be used for terrorist purposes. For Switzerland, the actor had to actually will that his funds be used to carry out terrorist acts. Poland sought, on the contrary, to include once more the possibility that the crime be committed through recklessness. Finally, Mexico suggested that the knowledge and intent could be inferred from the evidence or from the actual circumstances of the crime.[87] However, most delegations were satisfied with the French proposal.[88]

After the second reading, France revised, once again, the definition of the offence. The new text read:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person unlawfully proceeds with the financing, by any means, directly or indirectly, of any person or organization with the intention that the funds should be used, or in the knowledge that the funds are to be used, in full or part, to prepare for or to commit:
>
> (a) Offences as defined in annex I to this Convention; or
>
> (b) Acts intended to cause death or serious bodily injury to a civilian or to any other person not engaged in an armed conflict, when such acts, by their nature or context, are designed to intimidate a government or a civilian population.
>
> 2. In order to convict a person for an offence under paragraph 1 of this article, it shall not be necessary to prove that the funds were in fact used to prepare for or to commit a specific offence or an offence within a specified category of offences.[89]

---

[86] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," *supra* note 82, at 2; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶ 88.

[87] Mexico, "Proposal," new art. 2.5, A/C.6/54/WG.1/CRP.10 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 20-21.

[88] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," *supra* note 82, at 2; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶ 89.

[89] France, "Working paper on arts. 1-2," *supra* note 56, art. 2.1-1.2

Three new elements of this draft are noteworthy. First, the new paragraph 2 made abundantly clear that the offence of terrorist financing was to be a separate crime, independent from the actual execution of terrorist acts. Second, this draft deleted the reference to "intentionally," since this was implicit in the criminal intent now required; and, third, it described the act of financing broadly: "by any means, directly or indirectly (…)". This revised text was discussed at the fall meeting of the working group. On the intent requirements, some delegations suggested deleting the word "unlawfully" since it was redundant. Others preferred maintaining it to exclude from the convention legitimate activities of humanitarian agencies. In this sense, it was suggested that it could be replace by "deliberately," "willingly," "knowingly," or "with full knowledge." Moreover, some delegations advocated the deletion of the new paragraph 2, since the definition of the offence already made clear that no terrorist act had actually to be committed.[90]

After this round of discussions, Colombia, Costa Rica, and Mexico proposed the following text:

> Any person commits an offence within the meaning of this Convention if that person voluntarily provides, accepts or collects funds by any means, directly or indirectly, with the intention that the funds should be used, or with the full knowledge and consent that the funds will be used, in full or in part, to prepare for or to commit: (…)[91]

The changes in this text focused mostly on the intentionality elements. It replaced "unlawfully" with "voluntarily" thus excluding from the crime any funds extracted by coercion. It also raised the threshold of the criminal intent by requiring either the intention or "full knowledge and consent", so as to exclude from the scope of the

[90] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 67-68, 89.

[91] Colombia, Costa Rica, and Mexico, "Proposal," *supra* note 64.

convention the activities of humanitarian organizations that might know that part of their assistance is diverted to terrorist groups but who do not accept it. This text was used as the basis for discussions in informal consultations chaired by the delegation of Argentina. Several improvements were made. Germany, the Holy See, and Switzerland, among others,[92] suggested replacing "voluntarily" by "willfully." Austria[93] and the United Nations High Commissioner on Refugees underlined the need to include the term "unlawfully," to avoid the criminalization of humanitarian organizations.[94] Meanwhile, the term "full knowledge and consent" was supported by Austria, Switzerland, and Sweden, but the United States and Spain objected saying that it would make the convention unworkable because such conditions would almost be impossible to prove in court. Finally, the United States noted that it could now accept the deletion of the possibility that the funds be used to prepare a terrorist attack.[95] After this debate, and a series of bilateral consultations, the coordinator prepared a new draft which read:

> Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out (…)[96]

3) The offences set forth in previous conventions

---

[92] Austria, Canada, Denmark, Egypt, Lebanon, Portugal, and the United Kingdom.

[93] Supported by Denmark and Egypt.

[94] United Nations High Commissioner for Refugees, *supra* note 51.

[95] Carlos F. Díaz, Autograph notes on the negotiation of the Financing Convention, taken down as an official representative of Costa Rica in those negotiations, Oct 4, 1999, on file with the author.

[96] Argentina, "Discussion paper proposed by the coordinator, art. 2, Oct. 7, 1999," art. 2.1. (TD, non-paper on art. 2. circulated to delegations, Oct. 7, 1999) (on file with the author).

Pursuant to the original French draft, a person would perpetrate the crime of terrorist financing when he provides funds to prepare or to commit "[a]n offence within the scope of one of the Conventions itemized in the annex, subject to its ratification by the State Party."[97] This reference to pre-existing counter-terrorism instruments allowed the Committee to avoid the difficult task of agreeing on a comprehensive definition of terrorism. It raised several questions, tough. First, were all the offences established in those previous instruments of such gravity that financing them should be considered a separate crime instead of simply as complicity? Second, what would be the situation if a state had not accepted one of the previous instruments? And, third, would it be possible to add to the list new treaties adopted after the Financing Convention was concluded?

The first question was related to the nature of the crime of terrorist financing. Providing funds to assist terrorist acts is, in itself, a preparatory act to the main terrorist offence; it is either complicity or participation in a criminal enterprise. Thus, all previous counter-terrorism treaties, which had already criminalized preparatory and accessory crimes to the terrorist offences, had implicitly criminalized some acts of terrorist financing. The Bombings Convention, for instance, had criminalized aiding and abetting the use of bombs for terrorist purposes, as well as contributing to a criminal group that intended to put a bomb.[98] The Financing Convention, however, intended to raise the preparatory act of making a financial contribution to a terrorist offence into a separate offence in and of itself; that is, that it would be possible to commit the crime of terrorist financing even if a terrorist attack is never carried out or even attempted. The difficulties arose then regarding the relationship between the accessory crimes to the offence of

[97] France, Second draft, *supra* note 26, art. 2.1.a

[98] Bombings Convention, *supra* note 3, art. 2.3.a, 2.3.c.

terrorist financing and the accessory crimes of the main terrorist offences. Theoretically, pursuant to the French draft, it would be possible to criminalize complicity to finance the preparation of an act of complicity in a terrorist offence. Some delegations thought that this possibility of criminalizing an accessory offence to and accessory offence created "the danger of very long chains of participation removing a reasonably close nexus to the main offence."[99] Austria suggested two possible solutions: either to refer in the annex only to the articles of the pre-existing instruments that created the main offences, excluding the ancillary ones; or to specify, in the definition of the crime, that the financing was to be directed to the commission of the main offences.[100]

The second question regarding the relationship between the new convention and the pre-existing instruments consisted on what would happen if a state had not ratified one or several of the previous treaties. The France had proposed that those instruments would be incorporated into the scope of the definition of terrorist financing only in so far as each state had ratified them.[101] This suggestion respected the freedom of every state to accept voluntarily the obligations enshrined in a treaty. It created, however, the problem that the actual definition of the crime, the meaning of terrorist financing, would change from state to state depending on which treaties each one had ratified. The Republic of Korea, the United States, and India[102] accepted the French approach, but tried to make it more specific by including other forms of accepting international obligations, such as approval and accession of a treaty. Iran, China, and Japan proposed, instead, to delete the

---

[99] Austria, "Proposal," *supra* note 71, rationale, art. 2.a.

[100] *Ibid*, annex; Austria, "Proposal," art. 2.1a, A/AC.252/1999/WP.12, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 31-32.

[101] France, Second draft, *supra* note 26, art. 2.1.a

[102] Supported also by Algeria, Italy, Russia, and Tanzania.

reference to ratification, ensuring that the definition of the crime would be homogeneous in all legal systems. Finally, Austria[103] and the United Kingdom,[104] proposed an "opt-out" system that would allow states to indicate, at the moment of ratification, that they did not accept one or other of the pre-existing treaties. This mechanism sought to ensure that, in principle, there was a homogenous understanding of the crime of terrorist financing, while respecting the contractual freedom of all States.[105] Their proposal read:

> On depositing its instrument of ratification, acceptance, approval or accession of this Convention, a State which is not a party to a treaty listed in the Annex may declare that, in the application of this Convention to that State Party, offences specified in that treaty shall not be treated as offences for the purposes of article 2 (1) (a). Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact and the depositary shall so notify the other States Parties. [106]

The third question was whether it would be possible to add new treaties to the annex. If the annex was to be a closed list of the counter-terrorism instruments adopted before the conclusion of the Financing Convention, the new convention would be "frozen in time." Nevertheless, international law is in continuous development and counter-terrorism instruments are adopted periodically. The Nuclear Convention, for instance, was being negotiated in parallel with the Financing Convention and there was no guarantee that it was going to be adopted before the latter was concluded.[107]

---

[103] Austria, "Proposal," *supra* note 71, rationale, art. 20.bis.

[104] United Kingdom, "Proposal," *supra* note 55, art. 1.2.b.

[105] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," *supra* note 67, p. 3; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 21.

[106] United Kingdom, "Proposal," *supra* note 55, art. 1.2.b.

[107] See *supra* Chapter 5.F.1.

Consequently, the United Kingdom[108] suggested a mechanism to ensure that the Financing Convention would be updated periodically, as new counter-terrorism treaties came into force.[109] The United Kingdom's proposal read:

> States Parties may propose the addition to the list in the Annex of offences specified in another treaty. Once the depositary has received such a proposal from [22] States Parties, the Annex shall be deemed to have been so amended [90] days after the depositary has informed all States Parties that he has received [22] such proposals. However, a State Party which is not a party to such treaty may, within the said period of [90] days, declare that the amendment shall not apply to that State Party. Such declaration shall cease to have effect as soon as the treaty enters into force for the State Party. The State Party shall inform the depositary, which shall so notify the other States Parties.[110]

On March 22, 1999, France submitted a revised definition of the offence. France included the United Kingdom's formulations for an opt-out clause regarding those treaties that a state has not ratified, and for a provision to include new treaties in the annex; as well as Austria's redrafting of the annex to refer only to the principal crimes.[111] In the ensuing debate, the majority of delegations that participated,[112] favored specifying the crimes referred to in the annex, rather than referring generally to the text of the pre-existing treaties. The United States, Iran, and Russia, though, preferred a broader formulation. Austria, Belgium, and others,[113] argued the convention should either include preparatory acts in the definition of the offence, and not in the annex; or,

---

[108] Supported by Cuba, Egypt, India, Italy, Ukraine, and the United States.

[109] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," *supra* note 67, p. 3; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 22.

[110] United Kingdom, "Proposal," *supra* note 55, art. 1.2.c.

[111] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," *supra* note 80, at additional provisions.

[112] Austria, Finland, Ireland, Malawi, Pakistan, South Africa, and Sweden.

[113] See Austria, Belgium, Japan, Sweden, and Switzerland, "Proposal," *supra* note 83, n.

conversely, include the preparatory acts in the annex and not in definition of the offence. Finland, Pakistan, Malawi, South Africa, and Ireland supported the inclusion of the British formulation to extend the application of the convention to new instruments adopted after its conclusion.[114]

At the beginning of the fall session of the working group, Austria and Brazil reiterated their proposal to limit the annex offences only to the most serious offences. This time, they proposed the inclusion of those offences only when they were, "by their nature or context," capable of intimidating a government or the population.[115] Other delegations opposed limiting the cross-reference to the pre-existing treaties only to the main offences, since this would exclude the safeguards and exceptions included in each one of those treaties. Delegations could not agree either on whether to refer to preparatory acts to the main terrorist offences in the definition of the crime of terrorist financing or through a cross-reference to the pre-existing treaties.[116] Views also differed regarding the treatment of those treaties that had not been ratified. The Republic of Korea[117] favored an op-in clause, which would deem included only those treaties that had actually been ratified by the state or those which it had formally accepted. The United Kingdom[118] preferred instead an opt-out system, excluding only those instruments that the state expressly excluded. The British delegation argued that its approach would make

---

[114] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," *supra* note 82, at 2.

[115] Austria, "Proposal," art. 2.1, U.N. Doc. A/C.6/54/WG.1/CRP.12 (Sept. 29, 1999) in 1999 Working Group Report, *supra* note 57, at 21. See *also* Brazil, "Proposal," art. 2.1.b, U.N. Doc. A/C.6/54/WG.1/CRP.25 (Oct. 1, 1999) in 1999 Working Group Report, *supra* note 57, at 38.

[116] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 72-75.

[117] Republic of Korea, "Proposal," art. 2.1.a, U.N. Doc. A/C.6/54/WG.1/CRP.7 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 19.

[118] United Kingdom, "Proposal," art. 20.bis.1, U.N. Doc. A/C.6/54/WG.1/CRP.11 (Sept. 29, 1999) in 1999 Working Group Report, *supra* note 57, at 21.

for a more homogeneous legal regime, requiring less monitoring of the list of convention. In addition, to lessen the difficulties that some delegations had in accepting treaties which they had not yet ratified, the United Kingdom suggested that, instead of referring directly to the offences established in the previous convention, it might be better to refer to "acts which would be offences"[119] under those instruments.[120] Towards the second week of the fall session of the working group, there was growing support for the United Kingdom's suggestions of an opt-out system and of a mechanism for adding new treaties.[121] Moreover, the United States announced that it could then accept the deletion, from the definition of the offence, the reference to the preparation of a terrorist attack, so that preparatory acts to the main offence could be included in the annex.[122]

4) Murder with terrorist purposes

Defining the offence of terrorist financing through a reference to the pre-existing counter-terrorism treaties created an additional problem. None of those instruments criminalized homicide with terrorist purposes, when the victim was not a diplomat or an internationally protected person and when the attack had not been carried out with a bomb. Consequently, France had supplemented the list of counter-terrorism treaties by adding a new offence of murder with terrorist purposes.[123] According to this proposal,

---

[119] United Kingdom, "Proposal," art. 2.1.a, U.N. Doc. A/C.6/54/WG.1/CRP.18 (Sept. 30, 1999) in 1999 Working Group Report, *supra* note 57, at 36.

[120] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 76-77.

[121] Ibid., ¶¶ 113-120.

[122] Díaz, Autograph notes, *supra* note 95, Oct 4, 1999.

[123] See France, "Working document: Why an international convention against the financing of terrorism?" *supra* note 10, ¶6; 1999 Ad Hoc Comm. Report, *supra* note 24, ¶ 29.

somebody would commit an act of terrorist financing if he provides funds to assist someone else to commit:

> An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a government or the civilian population.[124]

In itself, this provision defined a new crime, with its own wrongful act: "an act designed to cause death or serious bodily injury;" its own level of intentionality: "an act designed;" its own targets: "a civilian or to any other person, other than in armed conflict;" and a characteristic purpose: "when such an act, by its nature or context, constitutes a means of intimidating a government or the civilian population." The discussion on this text focused mostly on the characteristic terrorist purpose of the act, both in terms of what makes certain conduct an act of terrorism, and of how this characteristic element could be inferred. At the outset, the Netherlands, Switzerland, Belgium, Japan and Iraq believed that this formulation was too broad. Belgium actually proposed its deletion. Algeria and Turkey believed, on the contrary, that it should be expanded to include actions directed at causing damage to property.[125] Germany, Italy, and Malawi suggested redrafting the characteristic terrorist purpose to say that the act was "intended and likely to intimidate." Germany[126] explained that, for an act to be deem terrorist, it was not enough that it could cause fear, as proposed by France; but it actually had to be intended to cause fear. In its view, to commit an act of terrorist financing, the

---

[124] France, Second draft, *supra* note 26, art. 2.1.c.

[125] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," *supra* note 67, pp. 3-4; 1999 Rapporteur's Informal Summary of the First Reading, *supra* note 39, ¶ 23-25.

[126] Germany, "Proposal," *supra* note 71, at rational 1.d.

person who supplied the funds had to know and intend, not that a common murder be committed, but that a terrorist act be carried out.[127]

After the debate, France revised the definition of the offence as follows:

> An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, is designed to intimidate a Government or the civilian population.[128]

The only change from the previous draft was that the act now had to be "designed to intimidate" instead of constituting "a means of intimidating a government or the civilian population." Switzerland and Japan reiterated their reservations to the inclusion of this new offence. Turkey, Algeria, and South Africa again suggested broadening it, to encompass acts designed to damage property or the environment.[129] Thus, by the end of the session of the *Ad Hoc* Committee, France revised, once more, its definition of murder with terrorist purposes. The new text read:

> Acts intended to cause death or serious bodily injury to a civilian or to any other person not engaged in an armed conflict, when such acts, by their nature or context, are designed to intimidate a government or a civilian population.[130]

The only change from the previous text was the redrafting of the formula on armed conflict. This text was then discussed at the beginning of the fall session of the working group. This time, the debate focused mostly on how to distinguish a terrorist murder from a common homicide.[131] Several formulations were offered. Mexico and

---

[127] U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," *supra* note 67, pp. 3-4.

[128] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," *supra* note 80, art. 2.1.b.

[129] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," *supra* note 82, at 3; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶¶ 92-93.

[130] France, "Working paper on arts. 1-2," *supra* note 56, art. 2.1-1.2

[131] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 84, 87.

Costa Rica suggested a formulation based on the draft Nuclear Convention, emphasizing the intention of the murderer to compel a government to do something:

> Acts intended to cause death or serious bodily harm to a person when such acts are committed with the intent to provoke terror in the population or to compel a legal person, an international organization or a State to commit or refrain from committing an act.[132]

For its part, Belgium suggested: "a murder when, in view of its context, it provokes terror in the population and is likely to intimidate a government."[133] In addition, Syria proposed that the definition of terrorist homicide be replaced with a broader formulation underlining that the criminal acts had to be "designed to terrorize":

> An act intended to cause death or serious bodily or psychological injury or the destruction in full or in part of a public or private establishment by using any criminal method whatsoever when such acts by their nature or context are designed to terrorize a Government, an international organization or a civilian population.[134]

After this debate, the chairman of the working wroup asked the delegation of Argentina to coordinate informal consultations on this paragraph. In those consultations, the approach proposed by Mexico and Costa Rica, of using the concepts of compelling a legal person, state, or organization to do something, gathered support. There were, though, differences on how to refer to the causation of fear. Mexico and Costa Rica had proposed a subjective criterion, the intention of the actor to create fear. Austria and

---

[132] Costa Rica and Mexico, "Proposal," 2.1.b, U.N. Doc. A/C.6/54/WG.1/CRP.14 (Sept. 29, 1999) in 1999 Working Group Report, *supra* note 57, at 22.

[133] Belgium, "Proposal," art. 2.1.b, U.N. Doc. A/C.6/54/WG.1/CRP.3 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 18.

[134] Syria, "Proposal," art. 2.1.b, U.N. Doc. A/C.6/54/WG.1/CRP.23 (Oct 1, 1999) in 1999 Working Group Report, *supra* note 57, at 37.

Germany proposed more objective criteria, such as whether the murder was "likely to provoke terror" or "capable of provoking terror." Austria and the United Kingdom preferred also to speak of "fear" instead of "terror."[135] The distinction between acts intended to cause terror and acts likely to cause terror was of enormous practical importance, because it determined the level of evidence required to prove that the crime of terrorist financing had been committed. In real-life criminal cases, it is much easier to prove in court that an act is capable to causing fear, in view of the concrete, objective situation; than to prove that the person who did it actually wanted to cause terror. To solve this problem, Mexico proposed that the subjective elements of the crime: the knowledge, intent, and purpose of the actor could "be inferred from well-founded evidence or objective and actual circumstances."[136]

On October 5, 1999, after a round of private, bilateral consultations, the coordinator prepared the following definition:

> Any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act is by its nature or context to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.[137]

On the characteristic terrorist nature of the act, this text balanced, on the one hand, the position of those who stressed the subjective elements of the crime: the purpose of the act; and, on the other, the position of those who sought to infer the terrorist character of the crime from its objective circumstances: its nature or context. Thus, the

---

[135] Díaz, Autograph notes, *supra* note 95, Sept. 1999.

[136] Mexico, "Proposal," *supra* note 87.

[137] Argentina, "Revised discussion paper prepared by the coordinator, art. 2, Oct. 5, 1999" (TD, non-paper on art. 2.1.b, circulated to delegations, Oct. 5, 1999) (on file with the author).

coordinator's draft required that the purpose of the murder be to intimidate a population or compel a government, while it allowed states to infer it from the context in which the murder was carried out. As this text seemed to gather substantial support, the coordinator reproduced it in the consolidated definition of the offence that she produced on October 7, 1999.[138]

5) Self-determination and armed forces

The negotiation of both the Bombings Convention and the Nuclear Convention had proved that distinguishing between criminal, terrorist acts, on the one hand, and the legitimate activities of armed forces, on the other, was one of the most difficult tasks that had to be undertaken when drafting a new counter-terrorism instrument.[139] It was, however, an unavoidable task. Any criminal law instrument that sought to penalize the use of violence in society had to differentiate those situations where the use of violence was unacceptable from those circumstances when it was tolerated.

In preparing the first draft of the Financing Convention, France adopted the solution developed during the negotiation of the Bombings Convention; that is, to exempt from the scope of the convention both the activities of the military during an armed conflict and the activities of state armed forces in peacetime, when carried out in the exercise of their official duties "inasmuch as they are governed by other rules of international law."[140] Hence, France reproduced in its draft the entire package-deal

---

[138] Argentina, "Discussion paper proposed by the coordinator, art. 2, Oct. 7, 1999," *supra* note 96, art. 2.1.b.

[139] See *supra:* Chapter 4.F and Chapter 5.D.

[140] France, First draft, *supra* note 12, art. 21.

adopted in the previous instrument.[141] At the time, such a broad exemption seemed necessary since the draft contained a wide-ranging conceptual definition of terrorism that overlapped with the activities of the military during an armed conflict: to kill and to cause extensive destruction of property in order to disrupt the public order and to compel a state to do something.[142] However, by the end of 1998, the formula on armed forces adopted in the context Bombings Convention had become the main stumbling block for the adoption of the Nuclear Convention.[143] Thus, after the December 1998 meeting of G-8 counter-terrorism experts, France removed from its draft both the Bombings Convention's formulation on armed forces and the broad definition of terrorism.[144] This change did not mean, however, that there would be no distinction between terrorism and the legitimate use of force. Quite on the contrary, by defining the crime of terrorist financing through a cross-reference to the offences established under pre-existing Conventions, the revised French draft had implicitly incorporated the distinctions and exceptions contained in each one of those instruments. Thus, for example, if a person financed the use of bombs during an armed conflict, either by a government or by a recognized self-determination movement, he did not commit the crime of terrorist financing because, due to the exception contained in article 19 of the Bombings Convention, using bombs in that context could not be considered a terrorist act.

The issue of the exception for armed forces was then circumscribed to the question of terrorist murder. Undoubtedly, there was certain overlap between the

---

[141] *Ibid.,* pr. para. 11, arts. 1.b and 21.

[142] *Ibid.,* art. 2.1.a; see *supra* p. 11.

[143] See *supra* Chapter 5, section E.

[144] France, Second draft, *supra* note 26.

proposed definition of terrorist murder and the normal activities of armed forces; indeed, those forces perform acts designed to cause death or bodily injury with the purpose of intimidating another government.[145] Even so, in the context of terrorist financing, the need for an exception for armed forces was less pressing than in other counter-terrorism instruments. International law clearly recognizes that armies are entitled to kill; it does not grant them a right to finance other people to kill.

France proposed addressing the question of armed forces in the context of financing a terrorist murder through a reference to the targets: "to a civilian or to any other person, other than in armed conflict."[146] France elaborated on this provision in the preamble by noting that "any act governed by international humanitarian law is not governed by this convention."[147] This provision would have made punishable both the financing of attacks against civilians, at any time, and the financing of attacks against military personnel in peacetime. It did not criminalized financing attacks against military personnel in wartime. Thus, this text correctly did not penalize fund-raising activities in favor of a national liberation movement fighting an internal armed conflict. However, this text criminalized neither an attack against the military by a non-combatant during a situation of armed conflict. From this point of view, it created a loophole that could allow certain terrorists to escape prosecution. The International Committee of the Red Cross explained this situation through an example:

> In a country torn by an internal armed conflict to which international humanitarian law is applicable, an official is dismissed. He believes that his dismissal is unjust and decides to take revenge and force the Government to put

[145] *Cf. ibid.,* art. 2.1.b.

[146] *Ibid.,* art. 2.1.b.

[147] *Ibid.,* pr. para. 8.

> an end to dismissals. He requests financial assistance from a clandestine organization based abroad. With this money, he acquires a bomb, which he explodes inside a ministry of his country, causing serious bodily injury to the members of the armed forces guarding it.
>
> A strict interpretation of the proposed text leads to the logical conclusion that, since the bomb explosion took place in a situation of armed conflict, and since it injured non-civilians, the financing of the act falls outside the scope of application of the convention. Other cases of acts of violence committed outside the context of an armed conflict can be imagined.[148]

When the proposed definition of terrorist murder was first considered by the *Ad Hoc* Committee, in the spring of 1999, some delegations[149] felt that the French formulation was unnecessarily ambiguous: was the convention as a whole not to apply to situations of armed conflict, or was it was to apply to those situations but not with respect to attacks against combatants? The Red Cross argued that the new convention should protect civilians at all times, while recognizing, at the same time, the status of the combatants taking part in an armed conflict. In their view, the new instrument should exempt only those parties to an armed conflict bound by international humanitarian law.[150] To clarify the situation, the ICRC recommended the following formulation:

> In situations of armed conflict, the parties to the conflict shall be bound by the rules of international humanitarian law, and this Convention shall therefore not apply.[151]

---

[148] International Committee of the Red Cross, "Replies given on 22 March 1999 to the questions asked by the delegations of Belgium and Mexico regarding the implications of art.2.1.b," ¶¶ 8-9, U.N. Doc. A/AC.252/1999/INF/2 (March 26, 1999).

[149] Argentina, Cuba, Egypt, and the United States. See Guatemala, "Proposal," art. 2.1.b., A/AC.252/1999/WP.16, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 33; Papua New Guinea, "Proposal," art. 2.1.b., A/AC.252/1999/WP.36, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 43.

[150] International Committee of the Red Cross, "Replies," *supra* note 148, ¶ 6.

[151] *Ibid.,* ¶ 10.

After the first reading, France prepared a revised definition of the offence. It did not change, however, the reference to armed conflict.[152] When the text was discussed again, on March 22, 1999, the United Kingdom, the Republic of Korea, and India argued that the convention should not exclude attack against combatants. India simply proposed to penalize the financing of attacks against "any person."[153] For its part, Pakistan wondered how this provision would affect national liberation movements. Mexico, reflecting the ICRC's concerns, noted that this article, as drafted, would unintentionally exclude from the scope of the convention acts committed by individuals not entitled to the protection of international humanitarian law as combatants, and Lebanon[154] proposed to exclude from the scope of the convention any acts governed by international humanitarian law.[155] Thus, by the end of the spring session of the *Ad Hoc* Committee, France redrafted this definition to make clear that the convention would apply in situations of armed conflict with respect to acts committed both against civilians and military personnel not waging war; but not with respect to acts committed against combatants. The new text read:

> Acts intended to cause death or serious bodily injury to a civilian or to any other person not engaged in an armed conflict, when such acts, by their nature or context, are designed to intimidate a government or a civilian population.[156]

---

[152] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," *supra* note 80, art. 2.1.b.

[153] India, "Proposal," art. 2.1.b, A/AC.252/1999/WP.48, (March 23, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 51.

[154] Lebanon, "Proposal," art. 3.1, A/AC.252/1999/WP.33, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 42.

[155] U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," *supra* note 82, at 3; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶¶ 92-93.

[156] France, "Working paper on arts. 1-2," *supra* note 56, art. 2.1-1.2

When this text was considered at the beginning of the fall session of the working group, India[157] sought once again to delete the reference to armed conflict, so that any murder of military personnel would be considered a terrorist attack. Others preferred the revised French text, which protected off-duty and *hors-de-combat* military personnel during wartime, but not combatants. Finally, Belgium,[158] reflecting the ICRC's concerns, proposed the exclusion from the scope of the convention any acts committed during an armed conflict which are governed by international humanitarian law.[159] Since this proposal was not accepted, on October 4th, Belgium suggested a different approach. It proposed the addition of a provision noting that the new convention would not affect rights and obligations under international humanitarian law. It also suggested defining armed conflict in terms of international humanitarian law. This proposal read:

> Article 1
>
> "Armed conflict" means an armed conflict, as those terms are defined by international humanitarian law.
>
> Article 19. bis
>
> Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.[160]

In practice, while not creating a broad exclusion for all activities governed by the laws of war, these provisions would have allowed judges to interpret the convention in the light of the norms of international humanitarian law, so as not to criminalize acts that

---

[157] See India, "Proposal," art. 2.1.b, U.N. Doc. A/C.6/54/WG.1/CRP.33 (Oct. 6, 1999) in 1999 Working Group Report, *supra* note 57, at 42.

[158] Belgium, "Proposal," art. 19.bis U.N. Doc. A/C.6/54/WG.1/CRP.4 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 19.

[159] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 85-86.

[160] Belgium, "Proposal art. 1 and 19.bis," (TD, non-paper on the question of international humanitarian law, circulated in informal consultations, Oct. 4, 1999) (on file with the author)

are lawful under that law. Moreover, this text was familiar to delegations, since it was taken from the Bombings Convention.[161]

These proposals were discussed in informal consultations under the chairmanship of Argentina, the coordinator on the definition of the offence. The United States, Germany, Sweden, and Canada supported the text proposed by Belgium. Egypt and Papua New Guinea felt that it was redundant. Iran believed that the definition of armed conflict was not necessary, but it supported the reference to the principles of the United Nations Charter since it included the right of self-determination. India, however, strongly opposed the Belgian proposal. It felt that there should be no exception for attacks against military personnel during an armed conflict.[162] Based on these discussions, on October 5, 1999, the coordinator submitted the following definition:

> Any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act is by its nature or context to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.[163]

Regarding armed forces, this text was more precise than the previous French draft, using the technical terms "taking an active part in hostilities in a situation of an armed conflict" rather than the more vague formula of: "engaged in an armed conflict." The new formulation excluded from the scope of the convention only attacks against military personnel actually taking active part in an armed conflict; so that financing attacks against soldiers outside the theater of war or *hors-de-combat* would be considered

---

[161] Bombings Convention, *supra* note 3, art. 19.1.

[162] Díaz, Autograph notes, *supra* note 95, Oct. 4, 1999.

[163] Argentina, "Revised discussion paper prepared by the coordinator, art. 2, Oct. 5, 1999" (TD, non-paper on art. 2.1.b, circulated to delegations, Oct. 5, 1999) (on file with the author).

terrorist financing. The coordinator also proposed to include, as part of the package, the two paragraphs proposed by Belgium.[164] When this text was discussed, Mexico recommended adding in the preamble the formulation, originally suggested by France, that no act governed by international humanitarian law would be regulated by the new convention, but this proposal did not receive any support.[165]

In parallel with the definition of terrorist murder, the Committee discussed the precise drafting of the cross-reference to the terrorist offences established in pre-existing counter-terrorism treaties. It seems that, in that context, the question of armed forces and self-determination was not discussed openly. Delegations limited themselves to proposing formulations such as: "acts which would be offences"[166] or "an offence within the scope of one of the Conventions listed in the Annex,"[167] which were broad enough to encompass the exceptions contained in those instruments. Finally, Syria, Cuba, and Pakistan proposed adding a reference to the right of self-determination and to the root causes of terrorism in the preamble. Syria and Pakistan[168] proposed, in particular, to recall a 1985 resolution[169] that had urged states to "contribute to the progressive elimination of the causes underlying international terrorism"[170] in particular, situations of colonialism, racism, and alien occupation. Moreover, Syria and Cuba suggested

---

[164] Argentina, "Revised discussion paper prepared by the coordinator, art. 2, Oct. 5, 1999," *supra* note 137, art. 1, new para. and art. 19.bis.

[165] Díaz, Autograph notes, *supra* note 95, Oct. 4, 1999; 1999 Chairman's informal summary, *supra* note 59, ¶ 20.

[166] United Kingdom, "Proposal," *supra* note 119, art. 2.1.a.

[167] Austria, "Proposal," *supra* note 71, art. 2.1.a.

[168] Supported by Kuwait. See Kuwait, "Proposal," preamble, U.N. Doc. A/C.6/54/WG.1/CRP.36 (Oct. 8, 1999) in 1999 Working Group Report, *supra* note 57, at 48-51.

[169] G.A. Res. 40/61, ¶ 9, U.N. Doc. A/RES/4061 (Dec. 9, 1985).

[170] Pakistan and Syria, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.34 (Oct. 6, 1999) in 1999 Working Group Report, *supra* note 57, at 42.

mentioning the General Assembly Declaration of the Fiftieth Anniversary of the United Nations,[171] which contained a reaffirmation of the right of self-determination.[172] To address these concerns, on October 7, 1999, after a series of private consultations held by France,[173] the Friends of the Chairman circulated a draft preamble,[174] which contained the reference to the Fiftieth Anniversary Declaration, already reflected in the Bombings Convention;[175] but not the reference to the root causes of terrorism, that was objected to both by the United States and by France.[176]

6) Re-aggregating the issues

On October 7, 1999, the coordinator on the definition of the offence brought together the various strands of text that had been developed separately and proposed a broad package. This package contained several elements. First, a definition of the offence, describing the wrongful act: to provide or collect funds by any means; requiring criminal intent; containing a general legality precondition: that the act be performed unlawfully; and, requiring that the funds be provided to commit one of the offences

---

[171] G.A. Res. 50/6, U.N. Doc. A/RES/50/6, (Oct. 24, 1995).

[172] U.N. Codification Division, "Oct. 5, 1999, 17:45" at 7 (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 5, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 13, 17, 19, 25.

[173] 1999 Chairman's informal summary, *supra* note 59, ¶ 26.

[174] Friends of the Chairman, "Revised text," pr. para. 3, U.N. Doc. A/C.6/54/WG.1/CRP.35 (Oct. 7, 1999) in 1999 Working Group Report, *supra* note 57, at 42-48 [hereinafter Friends of the Chairman, Revised text of Oct. 7, 1999].

[175] Bombings Convention, *supra* note 3, pr. para. 3.

[176] Díaz, Autograph notes, *supra* note 95, Oct. 7. 1999; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 29-30.

"within the scope of and as defined in" the pre-existing counter-terrorism instruments, or a terrorist murder. This text read:

> Article 2
> 1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex; or
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. [177]

Second, the package included, as suggested by the United Kingdom, an op-out mechanism to enable any state to exclude from the scope of the new convention any treaties that it had not yet ratified:

> (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
> (b) When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.[178]

Third, following a French suggestion, the coordinator added to the package a provision noting that terrorist financing is a principal crime in itself; that is, that it is not necessary that a terrorist attack actually be carried out to find somebody guilty of it:

> For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out a specific offence referred to in paragraph 1, subparagraphs (a) or (b).[179]

---

[177] Argentina, "Discussion paper proposed by the coordinator, art. 2, Oct. 7, 1999," *supra* note 96, art. 2.1.

[178] *Ibid.,* art. 2.1.bis

Fourth, Argentina included in the package a clause, taken from the Bombings Convention[180] and suggested by Belgium, stressing that any other rights and obligation under international humanitarian law remained unaffected:

> Article 19.bis
>
> Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.[181]

Fifth, the coordinator included a mechanism to add to the annex any new treaties adopted after the conclusion of the Financing Convention. This text, based on a British proposal, had been improved following technical suggestions from the United Nations Treaty Section:

> Article 20 (ter)
>
> 1. The annex may be amended by the addition of relevant treaties that:
>
> (a) Are open to the participation of all States;
>
> (b) Have entered into force, and
>
> (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.
>
> 2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
>
> 3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
>
> 4. The adopted amendment to the Annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument.

---

[179] *Ibid.,* art. 2.2

[180] Bombings Convention, *supra* note 3, art. 19.1.

[181] Argentina, "Discussion paper proposed by the coordinator, art. 2, Oct. 7, 1999," *supra* note 96, art. 19.bis

> For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.[182]

Finally, the package contained an annex listing the nine counter-terrorism conventions previously adopted:

> Annex
> 1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
> 2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
> 3. 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.
> 4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
> 5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
> 6. 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, done at Montreal on 24 February 1988.
> 7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
> 8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
> 9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.[183]

This package included neither the definition of "armed conflict," proposed by Belgium, since most delegations felt that it was not necessary, nor a preamblular paragraph stating that acts governed by international humanitarian law would be outside this convention.

---

[182] *Ibid.,* art. 20.ter

[183] *Ibid.,* annex.

This text was discussed on the October 7, 1999. There were very few comments, concentrating mainly on the reference to armed forces in the definition of terrorist murder. It seemed that the majority of delegations could live with the overall package on the definition of the offence. Syria and Lebanon reiterated their preference for a broader definition of terrorism.[184] Syria also complained that this text did not address state-terrorism. India argued that the concept of "armed conflict" could generate disputes of interpretation in concrete cases and suggested that the convention should protect all persons.[185] For its part, Guatemala argued that sometimes civilians take part in the hostilities. The United States replied that that all civilians should be protected by the convention because they should never be targeted. In addition, military personnel not actively engaged in an armed conflict should also be protected by the convention. The protection of the Convention should not be extended, however, to persons engaged in an armed conflict, in order not to punish as terrorist any activities which are acceptable under international humanitarian law. Moreover, in its view, the concept of armed conflict was not controversial since it should be understood in the same way as in the Bombings Convention. Finally, the coordinator, Argentina, argued that the text struck a balance between all the positions, but that it was impossible to satisfy everyone a hundred percent. She advocated against reopening the text.[186]

On the last day of meeting, the Friends of the Chairman submitted a consolidated text of the draft convention. In it, they included the package proposed by the coordinator

---

[184] See Syria, "Proposal," *supra* note 134.

[185] See India, "Proposal," *supra* note 157.

[186] Díaz, Autograph notes, *supra* note 95, Oct. 7. 1999; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 100-107.

of the definition of the offence.[187] When the chairman introduced this text, he stressed that the concept of armed conflict "could only be interpreted and applied in accordance with international humanitarian law."[188] This text was then referred to the Sixth Committee for its further discussion and possible adoption.[189]

C) Seizing funds

As proposed by the French Foreign Minister in 1998, one of the main objectives of the Financing Convention was to establish effective mechanisms to deter terrorist activities, "such as the seizure or the freezing of the assets of organizations or individuals that have participated in terrorist acts."[190] Later, in the Sixth Committee, France reiterated the importance of impounding any funds available to terrorist organizations.[191] Accordingly, the first draft proposed by France contained the following provision allowing states to freeze and seize funds destined to finance terrorist activities:

> Article 8
>
> 1. Each State Party shall take appropriate measures to allow for identification, freezing or seizure of any instrument that has contributed to the commission of the offences referred to in this Convention, for purposes of possible forfeiture.
>
> 2. Each State Party shall take appropriate measures to permit the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.

---

[187] The Friends of the Chairman, "Revised text," arts. 2, 21, 23, and Annex, U.N. Doc. A/C.6/54/WG.1/CRP.35/Rev.1, (Oct. 8, 1999) in 1999 Working Group Report, *supra* note 57, Annex I, at 4-15 [hereinafter Friends of the Chairman, Consolidated draft of Oct. 8, 1999].

[188] 1999 Working Group Report, *supra* note 57, ¶ 16; Chairman's informal summary, *supra* note 59, ¶ 109.

[189] 1999 Working Group Report, *supra* note 57, ¶ 18.

[190] France (H. Védrine), "Statement," *supra* note 6, p. 18.

[191] France, "Statement," *supra* note 11, ¶ 20; France, "Working document: Why an international convention against the financing of terrorism?" *supra* note 10, ¶6.

> 3. Each State Party may give consideration to concluding agreements on sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law.[192]

This provision, foresaw three different stages of implementation; first, the funds would be identified and frozen; second, the state would take over the ownership of those funds; and, third, states would consider sharing those funds, if appropriate. After the December meeting of the G-8 counter-terrorism experts, France redrafted paragraph 1, using a slightly broader language: allowing the "identification, detection, freezing or seizure of any goods, funds, or other means used or designed to be used in any manner to commit the offences referred to in this Convention (…)."[193] The rest of the language remained the same.

The Terrorism *Ad Hoc* Committee considered this text on March 18, 1999. Four issues dominated the discussion. First, whether this provision would be mandatory or optional; that is: whether states simply could freeze funds, if they wish to do so, or whether they were oblige to seize them. Second, how to describe which funds would be seized. Third, to what extent this provision was going to be subject to domestic laws; and, fourth, what would be the use of the impounded funds. On the first question, both Iran[194] and the Netherlands[195] proposed that states should have a positive duty to take measures to identify and seize any funds intended to finance terrorist acts. On the second question - which funds should be seized - delegations felt that the French formulation to

---

[192] France, First draft, *supra* note 12, art. 8.

[193] France, Second draft, *supra* note 26, art. 8.

[194] Iran, "Proposal," art. 8.1-8.2, A/AC.252/1999/WP.30, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 41.

[195] Netherlands, "Proposal," art. 8.1, A/AC.252/1999/WP.39, (March 19, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 45.

refer to the funds: "designed to be used," was too vague. The Netherlands proposed restricting this provision only to the resources actually used finance terrorism.[196] The United Kingdom and South Africa proposed to cover instead any funds "capable of being used" to finance terrorism, but Finland felt that this formulation was too open. Consequently, Finland itself, the United States, and Sudan preferred to apply this provision only to those funds "intended to be used" to finance terrorism.[197] On the third question, several delegations believed that the measures proposed in this article should be applied in conformity with their domestic legislation and principles of due process, in particular, the principle that nobody should be deprived of his property without a decision from a competent tribunal. Thus, Australia[198] and Finland proposed that states should not claim ownership over the seized funds until the criminal proceedings had been completed. In the same vein, the Netherlands proposed adding to paragraph 2 a reference to domestic law and due process.[199] Meanwhile, Japan, Belgium, and Sudan proposed a general clause, taken from the 1988 Narcotics Convention,[200] stating that these measures should be "implemented in accordance with and subject to the domestic law" of the state parties.[201] The United States opposed this suggestion in principle, as it would allow

---

[196] *Ibid.,* art. 8.1

[197] U.N. Codification Division, "Art. 8, March 19, 1999, 5:15 p.m.," at 1, (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 19, 1999) (on file with the author); 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶¶ 58-59, 62.

[198] Australia, "Proposal," art. 8.2, A/AC.252/1999/WP.25, (March 17, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 37.

[199] Netherlands, "Proposal," *supra* note 195, art. 8.

[200] United Nations convention against illicit traffic in narcotic drugs and psychotropic substances, art. 5.9, *adopted on* Dec. 19, 1988 [hereinafter Narcotics Convention].

[201] Belgium and Japan, "Proposal," art. 8 new para., A/AC.252/1999/WP.40, (March 19, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 46.

states not seize funds on the basis of their domestic law.[202] On the last issue, on how to use the seized funds, Cote d'Ivoire, the United States, and the United Kingdom proposed that those funds could be used to compensate the victims of terrorist acts and their families. Ecuador and South Africa suggested a detailed formulation along similar lines.[203] Lebanon proposed instead that those funds could be used to address the root causes of terrorism.[204]

After the first reading, France revised the text of this article. The new formulation, circulated on March 22, 1999, read:

> Article 8
>
> 1. Each State Party shall take appropriate measures to allow for identification, detection, freezing or seizure of any goods, funds or other means used or designed to be used in any manner in order to commit the offences referred to in this Convention, [as well as the proceeds derived from such offences,] for purposes of possible forfeiture.
>
> 2. Each State Party shall take appropriate measures, in accordance with its fundamental legal principles, to permit the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.
>
> 3. Each State Party may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such [proceeds or] property, or funds derived from the sale of such [proceeds or] property.
>
> 4. Subject to its domestic law, each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to indemnify the victims of criminal acts resulting from the commission of offences within the ambit of this Convention, or their families.
>
> 5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.[205]

---

[202] U.N. Codification Division, "Art. 8, March 19, 1999, 5:15 p.m.," *supra* note 197, at 2-3; 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶¶ 62-63.

[203] Ecuador and South Africa, "Proposal," art. 8.4, A/AC.252/1999/WP.35, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 43.

[204] U.N. Codification Division, "Art. 8, March 19, 1999, 5:15 p.m.," *supra* note 197, at 2; 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶ 64.

[205] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," *supra* note 80, art. 8.

Notably, France included the proposal from Ecuador and South Africa to allow the seized funds to be used to compensate the victims of the terrorism. It also included a clause protecting the rights of innocent parties that might have previous claims over the seized properties or funds, such as creditors or co-owners. Furthermore, it added a reference to domestic legal principles when referring to the forfeiture of the seized property. This draft, however, still made optional the freezing and forfeiture of funds. Finally, following a German suggestion,[206] France included the possibility of freezing and seizing the "proceeds" or material gains produced by the offences. When this text was revisited, Iran, Australia, South Africa, and Sudan stressed once again that all of these measures had to be mandatory, and not optional, as proposed by France. Meanwhile, many delegations[207] supported the seizure of the gains or proceeds obtained from commission of the offences. The paragraph on compensating the victims of terrorism was welcomed, but several delegations[208] believed that it should not be subject to domestic law. Conversely, on the forfeiture of property, the United Kingdom and Iran proposed referring to domestic law; the Netherlands and South Africa suggested mentioning also due process; and Japan, the Netherlands, and Belgium reiterated their proposal to include a paragraph stressing the implementation of this provision subject to domestic law. Ecuador, Ireland, Belgium, and the United States preferred, though, the text proposed by France. On the rights of third parties, the United Kingdom and Ireland suggested deleting the reference to "good faith" as redundant, but the United States preferred maintaining it. Finally, the United Kingdom suggested adjusting the language

---

[206] U.N. Codification Division, "Art. 8, March 19, 1999, 5:15 p.m.," *supra* note 197, at 2.

[207] Argentina, Australia, Austria, Belgium, Ecuador, Netherlands, and the United States; but opposed by Japan and the United Kingdom.

[208] Argentina, Australia, Ecuador, Ireland, South Africa, United Kingdom, and the United States.

to make clear that the offences referred to in this article were the acts of terrorist financing and not all terrorist acts, so that this text would not create a general obligation to seized all property involved in all terrorist acts.[209]

At the end of the spring session of the *Ad Hoc* Committee, the bureau revised this article, taking into account the comments made in the two previous rounds of discussions.[210] The bureau decided to make three major changes. First, it made it obligatory for states to freeze and seize any funds used for terrorist financing. Second, instead of referring to funds "designed" to be used for terrorist financing, it spoke of property and funds "intended" to finance terrorist crimes. Third, it did not contain any reference to domestic laws or principles; it just spoke of "appropriate" measures.[211] As the session was coming to a close, the Committee decided to defer the discussion of this proposal to the next session working group.[212]

On September 28, 1999, when this text was discussed in the working group, Austria, Australia, and Syria noted that, in real-life cases, proving the intention to use funds to finance terrorism, before the crime was even attempted, was extremely difficult; particularly since the possession of funds is neither illegal nor dangerous in itself. Most delegations,[213] though, supported the formulation proposed by the bureau, which use the

---

[209] U.N. Codification Division, "Revised art. 8, March 23, 1999, 8:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in closed meetings of the *Ad Hoc* Comm., for the use of the bureau, March 23, 1999) (on file with the author); 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶ 125-131.

[210] The bureau, "Discussion papers on articles 3 to 25," art. 8, in 1999 Ad Hoc Comm. Report, *supra* note 24, Annex I.A, at 5-12.

[211] U.N. Codification Division, "Explanatory note to the discussion paper submitted by the bureau on arts. 3 -25 of the draft international convention for the suppression of the financing of terrorism (Doc. A/54/37, annex I.A," pp. 6-7, (TD, speaking notes prepared for the chairman of the Working Group, Sept. 27, 1999, 11:00 a.m.) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 206-211.

[212] 1999 Ad Hoc Comm. Report, *supra* note 24, ¶ 12.

[213] Ecuador, Germany, Ghana, Holy See, India, Italy, and Switzerland.

intention of the actor to define which funds would be seized. On the list of offences, the Netherlands argued that the obligation to seize funds should not be limited only to those resources used for terrorist financing, but should include any funds or property use to commit any terrorist attack. On the proceeds of the crime, the United Kingdom suggested a formulation that made clear that it meant "any assets derived from or obtained, directly or indirectly, through the commission of an offence." On the obligation to establish mechanisms for compensating the victims of terrorist attacks, Japan suggested a less stringent language that would have simply invited countries to consider such mechanisms, but this idea was opposed by Ecuador, Ghana, and South Africa, which preferred stronger language. Finally, Japan[214] insisted on its proposal to add a broad clause noting that the implementation of this article would be subject to domestic laws.[215]

On September 30, the Friends of the Chairman presented their first rolling text of the Financing Convention.[216] They made no significant changes to article 8 on the freezing and seizing of funds.[217] In the subsequent discussions, Syria proposed once again the deletion the reference to the funds "intended to be used" to finance terrorism, and Mexico proposed the addition of a separate definition on proceeds, taken from the

---

[214] Japan, "Proposal," art. 8.6, U.N. Doc. A/C.6/54/WG.1/CRP.8 (Sept. 28, 1999) in 1999 Working Group Report, *supra* note 57, at 20.

[215] U.N. Codification Division, "Art. 8, Sept. 29, 15:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 29, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 212-221.

[216] The Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, and 17" U.N. Doc. A/C.6/54/WG.1/CRP.15 (Sept. 30, 1999) in 1999 Working Group Report, *supra* note 57, at 22-25 [hereinafter Friends of the Chairman, Rolling text of Sept 30, 1999].

[217] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 222-224.

Narcotics Convention.[218] Most of the discussion focused, however, on the relationship between the implementation of this provision and domestic legal system of each state. Japan proposed a broad paragraph making the implementation of this article subject to the domestic law of each state. Austria, Australia, and Belgium supported this proposal since it would ensure that no funds are forfeited before the owner is convicted of a terrorist act. For its part, the United States believed that the Japanese paragraph was not necessary. However, if such new language was to be added, the United States preferred a reference to the fundamental legal principles of each state's legal system rather than to the domestic law.[219] The distinction was significant since subjecting this provision to existing domestic laws would mean that states were not to be obliged to amend their legislation to implement it. Conversely, subjecting this proposal to the broader legal principles meant that states would be obliged to adapt their legislation to comply with this norm. After this round of discussion, the Friends of the Chairman prepared another version of article 8. It read:

> Article 8
>
> 1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any property, funds or other means used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
>
> 2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of property, funds and other means used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.
>
> 3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such proceeds or property, or funds derived from the sale of such proceeds or property.

---

[218] Narcotics Convention, *supra* note 200, art. 1.p.

[219] U.N. Codification Division, "Art. 8, (CRP.15) Sept. 30, 21:28," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 30, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 222-232.

> 4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
>
> 5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.
>
> *Proposed definition*
>
> "Proceeds" means any property or other type of profit derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 2, paragraph 1.[220]

Two important changes were made. First, a reference to domestic legal principles was added both to paragraph 1, on freezing funds, and to paragraph 2, on the forfeiture of funds and property. Second, following a Mexican suggestion, this text expressly defined "proceeds" as any profits obtained in connection with the commission of the offence.[221] The Friends of the Chairman introduced this text on September 30, 1999. The subsequent discussion focused mostly on the question of seizure and forfeiture of the property "intended to be used" for a crime of terrorism. Sweden, Belgium, and Pakistan, among others,[222] advocated the deletion of this formula since they feared that it would allow both the forfeiture of property prior to a conviction and the seizure of funds before execution of the crime had begun. Others, like Germany, Russia, and France,[223] wanted to retain it to ensure the effectiveness of the new convention. Japan, Austria, and the United States believed that this text should be acceptable once subject to the requirements of domestic legal principles. Several alternative formulations were proposed, such as

---

[220] The Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, and 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.1 (Oct. 1, 1999) in 1999 Working Group Report, *supra* note 57, at 25-28 [hereinafter Friends of the Chairman, Rolling text of Oct. 1, 1999].

[221] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 233-237.

[222] Australia, Austria, Holy See, Lebanon, Libya, Portugal, Switzerland, and Syria.

[223] Also Cuba, Ecuador, Ghana, Hungary, Malaysia, Mali, Papua New Guinea, Turkey, and the United Kingdom.

"destined for use,"[224] "in order to commit,"[225] "attempted to be used,"[226] and "allocated;"[227] but none of these proposals gathered much support at the time.[228] Regarding the reference to domestic legal principles, several delegations, including Iran, Syria, Austria, and South Africa[229] preferred the more stringent reference to "domestic laws" or "domestic legal norms" of each state. Papua New Guinea went further by proposing a reference to domestic laws and procedures. Finally, Austria and Ireland felt that the definition of "proceeds" was unnecessary and confusing.[230]

After this round of discussions, the Friends of the Chairman prepared a new rolling text of article 8.[231] All the references to property were deleted since, in a separate negotiation on the definition of funds, it had been agreed that the term "funds" would be understood as comprising property as well. The reference to funds "intended to be used" was maintained, pending further discussion among delegations.[232] The working group considered this proposal on October 5, 1999. This time, however, there were fewer comments and most of them of a drafting nature. Syria and Austria proposed once again the deletion of the reference to funds "intended to be used." The United Kingdom

---

[224] Italy, Portugal, Sri Lanka, and the United Kingdom.

[225] Netherlands and Sierra Leone.

[226] Syria.

[227] Syria.

[228] U.N. Codification Division, "Oct. 4, 1:00," pp. 3-4 (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 4, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 243-244.

[229] Also Cuba, Iran, Malaysia, and Sierra Leone.

[230] U.N. Codification Division, "Oct. 4, 1:00," *supra* note 228, pp. 4-5; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 238, 246, 251.

[231] The Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, and 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.2 (Oct. 4, 1999) in 1999 Working Group Report, *supra* note 57, at 28-31 [hereinafter Friends of the Chairman, Rolling text of Oct. 4, 1999].

[232] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 253-256.

suggested instead "destined to be used." Guatemala[233] proposed the deletion of the reference to other means, since it was already covered by the definition of "funds" in article 1. Similarly, Malaysia[234] suggested referring only to "funds" in the definition of "proceeds." Finally, the Netherlands and the United Kingdom proposed to using the term "confiscation" instead of "forfeiture."[235]

After these discussions, the Friends of the Chairman revised, once more, their rolling text.[236] The only changes they made were those suggested by Guatemala and Malaysia to align the language to the broader definition of "funds" adopted in the context of the definition of the offence. The reference to funds "intended to be used" was again maintained, pending further discussion among delegations.[237] This text was considered on October 6, 1999. The only comment came from Syria, that proposed, once again, to replace "intended to be used" with "calculated to be used."[238] Consequently, the Friends of the Chairman made no changes to the text of this article in their next rolling text.[239] The next day, October 7, 1999, Sweden explained to the plenary that it had been conducting private consultation on how to describe the funds to be seized. It noted that

---

[233] Supported by France, Ghana, and Malaysia.

[234] Supported by Ghana.

[235] U.N. Codification Division, "Oct. 5, 1999, 17:45," pp. 3-4 (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 5, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶¶ 257-264.

[236] The Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, and 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.3 (Oct. 5, 1999) in 1999 Working Group Report, *supra* note 57, at 32-35 [hereinafter Friends of the Chairman, Rolling text of Oct. 5, 1999].

[237] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 265-269.

[238] U.N. Codification Division, "October 6th meeting" p. 1 (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 6, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶ 270.

[239] Friends of the Chairman, Revised text of Oct. 7, 1999, *supra* note 174, art. 8.

there were two proposals. Its own, to spell out the scope of the convention; and Syria's, of replacing the words funds "intended to be used for" financing terrorist activities, with funds "allocated for the purpose of" financing terrorist acts. Sweden recognized that there was not much support for its own proposal. Immediately, Austria announce that it could accept "allocated for" if it were to be used to describe both the funds to be frozen and the funds to be seized.[240] As there were no objections, this change was included in the next consolidated text prepared by the group of Friends:

> Article 1
> For the purposes of this Convention:
> (…)
> 3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.
> (…)
> Article 8
> 1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
> 2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
> 3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
> 4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
> 5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.[241]

The working group submitted this formulation to the Sixth Committee as part of the final consolidated text of the draft convention.[242]

---

[240] Díaz, Autograph notes, *supra* note 95, Oct. 7. 1999; *Cf.* 1999 Chairman's informal summary, *supra* note 59, ¶¶ 273-275. (The summary contained in ¶¶ 273-274 does not reflect exactly what happened in the meeting.)

[241] Friends of the Chairman, Consolidated draft of Oct. 8, 1999, *supra* note 187, arts. 1.3, 8.

D) Banking secrecy

One of the key objectives of the Financing Convention was, in the words of the French Foreign Minister, to make "it impossible to invoke banking secrecy in judicial bodies investigating a terrorist attack".[243] In order to achieve this objective, France proposed a two-pronged strategy: first, to formally prohibit states from claiming bank secrecy as a basis for refusing police and judicial cooperation in criminal investigations relating to the crime of terrorist financing; and, second, to urge state to require their domestic financial institutions to clearly identify their clients.[244] Since France had placed these suggestions in different articles, they were discussed separately.

In order to prevent states from claiming banking secrecy to deny each other police and judicial cooperation, France proposed the following provision in the first draft of the Financing Convention:

> Article 12
>
> 3. States Parties may not claim privileged communications, bank secrecy, or a priori rely on the tax nature of the offence to refuse mutual legal assistance provided for under the present article. [245]

It should be noted that this provision sought to address, at the same time, the question of banking secrecy together with that of the fiscal nature of the crime. After the December meeting of the G-8 counter-terrorism experts, however, France decided to

---

[242] 1999 Working Group Report, *supra* note 57, ¶ 18.

[243] France (H. Védrine), "Statement," *supra* note 6, at 18.

[244] France, "Working document: Why an international convention against the financing of terrorism?" *supra* note 10, ¶ 10.

[245] France, First draft, *supra* note 12, arts. 12.3.

address those two questions separately. Therefore, it redrafted its proposal as follows: "State Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article."[246] This text was based on, but it was not identical to, a similar provision of the Narcotics Convention designed to combat the laundering of drug-trafficking profits.[247] When the *Ad Hoc* Committee considered this text for the first time, it was not controversial. A group of Latin American countries[248] proposed adding that any information provided under this norm, and protected by bank secrecy, should be used only for the criminal proceedings for which it was requested. From a practical point of view, this language would have prevented that the information obtained in a counter-terrorism criminal investigation from being publicized or from being used to prosecute the owner of the confidential account of another crime, such as tax-evasion or corruption. The language proposed by the Latin American delegations was taken from the Latin American Convention against Corruption.[249] A similar provision had already been included in the Narcotics Convention.[250] However, since there were no other comments, France did not change its proposed text in its next revision of the draft convention.[251] In the subsequent debate, Austria and Belgium proposed to specify that mutual legal

---

[246] France, Second draft, *supra* note 26, art. 12.3.

[247] Narcotics Convention, *supra* note 200, art. 7.5: "A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy."

[248] Bolivia, Colombia, Chile, Ecuador, Mexico, and Peru, "Proposal," new art.12.2.bis A/AC.252/1999/WP.44, (March 22, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, p. 47: "The Requesting State Party shall not use any information received that is protected by bank secrecy for any other purpose other than the proceedings for which that information was requested, unless authorized by the Requested State Party."

[249] 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶¶ 66-67.

[250] Narcotics Convention, *supra* note 200, art. 7.13: "The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party."

[251] France, "Revised texts of arts. 2, 5, 8, and 12 and additional provisions," *supra* note 80, art. 12.3.

assistance could not be denied "solely" on the grounds of bank secrecy, thus recognizing that there might be other grounds for denying such assistance. It was also proposed that this provision be simplified by stating that "state parties may not refuse a request for mutual legal assistance on the grounds of bank secrecy,"[252] which would have brought the formulation closer to that used in the Narcotics Convention.[253] Finally, the Latin American countries[254] reiterated their proposal that any information protected by bank secrecy, shared pursuant to this article, should be used only for purposes stated in the original request.[255]

By the end of the spring session of the *Ad Hoc* Committee, the bureau prepared a revised text of the draft convention.[256] On the prohibition to refuse legal assistance on the basis of bank secrecy, the bureau chose the more simple formulation suggested during the second reading. It also chose to include a new paragraph to address the concerns of Latin American delegations. However, rather than using the text from the Latin American Convention, the bureau used, with some minor changes, a similar provision contained in the Narcotics Convention.[257] Thus, the new paragraphs on bank secrecy read:

> 2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.
> 2. *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or

[252] 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶ 137.

[253] Narcotics Convention, *supra* note 200, art. 7.5.

[254] Bolivia, Colombia, Chile, Ecuador, Mexico, and Peru, "Proposal," *supra* note 248.

[255] Díaz, Autograph notes, *supra* note 95, March 1999; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶¶ 137-139.

[256] The bureau, "Discussion papers on articles 3 to 25," *supra* note 210.

[257] Narcotics Convention, *supra* note 200, art. 7.13; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 278-279; U.N. Codification Division, "Explanatory note," *supra* note 211, at 8.

> proceedings other than those stated in the request without the prior consent of the requested Party.[258]

Sixth Committee's working group on terrorism considered these paragraphs together with the rest of article 12 on September 29, September 30, and October 4, 1999. Since no delegation made any comment on them, the Friends of the Chairman felt that they were satisfactory. Consequently, the Friends of the Chairman reproduced them in their consolidated drafts of September 30, October 1, and October 4, 1999.[259] On October 5, though, it was suggested that paragraph 12.2.bis be amended to forbid the use of the information provided for "any other purpose" than the one indicated in the original request for that information. This amendment would not have changed the substance of the provision but it would have brought its language closer to the Latin American formulation. However, there were objections to this suggestion.[260] Thus, the Friends of the Chairman reproduced the texts produced at the end of the spring session in their consolidated drafts of October 5 and October 7, 1999.[261] Finally, these same texts were reproduced in the final text of the convention submitted by the working group to the Sixth Committee for its final consideration.[262]

In addition to preventing states from claiming banking secrecy to deny judicial cooperation, the first French draft required states to ask their financial institutions to eliminate anonymous accounts, identify their clients clearly, and maintain records of all

---

[258] The bureau, "Discussion papers on articles 3 to 25," *supra* note 210, art. 12.2-12.2.bis.

[259] Friends of the Chairman, Rolling text of Sept 30, 1999, *supra* note 216, art. 12.2-12.2.bis; Chairman, Rolling text of Oct. 1, 1999, *supra* note 220, art. 12.2-12.2.bis; Friends of the Chairman, Rolling text of Oct. 4, 1999, *supra* note 231, art. 12.2-12.2.bis.

[260] 1999 Chairman's informal summary, *supra* note 59, ¶ 308.

[261] Friends of the Chairman, Rolling text of Oct. 5, 1999, *supra* note 236, art. 12.2-12.2.bis; Friends of the Chairman, Revised text of Oct. 7, 1999, *supra* note 174, art. 12.2-12.2.bis.

[262] Friends of the Chairman, Consolidated draft of Oct. 8, 1999, *supra* note 187, arts. 12.2-12.3.

financial transactions. France noted that these anti-money laundering measures were necessary because, in real-life cases, it was extremely difficult to find evidence of criminal financial transactions.[263] Consequently, France proposed the following text:

> Article 17
>
> States Parties shall cooperate in the prevention of the offences set forth in article 2, including:
>
> 1. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
>
> (a) Measures to prohibit in their territories activities of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;
>
> (b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:
>
> (i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names;
>
> (ii) With respect to the identification of legal entities, verifying the existence and the legal structure of the customer by obtaining, from the customer or public records, proof of incorporation as a company, including information on the name of the client, its legal form, its address, its directors and provisions on the legal entity's authority to bind;
>
> (iii) Taking measures for preserving for at least five years the necessary documents in connection with the transactions carried out;
>
> 2. By exchanging accurate and verified information in accordance with their domestic law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences as set forth in article 2.[264]

It should be noted that this draft article required states to demand that their financial institutions take measures to identify their customers, but it did not make any particular measure mandatory. It only asked states to consider prohibiting secret accounts, but not to actually ban them. Moreover, this was balanced out by a series of caveats, such as applying measures to the extent that they were "practicable" and

---

[263] France, "Working document: Why an international convention against the financing of terrorism?" *supra* note 10, ¶ 10.

[264] France, First draft, *supra* note 12, art. 17.

adopting legislation only "if necessary."[265] These paragraphs were based on the 1996 recommendations of the Financial Action Task Force on Money Laundering.[266] The Task Force was an intergovernmental, multidisciplinary, expert body established in 1989 by the G-7 and the European Commission to examine trends and techniques of money laundering and to propose measures to combat that crime. Pursuant to this mandate, in 1990 the Task Force proposed a comprehensive action plan against money laundering in the form of forty recommendations. These recommendations were revised and updated in 1996 and in 2003. In 1999, the parties to the negotiation of the Financing Convention used the 1996 recommendations, since those were the most up to date at the time. It should be noted, though, that the Task Force's recommendations are not binding, that is, that no state is oblige to implement them and that, therefore, they are different in nature from a treaty provision which are obligatory. Moreover, the Task Force is not a universal organ. In 1996, when the recommendations were updated, it had only 28 members,[267] mostly developed countries.[268] After France prepared this text, it was considered at the December 1998 meeting of the G-8 counter-terrorism experts. However, no changes were made to this article.[269]

---

[265] *Ibid.,* art. 17.1.

[266] Financial Action Task Force on Money Laundering, "Forty Recommendations," FATF Doc. FATF VI-7, Annex 1 (June 28, 1996).

[267] Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, the United States, the European Commission, and the Gulf Cooperation Council.

[268] Financial Action Task Force on Money Laundering, "Forty Recommendations," *supra* note 260, p. 2; FATF "About the FATF," available from *http://www.fatf-gafi.org*, accessed Aug. 10, 2006; FATF, "FATF Documents on the Forty Reccomendations," available from *http://www.fatf-gafi.org*, accessed Aug. 10, 2006.

[269] France, Second draft, *supra* note 26, art. 17.

In early March, 1999, when the *Ad Hoc* Committee met to consider this text for the first time, the discussion focused on two issues: first, to what extent those measures were to be mandatory; and, second, what should be done with the anonymous accounts. Several formulations were proposed to require more forcefully the adoption of concrete measures. The Netherlands and the United States felt that the goal of "improv[ing] the identification" of the clients was too vague. They suggested strengthening this phrase by stressing that measures should be taken to "identify" those clients "on the basis of an official or other reliable identifying document."[270] In their view, states should "ensure" the adoption of the measures proposed, and not just consider them.[271] Similarly, Ecuador and Australia suggested reformulating this article to oblige states to actually require their financial institutions to verify the identity of the account's owner and to preserve evidence of any financial transaction. For their part, Japan, Cuba, New Zealand, and Mexico felt that speaking of "measures" created too much leeway for the implementation of this provision and, consequently, they suggested using the term "regulations." Several new paragraphs were suggested. The Netherlands[272] proposed that states should create a system to register the economic beneficiaries of legal entities.[273] Germany[274] suggested that states should adopt measures to supervise and license all money-transferring agencies. In addition, Germany argued that states should implement measures to detect

---

[270] Netherlands, "Proposal," art. 17.1.b, A/AC.252/1999/WP.28, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 40.

[271] *Ibid.*

[272] Supported by the United States.

[273] Netherlands, "Proposal," *supra* note 270, new art. 17.1.b.iv.

[274] Supported by the Mexico, Sri Lanka, Republic of Korea, and the United States,.

and monitor the movement of cash and negotiable financial instruments across borders.[275] In Germany's view, these measures were necessary to prevent terrorist groups from using couriers and "shadow banking systems," such as travel agencies and cultural associations, to transfer funds.[276] Australia[277] suggested an alternative formulation to this whole paragraph using language taken *verbatim* from some of the recommendations of the Task Force on Money Laundering. Finally, the United States[278] proposed that states create channels of communication among their competent agencies to share swiftly information on the activities of suspected persons and on irregular movements of funds.[279] Regarding the ban of anonymous accounts, the Netherlands sought to strengthen the prohibition by requiring financial entities to record, in all cases, the identity of their clients.[280] Meanwhile, Switzerland,[281] Lebanon, Peru, and Ecuador tried to soften the prohibition by proposing the formulation: "accounts whose beneficiary is unidentified or unidentifiable." This formula would have allowed the existence of accounts identified

---

[275] Germany, "Proposal," art. 17.1, A/AC.252/1999/WP.27, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 39-40.

[276] *Ibid.,* rationale.

[277] Australia, "Proposal," art. 17, option 2, A/AC.252/1999/WP.38, (March 19, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 44-45.

[278] United States, "Proposal," art. 17.1, A/AC.252/1999/WP.31, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 41-42.

[279] U.N. Codification Division, "Art. 17.1, March 19, 1999, 12:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 19, 1999) (on file with the author); 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶¶ 69-83.

[280] Netherlands, "Proposal," *supra* note 270, new art. 17.1.

[281] Switzerland, "Proposal," art. 17.1.b.i, A/AC.252/1999/WP.5, (March 16, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 27.

only by a number, insofar as the bank could identify the owner of the account if requested to do so by a judicial order. The United States and Sri Lanka opposed this suggestion.[282]

After this first round of discussions, France suggested to use either the language of the Financial Action Task Force on Money Laundering, as proposed by Australia,[283] or its own newly revised formulation which read:

> Article 17
>
> States Parties shall cooperate in the prevention of the offences set forth in article 2, including:
>
> 1. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
>
> (a) Measures to prohibit in their territories activities of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;
>
> (b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:
>
> (i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names;
> [Adopting regulations prohibiting the opening of accounts whose beneficiary is unidentified or unidentifiable.]
>
> (ii) With respect to the identification of legal entities, verifying the existence and the legal structure of the customer by obtaining, from the customer or public records, proof of incorporation as a company, including information on the name of the client, its legal form, its address, its directors and provisions on the legal entity's authority to bind;
>
> (iii) Taking measures for preserving for at least five years the necessary documents in connection with the transactions carried out;
>
> (c) Measures for the supervision and licensing of all money-transmission agencies;
>
> (d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
>
> 2. By exchanging accurate and verified information in accordance with their domestic law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences as set forth in article 2, in particular:

---

[282] U.N. Codification Division, "Art. 17.1, March 19, 1999, 12:00 p.m, *supra* note 279, at 2; 1999 Rapporteur's Informal summary of the first reading, *supra* note 39, ¶ 76.

[283] Australia, "Proposal," *supra* note 277, art. 17, option 2.

(a) By establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 2 of the Convention;
(b) By cooperating with one another in conducting inquiries, with respect to the offences established in accordance with article 2 of the Convention, concerning:
(i) The identity, whereabouts and activities of persons suspected of being involved in offences referred to in this Convention;
(ii) The movement of funds or property relating to the commission of such offences.

[3. Each State Party shall not assist either actively or passively any person or organization in the negotiation, conclusion, implementation, execution or enforcement of any contract or agreement to commit an offence as set forth in article 2.] [284]

Some delegations[285] preferred to use the language proposed by France.[286] France made several noteworthy additions to this text. First, on anonymous accounts, France included, side by side with its original formulation, the softer language proposed by Switzerland, within brackets.[287] On the licensing of financial institutions and the cross-border movements of funds, France added the paragraphs suggested by Germany.[288] In paragraph 2, on exchange of information, France added the detailed language proposed by the United States.[289] Moreover, France added a new paragraph 3 stressing that states should not enforce contracts that would lead to the financing of terrorism. Notwithstanding these changes, this proposal still did create a positive duty for states to implement any concrete measures against money laundering. States were called only to

[284] France, "Revised text of art. 17," A/AC.252/1999/WP.47, (March 22, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 50-51.

[285] Germany, Ireland, and Netherlands.

[286] U.N. Codification Division, "Revised Art. 17, March 23, 1999, 10:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Bureau, March. 23, 1999) (on file with the author); 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶ 141.

[287] *Cf.* Switzerland, "Proposal," *supra* note 281, art. 17.1.b.i.

[288] *Cf.* Germany, "Proposal," *supra* note 275.

[289] *Cf.* United States, "Proposal," *supra* note, 278.

"consider" them.[290] When this text was discussed in informal consultations, Switzerland, Ireland, and Papua New Guinea advocated again the softer language on anonymous accounts, but the Netherlands, Australia, the United States, Italy, and India preferred the stronger French formulation. On legal entities and the maintenance of records, Australia suggested once more the detailed language proposed by the Task Force,[291] which France accepted. Delegations made no comments on paragraph 2, on the exchange of information, seemingly indicating that it was acceptable as proposed. Finally, views were divergent on the new paragraph 3, on states not assisting terrorist financing by enforcing financial contracts to transfer funds. Some delegations, including the Netherlands, Germany, and the United States,[292] advocated its deletion; others, such as Belgium, Australia and Turkey,[293] preferred to retain it; and a third group, consisting of Ecuador, Italy, and India preferred the softer formulation that states "shall ensure that no assistance is provided" to enforce contracts for terrorist financing.[294]

After this second reading, the bureau of the *Ad Hoc* Committee prepared a revised the text of article 17.[295] Concerning the measures to be taken by financial institutions, it replaced the phrase: "improve the identification of" their clients, with "utilize the most efficient measures for the identification of"[296] those clients. The chairman explained that this was to avoid the impression that the then existing measures were unsatisfactory. The

---

[290] France, "Revised text of art. 17," *supra* note 284, option 1, art. 17.1.b.

[291] Financial Action Task Force on Money Laundering, "Forty Recommendations," *supra* note 260, recommendation 10.i.

[292] Also Canada, Ireland, Russia, and the United Kingdom.

[293] Also Fiji, Papua New Guinea, and Tunisia.

[294] U.N. Codification Division, "Revised Art. 17, March 23, 1999, 10:00 p.m.," *supra* note 286, 2-3; 1999 Rapporteur's informal summary of the second reading, *supra* note 82, ¶¶ 142-149.

[295] The bureau, "Discussion papers on articles 3 to 25," *supra* note 210.

[296] The bureau, "Discussion papers on articles 3 to 25," *supra* note 210, art. 17.1.b. chapeau.

bureau decided not to include paragraph 3, proposed by France, since it was already covered both by general international law and by the duty of states to criminalize terrorist financing. Finally, it also made several smaller amendments to improve the drafting of this provision without changing its substance.[297]

The text prepared by the bureau of the *Ad Hoc* Committee at the end of March 1999 was considered by the Sixth Committee's terrorism working group on September 29, 1999. During the discussions, Mexico proposed that financial institutions should identify the real beneficiaries of all financial transactions and report any unusual or suspicious movements of funds. [298] Switzerland suggested deleting the references to anonymous accounts and to accounts under fictitious names, since they were covered implicitly in the ban of accounts whose holder is unidentified or unidentifiable. The United States argued that it was necessary to give states some flexibility in implementing the anti-money laundering measures. Therefore, it preferred to use throughout the whole text the formula: "appropriate measures." Similarly, China suggested that states should take only those measures "available." The United Kingdom redrafted the language to make clear that states would apply the anti-money laundering measures to all financial institutions working in their territory and not only to those formally incorporated in them. Finally, Singapore and Sierra Leone proposed a reference to persons "in respect of whom reasonable suspicion exists that they are" involved in terrorist financing rather than

---

[297] See 1999 Chairman's informal summary, *supra* note 59, ¶¶ 322-324; U.N. Codification Division, "Explanatory note," *supra* note 211, at 10-11.

[298] Mexico, "Proposal," A/C.6/54/WG.1/CRP.13 (Sept. 29, 1999) in 1999 Working Group Report, *supra* note 57, at 21-22.

persons "suspected" of being involved in this crime. This formulation reflected higher standards of evidence and due process.[299]

In revising the text, the Friends of the Chairman took on board most of the suggestions made on September 29, except the Mexican proposals, so that it now read:

> Article 17
>
> States Parties shall cooperate in the prevention of the offences set forth in article 2, including by:
>
> 1. Taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
>
> (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
>
> (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:
>
> (i) Adopting regulations prohibiting the opening of accounts whose holder or beneficiary is unidentified or unidentifiable;
>
> (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
>
> (iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international;
>
> (c) Measures for the supervision and licensing of all money-transmission agencies;
>
> (d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
>
> 2. Exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular, by:
>
> (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid

[299] U.N. Codification Division, "Art. 17, Sept. 29, 1999, 17:30," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 29, 1999) (on file with the author); Díaz, Autograph notes, *supra* note 95, Sept. 29, 1999; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 325-329.

exchange of information concerning all aspects of offences set forth in article 2;
(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
(ii) The movement of funds or property relating to the commission of such offences.[300]

This text was considered on September 30, 1999. The discussion focused mostly on Bahrain's earlier proposal to ask states to prohibit the entry into their territories of persons and groups that support or engage in terrorist financing,[301] and on Mexico's idea to demand that financial institutions report any suspicious transactions.[302] Belgium, Austria, and the United Kingdom opposed the Bahrain's suggestion because, in their view, if a state suspects that someone was involved in terrorist financing, it must arrest, and prosecute or extradite him; not just reject him at the border. For the Netherlands, this provision could negatively affect the rights of refugees; and, for Australia, it could cause practical difficulties in law enforcement investigations. The United States and Iran favored the Bahraini suggestion if added to one of the existing paragraphs.[303] Regarding Mexico's proposal, Belgium, Australia, and Germany could agree that states should ask their financial institutions to report suspicious transactions, even if this went beyond the recommendations of the Task Force on Money Laundering. The Task Force had asked financial institutions to report only when they suspected that "funds that stem from

[300] Friends of the Chairman, Rolling text of Sept 30, 1999, *supra* note 216, art. 17.

[301] Bahrain, "Proposal," A/AC.252/1999/WP.32, (March 18, 1999) in 1999 Ad Hoc Comm. Report, *supra* note 24, at 42.

[302] Mexico, "Proposal," *supra* note 298.

[303] U.N. Codification Division, "Art. 17, (CRP.15) Sept. 30, 1999, 20:30," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 30, 1999) (on file with the author); 1999 Chairman's informal summary, *supra* note 59, ¶ 338.

criminal activities"[304] and to "pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose."[305] The Task Force had not asked, however, that financial institutions report all unusual transactions. The United Kingdom, while agreeing to the Mexican idea, considered it more appropriate to refer to transactions exceeding a pre-set amount rather than "suspicious" transactions. Austria, on the contrary, believed that the text prepared by the Friends of the Chairman sufficed since it remained within the recommendation of the Task Force.[306] In addition, France proposed that states may exchange information through INTERPOL.[307] Canada and Sweden, among others,[308] suggested removing the requirement that states license financial institutions, since this went beyond the recommendations of the Financial Task Force. Germany, on the contrary, supported this proposal to regulate small businesses that serve to transfer of funds as a "shadow banking system."[309]

After this round of discussions, the chairman invited the most interested delegations to meet bilaterally to solve the pending issues. Thus, on October 1st, 1999, Australia, in consultation with Mexico and Austria, prepared a revised text of article

---

[304] Financial Action Task Force on Money Laundering, "Forty Recommendations," *supra* note 260, recommendation 15.

[305] *Ibid.* recommendation 14.

[306] U.N. Codification Division, "Art. 17, (CRP.15) Sept. 30, 1999, 20:30," *supra* note 303; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 339-340.

[307] France, "Proposal," A/C.6/54/WG.1/CRP.22 (Sept. 30, 1999) in 1999 Working Group Report, *supra* note 57, at 37.

[308] Australia, Belgium, and the United Kingdom.

[309] U.N. Codification Division, "Art. 17, (CRP.15) Sept. 30, 1999, 20:30," *supra* note 303; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 341-343.

17.[310] Australia made three substantive changes to the text. First, to maintain consistency with the recommendations of the Task Force, it asked states to consider adopting "measures to ensure" that financial institutions verify the identity of the owners of the accounts.[311] Second, it left the licensing of "money transmission agencies" as an example of the kind of measures that could be taken to supervise the work of the financial institutions, but not as an obligation for state parties;[312] and, third, pursuant to the Mexican proposal, it called upon states to require that their financial institutions report any unusual transactions. However, because of the concerns of the United Kingdom and Austria on what constitutes an "unusual transaction," this text referred to "complex, unusual large transactions" that have no apparent economic purpose:

> ii) *bis.* adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose, without fear of assuming criminal or civil liability for breach of any restrictions on disclosure of information if they report their suspicions in good faith;[313]

The Friends of the Chairman decided to include the revised draft prepared by Australia in their next consolidated text of the Financing Convention.[314] They only added a new paragraph containing the language proposed by France to allow states to exchange information through INTERPOL.[315] When this text was next considered, on October 4,

---

[310] Australia, "Non-paper, outcome of informal consultations on art. 17" (TD, non-paper prepared by Australia, Oct. 1, 1999) (on file with the author).

[311] *Ibid.,* art 17.1.b.i.

[312] *Ibid.,* art. 17.1.c.

[313] *Ibid.,* art. 17.1.b.ii.bis.

[314] Chairman, Rolling text of Oct. 1, 1999, *supra* note 220, art. 17.

[315] 1999 Chairman's informal summary, *supra* note 59, ¶¶ 344-353.

1999, most comments were of a drafting nature. The United Kingdom and Austria suggested redrafting the chapeau to make clear that the article contained an indicative list of measures that could be supplemented by other actions.[316] Regarding the reporting requirement, Switzerland and Luxemburg suggested replacing it with an obligation to pay special attention to unusual transactions. The United States and Mexico preferred the language proposed by the Friends of the Chairman.[317]

The Friends of the Chairman prepared a new version of this article, making only the minor drafting changes that had been suggested in the previous meeting.[318] The debate of October 5, 1999, was devoted to fine-tuning of the reporting requirement. Switzerland[319] once more tried to downgrade this requirement to a request that financial institutions pay special attention to suspicious accounts, arguing that it reflected better the recommendations of the Financial Action Task Force. As a compromise, India suggested that a financial institution should report transactions only if it believes that the funds stem from criminal activities. The United States, Australia, and Sweden objected to this proposal since it weakened the reporting mechanism. The Netherlands suggested that both unusual and large transactions should be reported, not only those that were at the same time unusual and large. Finally, Malaysia was concerned about the reporting procedure in view of banking secrecy.[320] Since there was no agreement at the time, the Friends of the Chairman reproduced the same text in the next consolidated draft of the

---

[316] Supported by Australia and India.

[317] U.N. Codification Division, "Oct. 4, 1:00," *supra* note 228, p. 7; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 355-360.

[318] Friends of the Chairman, Rolling text of Oct. 4, 1999, *supra* note 231, art. 17.

[319] Supported by Belgium.

[320] U.N. Codification Division, "Oct. 05, 1999, 17:45," *supra* note 235, p. 5; 1999 Chairman's informal summary, *supra* note 59, ¶¶ 366-368.

convention.[321] In parallel, however, there were informal consultations to address Switzerland's concern. Eventually, it was agreed that both the Swiss and the India proposals be merged to require financial institutions to "pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity." This consensus solution, introduced at the October 6th meeting, read:

> Article 17
>
> 1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:
>
> (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
>
> (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
>
> (i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
>
> (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
>
> (ii) *bis.* Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
>
> (iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.
>
> 2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:
>
> (a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

[321] Friends of the Chairman, Rolling text of Oct. 5, 1999, *supra* note 236, art. 17.

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).[322]

The net impact of this package-deal was that states were to be obliged to require financial institutions to pay attention to unusual transactions but they were not bound to require that those transactions be reported. States were only asked to consider imposing such reporting requirement. Since there were no more comments on this draft article, the Friends of the Chairman included it in their next rolling text[323] and in the draft convention that was submitted to the Sixth Committee.[324]

E) Adoption

On October 8, 1999, the last day of meetings of the terrorism working group, the Friends of the Chairman presented a final consolidated text of the whole Financing Convention, bringing together various strands of the text that had been negotiated

[322] Friends of the Chairman, Revised text of Oct. 7, 1999, *supra* note 174, art. 17.

[323] *Ibid.,* art. 17.

[324] Friends of the Chairman, Consolidated draft of Oct. 8, 1999, *supra* note 187, art. 18.

separately.[325] The chair's intention was that the working group would recommend its adoption by the Sixth Committee. However, Syria, Cuba, Libya, and Lebanon rejected it. Syria argued that its proposals had not been taken into account and requested that the negotiations be continued before finalizing the text. Cuba, Lebanon, and Libya said that the convention should define terrorism "in all its forms and manifestations" and it should not be adopted until there was general agreement. These delegations reserved the right to raise these questions again during the Sixth Committee debate and to present further amendments to the text.[326] In view of these objections, the chairman proposed to that the working group submits "the draft international convention for the suppression of the financing of terrorism (…) to the Sixth Committee for discussion and consideration."[327] This recommendation, which allowed the negotiations to continue and which avoided endorsing the text, was adopted by the working group. Consequently, the draft convention was submitted to the Sixth Committee as part of the working group's report.[328]

A month later, when the Sixth Committee held its annual debate on the topic of international terrorism, Ambassador Kirsch, the chairman of *Ad Hoc* Committee, introduced the reports of *Ad Hoc* Committee and of the terrorism working group. He noted that the revised draft of the Financing Convention prepared by the Friends of the Chairman at the end of the session of the working group had been supported by most delegations and that, consequently, he recommended that the Sixth Committee adopt it

---

[325] *Ibid.*

[326] Díaz, Autograph notes, *supra* note 95, Oct. 8. 1999, pm.

[327] 1999 Working Group Report, *supra* note 57, ¶ 18.

[328] *Ibid.,* ¶ 18 and Annex 1.

during that same session. He cautioned, though, "against reopening the text, since it represented a delicate balance of interests."[329] Most delegations,[330] including the European Union, the Rio Group, Algeria, and the United States[331] advocated the adoption of the draft convention at that session, without further changes or delays. For the United States, the draft Financing Convention was simply "excellent."[332] Some delegations,[333] like Japan and Liechtenstein,[334] noted that, while they still had some difficulties with the text, they supported the adoption of the draft convention during that same session of the General Assembly and argued against reopening the negotiations. Other delegations, though, expressed objections to the draft Financing Convention and requested more time to continue the negotiations. Syria, Lebanon, Libya, Pakistan, and Iraq had difficulties with the text because it did not define terrorism, nor condemn state-terrorism, nor

---

[329] Canada (Amb. Kirsh), "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 6, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

[330] The Russian Federation, the Republic of Korea, Slovakia, Turkey, Hungary, Sri Lanka, Malaysia, Israel, Bahrain, the Central American countries, Burkina Faso, Macedonia, Poland, Slovenia, Democratic Republic of Congo, France, U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶¶ 41, 53, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶¶ 2, 69, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg. ¶ 16, 19, 26, 53, 57, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 3, 19, 25, 48, 51, 55, 66-67, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

[331] Finland, "Statement on behalf of the European Union," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 15, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); Mexico, "Statement on behalf of the Rio Group," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 10, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); Algeria, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 36, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); United States, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶ 10, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[332] United States, "Statement," *supra* note 331, ¶ 10.

[333] Also Sierra Leone, Mongolia, Peru, Malawi, South Africa, India, Ghana, U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 74, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 28, 72, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg. ¶ 13, 34, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 37, 65, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

[334] Japan, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 34, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); Liechtenstein, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 61, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

distinguish between terrorism and legitimate acts of self-determination.[335] Cuba argued that, during the negotiations, "many delegations had shown a reluctance to go to the heart of the problem of terrorist financing and had preferred instead to formulate a superficial regime for the suppression of the financing of terrorism, expressly excluding from the supposed definition of financing some of the actors which constituted the various links in the financing chain, namely corporations and the State itself."[336] Syria argued that those issues required further discussion and requested that the draft be referred to the following year's session of the *Ad Hoc* Committee. Syria also rejected what it perceived to be an attempt to "impose the convention as a *fait accompli,*" and the "ultimatum 'take it or leave it.'"[337] Finally, Syria noted that its delegation could not support the convention and stressed that there was no consensus.[338] It should be noted, though, that not all Islamic delegations that shared Syria's and Lebanon's concerns objected to the adoption of the Convention. Iran, for instance, regretted that the Convention did not define terrorism and that it excluded some persons and entities that were known to finance terrorism, but that, nonetheless, its delegation favored the adoption of the Convention as a good step forward in combating terrorism.[339]

---

[335] U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 12, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg. ¶¶ 29-30, 39-42, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 10, 30, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

[336] Cuba, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 57, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

[337] Syria, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 33nd mtg. ¶ 42, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999).

[338] *Ibid.*

[339] Iran, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 44, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999). See *also* Sudan, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 16, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

On November 16, 1999, in parallel with the Sixth Committee's debate, the delegation of Canada held informal consultations on a short draft resolution designed to adopt the Financing Convention. In those consultations, Syria and Lebanon restated their objections and requested more time to reach consensus. After intensive bilateral discussion with those delegations, it was agreed to include in the preamble of draft resolution a cross-reference to the 1991 General Assembly resolution on terrorism, which contained a strong restatement of the right of self-determination and which had been adopted by consensus.[340] With this small change, those two delegations agreed not to call for a vote on the draft resolution. Thus, on November 18, the Sixth Committee adopted, without a vote, the draft Financing Convention and submitted it to the plenary of the General Assembly for its final approval.[341] Before the adoption, however, Syria, Lebanon and Cuba explained their positions. Lebanon stressed that, in its view, the new instrument "did not apply to the legitimate struggle against colonial or other forms of alien domination or foreign occupation, since that struggle was a right recognized in the Charter of the United Nations and in customary international law."[342] Syria said that "[i]t would have been desirable to have a clear definition of terrorism, since it was important to distinguish between that phenomenon and the legitimate struggle of peoples against

---

[340] G.A. Res. 46/51, pr. para. 16, U.N. Doc. A/RES/46/51 (Dec. 9, 1991):

> "Reaffirming also the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and foreign occupation, and upholding the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,"

[341] U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶¶ 59, 71-72, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999); Virginia Morris and Arnold Pronto, "Current Developments: The Work of the Sixth Comm. at the Fifty-Fourth Session of the UN General Assembly," 94 AM.J.INT'L.L 582, 585, n.18 (2000).

[342] Lebanon, "Explanation of vote," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶ 64, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

colonial or other forms of alien domination or foreign occupation, as in the case of the struggle against Israeli occupation."[343] For its part, Cuba regretted that the new instrument did not address terrorist financing by states. Pakistan, Yemen, and Iraq supported these statements.[344] Finally, on December 9, 1999, the plenary of the General Assembly adopted to the International Convention for the Suppression of the Financing of Terrorism and opened it for signature.[345]

[343] Syria, "Explanation of vote," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶ 61, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[344] U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶¶ 65-69, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[345] G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999).

Chapter 7 – The negotiation of the Draft Comprehensive Convention on Terrorism

The negotiations on the draft comprehensive convention were intended to complete the international, police and judicial cooperation, legal regime against terrorism. While positions varied widely, it was generally understood that this convention would, at least, address those forms of terrorist activities not dealt with in the pre-existing counter-terrorism treaties and update the legal cooperation mechanisms established in those instruments. In a sense, thus, it was felt that this convention would be the final counter-terrorism treaty. Nonetheless, after eight year of work, it has been impossible to reach an agreement. Unlike the previous negotiations on sectoral treaties, the discussions of the comprehensive convention could not avoid the question of the definition of terrorism. If terrorism was to be address as a whole, there is a logical need to know what it actually was. Moreover, if the proposed instrument was to be the final treaty against terrorism, it was the last opportunity to distinguish it from legitimate violent acts in exercise of the right of self-determination. These difficulties were compounded by the fallout of the September 11, 2001 terrorist attacks, including both a heighten interest on all questions related to terrorism and the sudden Council legislative action against this type of crime.

A) Agreeing to negotiate

At the 1996 session of the Sixth Committee, the United States and the Russian Federation proposed respectively the negotiation of a convention on terrorist bombings

and a convention on nuclear terrorism.[1] In response, some developing countries argued that it was preferable to develop a comprehensive legal framework or treaty that would deal – at the same time – with all forms of terrorism.[2] Iran and Ethiopia, in particular, criticized the sectoral approach precisely because it did not provide an all-encompassing approach for combating terrorism at the international level.[3] Meanwhile, Cameroon and Bangladesh advocated for the negotiation of both additional sectoral treaties and a comprehensive convention.[4] Finally, Arab delegations and Cuba argued that it was necessary to define the concept of terrorism in a comprehensive manner in order to distinguish it from the legitimate exercise of the right to self-determination. [5] India stressed the need to create a homogeneous and all-encompassing legal framework for the prevention, repression, and elimination of international terrorism in all its aspects. It argued that regional and sectoral approaches were insufficient because terrorist bombings, drugs and arms trafficking, smuggling of nuclear material, money laundering, and the use of information technology for terrorist purposes were all inextricably linked, and that their eradication required a comprehensive, international, unified effort. For India, the negotiation of sectoral treaties on discreet forms of terrorism was only a

---

[1] See *supra:* Chapters 4.A and 5.A.

[2] Tunisia, Colombia, Botswana, Brazil, Algeria, Qatar and Indonesia. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶¶ 7, 34, 58, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 3, 16, 35, 40, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996).

[3] Iran, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶ 84, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996); Ethiopia, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶ 108, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[4] Cameroon, Bangladesh and Kyrgyzstan. U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 37, 77, 119, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

[5] Lebanon, Libya, Iraq, Sudan, Syria, United Arab Emirates and Cuba. U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 51, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996); U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶¶ 27, 38, 68, 93, , U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996); U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 61, 80, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

prelude to the adoption of a comprehensive convention.[6] To further this process, India then offered a draft comprehensive convention on international terrorism.[7] At the end of the debate, however, it became evident that most delegations were prepared to begin negotiations on the proposed sectoral convention on terrorist bombings but not on a convention addressing all aspects of terrorism. Norway and Sweden, for example, argued that negotiating a comprehensive convention would be so difficult that it would be impractical.[8]

After informal consultations, delegations agreed on a package-deal that included all the aforementioned proposals. The General Assembly decided to launch negotiations, first, on the Convention on Terrorist Bombings; second, on the Convention on Acts of Nuclear Terrorism; and, third, to consider "means of further developing a comprehensive legal framework of conventions dealing with international terrorism."[9] In addition, the Assembly noted the possibility of considering in the future the negotiation of a comprehensive convention on international terrorism.[10] It should be noted, though, that the Assembly did not commit itself to the negotiation of a comprehensive counter-terrorism convention but only to examine various means to strengthen the counter-terrorism legal regime. This approach – to defer the decision on launching negotiations on a comprehensive convention by using ambiguous language – was followed the next two years.

---

[6] India, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 31- 34, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996)

[7] India, "Draft international convention on the suppression of terrorism," U.N. Doc. A/C.6/51/6 Annex (Nov. 1, 1996) [hereinafter India's First Draft].

[8] U.N. GAOR 51st Sess. Sixth Comm. 50th mtg., ¶¶ 27, 28, U.N. Doc. A/C.6/51/SR.50 (Nov. 29, 1996).

[9] G.A. Res. 51/210, ¶ 9, U.N. Doc. A/RES/51/210 (Dec. 17, 1996).

[10] *Ibid*., pre. para. 10: "Bearing in mind the possibility of considering in the future the elaboration of a comprehensive convention on international terrorism".

During the 1997 Sixth Committee debate, developing countries reiterated their call for a comprehensive convention against all forms of terrorism.[11] The committee, however, was then entangled with the thorny adoption of the Bombings Convention and could not consider in depth the possible negotiation of a comprehensive convention.[12] Hence, it limited itself to reiterating the ambiguous mandate of the *Ad Hoc* Committee.[13] At the time, though, Norway and Sweden expressed some reservations regarding this decision because the broad formulation used to define the mandate of the *Ad Hoc* Committee could be interpreted as endorsing the negotiation of a comprehensive convention. For them, a focused, sectoral approach was the best way to ensure compliance with the international, counter-terrorism, legal regime, while they feared that negotiating a comprehensive convention would be extremely difficult.[14] India replied that, the previous year, all delegations had agreed on an extended program of work that included the negotiation of a convention on terrorist bombings, a convention on nuclear terrorism, and a comprehensive counter-terrorism convention. In a veiled threat, it argued that any attempt to modify this package-deal, in view of its well-understood ambiguities, could jeopardize the agreement on the whole program of work.[15]

At the 1998 meetings of the *Ad Hoc* Committee and the working group of the Sixth Committee on terrorism, some delegations reiterated their calls for developing a

---

[11] Brunei Darussalam, Tunisia, Malaysia, Colombia, Nigeria, India, Ethiopia, Sudan. U.N. GAOR 52nd Sess. Sixth Comm. 27th mtg., ¶ 44, U.N. Doc. A/C.6/52/SR.27 (Nov. 13, 1997); U.N. GAOR 52nd Sess. Sixth Comm. 28th mtg., ¶¶ 13, 25, 33, 46, U.N. Doc. A/C.6/52/SR.28 (Nov. 13, 1997); U.N. GAOR 52nd Sess. Sixth Comm. 29th mtg., ¶¶ 43, 46, 66, U.N. Doc. A/C.6/52/SR.29 (Nov. 14, 1997); U.N. GAOR 52nd Sess. Sixth Comm. 30th mtg., ¶ 14, U.N. Doc. A/C.6/52/SR.30 (Nov. 14, 1996).

[12] See *supra:* Chapter 4.G.

[13] G.A. Res. 52/165, pre. para. 8 and ¶¶ 8, 9, U.N. Doc. A/RES/52/165 (Dec. 15, 1997).

[14] U.N. GAOR 52nd Sess. Sixth Comm. 34th mtg., ¶¶ 23, 29, U.N. Doc. A/C.6/52/SR.34 (Nov. 21, 1997).

[15] India, "Statement," U.N. GAOR 52nd Sess. Sixth Comm. 34th mtg., ¶ 30, U.N. Doc. A/C.6/52/SR.34 (Nov. 21, 1997).

comprehensive counter-terrorism legal regime and for drafting a comprehensive definition of this crime.[16] Those meetings, however, focused on the draft nuclear terrorism convention.[17] Moreover, at the Sixth Committee, France proposed negotiating a convention on the financing of terrorism and to give it precedence over the consideration of the possible comprehensive convention.[18] This initiative was supported by the European Union, the Russian Federation, and the United States, among others.[19] Some developing countries, though, still preferred the negotiation of an all-encompassing treaty to deal with terrorism in an integrated manner.[20] India suggested a trade-off. It was willing to accept the negotiation of an instrument on the financing of terrorism on the understanding that, immediately after, the *Ad Hoc* Committee would take up the draft comprehensive convention prepared by India.[21] Japan objected, arguing that negotiations of a comprehensive convention were premature and that any decision in that regard

---

[16] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17 - 27, 1998), *Report,* ¶ 22, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998); U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the discussions in the Working Group," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, Annex III, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

[17] See *supra:* Chapter 5.B – E.

[18] See *supra:* Chapter 6.A. France, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 20, 22, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

[19] Also Turkey, Macedonia, New Zealand, Croatia, Philippines, Egypt, Hungary, Poland, Uganda, Sri Lanka, Uruguay, Ukraine, Australia, Japan, Haiti. U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 8, 12 U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶¶ 3, 25, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶¶ 16, 20, 28, 30, 42, 48, 60, 69, 71, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶¶ 4, 9, 15, 21, 24, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[20] Algeria, South Africa, Tunisia, Iran and Angola. U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 27 U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., ¶¶ 18, 30, U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg ¶ 36, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998); U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 27, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[21] India, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg ¶ 4, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

required further consideration.[22] Similarly, the United States favored a step-by-step approach , rather than a comprehensive approach, to the development of international law against terrorism.[23]

After extensive negotiations,[24] it was agreed to give precedence to the negotiation of the financing convention in exchange for the committee to consider "means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority basis, the elaboration of a comprehensive convention on international terrorism."[25] As part of this deal, and in order to ensure that this broad mandate could be completed, the General Assembly decided that the *Ad Hoc* Committee would meet in 1999 and 2000.[26] Since some delegations still maintained their objections to the negotiation of a comprehensive convention,[27] this decision did not contain a firm commitment to launch negotiations on such a convention but only a commitment to consider, as a matter of priority, its possible negotiation.

In 1999, both the session of the *Ad Hoc* Committee and the meeting of the working group were devoted to the elaboration of the convention on the financing of terrorism. As it had been agreed that the discussion on the possible negotiation of the comprehensive convention was going to take place after the financing convention was

---

[22] Japan, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 22, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

[23] United States, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg ¶ 30, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

[24] Argentina, "Statement," (Ms. Fernandez de Gurmendi, facilitator on the draft resolution) U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 14, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

[25] G.A. Res. 53/108, ¶ 11, U.N. Doc. A/RES/53/108 (Dec. 8, 1998).

[26] *Ibid*., ¶ 12.

[27] *E.g.:* Sweden, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 23, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

finished, the question of the negotiation of a comprehensive convention was mentioned only in passing.[28] However, by the end of 1999, the text of the Terrorist Financing Convention was ready for adoption and the negotiations on the draft convention on nuclear terrorism were deadlocked. Consequently, the Sixth Committee could not postpone any longer taking a decision on whether to begin negotiations on the comprehensive convention. In the debate, three positions were clearly distinguishable. The majority of states supported the negotiation of a broad comprehensive convention on the basis of the Indian draft.[29] Some delegations were enthusiastic. Ethiopia, for example, strongly favored the negotiation of a comprehensive instrument to overcome the limitations of the sectoral approach.[30] Other delegations were more guarded in their support. The European Union could agree to the negotiation of a comprehensive convention only under the condition that it would not contain any exceptions or justifications based on the motives that prompted the recourse to violence. It expressed a general preference for the sectoral approach since specific treaties did not provide for exceptions based on the right to self-determination.[31] For their part, Islamic states stressed

---

[28] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15 - 26, 1999), *Report,* ¶ 38, U.N. GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999); U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the discussions in the Working Group," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex IV, ¶ 2, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

[29] Colombia, Russian Federation, Slovakia, Egypt, Mongolia, Turkey, Peru, Malawi, Hungary, Sri Lanka, South Africa, Brazil, Angola, Macedonia, India, Democratic Republic of Congo, Ghana, Haiti, and Ethiopia. U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., ¶¶ 30, 31, 45, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶¶ 3, 6, 24, 70, 74, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., ¶¶ 14, 17, 22, 38, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., ¶¶ 18, 23, 27, 36, 58, 65, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶¶ 1, 8, 15, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[30] Ethiopia, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶ 15, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

[31] Finland, "Statement on behalf of the European Union," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 16 - 18, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

the need for defining terrorism and for distinguishing it from the legitimate exercise of the right to self-determination. Some even suggested amending the Indian draft to include such a distinction.[32] Even more, some of these countries argued that the proposed definition of terrorism should encompass "state terrorism" to criminalize the use of force by states in the occupied Palestinian territory, Kashmir, Kuwait, Libya, and Sudan.[33] Finally, a third group of states had strong reservations to the negotiation of a comprehensive convention.[34] The United States argued that negotiating a definition of terrorism was both extremely difficult, due to the differences of opinion, and unnecessary, since the Sixth Committee had already been dealing successfully with specific forms of terrorism. The American delegation predicted that the proposed comprehensive convention was going to face many difficulties and recalled that the international community had chosen the sectoral approach precisely because it had been unable to agree on a comprehensive text.[35] After consultations, the General Assembly decided to begin "consideration with a view to the elaboration of a comprehensive convention on international terrorism within a comprehensive legal framework of conventions dealing with international terrorism," during the fall 2000 meeting of the

---

[32] United Arab Emirates, Yemen, Iraq, Oman, Malaysia, Bahrain. U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., ¶¶ 36, 58, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶¶ 10, 24, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., ¶¶ 23, 58, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999).

[33] Qatar, Lebanon, Syria, Kuwait, Libya, Sudan, and Pakistan. U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶ 47, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., ¶¶ 4, 29, 44, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999); U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., ¶¶ 7, 16, 28, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999)

[34] Japan and Canada. Japan, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 35, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999); Canada, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 46, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999).

[35] United States, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶¶ 9, 11, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

working group, and to continue the work in the spring of 2001.[36] This formulation sought to balance the preferences of those who wanted to begin immediately negotiations on the comprehensive convention and those who feared that the new instrument would seek to replace the legal regime created by the sectoral treaties and introduce wide-ranging exceptions. Besides, at this stage, there was no commitment to conclude successfully or to adopt the comprehensive convention.

At the next meeting of the *Ad Hoc* Committee, in February 2000, India informally offered delegations a revised version of its draft comprehensive convention. At that time, however, some delegations argued that the comprehensive convention should address only those issues that were not already dealt within the existing sectoral treaties. Moreover, it was argued that, in order to maintain consistency, the comprehensive convention should follow the basic structure and approach of the sectoral conventions previous adopted.[37] As it had been agreed previously by the General Assembly, the consideration of this text was deferred until the fall meeting of the working group. Thus, on September 25th, 2000, the General Assembly finally began negotiations on a comprehensive convention on international terrorism.[38] At that outset, India formally introduced its revised version of the draft convention.[39] In an effort to simplify the negotiation of many provisions and facilitate agreement, India followed in this draft the structure of the Terrorist Bombings and Terrorist Financing conventions and availed

---

[36] G.A. Res. 54/110, ¶ 13, U.N. Doc. A/RES/54/110 (Dec. 9, 1999).

[37] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fourth session, Feb 14-18, 2000), *Report,* ¶ 4, U.N. GAOR 55th Sess. Supp. No. 37, U.N. Doc. A/55/37 (2000).

[38] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶¶ 1, 10, U.N. Doc. A/C.6/55/L.2 (Oct. 19, 2000) [hereinafter 2000 Working Group Report].

[39] India, "Working document on the draft comprehensive convention on international terrorism," UN Doc. A/C.6/55/1 reprinted in: 2000 Working Group Report, *supra* note 38, Annex II, pp. 9 – 24, [hereinafter India's Revised Draft Convention].

itself of the language already agreed in those instruments.[40] Moreover, India had consulted several delegations, including the United States, in the preparation of its revised text.[41]

B) Defining the crime

In the negotiations, the first question that delegations had to face has how to define the criminal offence of terrorism. The first draft of the comprehensive convention, which had been proposed by India in November 1996 purported to address all forms on terrorism. Draft article 1 obliged state-parties to take all necessary measure to prevent and punish "acts of terrorism," giving special emphasis to those expressly included within the scope of the convention.[42] For its part, draft article 2 contained the following non-exhaustive inventory of terrorist offences:

> Article 2
>
> 1. The Contracting States shall ensure that their national laws recognize that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are under any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.
>
> 2. In particular, for purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:
>
> (a) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

---

[40] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the general discussion in the Working Group," ¶ 9, in: 2000 Working Group Report, *supra* note 38, Annex IV [hereinafter 2000 Chairman's Informal Summary].

[41] *Ibid.,* ¶ 9.

[42] India's First Draft, *supra* note 7, art. 1.

(b) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
(c) An offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly on 14 December 1973;
(d) An offence within the scope of the International Convention against the Taking of Hostages, signed at New York on 17 December 1979;
(e) Murder, manslaughter or assault causing serious bodily harm, kidnapping or serious unlawful detention;
(f) An offence involving the use of firearms, weapons, explosives or other dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property;
(g) An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.[43]

Several aspects of this list are noteworthy. First, it did not circumscribe the scope of application of the proposed convention, that is, that the counter-terrorism measures established in the draft convention were to be applicable to all terrorist offences and not only to those mentioned in article 2. Thus, both article 1, on preventive and punitive measures, and article 3.1, asking states not to support terrorism, used open-ended formulations, such as: "terrorist offences, in particular those referred to in article 2."[44] Second, this text did not define the crime of terrorism. It did not describe the actor of the criminal conduct, nor the wrongful act itself (the *actus reus*), nor the intentionality requirements (the *mens rea*), all of which are indispensable elements of a technical, legal definition of a crime.[45] Paragraph 1 only mentioned the general purpose of the criminal conduct: "to provoke a state of terror in the general public, a group of persons or

[43] *Ibid.,* art. 2.

[44] *Ibid.,* art. 3.1. See also art. 1.

[45] See *supra:* Chapter 1.B.2.a.

particular persons for political purposes," while the rest of the article was a mixture of disconnected elements. Subparagraphs a) to d) referred to the offences established in four previous conventions. Subparagraphs e) and f) mentioned some forms of common criminality – murder, manslaughter, assault, kidnapping, and the use of weapons and explosives for indiscriminate purposes – without linking them to the terrorist purpose; and subparagraph g) covered criminal participation and inchoate crimes. Third, rather than defining terrorism, this article focused on the political offence exception and on the defences based on self-determination. Paragraph 1 asked state-parties to recognize that criminal acts intended to cause terror are unjustifiable in all circumstances, while paragraph 2 sought to implement this general principle by derogating the political offence exception for a list of specific crimes.

By 2000, after consultations with other delegations and the experience of negotiating the terrorist bombing, the terrorist financing and the nuclear terrorism conventions,[46] India proposed the following technical definition of the offence:

> Article 2:
>
> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, does an act intended to cause:
>
> (a) Death or serious bodily injury to any person; or
>
> (b) Serious damage to a State or government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss;
>
> when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[47]

[46] 2000 Chairman's Informal Summary, *supra* note 40, ¶ 9.

[47] India's Revised Draft Convention, *supra* note 39, art. 2.1.

Unlike the first draft, this text contained a technical definition of the offence, following closely the structure and the concepts used in the Terrorist Bombings and Financing Conventions. The description of the actor and the element of *mens rea* were identical to the ones of the Bombing Convention.[48] Subparagraph a), on the death or injury to a person, also reflected the language of the bombings convention.[49] Subparagraph b) merged the list of possible targets of the criminal conduct, taken from the Bombings Convention, with the notable addition of "communication systems," with the qualification on the extent of damage, also from that convention.[50] Each target was defined separately in article 1.[51] The end of the paragraph, on the terrorist purpose, was identical to the language agreed in article 2.1.b of the terrorist financing convention.[52]

Negotiations on the revised Indian draft began on September 25, 2000. At the outset, there were three different approaches regarding the scope of the proposed convention. Some delegations argued that the new instrument should only fill up the gaps in the legal regime created by the pre-existing instruments. Switzerland, for example, simply proposed that the new convention should not apply if the act described in the definition of the offence fell within the scope of a previous specific convention on terrorism.[53] Netherlands went even further by proposing to exclude from the scope any

---

[48] International Convention for the Suppression of Terrorist Bombings, art. 2.1. chapeau, *adopted* on Dec. 15, 1997, G.A. Res. 52/164 Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997) [hereinafter Bombings Convention].

[49] *Ibid.,* art. 2.1.a.

[50] *Ibid.,* art. 2.1. chapeau and b).

[51] India's Revised Draft Convention, *supra* note 39, art. 1.1., 1.3 – 1.5.

[52] International Convention for the Suppression of the Financing of Terrorism, art. 2.1.b, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999) [hereinafter Financing Convention].

[53] Switzerland, "Proposal, Amendment to art. 2.1," U.N. Doc. A/C.6/55/WG.1/CRP.31 (Oct. 4, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 31.

offence covered either in a pre-existing or in a future sectoral convention.[54] Other delegations argued that the convention had to be truly comprehensive and, therefore, that it had to include within its scope all aspects of terrorism regardless of whether they had already been addressed in any specific convention.[55] Several Latin American delegations suggested including in the definition the major elements of all the previous sectoral delegations – such as kidnapping, and endangering the safety of ships and aircrafts – as well as new elements, such as the damage to the environment.[56] Finally, members of the Organization of the Islamic Conference argued that, in order to have a truly comprehensive approach, it was necessary to define terrorism and to distinguish it unequivocally from the legitimate exercise of the rights of self-determination and of self-defence against foreign occupation.[57] For them, it was also necessary to address the

---

[54] Netherlands, "Proposal, new para. 4 to art. 2" U.N. Doc. A/C.6/55/WG.1/CRP.7 (Sept. 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 7: "The provisions of this Convention do not apply if the act described in paragraph 1 constitutes an offence within the scope of a previous or future more specific convention relating to acts of terrorism."

[55] 2000 Chairman's Informal Summary, *supra* note 40, ¶ 19.

[56] Bolivia, Chile, Costa Rica, Ecuador, and Peru, "Proposal," art 2.1, U.N. Doc. A/C.6/55/WG.1/CRP.15, (Sept. 2000), *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 15:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally:
>
> (a) Causes death or serious bodily injury to any person;
>
> (b) Seizes or detains and threatens to kill, to cause serious bodily injury or to continue to detain any person;
>
> (c) Causes serious damage of any kind, including major economic loss to, or against a place of public use, a State or governmental facility, a public transportation system, an infrastructure facility or the environment;
>
> (d) Seizes, exercises control over or endangers a ship, an aircraft or a fixed platform located on the Continental Shelf,
>
> when the purpose of such act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or to abstain from doing any act."

[57] Malaysia, on behalf of the OIC group, "Additional para. to arts. 1 and 2 of doc. A/C.6/55/1," art. 2 new para., U.N. Doc. A/C.6/55/WG.1/CRP.30 (Oct. 3, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 30: **"**Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime."

question of state terrorism. The United States replied that the term "terrorism" was inapplicable to states because their conduct is regulated by the rules of international law on the use of force, particularly articles 2.4 and 39 of the United Nations Charter.[58] Concretely on the definition proposed by India, Australia and Belgium sought to remove requirement of a specific terrorist purpose.[59] Similarly, Colombia proposed that such a requirement should apply only to the material damage but not to the acts that cause death or bodily injury to a person.[60] The members of the Islamic Conference and Côte d'Ivoire sought, instead, to emphasize the terrorist purpose and proposed to define terrorism.[61] The definition proposed by the OIC, taken from its regional treaty,[62] read:

> "Terrorism" means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States. [63]

Delegations were also divided on whether the offence was to be a crime of intent or a crime of result. India proposed a crime of intent. Following the precedent of the

---

[58] 2000 Chairman's Informal Summary, *supra* note 40, ¶ 12.

[59] Australia and Belgium, "Proposal, art. 2.1," U.N. Doc. A/C.6/55/WG.1/CRP.5 (Sep. 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 5.

[60] Colombia, "Proposal, art. 2.1" U.N. Doc. A/C.6/55/WG.1/CRP.4/Rev.1 (Sept. 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 4.

[61] Côte d'Ivoire, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.26 (Oct. 3, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 26.

[62] Convention of the Organization of the Islamic Conference on Combating International Terrorism, art. 1.2, *adopted on* July 1, 1999, *reprinted in* U.N. Doc. A/54/637-S/1999/1204 Annex.

[63] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art 1. new para.

Bombing Convention,[64] the Indian draft required only that the act be "intended to cause" death, injury, or serious destruction with the "intent to cause extensive destruction."[65] Accordingly, the crime would be deemed committed even if no actual death, injury or damage occurred. However, unlike the Bombings Convention, where the wrongful act was precisely defined in a list of forbidden actions,[66] the Indian draft characterized the wrongful conduct only through its purpose. Several delegations felt that this formulation was too vague.[67] Anything could be done to intimidate the population, even if it had no negative effect at all. In their view, for the crime to be completed, the intended result actually had to ensue. They also stressed that it was necessary to avoid a double intent requirement. Austria, Australia, Belgium, Switzerland, and a group of Latin American states made proposals in this regard.[68] Finally, the question of the threshold of destruction needed for the conduct to be considered a crime, was also discussed. India had proposed "serious damage (…) with the intent to cause extensive destruction (…) or where such destruction results or is likely to result in major economic loss."[69] Austria,

---

[64] Bombings Convention, *supra* note 48, art. 2.1.a and b).

[65] India's Revised Draft Convention, *supra* note 39, art. 2.1.

[66] Bombings Convention, *supra* note 48, art. 2.1. chapeau.

[67] Belgium and the Netherlands.

[68] Australia and Belgium, "Proposal, art. 2.1," *supra* note 59; Bolivia, Chile, Costa Rica, Ecuador, and Peru, "Proposal," *supra* note 56, art. 2.1; Switzerland, "Proposal, Amendment to art. 2.1," *supra* note 53, art. 2.1.; Austria, "Proposal, art. 2.1" U.N. Doc. A/C.6/55/WG.1/CRP.32 (Oct. 4, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 32:

> Article 2, paragraph 1
>
> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, does an act and **thereby**, unlawfully and intentionally, **causes**:
>
> a) Death or serious bodily injury to any person; or
>
> b) Extensive destruction to a place of public use, a State or government facility, a public transportation system or an infrastructure facility, where such destruction results or is likely to result in major economic loss,
>
> when the purpose of such act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or abstain from doing any act.

[69] India's Revised Draft Convention, *supra* note 39, art. 2.1.b.

Australia, and Belgium sought to raise that threshold to "extensive destruction (…) where such destruction results in or is likely to result in major economic loss,"[70] as it had been in the Terrorist Bombing Convention,[71] while the Latin American delegations sought to lower the threshold to "serious damage of any kind."[72] For its part, the formulation proposed by the Islamic states sought to lower it ever further by including within in their definition of terrorism any acts of violence that create hazards to public and private property and to the environment.[73]

On 2 October, India circulated informally the following revised definition of the offence:

> Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally **causes**:
> (a) Death or serious bodily injury to any person; or
> (b) **Extensive destruction to a place of public use**, a State or Government facility, a public transportation system, or **an** infrastructure facility, or where such destruction results or is likely to result in major economic loss,
> when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[74]

Following the majority view, this new text transformed the offence into a crime of result. In addition, it raised the threshold of the damage required for an act to fall within

---

[70] Austria, "Proposal, art. 2.1" *supra* note 68, art. 2.1.b; Australia and Belgium, "Proposal, art. 2.1," *supra* note 59, art. 2.1.b.

[71] Bombings Convention, *supra* note 48, art. 2.1.b.

[72] Colombia, "Proposal, art. 2.1" *supra* note 60, art. 2.1.b; Bolivia, Chile, Costa Rica, Ecuador, and Peru, "Proposal," *supra* note 56, art. 2.1.c.

[73] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art 1. new para.

[74] India, "Revised text of art. 2," U.N. Doc. A/C.6/55/WG.1/CRP.35, (Oct. 4, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 32, art. 2.1 (bold in the original. Circulated informally on Oct. 2, 2000) [hereinafter India's Revised Art. 2].

the scope of the convention by requiring that either that "extensive destruction" is produced or that the destruction results in major economic loss.

In informal consultations, the basic positions regarding the general approach of the convention were reiterated. In addition, Nigeria proposed including, within the scope of this convention, the offences established in all the sectoral treaties,[75] while Lebanon and Syria requested again the addition of the definition of terrorism taken from the 1999 OIC Convention on Combating International Terrorism.[76] Since these discussions proved to be inconclusive, the coordinator suggested that they be continued in the following session of the *Ad Hoc* Committee.[77] Nevertheless, on October 6, 2000, towards the end of the session of the working group, India circulated a further revision of its definition of the offence. It read:

> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
> (a) Death or serious bodily injury to any person; or
> (b) Serious damage to public or private property, a place of public use, a State or government facility, a public transportation system, or an infrastructure facility; or
> (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss;
> when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[78]

---

[75] Nigeria, "Amendment to art. 2.1," new art. 2.1.bis, U.N. Doc. A/C.6/55/WG.1/CRP.33 (Oct. 4, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 33: "Any person also commits an offence, within the meaning of this Convention, if that person commits or attempts to commit an offence as set forth in any of the sectoral or specific conventions on international terrorism."

[76] Lebanon and Syria, "Proposal," art. 1, U.N. Doc. A/C.6/55/WG.1/CRP.38 (Oct. 5, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 38.

[77] 2000 Chairman's Informal Summary, *supra* note 40, ¶ 14.

[78] India, "Informal revised text of art. 2," art. 2.1., *in:* 2000 Working Group Report, *supra* note 38,Annex I.B, pp 7 - 8 [hereinafter India's Further Revised Art. 2].

Like October 2nd, 2000 draft, this text contained two different thresholds regarding property damage: either serious damage to public property (subparagraph b) or damage that caused or that was likely to cause major economic loss (subparagraph c). Moreover, this text clearly included the possibility of damage to private property.

In November 2000, several delegations explained to the Sixth Committee their substantive positions on the definition of the crime contained in the draft comprehensive convention. Colombia, on behalf of the Latin American states, argued that the new instrument should focus on the distinctive element of the crime of terrorism: its objective to inflict terror on a population or to oblige a government or an international organization to do or to refrain from doing something.[79] Islamic states, including Saudi Arabia, Syria and Pakistan, argued that the new convention should address the phenomenon of terrorism in a comprehensive manner. They advocated, therefore, for an all-inclusive definition of terrorism such as the one proposed by the OIC.[80] Conversely, the Czech Republic believed that no new elements had to be added to the Indian draft.[81]

Negotiations on the draft comprehensive convention continued in February 2001, in the framework of the *Ad Hoc* Committee. On that occasion, rather than having a detailed negotiation on the technical aspects of the definition of the offence, there was an

---

[79] Colombia, "Statement on behalf of the Rio Group," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 18, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

[80] Burkina Faso, Pakistan, Iraq, Saudi Arabia, Syria, and Kuwait. U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 37, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000); U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶¶ 33, 37, 39, 49, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 54, 65, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[81] Czech Republic, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 44, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

exchange of views on its broad conceptual underpinnings.[82] Islamic countries stressed the need to define terrorism, as proposed by the OIC, in order to differentiate it from the legitimate struggle for self-determination.[83] Western countries argued that defining terrorism was not necessary since the Indian draft already provided an operational definition of the offence for the use of the convention. They underlined, in this regard, the words "within the meaning of this Convention"[84] in the Indian draft. Other delegations believed that the legal definition of terrorism should focus on its usual purpose: to produce fear in the population or to force a government or an international organization to do or to refrain from doing something.[85] Concretely on the text, South Africa formally proposed to extend the definition to any act that endangers life and freedom, even if it does not actually kill, and to cover private property.[86]

The negotiations on the proposed comprehensive convention were to continue during the 56th Session of the General Assembly, which was scheduled to begin on September 11th, 2001. The terrorist attacks of that day, though, unexpectedly raised the profile of terrorism within the United Nations. The inmediatly day after the attacks, both the Security Council and the General Assembly condemned those criminal acts in the strongest terms and called for increased international cooperation to prevent the

---

[82] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* ¶ 15, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001) [hereinafter 2001 Ad Hoc Comm. Report].

[83] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art 1. new para.

[84] India's Further Revised Art. 2, *supra* note 78, art. 2.1. chapeau.

[85] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Chairman, "Informal summary of the general exchange of views," ¶¶ 7 – 11, *in:* 2001 Ad Hoc Comm. Report, *supra* note 82, Annex V [hereinafter 2001 Chairman's informal summary]; United Nations, *"Committee on terrorism takes up draft comprehensive anti-terrorism convention,"* (press release L/2971) Feb. 12, 2001.

[86] South Africa, "Proposal on art. 2.1," A/AC.252/2001/WP.5 *reprinted:* 2001 Ad Hoc Comm. Report, *supra* note 82, Annex III, ¶ 5.

commission of new terrorist acts and to bring those responsible to justice.[87] The General Assembly urgently called for "international cooperation to prevent and eradicate acts of terrorism, and stress[ed] that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of such acts will be held accountable."[88] Two weeks later, on September 28, 2001, the Security Council adopted its resolution 1373 which contained a broad range of mandatory measures to combat international terrorism.[89] Those provisions were exceptional for two reasons: first, because they imposed upon states the sort of obligations that they traditionally undertook freely through treaties,[90] and second, because the Council, in adopting binding norms of general application rather than discrete measures to address specific situations that constitute concrete threats to international peace and security, went far beyond the previous understanding of its enforcement powers.[91] Scholars have considered that, in adopting those measures, the Council seized a legislative or quasi-legislative role, imposing on the broader international community universal and immediately binding obligations in areas where traditional treaty law-making has proved inadequate.[92] While most of the

---

[87] G.A. Res. 56/1, U.N. Doc. A/RES/56/1 (Sept. 12, 2001); S.C. Res. 1368 (2001), U.N. Doc. S/RES/1368 (Sept. 12, 2001).

[88] G.A. Res. 56/1, *supra* note 87, ¶ 4.

[89] S.C. Res. 1373 (2001), U.N. Doc. S/RES/1373 (Sept. 28, 2001).

[90] Eric Rosand, "The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?" 28 Fordham Int'l L.J. 542, at 567 - 568 (2005); Alan Boyle and Christine Chinkin, *The Making of International Law*, (Oxford: Oxford University Press, 2007) pp. 109 – 110, 113 – 115.

[91] Paul C. Szasz, "The Security Council Starts Legislating," 96 AM.J.INT'L.L 901, at 902 (2002):

> Resolution 1373, while inspired by the attacks of September 11, 2001, is not specifically related to these (though they are mentioned in the preamble) and lacks any explicit or implicit time limitation, a significant portion of the resolution can be said to establish new binding rules of international law – rather than mere commands relating to a particular situation – and, moreover, even creates a mechanism for monitoring compliance with them.

[92] Boyle and Chinkin, *supra* note 90, at 109 - 110:

normative provisions of resolution 1373 were based on the Financing Convention,[93] a few of them overlapped with the scope of the proposed comprehensive convention. The resolution ordered states, in particular, to:

> (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
>
> (…)
>
> (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
>
> (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.[94]

These provisions enshrined into general international law the fundamental obligation to judge or to extradite - *aut dedere aut judicare* - which the proposed comprehensive convention had sought to establish. From this point of view, resolution 1373 served as a shortcut to incorporate into the law a universal obligation for states to criminalize terrorism and to provide each other mutual legal assistance. It has been argued that the Security-Council had to impose these broad ranging obligations because

---

> [F]ollowing the end of the cold war, the Security Council has largely been freed from the use of the veto power that had previously inhibited it. Since then, and notwithstanding that its powers under Chapter VII of the UN Charter are limited to the maintenance of international peace and security, it has interpreted these terms very broadly and acted in a number of innovative ways that demonstrate a capacity and willingness to lay down rules and principles of general application, binding on all states, and taking precedence over legal rights and obligations. In effect it has asserted and extended its authority where the inadequacies of law-making by treaty might undermine the pursuit of its objectives.

[93] Szasz, supra note 91, 903; Rosand, supra note 90, 581: "In drafting Resolution 1373, the Council took certain provisions from the Terrorist Financing Convention and from other conventions related to terrorism, and made them binding on all States overnight in order to fill the existing gap."

[94] S.C. Res. 1373 (2001), *supra* note 89, ¶ 2.c, e) and f).

the traditional treaty making procedures at the General Assembly had proved inadequate to address international terrorism. Rosand, an American diplomat who used to deal with questions of terrorism within the Security Council, argues that:

> Part of the reason why the Security Council had to adopt Resolution 1373 was because the traditional law-making process in the General Assembly was not working. For example, negotiations on a comprehensive terrorism convention have been stalled for four years over two paragraphs in the text related to the definition of terrorism. Although there was consensus the remaining parts, the text could not be adopted until agreement was reached on all provisions. Even where the General Assembly had reached consensus on the text of a counter-terrorism treaty, States, particularly in the regions where the terrorist threat is probably greatest, were slow to take the necessary domestic steps to become parties to (i.e., be legally bound by) them, thus limiting their practical relevance.[95]

The perceived problems, though, were not limited to the nature of treaty-making negotiations as law-making process. They included also the lack of an effective enforcement system. Rosand adds:

> [T]here was no mechanism in place to monitor the efforts of States to join and implement these treaties. Thus, even where States had consented to be bound by the obligations contained in the treaties, the United Nations had limited means to politically pressure them to actually implement such obligations. In sum, the traditional law-making approach was proving inadequate for dealing with the global and imminent terrorist threat. The Security Council, therefore, may have had little choice but to try to fill the void.[96]

In a sense, by imposing on all states wide-ranging obligations to fight terrorism, the Security Council took away from the General Assembly its normative role.[97] From

---

[95] Rosand, *supra* note 90, 576 - 577

[96] *Ibid.,* 577.

[97] See *e.g.* the reaction of Cuba to the adoption of resolution 1373. Cuba, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 14 – 18, at 16, U.N. Doc. A/56/PV.13 (Oct. 1, 2001):

> [T]he Security Council recently adopted – after speedy negotiations that were not very transparent – a resolution that orders States to work on urgent legislative modifications, demands

that moment onwards, it became legitimate to ask whether negotiating a new counter-terrorism treaty within the General Assembly was worth the effort when the basic obligations that such a treaty was supposed to create had already been created by the Security Council. As another American diplomat notes:

> After September 11, 2001, the Security Council weighed in on terrorism – "took charge" probably is not too strong a term – and became the locus of action. That the larger world could not agree on a definition of terrorism or condemnation of terrorism in all circumstances became irrelevant; or, if not irrelevant, a symptom of political disagreement all could understand.[98]

Such considerations were to have, in the long run, an important impact on the negotiation of the draft comprehensive convention.[99] In the short run, however, other consideration came to the fore. In the first place, from a symbolic, normative point of view, the adoption of a comprehensive convention against terrorism became even more important than before. For all those states that were not members of the Security Council, adopting such a convention became a good opportunity to express their censure for terrorist acts and to make a tangible contribution to the fight against this crime.[100] Thus, out the 167 states and 4 observers that condemned terrorism in general and the September 11 attacks in particular during a formal debate held at of the General

---

> immediate reports and creates a sort of anti-terrorism general staff. (…) In this, the Council is once again usurping the functions of the General Assembly, which is the only organ whose universal membership and democratic format could legitimize such far reaching decisions. The Council uses the unusual method of imposing on all States some of the provisions found in the conventions against terrorism, to which individual States have the right to decide whether or not they wish to be signatories.

[98] Nicholas Rostow, "Before and After: The Changed UN Response to Terrorism since September 11th," 35 Cornell Int'l L.J. 475, at 481 (2002)

[99] See *infra:* sections E) and F).

[100] See *e.g.*: Peru "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 14 – 16, at 14, U.N. Doc. A/56/PV.16 (Oct. 3, 2001): "The conventions that are still being negotiated (…) must be concluded soon in order to send a clear message of shared resolve to defeat terrorism."

Assembly in the first week of October, 2001, almost half of them – 75 – called for increased efforts to finalize the draft convention quickly.[101] Some delegations even suggested its adoption before the end of 2001.[102] The Secretary-General, in urging the speedy adoption of the draft comprehensive convention, stressed its symbolic or "moral" value. He said:

> It will also be important to obtain agreement on a comprehensive convention on international terrorism. In the post-11 September era, no one can dispute the nature of the terrorist threat or the need to meet it with a global response. I understand that there are outstanding issues, which until now have prevented agreement on the convention. Some of the most difficult issues relate to the definition of terrorism. I understand and accept the need for legal precision. But let me say frankly that there is also a need for moral clarity. There can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance. If there is one universal principle that all peoples can agree on, surely it is that.[103]

---

[101] Belgium (on behalf of the European Union), Algeria, Ukraine, United Kingdom, Belarus, (U.N. GAOR 56th Sess. 12th plen. mtg., pp. 10, 13, 15, 18, 22, U.N. Doc. A/56/PV.12 (Oct. 1, 2001); Costa Rica, Russian Federation, Morocco, Mongolia, Turkey, Netherlands, Ecuador, Mexico, Argentina, Chile, France, Liechtenstein (U.N. GAOR 56th Sess. 13th plen. mtg., pp. 2, 3, 4, 7, 9, 10, 11, 14, 19, 21, 23, 30, U.N. Doc. A/56/PV.13 (Oct. 1, 2001); Republic of Korea, Ireland, Madagascar, Malaysia, Japan, Yugoslavia, Colombia (U.N. GAOR 56th Sess. 14th plen. mtg., pp. 4, 7, 9, 10, 15, 18, 24, U.N. Doc. A/56/PV.14 (Oct. 2, 2001); Cyprus, Uruguay, Iran, Lesotho, Australia, Germany, Sri Lanka, Philippines, Gabon, (U.N. GAOR 56th Sess. 15th plen. mtg., pp. 3, 4, 6, 8, 9, 11, 14, 17, 27, U.N. Doc. A/56/PV.15 (Oct. 2, 2001)); Brazil, Paraguay, Jamaica, Peru, Indonesia, Cape Verde, Macedonia, Sweden, India, China (U.N. GAOR 56th Sess. 16th plen. mtg., pp. 3, 8, 9, 14, 17, 20, 22, 24, 27, U.N. Doc. A/56/PV.16 (Oct. 3, 2001); Guinea, Slovenia, Ethiopia, Monaco, Italy, Angola (U.N. GAOR 56th Sess. 17th plen. mtg., pp. 5, 11, 12, 15, 23, 25, U.N. Doc. A/56/PV.17 (Oct. 3, 2001); Ghana, Slovenia, Lithuania, Romania, Trinidad and Tobago, Tanzania, Canada (U.N. GAOR 56th Sess. 18th plen. mtg., pp. 2, 5, 10, 14, 15, 18, 22, U.N. Doc. A/56/PV.18 (Oct. 4, 2001); Niger, Hungary, El Salvador, Kenya, Moldova (U.N. GAOR 56th Sess. 19th plen. mtg., pp. 5, 11, 19, 23, 25, U.N. Doc. A/56/PV.19 (Oct. 4, 2001); Nepal, Burundi, Uganda, Uzbekistan, Tajikistan, Laos, Dominica, Samoa, Brunei Darussalam, (U.N. GAOR 56th Sess. 20th plen. mtg., pp. 2, 6, 7, 8, 12, 14, 15, 21, 22, U.N. Doc. A/56/PV.20 (Oct. 4, 2001); Nauru (on behalf of the Pacific Islands Forum), Latvia, Denmark, Turkmenistan, Thailand, (U.N. GAOR 56th Sess. 21st plen. mtg., pp. 2, 10, 13, 17, 20, U.N. Doc. A/56/PV.21 (Oct. 5, 2001).

[102] *E.g.:* Argentina, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 18 – 19, at 19, U.N. Doc. A/56/PV.13 (Oct. 1, 2001).

[103] U.N. Secretary-General, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 2 - 4, at 3, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

In the same line of thought, India argued that "It would be the best memorial to those who died on 11 September and the clearest pledge that we will work to ensure that an atrocity like that never recurs if, at this session, the General Assembly were to come to an agreement by consensus on a comprehensive convention to outlaw international terrorism."[104] In this sense, September 11 brought to the negotiations on the comprehensive convention both a heightened sense of urgency and some pressure to make compromises. Germany, for instance, noted that there was "a clear opportunity for negotiations on a comprehensive convention on international terrorism to be brought to a successful conclusion, if a spirit of compromise and a sense of common purpose prevail in the Sixth Committee."[105] Finland argued that: "All efforts should be concentrated on the upcoming third round of negotiations on finding solutions that will make the convention generally acceptable."[106] Cape Verde said that "the urgency brought on by the events of 11 September should direct us to find the necessary compromises that would enable the draft to be finished,"[107] while Malawi invited delegations to "set aside differences that could stifle progress in their work and to show flexibility on their respective national positions so as to complete the formulation of the draft comprehensive convention."[108]

---

[104] India, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 24 – 27, at 27, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

[105] Germany, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., pp. 9 – 11, at 11, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

[106] Finland, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 10 – 12, at 11, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

[107] Cape Verde, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 19 – 21, at 20, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

[108] Malawi, "Statement," U.N. GAOR 56th Sess. 20th plen. mtg., 17 -19, p. 18, U.N. Doc. A/56/PV.20 (Oct. 4, 2001).

In a second place, the question of the definition of terrorism itself became evern more pressing. The Security Council, in order to avoid the conceptual differences that had bogged down negotiations within the Sixth Committee, had chosen not to define terrorism and allow each state to use its own domestic concept of this crime.[109] Such indeterminacy, though, could cause major political and legal problems since all the obligations embodied in resolution 1373 hinged precisely on the concept of terrorism. Without a common understanding of what terrorism was, it became difficult to criminalize terrorism, deny refugee status to terrorists, and prevent the activities of terrorist movements in a homogeneous manner. Syria, for example, expressly chose a definition of terrorism, for the purposes of implementing resolution 1373, that excluded self-determination movements, as it was in fact entitled to do.[110] Some delegations clearly perceived these difficulties. Burkina Faso argued, for instance, that:

> The big question before us today, therefore, is what can be done to eradicate an elusive evil. In our humble opinion, the first requirement is that all States have the same definition and the same understanding of terrorism. Unfortunately, what do we see? Depending on their interests, States do not have the same concept or the same view of terrorism and of the relations with terrorist. What is described as a terrorist act in one State will be interpreted as a nationalist claim in another. Does this mean that we are to believe that there are good and bad terrorists? The need to speak the same language is therefore the *sine qua non*

---

[109] Rostow, supra note 98, 484; Rosand, supra note 90, 576, at 582, n. 175; Ben Saul, *Defining Terrorism in International Law* (Oxford: Oxford University Press, 2006) at 48.

[110] Syria, "Statement," U.N. SCOR 57th year, 4453rd mtg, 7 – 9, at 9, U.N. Doc. S/PV.4453 (Jan. 18, 2002):

> Syria has been in the forefront of States that have responded to resolution 1373 (2001) by submitting reports pursuant to paragraph 6 of that resolution. Since the resolution did not define terrorism, Syria has based its report on its obligations under the 1998 Arab Convention on the Suppression of Terrorism, which clearly distinguished between terrorism and legitimate struggle against foreign occupation. That is consistent with international antiterrorism agreements to which Syria is a party and with Security Council resolution 1333 (2000). [Sic. Presumably Syria meant SC res. 1373 (2001)].

> for victory over international terrorism, because for this struggle to be effective it can brook no exception or compromise.[111]

Côte d'Ivoire simply asked: "How can the international community effectively combat an evil if the members of that community differ about the nature of that evil?"[112] While Qatar, speaking on behalf of the members of the Organization of the Islamic Conference, noted that:

> The definition of terrorism and the drafting of an international convention to combat it are not academic or theoretical issues; they are factual, practical issues. A strict, comprehensive definition of terrorism could help us in waging the war against it. Proceeding from such a convention, we could set out clearly those States and groups against whom the war is targeted, those who are qualified to lead the struggle against terrorism and terrorists, and the ways and means to be used in such a war. (…) We believe that any delay in creating an international understanding on terrorism will open the way for some to use the issue in a selective and contradictory manner, which in the end will only weaken the international campaign against terrorism.[113]

The United Kingdom believed, on the contrary, that there was no such need for a definition of terrorism. It advocated, instead, for a pragmatic approach, which, nonetheless, clearly implied a substantive position against any exception based on self-determination. The British ambassador argued that:

> Increasingly, questions are being raised about the problem of the definition of a terrorist. Let us be wise and focused about this. Terrorism is terrorism. It uses violence to kill and damage indiscriminately to make a political or cultural point and to influence legitimate Governments or public opinion unfairly and amorally. There is common ground among all of us on what

---

[111] Burkina Faso, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 19 – 20, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

[112] Côte d'Ivoire, "Statement," U.N. GAOR 56th Sess. 18th plen. mtg., pp. 7 – 9, at 8, U.N. Doc. A/56/PV.18 (Oct. 4, 2001).

[113] Qatar, "Statement, on behalf of the Organization of the Islamic Conference" U.N. SCOR 57th year, 4453rd mtg, resumption 1, at 18 - 19, U.N. Doc. S/PV.4453 (Resumption 1) (Jan. 18, 2002).

> constitutes terrorism. What looks, smells, and kills like terrorism is terrorism. (…) In following up the implementation of Friday's Security Council resolution, the 1373 Committee must focus on what we all agree is terrorism without subjective interpretation, and filter out prejudice and unilateralism.[114]

Furthermore, the Security Council had construed terrorism, without defining it, as a threat to international peace and security and had implicitly linked it to the inherent right to self-defence. Thus, under resolution 1373, individual states could deem themselves legitimated to use force at the international level, arguably in self-defence, against almost anything they chose to define, by themselves, as terrorist attacks. Such indeterminacy, if abused through self-serving interpretations, could weaken the basic prohibition of the use of force in international relations, creating greater regional instability and violence. [115] In this regard, for example, Pakistan complained of India's use of the concept of terrorism to justify a military escalation. The Pakistani ambassador said that:

> As we fight terrorism we have to be careful that we are not misled and drawn away from the main task at hand. A crisis has been provoked in our region, for the sake of political opportunism, by confusing and obfuscating the issue and by fudging the very definition of terrorism. In fact, this crisis, imposed on us and accompanied by blatant threats of the use of force, has shifted the focus away from the real fight against terrorism. It is driven only by political ambitions for regional hegemony, not by the fight against terrorism.[116]

---

[114] United Kingdom, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., at 18 - 19, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

[115] Saul, *supra* note 109, at.48; S.C. Res. 1373 (2001), *supra* note 89, pre. para. 3 – 4:

> *Reaffirming further* that such acts, like any act of international terrorism, constitute a threat to international peace and security,
>
> *Reaffirming* the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001).

[116] Pakistan, "Statement," U.N. SCOR 57th year, 4453rd mtg, 29 - 32, at 31, U.N. Doc. S/PV.4453 (Jan. 18, 2002).

Similarly, Syria argued that: "The greatest danger we face in our fight against terrorism is the Israeli interpretation of combating terrorism and of resolutions of international legitimacy, which is based on a pretext of self-defence. What kind of self-defence is this which permits occupation, settlements, killing and destruction?"[117] Undoubtedly, however, in making those statements, both Pakistan and Syria where trying, as much as India and Israel, to take advantage of the lack of precision of the term to pursue their own ends.

Negotiations on the draft convention continued, in the framework of the Working Group of the Sixth Committee, from 15 to 26 October, 2001.[118] On Thursday October 18, 2001, the Working Group returned to the draft definition of the offence. The discussions were based on the revised text prepared by India more than a year before, on October 6, 2000, [119] which read:

> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
>
> (a) Death or serious bodily injury to any person; or
>
> (b) Serious damage to public or private property, a place of public use, a State or government facility, a public transportation system, or an infrastructure facility; or
>
> (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss;
>
> when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[120]

---

[117] Syria, "Statement," *supra* note 110, at 9.

[118] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 1, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001) [hereinafter 2001 Working Group Report].

[119] U.N. Codification Division, "Informals on 18 Oct. (morning and afternoon) article 2," (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 18, 2001) (on file with the author); Carlos F. Díaz, Autograph notes on the negotiation of the draft Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations, Oct. 15 – Nov. 7, 2001, at Oct. 18, 2001, (on file with the author).

[120] India's Further Revised Art. 2, *supra* note 78, art. 2.1.

During the discussions, Western delegations, such as the United States, Belgium, and the United Kingdom, supported the general approach of India of presenting a technical, legal definition of the offence.[121] The United States, for example, argued that the definition of the offence needed to be a good and workable from a practical point of view, but not a perfect one. Some Islamic countries, such as Malaysia, Syria, and Egypt,[122] argued, on the contrary, that it was necessary to define the concept of "terrorism" itself in order to exclude legitimate acts against foreign occupation.[123]

On the introductory part of the definition, its *chapeau,* Cuba, supported by Jordan, Morocco, Peru, and Brazil, proposed to eliminate the reference to "unlawfully" as the convention itself should make those acts unlawful in all circumstances. The United Kingdom, the Philippines, and Germany advocated instead for its retention. Meanwhile, Costa Rica argued that the Indian text was not truly comprehensive since it did not include terrorist hijacking, hostage-taking, and damage to the environment. It recalled, in this sense, the proposal made a year before by several Latin American countries.[124] Jordan and Peru supported the inclusion of the three new elements. The great majority of delegations supported all the inclusion of the damage to the environment only.[125] South Africa, for its part, suggested adding a reference to natural resources.[126] Among the list of possible actors of the crime, Syria proposed to add a reference to legal persons and

---

[121] Also: the Czech Republic and the Netherlands.

[122] Also: Lebanon, Nigeria, Oman, and Pakistan. Nigeria, however, stressed that it was flexible.

[123] See Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 1, new paragraph.

[124] Bolivia, Chile, Costa Rica, Ecuador, and Peru, "Proposal," *supra* note 56, art 2.1.

[125] Belgium, Canada, Chile, Czech Republic, Ecuador, Egypt, Finland, Iran, Ireland, Israel, Italy, Lebanon, Lybia, Mali, Mexico, Netherlands, New Zealand, Nigeria, Oman, Philippines, Portugal, Sweden, Switzerland, and Turkey.

[126] U.N. Codification Division, "Informals on 18 Oct.," *supra* note 119, at 2.

states, so as to cover state terrorism.[127] This idea was rejected by Australia. For its part, Thailand proposed to include non-violent conduct that, nonetheless, produces the effect foreseen in the definition of the offence, as well as reprisals, retaliatory measures, and attempts to overthrow the government.[128] The United States, the Czech Republic, and Israel, among others, believe that non-violent conduct was already covered by the definition since it referred to "any means" of committing the offence.[129] There was also a discussion on the threshold of damage to property required for any act to be considered an offence within the scope of the convention. Angola, Cuba, and Uruguay proposed to lower the threshold by eliminating the word "serious."[130] The United States, Belgium, Netherlands, and Ireland preferred, on the contrary, to maintain it.[131] Meanwhile Australia, the United Kingdom, and Turkey argued that some threshold was necessary, even if not "serious," in order not to criminalize at the international level acts that cause only minor damage. Mexico agreed that some threshold was necessary but believed that "serious damage" was too high. It suggested using "significant damage." Austria stressed that the major economic loss had actually to be intended and thus suggested replacing the words "likely to result in major economic loss" for "intended to result in major economic loss" in subparagraph c).[132] In addition, Austria and the Netherlands suggested merging subparagraphs b) and c), following the precedent of the Bombings

[127] Supported by Burkina Faso, Egypt, Iraq, Lebanon, Libya, and Oman.

[128] Supported by Angola and Colombia.

[129] Ecuador, Finland, France, Mali, Nigeria, Portugal, and the United Kingdom.

[130] Also Brazil, Egypt, and Kenya.

[131] Also Chile, France, Mali, Portugal, and Spain.

[132] Supported by Argentina, Chile, Finland, Philippines, Portugal, and Switzerland. Opposed only by Italy.

Convention,[133] to avoid a double intent requirement.[134] Other delegations, though, preferred keeping the two paragraphs separate.[135] Meanwhile, Pakistan and Egypt proposed to replace the last section of the proposed article, on the specific terrorist purpose, with the following language: "when the act in its nature or context is bound to create panic and intimidation in a population or government or international organization to do or to abstain from doing an act." The United States, the United Kingdom, France, Germany, and Ecuador, preferred, nonetheless, the original formulation.[136] Finally, several delegations showed flexibility. The United Kingdom accepted private property as one of the possible targets of the criminal conduct, abandoning its previous objections. Chile, Peru, Ecuador, and Brazil accepted to work on the basis of the Indian draft rather than on the basis of the text proposed by them. Austria withdrew its proposal[137] to eliminate the last part of the definition, on the specific terrorist purpose.[138]

On the basis of the comments made on October 18, the coordinator prepared a revised text on the definition of the offence. In introducing this text, he said that he had incorporated in the last Indian proposal only those suggestions that he had felt enjoyed a high degree of support.[139] His proposal read:

---

[133] Bombings Convention, *supra* note 48, art. 2.1.b.

[134] Supported by Austria, Belgium, Finland, France, Japan, Morocco, New Zealand, South Africa, the United Kingdom, and the United States.

[135] Argentina, Cuba, Ecuador, Germany, Philippines, Russian Federation, Spain, Turkey, and Ukraine.

[136] U.N. Codification Division, "Informals on 18 Oct.," *supra* note 119, at 2 – 3.

[137] Australia and Belgium, "Proposal, art. 2.1," *supra* note 59.

[138] U.N. Codification Division, "Informals on 18 Oct.," *supra* note 119, at 1; Diaz, Autograph notes, *supra* note 119, Oct. 18, 2001.

[139] U.N. Codification Division, "Informals on 23 and 24 Oct. (afternoons) article 2," at 1, (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 25, 2001) (on file with the author).

> 1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
>
> (a) Death or serious bodily injury to any person; or
>
> (b) Serious damage to public or private property, **including** a place of public use, a State or government facility, a public transportation system, ~~**or**~~ an infrastructure facility **or the environment**; or
>
> (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or ~~**likely**~~ **intended** to result in major economic loss;
>
> when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.[140]

This text incorporated the reference to the environment, suggested by several Latin American countries, and the intent requirement regarding major economic loss, proposed originally by Austria. The word "including" in subparagraph b) was just a drafting improvement, of no major consequence, suggested by the United Kingdom. This draft was then discussed in informal consultations on 23 and 24 October 2001. At the outset, Mali, speaking on behalf of the Organization of the Islamic Conference, said that the OIC members could not accept the text proposed until there was agreement on the distinction between self-determination and terrorism. He suggested, therefore, discussing the question of the activities of armed forces rather than considering the proposed definition of the offence.[141] The chairman responded that the session of the Working Group was coming to a close and, therefore, that time was of the essence. He proposed continuing the negotiations on the definition of the offence without prejudice to the final decision on the question of self-determination, incorporated in the OIC's proposal.[142] Belgium, Germany, and the Netherlands stressed that nothing was definitively agreed

---

[140] Australia (Richard Rowe), "Coordinator's Non paper on the definition of terrorist offence," art. 2.1 (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author) (bold in the original).

[141] Supported by Côte d'Ivoire, Egypt, Indonesia, Libya, Morocco, Palestine, Sudan, and Syria.

[142] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57.

until the whole convention was agreed as a package deal; in diplomatic jargon: "nothing is agreed until everything is agreed."[143] More concretely on the proposed text, Argentina, Belgium, Brazil, Chile, Germany, Italy, and the Netherlands, could accept the text proposed by the coordinator since, in their view, it was a good compromise. India said that it could "live" with the changes made to its last proposal. The great majority of delegations welcomed the inclusion of the reference to the environment.[144] The United States, Israel, and Japan, though, opposed it. On the question of economic loss, in subparagraph c), some delegations saw it as an intent requirement; consequently, they preferred the formulation "intended to result in major economic loss."[145] The majority of delegations, though, saw it as an objective threshold of the gravity of the offence and, therefore, preferred the original Indian formulation of: "likely to result in major economic loss."[146] The United Kingdom recalled that the formulation "likely to result (…)" had been previously agreed in the Bombings Convention.[147] Meanwhile, a few delegations[148] proposed again to merge subparagraphs b) and c), also the precedent of the Bombings Convention, to apply only threshold of gravity to terrorist acts that produce material damage.[149] For its part, Syria suggested including a reference to groups and legal persons

---

[143] U.N. Codification Division, "Informals on 23 and 24 Oct.," *supra* note 139, at 1; Diaz, Autograph notes, *supra* note 119, Oct. 23, 2001.

[144] Belgium, Bolivia, Canada, China, Costa Rica, Cuba, Ecuador, Ecuador, France, Germany, Iran, Iraq, Israel, Italia, Jordan, Libya, Malaysia, Mexico, Morocco, New Zealand, Pakistan, Philippines, Portugal, Republic of Korea, South Africa, Sudan, Switzerland, Syria, Turkey, and the United Kingdom.

[145] Austria, Cuba, Finland, Philippines, Republic of Korea, and Switzerland.

[146] Belgium, Brazil, China, Ecuador, France, India, Indonesia, Iran, Italy, Japan, Jordan, Libya, Malaysia, Mexico, Morocco, New Zealand, Pakistan, Sudan, Syria, Turkey, and the United States.

[147] Bombings Convention, *supra* note 48, art. 2.1.b.

[148] Guatemala, Netherlands, Philippines, Portugal, and the Republic of Korea.

[149] U.N. Codification Division, "Informals on 23 and 24 Oct.," *supra* note 139, at 2; Diaz, Autograph notes, *supra* note 119, Oct. 23, 2001.

as possible actors of the criminal offence, since their possible criminal liability, in accordance with the domestic legal principles of each state party, was being considered in a different article.[150] Both Belgium and Libya objected to this proposal.

After this round of consultations, the coordinator prepared a revised definition of the offence. The only difference to his previous draft was to use, in subparagraph c), the formulation "likely to result in major economic loss" rather than "intended to result," as requested by most delegations. Since the session of the Working Group was coming to a close, this revised text was annexed to the Working Group's report.[151] Moreover, to save the position of the Islamic states that had linked their acceptance to this text to an agreement on the question of armed forces, the coordinator added the following footnote: "[t]hese texts represent the stage of consideration reached at the current session. It is understood that further consideration will be given to these texts in future discussion, including on outstanding issues."[152] The Working Group then recommended to the Sixth Committee to continue working "as a matter of urgency on the elaboration of a draft comprehensive convention on international terrorism, building upon the work accomplished during the meetings of the Working Group."[153]

C) Relationship with the Sectoral Conventions

---

[150] Friends of the Chairman, "Revised texts of arts. 3 – 17, 17 bis, 20, and 22," art. 9, U.N. Doc. A/C.6/56/WG.1/CRP.3 (Oct. 19, 2001) *reprinted in:* 2001 Working Group Report, *supra* note 118, 22 – 28, at 24 [hereinafter Friends of the Chairman, rolling text of Oct. 19. 2001].

[151] Australia (Richard Rowe), "Informal text of art. 2 and 2 bis, prepared by the Coordinator" art. 2.1, *in:* 2001 Working Group Report, *supra* note 118, Annex I.B, p. 16.

[152] *Ibid.,* n.2.

[153] 2001 Working Group Report, *supra* note 118, ¶ 19.

By 2000, when the negotiation of the comprehensive convention began, the international community had already adopted at the universal level twelve sectoral, counter-terrorism, mutual-assistance treaties. They were:

- The Convention on Offences Committed on Board Aircraft;[154]
- The Convention on the Seizure of Aircrafts;[155]
- The Convention on the Safety of Civil Aviation;[156]
- The Convention on Internationally Protected Persons;[157]
- The Hostages Convention;[158]
- The Physical Protection Convention;[159]
- The Protocol on Airports;[160]
- The Convention on the Safety of Maritime Navigation,[161]
- The Protocol on Fixed Platforms;[162]
- The Convention on the Marking of Plastic Explosives;[163]

---

[154] Convention on Offences and Certain Other Acts Committed on Board Aircraft, *adopted in* Sept. 14, 1963, 704 U.N.T.S [hereinafter Convention on Offences Committed on Board Aircraft].

[155] Convention for the Suppression of Unlawful Seizure of Aircraft, *adopted on* Dec. 16, 1970, 22 U.S.T. 1641, 869 U.N.T.S. 105.

[156] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, *adopted on* Sept. 23, 1971, 974 U.N.T.S.

[157] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *adopted on* Dec. 14, 1973, G.A. Res. 3166(XXVIII) Annex, 1035 U.N.T.S.

[158] International Convention against the Taking of Hostages, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S. [hereinafter Hostages Convention].

[159] Convention on the Physical Protection of Nuclear Material, *adopted on* Oct. 26, 1979, 1456 U.N.T.S.

[160] 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, *adopted on* Feb. 24, 1988, ICAO Doc. 9518.

[161] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1.

[162] Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Self, *adopted on* March 10, 1988, IMO Doc. SU/CONF/16/Rev.2.

- The Bombings Convention;[164] and,
- The Terrorist Financing Convention.[165]

In addition, the General Assembly was then negotiating a thirteenth counter-terrorism instrument: the draft nuclear terrorism convention.[166] Each one of them created a separate legal regime, with diverging and in some cases contradictory provisions, and binding different sets of states, depending on which treaties each state had ratified. The proposed comprehensive convention, by its own nature, was to overlap those treaties. The question then was which legal regime was to apply to a conduct that was criminalized both by the comprehensive convention and by a specific treaty. The 1969 Vienna Convention on the Law of Treaties, which codifies International Law on this topic, gives – in principle – precedence to the latter treaty, but allows the parties to that treaty to give priority to the previous instrument, if they so agree.[167] State-parties may wish to give precedence to the sectoral treaty because they deal more specifically with the particularities of each crime rather with an all-encompassing definition. Technically,

---

[163] Convention on the Marking of Plastic Explosives for the Purpose of Detection, *signed at* Montreal on March 1, 1991, U.N. Doc. S/22393, 30 ILM 726.

[164] Bombings Convention, *supra* note 48.

[165] Financing Convention, *supra* note 52.

[166] See *supra:* Chapter 5.

[167] Ian Brownlie, *Principles of Public International Law*, 4th ed., (Oxford: Clarendon Press, 1990), 625; Vienna Convention on the Law of Treaties, art. 30 *done on* May 23, 1969, 1155 UNTS 331, 8 ILM 679 (1969):

> Article 30
> 1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
> 2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier treaty, the provisions of that other treaty prevail.
> 3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

giving precedence to the more specific legal regime is known as the *lex specialis* rule.[168] Consequently, during the negotiation of the comprehensive convention, the parties had a choice between giving precedence to sectoral instruments or to the comprehensive convention. From a practical point of view, however, there were no problems regarding those provisions of the sectoral treaties and the draft comprehensive convention that were compatible, such like the duty to criminalize in domestic law. Difficulties did arise, though, regarding those provisions that were clearly incompatible, such as the elimination of the political exception and the exclusion from the scope of acts performed in exercise of the right to self-determination.

On the political exception,[169] the sectoral treaties contained a variety of policy alternatives, raging from its recognition[170] to its elimination.[171] Similarly, on the acts of violence performed in exercise of the right to self-determination, the sectoral instruments went from a clear recognition[172] to an outright censure.[173] If the comprehensive convention was to have precedence over the specific instruments, it would indirectly

---

[168] Gerhard Hafner, "The definition of the crime of terrorism," in: Guiseppe Nesi, ed., *International Cooperation in Counter-terrorism: the united Nations and regional organizations in the fight against terrorism* (Aldershort, UK, and Burlington, VT: Ashgate , 2005) 40 – 41.

[169] See *supra:* Chapter 1.B.3.

[170] Convention on Offences Committed on Board Aircraft, *supra* note 154, art. 2.

[171] Bombings Convention, *supra* note 48, art. 11.

[172] Hostages Convention, *supra* note 158, art. 12:

> In so far as the Geneva Conventions of 1949 for the protection of war victims or the Protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts, as defined in the Geneva Conventions of 1949 and article 1, paragraph 4, of Additional Protocol I of 1977 thereto, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

[173] Financing Convention, *supra* note 52, pre. para. 4.

amend the pre-existing legal regimes. Thus, the technical question of the relationship of the new convention with the pre-existing instruments became linked to the substantive political issues. States that sought to eradicate completely the political exception, such as India, gave precedence to the comprehensive convention.[174] Conversely, states that wanted to preserve the exception, such as Austria and Switzerland, upheld the specific instruments.[175]

The first draft of the comprehensive convention, proposed by India in 1996, sought to take precedence over the pre-existing sectoral instruments on terrorism. This approach corresponded to India's goal of eliminating from the legal regimes created by the sectoral conventions any grounds for denying prosecution, extradition, or judicial cooperation. Article 7 explicitly sought to amend all the pre-existing extradition treaties between state parties to make terrorist offences extraditable under them, while Article 2.2 sought to abrogate the political exception regarding all the offences mentioned in the sectoral counter-terrorism treaties.[176] Moreover, in absence of a specific provision to the contrary, the draft convention was implicitly to take precedence over all the sectoral instruments through the general principle embodied in the Vienna Convention. The only and rather limited exception to this principle was contained in a savings clause, stating

---

[174] See: India's First Draft, *supra* note 7, art. 2.2. See also*:* Lebanon, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.13 (Sept. 29, 2000) *reprinted in:* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 13, new art. 2.4.

[175] See: Austria, Belgium, and Switzerland, "Proposal," art. 14, U.N. Doc. A/C.6/55/WG.1/CRP.11 (Sept. 30, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 11.

[176] India's First Draft, *supra* note 7, art. 2.2 and 7.1. Art. 7.1 read: "The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. (…).

that the new convention would not restrict other obligations of state-parties regarding mutual judicial cooperation.[177]

India's revised draft followed this approach even more clearly. Article 14 sought to abrogate the political offence exception for the offences defined in the twelve sectoral anti-terrorism treaties. It read: "None of the offences referred to in article 2 and the acts which constitute an offence within the scope of and as defined in one of the treaties listed in Annex I shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. (…)"[178] Draft article 17.5 went further by explicitly amending all pre-existing extradition treaties between state-parties to the extent that they were incompatible with the new convention, thus giving priority to the provisions of the new instrument,[179] while article 2 provided a broad definition of the terrorist offences that overlapped with that of the sectoral conventions.[180]

The Working Group considered India's revised draft on September 25, 2000. On the question of the relationship between the draft convention and the pre-existing counter-terrorism treaties, some delegations recommended caution.[181] For them, the new convention should not affect negatively the legal framework established by the sectoral treaties, and it should limit itself to close any gaps that might have been present in the

---

[177] *Ibid.,* art.. 5.2.

[178] India's Revised Draft Convention, *supra* note 39, art. 14.

[179] *Ibid.,* art. 17.5: "The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention."

[180] *Ibid.,* art. 2.

[181] Austria, Belgium, Finland, Netherlands, and Switzerland. Carlos F. Díaz, Autograph notes on the negotiation of the draft Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations, Sept. 25 – Oct. 6, 2000 (on file with the author).

then existing legal framework. Netherlands, for instance, argued that the new convention should not apply if the criminal act fell within the scope of one of the previous sectoral conventions.[182] In the same vein, the United Kingdom proposed that the new instrument should not affect the rights and obligations of state-parties under any treaty adopted beforehand.[183] Conversely, other delegations argued that the new treaty should reinforce and complete the existing legal framework.[184] For those delegations, the scope of the new convention necessarily had to overlap with the scope of the sectoral instruments.[185] Guatemala questioned whether the principle embodied in article 30.3 of the Vienna Convention, giving precedence to the new instruments, should be applied automatically. It suggested a new article that foresaw the concurrent application of the comprehensive convention and the sectoral conventions insofar as they were compatible, and that gave priority to the comprehensive conventions in case of any incompatibility.[186]

These views were reiterated in informal consultations. Some delegations argued that the new convention should be truly comprehensive, covering all aspects of terrorism and superseding the previous instruments.[187] Others argued that the new convention should only fill in the gaps and extend the newest formulations on ancillary crimes and

---

[182] Netherlands, "Proposal, new para. 4 to art. 2," *supra* note 54.

[183] United Kingdom, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.16 (Oct. 2, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 16, new art.

[184] China and South Africa.

[185] 2000 Chairman's Informal Summary, *supra* note 40, ¶ 11.

[186] Guatemala, "Additional Art. Provisionally numbered 22.a," U.N. Doc. A/C.6/55/WG.1/CRP.1/Rev.1 (Oct. 2, 2000) *reprinted in* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 1. See also Guatemala, "Additional Art. Provisionally numbered 22.a," U.N. Doc. A/C.6/55/WG.1/CRP.1 (Sept. 25, 2000):

> As between States Parties to the present Convention and any one of the treaties enumerated in the preamble of the former, that treaty and the present Convention shall, with respect to any act of terrorism covered by both, be applied in a cumulative manner; provided, however, that, should any incompatibility exist between the two, the present Convention shall prevail.

[187] Including: Bolivia, Chile, Costa Rica, Ecuador, and Peru. Díaz, Autograph notes, *supra* note 181.

judicial cooperation to the pre-existing legal regimes without superseding them. A third group of delegations argued that the new convention should be limited only to those offences that did not fall within the scope of any of the then existing legal instruments.[188] Switzerland, for example, proposed to amend the beginning of article 2 as follows: "Unless an act is covered by a Convention listed in the preamble, any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally causes (…)"[189] Concretely on the political offense exception, Austria, Belgium, and Switzerland sought to remove from draft article 14 the explicit amendment to the previous sectoral conventions.[190] Conversely, Lebanon and Syria supported the idea of abrogating the political offence exception from all the previous sectoral instruments.[191] Since these discussions proved inconclusive, it was agreed to revisit the issue at the spring 2001 meeting of the *Ad Hoc* Committee.[192]

In November 2000, delegations restated their positions at the Sixth Committee's terrorism debate. Russia and China, among others, argued that the new convention should limit itself only to close the gap in the existing legal regime for cooperation against terrorism, without abrogating the sectoral instruments.[193] Similarly, the European Union said that the new instrument should be integrated in the corpus of the previous

---

[188] Including the Netherlands, Switzerland, and the United Kingdom. Díaz, Autograph notes, *supra* note 181. See also*:* 2000 Chairman's Informal Summary, *supra* note 40, ¶ 19.

[189] Switzerland, "Proposal, Amendment to art. 2.1" *supra* note 53.

[190] Austria, Belgium, and Switzerland, "Proposal," *supra* note 175, art. 14. Supported by Finland and Sweden. Díaz, Autograph notes, *supra* note 181.

[191] Lebanon, "Proposal," *supra* note 174, new art. 2.4.

[192] 2000 Chairman's Informal Summary, *supra* note 40, ¶¶ 14 and 19.

[193] Russian Federation, South Africa, Morocco, China, Slovakia, Australia, Ethiopia, New Zealand. U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶¶ 29 and 34, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000); U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶¶ 2, 19 and 46, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 30 and 36, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000); U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 3, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

instruments.[194] Meanwhile, Australia noted that the existence of separate legal regimes provided the necessary degree of specialization to ensure that each specify form of terrorism was properly addressed. In its view, attempting to cover all forms of terrorism within a single instrument would weaken the global counter-terrorism legal regime as a whole.[195] Other delegations argued, on the contrary, that the new convention should have a truly comprehensive character; that is, that it should not become a minor annex to the existing instruments.[196] Iran, for instance advocated for elaborating an "umbrella" convention that would replace all pre-existing instruments and facilitate the acceptance by states of the existing legal regime by requiring the ratification of one instrument only.[197] For its part, the Czech Republic noted that the real question was how to preserve the pre-existing instruments without undermining the value of the new comprehensive convention. It noted that, in most cases, both the comprehensive convention and the sectoral conventions could be applied simultaneously and without conflict.[198]

This debate was repeated at the February 2001 *Ad Hoc* Committee meeting. This time, it became clear that the negotiation had to choose between two approaches: to give precedence to the convention, following the "last in time" rule embodied in the Vienna Convention; or to give precedence to the sectoral conventions, following the *lex specialis*

---

[194] France, "Statement on behalf of the EU," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 9, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

[195] Australia, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 31 - 32, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[196] Philippines, Algeria, Democratic Republic of Congo, Brazil. U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 28, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 23, 50, 65, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[197] Iran, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 17, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[198] Czech Republic, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 45, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

rule.[199] European delegations continued to argue that the new convention should not overlap the pre-existing counter-terrorism instruments and that it should preserve their positive elements, their *aquis.* For them, it would not be acceptable to retroactively amend the pre-existing treaties on issues such as the political exception and the exclusion of military forces, since it would be incompatible with the domestic legislation that had incorporated those treaties into their national law. Moreover, it was argued that the mandate of the Committee was to elaborate a comprehensive convention as part of "a comprehensive legal framework of conventions dealing with international terrorisms,"[200] and not to supersede them.[201] Meanwhile, some developing countries, such as the Philippines, India, Lebanon, and Algeria favoured instead a truly comprehensive approach. In their view, the new convention should address exhaustively all forms of terrorism and not to limit itself to fill in the gaps within the pre-existing legal regime.[202] Pakistan, however, favoured the application of the sectoral conventions over the comprehensive one.[203] Notwithstanding these differences of view, there was general support for the idea of adding a new provision to the draft convention clarifying its relationship with the sectoral instruments, ensuring legal certainty in the application and interpretation of the counter-terrorism treaties.[204]

---

[199] 2001 Chairman's informal summary, *supra* note 85, ¶ 18.

[200] G.A. Res. 55/158, ¶ 13, U.N. Doc. A/RES/55/158 (Dec. 12, 2000).

[201] 2001 Chairman's informal summary, *supra* note 85, ¶¶ 20 – 21; United Nations, *"Committee on terrorism takes up," supra* note 85, pp. 3 – 4.

[202] 2001 Chairman's informal summary, *supra* note 85, ¶ 19; United Nations, *"Committee on terrorism takes up," supra* note 85, pp. 4, 7 - 8.

[203] Pakistan, "Proposal on a new art. on relationship," U.N. Doc. A/AC.252/2001/WP.7 *reprinted in:* 2001 Ad Hoc Comm. Report, *supra* note 82*,* Annex III, ¶ 7.

[204] 2001 Chairman's informal summary, *supra* note 85, ¶ 19;

After September 11, 2001, the positions on these issues did not change. Some delegations still believed that the new instrument should limit itself to fill the gaps in the pre-existing legal regime.[205] The European Union, for example, noted that the "international legal framework of anti-terrorist conventions is solid but contains loopholes and gaps which must be closed," and underlined that "such a comprehensive convention should bring added value to the existing sectoral conventions, in particular, by filling the gaps while preserving their achievements."[206] Similarly, New Zealand argued that such a convention "might seek to cover the gaps in the existing instruments, while being careful to avoid undermining or weakening them."[207] For its part, Slovenia argued that the new comprehensive convention and the pre-existing sectoral instruments should be applied simultaneously.[208] Conversely, some developing countries called instead for a convention that would address all forms of terrorism even if it would have to overlap with the sectoral conventions.[209] Algeria preferred "a global convention on terrorism in all its aspects and in all its forms and manifestations and that it would complete the existing arsenal in this regard and offer a juridical framework broad enough to cover the various aspects of the terrorist phenomenon." Thus, it supported the Indian draft since it

---

[205] The European Union, Netherlands, Yemen, Japan, Australia, New Zealand, Finland, Portugal, U.N. GAOR 56th Sess. 12th plen. mtg., p. 10, U.N. Doc. A/56/PV.12 (Oct. 1, 2001); U.N. GAOR 56th Sess. 13th plen. mtg., pp. 10, U.N. Doc. A/56/PV.13 (Oct. 1, 2001); U.N. GAOR 56th Sess. 14th plen. mtg., pp. 4, 16, U.N. Doc. A/56/PV.14 (Oct. 2, 2001); U.N. GAOR 56th Sess. 15th plen. mtg., pp. 9, 21, U.N. Doc. A/56/PV.15 (Oct. 2, 2001); U.N. GAOR 56th Sess. 16th plen. mtg., 11, U.N. Doc. A/56/PV.16 (Oct. 3, 2001); U.N. GAOR 56th Sess. 18th plen. mtg., p. 17, U.N. Doc. A/56/PV.18 (Oct. 4, 2001).

[206] Belgium, "Statement on behalf of the European Union," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 9 – 11, at 10, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

[207] New Zealand, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., pp. 20 - 21, at 21, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

[208] Slovenia, U.N. GAOR 56th Sess. 17th plen. mtg., p. 11, U.N. Doc. A/56/PV.17 (Oct. 3, 2001).

[209] Algeria, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 11 - 14, at 13, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

"also ensures a holistic and consistent approach to all terrorist acts, instead of the piecemeal and fragmentary approach taken to date."[210] Similarly, Lesotho advocated for the "[c]onsolidation of all international instruments on terrorism with a view to closing all existing gaps and loopholes."[211]

At the 2001 session of the Working Group, the question of the relationship of the proposed comprehensive convention and the pre-existing sectoral conventions was divided in two. On the one hand, delegations discussed the elimination of the political offence exception and the related non-refoulment principle in the pre-existing treaties. On the other hand, delegations focused on the relationship between a broad definition of the offence in the comprehensive convention and the specific criminal offences set forth in the sectoral treaties. The question of the exception for armed forces and liberation movements was linked to this second question.

The departure point in the negotiation over the question of the elimination of the political offence exception was the revised text prepared by India in 2000. India had proposed:

> Article 14
>
> None of the offences referred to in article 2 and the acts which constitute an offence within the scope of and as defined in one of the treaties listed in Annex I shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole

---

[210] Algeria, Bangladesh, Nigeria, Lesotho, Nepal, Malawi, U.N. GAOR 56th Sess. 12th plen. mtg., p. 13, U.N. Doc. A/56/PV.12 (Oct. 1, 2001); U.N. GAOR 56th Sess. 13th plen. mtg., p. 23, 29, U.N. Doc. A/56/PV.13 (Oct. 1, 2001); U.N. GAOR 56th Sess. 15th plen. mtg., p. 8, U.N. Doc. A/56/PV.15 (Oct. 2, 2001); U.N. GAOR 56th Sess. 20th plen. mtg., pp. 2, 18, U.N. Doc. A/56/PV.20 (Oct. 4, 2001).

[211] Lesotho, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., pp. 7 – 9, at 8, U.N. Doc. A/56/PV.15 (Oct. 2, 2001). See also Cambodia, U.N. GAOR 56th Sess. 17th plen. mtg., p. 10, U.N. Doc. A/56/PV.17 (Oct. 3, 2001).

> ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
>
> Article 15
>
> Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons. [212]

These provisions were based on similar language in the Bombings and Financing Conventions.[213] Draft article 15, identical to article 12 of the Bombings Convention and article 15 of the Financing Convention, enshrined the principle of non-refoulement by affirming that state-parties were not obliged to cooperate or extradite if they had grounds to believe that the request for mutual legal assistance is grossly unfair. The proposed article 14, based on article 11 of the Bombings Convention and on article 14 of the Financing Convention, sought to eliminate the political offence exception as grounds for denying an extradition, not only in the draft comprehensive convention but also in all previous counter-terrorism instruments. There was, however, an important difference. In the Bombings and Financing Conventions, these provisions formed a package: the political offence was abrogated in exchange for the recognition of the principle of non-refoulement. Consequently, the two articles had been perfectly symmetrical.[214] In the revised Indian draft, though, those provisions were not symmetrical. Draft article 14 abrogated the political offence exception in all the pre-existing sectoral treaties

---

[212] India's Revised Draft Convention, *supra* note 39, arts. 14 - 15.

[213] Bombings Convention, *supra* note 48, arts. 11 - 12; Financing Convention, *supra* note 52, arts. 14 - 15.

[214] See *supra:* Chapter 4.E.

mentioned in the proposed annex while draft article 15 recognized the principle of non-refoulement only in the context of the comprehensive convention.

The first reaction of those delegations that supported the political offence exception and the non-refoulement principle, such as Austria, Belgium, and Switzerland, was to preserve the political offence exception for extraordinary cases.[215] However, after September 11, the Security Council called states to "[e]nsure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists."[216] Consequently, when the Working Group took up this issue on October 15, 2001, those delegations were somewhat more willing to accept the abolition of the political offence exception.[217] Thus, during the debate, Austria, Belgium, Colombia, Costa Rica, Ecuador, and Switzerland, argued that the reference to the pre-existing treaties had either to be deleted from draft article 14 or to be included in draft article 15 since they were intended as a package. This position was shared by the Office of the High Commissioner for Refugees who even argued that there should be a positive obligation to refuse any discriminatory request of extradition.[218] Meanwhile, France, India, Turkey, the United Kingdom, and the United States supported the elimination of the political offence exception in all the pre-existing treaties since it had been recommended by the Security Council. Finally, Indonesia, Iran, Malaysia, Nigeria, and Syria preferred not to take a decision on this

---

[215] See*:* Austria, Belgium, and Switzerland, "Proposal," *supra* note 175, art. 14.

[216] S.C. Res. 1373 (2001), *supra* note 89, ¶ 3.g.

[217] Diaz, Autograph notes, *supra* note 119, Oct. 15, 2001.

[218] U.N.H.C.R., "Comments by the Office of the United Nations High Commissioner of Refugees on the draft comprehensive convention on international terrorism," ¶¶ 4 -5, (Oct. 16, 2001) *circulated as:* U.N. Doc. A/C.6/56/WG.1/INF/1 (Oct. 18, 2001).

paragraph until there was an agreement on the definition of the offence and the general provision on the relationship with the pre-existing treaties.[219]

After the consultations, the Group of Friends of the Chairman prepared a consolidated rolling text containing the less controversial provisions. In this draft, circulated on October 19, 2001, the Group of Friends made articles 14 and 15 perfectly symmetrical. Both of them refer to the acts defined as offences in any of the pre-existing sectoral treaties listed in the annex.[220] This text was considered in informal consultations on October 23 and 24, 2001. By this time, though, there was a growing consensus that the sectoral conventions should take precedence over the comprehensive convention. Thus, when these articles were considered, the great majority of delegations advocated for deleting the reference to annex 1.[221] Only Turkey supported the text proposed by the Friends of the Chairman and argued in favor of abrogating the political offence exception in all pre-existing counter-terrorism treaties. Moreover, Turkey asked for more time since most of the delegations that had supported that proposal were not present in the meeting room at that time. Belgium and Switzerland, who had been flexible on other matters, argued that, since Turkey was isolated this time, it had to be flexible.[222] Thus, the following rolling text proposed by the Friends of the Chairman contained articles 14 and 15 identical to those of the Bombings Convention, that is, without impacting on the preexisting instruments.[223]

---

[219] Diaz, Autograph notes, *supra* note 119, Oct. 15, 2001.

[220] Friends of the Chairman, rolling text of Oct. 19. 2001, *supra* note 150, arts. 14 – 15.

[221] Australia, Austria, Belgium, Colombia, Costa Rica, Cuba, Guatemala, Hungary, Switzerland, and Syria.

[222] Diaz, Autograph notes, *supra* note 119, Oct. 24, 2001.

[223] Friends of the Chairman, "Revised texts of arts. 3 – 17 bis and 20 to 27," arts. 14 – 25, U.N. Doc. A/C.6/56/WG.1/CRP.5/Add.1 (Oct. 25, 2001) *reprinted in:* 2001 Working Group Report, *supra* note 118, Annex I.A, at 12 [hereinafter Friends of the Chairman, rolling text of Oct. 25. 2001].

The questions of the definition of the offence and the relationship between the draft comprehensive convention and the pre-existing counter-terrorism treaties were intimately linked. Those states that sought to give priority to the new instrument also proposed all-encompassing definitions of the terrorist crime.[224] Those delegations that sought to give precedence to the sectoral instruments proposed instead discreet formulations of the offence.[225] Moreover, as it became evident that European states would not accept an all encompassing definition of the offence, since they preferred to leave the regulation of distinct forms of terrorism, such as kidnapping and hijacking, to the specific instruments; there was a growing consensus to give precedence to the sectoral counter-terrorism treaties.[226]

At the beginning of the 2001 session of the Working Group, there were various proposals on this issue on the table. Some proposals, such as India's draft article 17.5 and Nigeria's amendment to the definition of the offence, [227] sought to give priority to the new comprehensive convention. Others, such as Guatemala's and the United Kingdom's, foresaw the cumulative application of both instruments, even though the Guatemalan proposal gave priority to the new convention[228] while the British proposal gave precedence to the sectoral ones.[229] A final group of proposals, including those of the

---

[224] See *e.g.:* India's Revised Draft Convention, *supra* note 39, art. 2.1; Nigeria, "Amendment to art. 2.1," *supra* note 75, art. 2.1.bis.

[225] See *e.g.:* Switzerland, "Proposal, Amendment to art. 2.1," *supra* note 53, art.2.1.chapeau.

[226] See *supra*: subsections B.5 and 6).

[227] India's Revised Draft Convention, *supra* note 39, art. 17.5; Nigeria, "Amendment to art. 2.1," *supra* note 75, art. 2.1.bis.

[228] Guatemala, "Additional article (provisionally numbered 22A)," U.N. Doc. A/C.6/56/WG.1/CRP.1 and Corr.1, reprinted in: 2001 Working Group Report, supra note 118, Annex II, ¶ 1, at 17.

[229] United Kingdom, "Proposal," *supra* note 183, new art. para. 1.

Netherlands,[230] Pakistan,[231] and Switzerland,[232] as well as a new proposal by Hungary,[233] gave precedence to the sectoral instruments and did not allow their cumulative application.

The first proposal to be considered was India's suggestion for article 17.5. It read: "The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention."[234] Almost immediately, Israel, Pakistan, and Uruguay found it confusing since it did not make clear which treaties were being amended which of their provisions were affected. India explained then that its provision was not intended to amend the pre-existing sectoral counter-terrorism treaties but only bilateral extradition treaties. For India, this text was intended to derogate only certain norms of old bilateral extradition treaties that make extradition and judicial cooperation more difficult, such as the requirement of reciprocity. With this understanding, and since identical provisions had been included in the Bombings and the Financing Conventions,[235] this text was agreed without further

---

[230] Netherlands, "Proposal, new para. 4 to art. 2" *supra* note 54, new art. 2.4:

[231] Pakistan, "Proposal on a new art. on relationship," *supra* note 203, new art.

[232] Switzerland, "Proposal, Amendment to art. 2.1," *supra* note 53, art.2.1.chapeau.

[233] Hungary, "Proposal concerning the relationship between the present draft convention and other conventions on terrorism," U.N. Doc. A/C.6/56/WG.1/CRP.2, (Oct. 16, 2001) *reprinted in*: 2001 Working Group Report, supra note 118, Annex II, ¶ 2, at 21.:

> The provisions of this Convention shall not apply if the act described in paragraph 1 constitutes an offence within the scope of a specific convention on terrorism when the States concerned are States parties to that convention, in which case the provisions of the specific convention shall apply.

[234] India's Revised Draft Convention, *supra* note 39, art. 17.5.

[235] Bombings Convention, *supra* note 48, art. 9.5; Financing Convention, *supra* note 52, art. 11.5.

debate.[236] It was then included in the two successive rolling texts prepared by the Friends of the Chairman.[237]

The broader question of the relationship between the proposed comprehensive convention and the sectoral instruments was considered in informal consultations on October 22, 2001.[238] India argued then that there was no incompatibility between the new convention and the previous sectoral instruments. In fact, the new provisions were not contradictory with the previous ones but rather a further development and progress. Thus, in most cases, it would be possible to apply both instruments cumulatively. However, if there was any need to choose, the provisions of the new comprehensive convention should be preferred since they were the most updated and represented the then current state of the art. Guatemala, the Philippines, and Poland, among others, supported the cumulative application of both the comprehensive convention and the sectoral conventions, giving precedence to the comprehensive in case of conflict.[239] France[240] noted that there was no reason to presuppose that the provisions of the new convention were incompatible with those of the previous instruments. From its point of view, the problem was limited to concrete areas where the new convention had gone beyond the pre-existing ones, such as in the elimination of the political offence exception;

---

[236] Diaz, Autograph notes, *supra* note 119, Oct. 15, 2001; U.N. Codification Division, "Informals on 16 Oct. (morning and afternoon) articles 6, 7, 14 to 17, 19 to 22," p. 3, (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 16, 2001) (on file with the author).

[237] Friends of the Chairman, rolling text of Oct. 19. 2001, *supra* note 150, arts. 17.5; Friends of the Chairman, rolling text of Oct. 25. 2001, *supra* note 223, 17.5.

[238] U.N. Codification Division, "Informal consultations on 22 Oct. (morning and afternoon) Relationship issue, (23/10/2001 9:54:36 a.m.)" (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 23, 2001) (on file with the author).

[239] Also Chile, Colombia, France, Nigeria, Sierra Leone, and Uganda.

[240] Supported by Chile, Philippines, and Sierra Leone.

and, in theses cases, the new convention should supplement the previous ones.[241] Austria, Belgium, Finland, Netherlands, Switzerland, the United Kingdom, and the United States advocated all for a clear separation between the scope of the new convention and that of the pre-existing counter-terrorism instruments. For most, it was necessary to preserve the *aquis* of the sectoral instruments.[242] Switzerland stressed that some of the provisions of the draft comprehensive convention, such as the granting of refugee status, the elimination of the political offence exception, and the exception for military forces,[243] should not be extended to other treaties. In its view, agreement on the relationship provision depended on a satisfactory compromise in the other articles. Austria argued that a new provision on this matter was necessary since the issue could not be left to the principles of the Vienna Convention on the Law of Treaties, which would have given precedence to the latest instrument. Belgium noted that the new convention should strengthen the pre-existing instruments and close any gaps, but without replacing them. In its view, the new convention should never apply simultaneously with the pre-existing ones. Belgium, Italy, and the Netherlands expressly opposed the Guatemalan proposal for the cumulative application of the various conventions.[244]

Hungary then introduced its proposal for a new article clarifying the relationship between the proposed comprehensive convention and the previous sectoral treaties. This suggestion completely precluded the application of the new instrument if, in the concrete

---

[241] U.N. Codification Division, "Informal consultations on 22 Oct.," *supra* note 238, at 1; Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

[242] Austria, Belgium, Chile, France, Italy, United Kingdom, and the United States.

[243] Friends of the Chairman, rolling text of Oct. 19. 2001, *supra* note 150, arts. 7, 14, and 18.

[244] U.N. Codification Division, "Informal consultations on 22 Oct.," *supra* note 238, at 1 and 3; Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

case, the actual criminal behavior falls within the scope of one of the sectoral conventions and if the states seeking to cooperate were parties to the specific treaty. Thus, the comprehensive convention would be applicable only if no sectoral convention could be use.[245] The Netherlands and Switzerland withdrew their previous proposals and supported the Hungarian suggestion. Austria, Japan, and the United Kingdom, and others,[246] believed that this proposal was a good basis for further work. Meanwhile, some delegations sought to improve the language of the Hungarian proposal. Denmark and Germany sought to restrict this formulation only to United Nations conventions, since the Hungarian suggestions gave priority over the comprehensive convention not only to the twelve sectoral instruments adopted at the global level but also to all regional counter-terrorism instruments. Finland suggested the formulation: "conventions relating to acts of terrorism" rather than "conventions on terrorism," since most of the sectoral instruments did not mention terrorism expressly.[247] Finally, Poland proposed that the sectoral conventions should have precedence only "to the extent that such a convention provides more effective measures to prevent acts of terrorism." Austria, Hungary, and the Netherlands objected to this proposal since it would create ambiguity and raise doubts regarding which instrument was more effective.[248] Towards the end of the meeting, since giving priority to the sectoral instruments seemed to be gaining ground, Colombia made the following suggestion that foresaw the cumulative application of both the

---

[245] Hungary, "Proposal concerning the relationship," *supra* note 233, explanatory note: "The proposal gives clear priority to already existing conventions if they are factually and legally applicable. It also extends the applicability of the comprehensive convention to cases where an act is covered by the specific convention but the latter is not applicable due to non-participation by any of the States concerned."

[246] Finland, China, Belgium, Sierra Leone, Italy, Finland, and Nepal.

[247] Supported by Austria, Hungary, Italy, Poland, and Portugal.

[248] U.N. Codification Division, "Informal consultations on 22 Oct.," *supra* note 238, at 2 - 3; Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

comprehensive convention and the pre-existing treaties but that gave precedence to the sectoral ones in case of conflict:

> The provisions of the present convention shall not adversely affect the rights, obligations and responsibilities of State Parties under other international treaties. In the event of incompatibility between the provisions of the present convention and those embodied in any specific convention on acts of international terrorism, the provision of the specific convention shall apply.[249]

This text was welcomed by Chile but opposed by Sierra Leone and Italy.[250] Since there was no agreement, the coordinator of the informal consultations invited interested delegations to consult among themselves. Hungary took the initiative. It consulted bilaterally with other delegations, mainly Austria and Switzerland, and prepared a simplified version of its original proposal which read: "Where this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act, the provisions of the latter shall apply."[251] This revised proposal was acceptable for all the delegations that wanted to restrict the scope of the draft comprehensive convention. In addition, by this time, most developing countries had accepted that the draft convention was not going to be really comprehensive but that it would only fill in the gaps in the pre-existing and, consequently, they could also go along with the revised Hungarian text. Thus, on October 23, 2001, the coordinator circulated

---

[249] Colombia, "Non-paper, new art. on relationship issue," (TD, non-paper prepared by Colombia, Oct. 22, 2001) (on file with the author).

[250] U.N. Codification Division, "Informal consultations on 22 Oct.," *supra* note 238, at 3.

[251] Hungary, "Relationship, art. 2.bis," (Autograph doc. by Hungary, photocopy, Oct. 23, 2001) (on file with the author).

the revised draft as his own.[252] There was no consensus, though. Since this proposal greatly curtailed the applicability of the comprehensive convention, India and Guatemala chose to maintain their respective positions. Thus, by the end of the session of the Working Group, the coordinator included the text proposed by Hungary among the texts that required further discussion. He clarified in the text, though, that this question would only arise if the states involved were parties to both instruments. Hence, the final text read:

> Article 2 bis
>
> Where this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both treaties, the provisions of the latter shall prevail.[253]

D) Armed Forces and Self-determination

Like the negotiations of the Bombings, Financing, and Nuclear Conventions, the negotiation of the comprehensive convention struggled with the problem of its relationship with international humanitarian law and the right of self-determination.[254] Acts of violence intended to compel a government to do or abstain from doing something are not only typical of terrorism but also of armed forces during armed conflicts and of rebel forces fighting against colonial domination and foreign occupation. Consequently, it was necessary to decide whether and to what extent those acts were going to be

---

[252] Australia (Richard Rowe), "Text proposed by the Coordinator concerning the relationship between the draft Convention and other treaties dealing with specific category of terrorist offence" art. 2.bis, (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author).

[253] Australia (Richard Rowe), "Informal text," *supra* note 151, art. 2 bis.

[254] See *supra:* Chapters 4.F; 5.D; 6.B.5.

criminalized by the new convention.[255] During the negotiation of the comprehensive convention, the starting position of delegations reflected their principled stands on the issues. Members of the Organization of the Islamic Conference argued that the new convention had to distinguish clearly between terrorism, punishable under the convention, and legitimate acts of violence performed in the exercise of the right of self-determination. Western powers and India opposed such distinction arguing that all terrorist acts are criminal and unjustifiable. Conversely, the United States and other major developed countries argued that the new convention should not be applicable to the activities of the armed forces of the states, while some Arab countries, Switzerland, and New Zealand, argued that those activities should be covered if they were contrary to international humanitarian law.

The first draft of the comprehensive convention, circulated by India in 1996, did not make any exception for acts performed in the exercise of the right of self-determination. On the contrary, it sought, first, to condemn all acts of terrorism as unjustifiable, regardless of their purpose or motive; second, to impose upon states the obligation to make those acts criminally punishable; and, third, to abrogate the political offence exception.[256] In addition, the 1996 draft included the activities of the military forces within the scope of the convention: it not only did not contain an exception for those activities but it actually referred to acts of terrorism in which states were directly involved.[257] However, by 2000, after the exhaustive consideration of these issues during

---

[255] See *supra:* Chapter 1.B.2.b and c).

[256] India's First Draft, *supra* note 7, pre. para. 4, art. 2.1 and 2.2

[257] *Ibid.,* art. 3.1: "The Contracting States shall refrain from organizing, instigating, facilitating, financing, assisting or participating in the commission of terrorist offences, in particular those referred to in article 2, in the territories of other States, or acquiescing in or encouraging or tolerating activities within their territories directed towards the commission of such offences."

the negotiation of the bombing and nuclear terrorism conventions, and bilateral consultations with the United States, India circulated a revised draft that followed closely the language agreed in the context of the Terrorist Bombings Convention. Article 18 of the new draft read:

> Article 18
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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 law, which are governed by that law, are not governed by this Convention, and 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.[258]

This text was almost identical to article 19 of the Terrorist Bombings Convention[259] and thus reflected the careful balance and ambiguities that had been adopted in that convention: an indirect reference to the right to self-determination, in paragraph 1, through a general saving clause to the rights on individuals under International Law; an exclusion from the scope of the new convention of the activities of armed forces during armed conflicts that are governed by international humanitarian law, in the first part of paragraph 2; and the exclusion of any other activities of the military forces of states "inasmuch as they are governed by other rules of international law," in the latter part of paragraph 2.[260] In addition, the Indian revised draft also contained a definition of the "military forces of a State" identical to the one reflected in the Bombings

[258] India's Revised Draft Convention, *supra* note 39, art. 18.

[259] Bombings Convention, *supra* note 48, art. 19.

[260] See *supra:* Chapter 4.F.

Convention.[261] The preamble, however, still contained a reference to acts of terrorism committed by states.[262] Moreover, following the precedent of the Financing Convention,[263] the revised Indian draft asked states to adopt domestic legislation to ensure that terrorism is never deemed justifiable.[264] Unfortunately, this use of the Bombings Convention's language did not prevent heated discussions on these issues. There had not been real agreement on Article 19 of the Bombings Convention. Several delegations had disassociated themselves from the adoption of that instrument, precisely because they disagreed with that provision, while and other delegations had made contradictory interpretative statements regarding its meaning.[265]

When the revised Indian draft of the comprehensive convention was considered for the first time, at the 2000 session of the Working Group, several delegations stressed once more the need to distinguish between terrorism and the legitimate struggle of peoples for national liberation, self-determination, and independence from colonialism, alien domination and foreign occupation.[266] Syria and Lebanon proposed mentioning the

---

[261] India's Revised Draft Convention, *supra* note 39, art. 1.2; Bombings Convention, *supra* note 48, art. 1.4.

[262] India's Revised Draft Convention, *supra* note 39, pre. para. 8:

> *Convinced* that the suppression of acts of international terrorism, including those which are committed or supported by States, directly or indirectly, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States.

[263] Financing Convention, *supra* note 52, art. 6. See also Bombings Convention, *supra* note 48, art. 5.

[264] *Ibid*., art. 5:

> Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

[265] See *supra:* Chapter 4.G.

[266] 2000 Chairman's Informal Summary, *supra* note 40, ¶¶ 2 and 12.

right to self-determination in the preamble,[267] while the Organization of the Islamic Conference proposed distinguishing it from terrorism, as part of the definition of the offence itself:

> Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.[268]

In addition, Syria objected to the proposed article 5, which purported to declare terrorism unjustifiable in all circumstances, because it did provide not an exception for acts of resistance against foreign occupation.[269] Moreover, Syria and Lebanon suggested removing the proposed exclusion from the scope of the convention of governmental armed forces outside armed conflict.[270] Qatar agreed but proposed adding that the exclusion of the activities of armed forces during armed conflicts, which would remain in the convention, would not preclude their prosecution under other laws.[271] For their part, New Zealand and Switzerland proposed limiting the exclusion of the activities of the military forces of states outside armed conflict only to those acts performed in conformity with international law, thus any violent acts in violation of international law would have

---

[267] Lebanon and Syria, "Proposal on new preambular para.," U.N. Doc. A/C.6/55/WG.1/CRP.37 (Oct. 5, 2000) *reprinted in:* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 37.

[268] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new paragraph.

[269] Díaz, Autograph notes, *supra* note 181.

[270] Lebanon and Syria, "Proposal," *supra* note 76, art. 18. "Delete the second part of paragraph 2."

[271] Qatar, "Proposal on art. 18," new art. 18.3, U.N. Doc. A/C.6/55/WG.1/CRP.36 (Oct. 5, 2000) *reprinted in:* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 36:

> The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

been punishable under the new instrument.[272] These three proposals coincided in making military personnel criminally liable, as terrorists, for acts of violence that they commit in peacetime.

During the Sixth Committee debate, several Islamic delegations argued, once again, that the comprehensive convention should contain a clear distinction between terrorism and the right of self-determination.[273] Lebanon, for instance, emphasized that the negotiation of the comprehensive convention was the appropriate place to solve issues that had not been dealt with in the sectoral instruments such as the distinction between terrorism and self-determination.[274] In addition, Lebanon, Qatar, and Syria advocated for the inclusion in the preamble of a reference to the Declaration on the Fiftieth Anniversary of the United Nations, which recognized the right to self-determination.[275] In reply, Israel argued that the purported distinction between terrorism and the acts of violence performed pursuant to the right of self-determination was not only contrary to international law but a disservice to legitimate liberation movements that refrain from

---

[272] New Zealand and Switzerland, "Proposal on art. 18.2," U.N. Doc. A/C.6/55/WG.1/CRP.28 (Oct. 3, 2000) *reprinted in:* 2000 Working Group Report, *supra* note 38, Annex III, ¶ 28:

> 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, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are **in conformity with** international law, are not governed by this Convention. (emphasis in the original).

[273] Qatar, Egypt, Pakistan, Iraq, Iran, Democratic Republic of Congo, Syria. U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶¶ 41, 45, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000); U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶¶ 33, 37, 39, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 16, 50, 54, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[274] Lebanon, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 61, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

[275] U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 41, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000); U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 64, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 55, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

attacking the innocent.[276] Regarding the exclusion of state armed forces from the scope of the proposed convention, contained in draft article 18.2, Syria argued that the convention should address state terrorism and cover all activities of state armed forces.[277] Qatar argued that draft article 18.2 should not exclude the massacres and crimes committed by the Israeli armed forces against the Palestinians.[278] The delegate of Iraq noted that the new treaty should not exclude the acts committed by the United States and the United Kingdom against his country since 1991, including the use of force, the enforcement of a no-flight zone, and the training of rebel groups, while the Democratic Republic of Congo mentioned, as an example of state terrorism, the use of force by Uganda, Rwanda, and Burundi against its territory.[279] In this regard, Pakistan and Lebanon stressed that it was not the people struggling for independence who committed acts of terrorism but rather the occupation forces acting with impunity.[280] The United States replied that acts of terrorism could only be committed by groups or individuals not by states, who could only commit violations to international law and the United Nations Charter.[281] Other delegations, while recognizing that violent acts committed during armed conflicts could

---

[276] Israel, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 10, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[277] Syria, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 54, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[278] Qatar, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 42, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000). Supported by Saudi Arabia and Kuwait. U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 49, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 68, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[279] Iraq, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 40, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); Democratic Republic of Congo, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 50, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

[280] Pakistan, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 33, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000); Lebanon, "Statement," *supra* note 274, ¶ 61.

[281] United States, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 36th mtg., ¶ 15, U.N. Doc. A/C.6/55/SR.36 (Nov. 22, 2000).

be excluded from the convention, argued that the new convention should nonetheless govern the activities of armed forces in peacetime. Egypt noted that the new convention should not provide immunity for members of the armed forces that perpetrate terrorist acts.[282] Similarly, Iran objected to draft article 18.2 because it considered inappropriate to grant immunity to the military forces from prosecution for criminal acts during peacetime.[283] New Zealand argued that the exemption for armed forces should be confined only to situations were those forces were acting in conformity with international law.[284] Philippines, on the contrary, argued that the international community was not ready yet to address in a legal instrument state participation in terrorist activities, which, for the time being, had to be addressed at the political level or through unilateral actions.[285]

The February 2001 meeting of the *Ad Hoc* Committee saw a repetition of this debate. Malaysia reiterated the proposal of the Organization of the Islamic Conference to distinguish terrorism from self-determination.[286] Arab delegations argued that the comprehensive convention should address terrorist acts committed by the state armed forces.[287] The European Union argued that the new convention should not jeopardize

---

[282] Egypt, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 45, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

[283] Iran, "Statement," *supra* note 197, ¶ 18.

[284] New Zealand, "Statement" U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 3, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

[285] Philippines, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 42, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

[286] Suported by Pakistan, Syria, and Yemen. 2001 Chairman's informal summary, *supra* note 85, ¶ 8; United Nations, *"Committee on terrorism takes up," supra* note 85, pp. 5 – 8.

[287] Iraq, Lebanon, Pakistan and Syria. United Nations, *"Committee on terrorism takes up," supra* note 85, pp. 6 – 8.

international humanitarian law,[288] and the United States noted that State conduct did not need to be addressed in a counter-terrorism instrument since it was subject to a separate body of law, including the norms on state responsibility, the prohibition of use of the force, incorporated in article 2.4 of the UN Charter, and chapter VII of the same Charter regarding Security Council action in cases of threats to international peace and security.[289] At the time, there were only two new proposals on this issue. South Africa proposed to solve the question of international humanitarian law not through an exception but limiting the possible targets of the criminal offence, as had been done in the Financing Convention. It proposed to limit the possible targets to "a civilian or any person not taking active part in armed conflict."[290] Côte d'Ivoire proposed limiting the exception for self-determination only to acts that "take place in the context of international conventions governing armed conflicts, as well as international humanitarian law."[291] On the proposed article 5, which asked states to take measures to ensure that terrorist offences are never deemed justifiable, a group of Arab states[292] expressed reservations until there was a satisfactory solution regarding the exception for self-determination in the context of the definition of the offence and the exception for military forces. The great majority

---

[288] *Ibid.,* pp. 3 – 4.

[289] 2001 Chairman's informal summary, *supra* note 85, ¶ 15; United Nations, *"Committee on terrorism takes up," supra* note 85, p. 7.

[290] South Africa, "Proposal on art. 2.1," *supra* note 86, art. 2.1.a. *Cf.* Financing Convention, *supra* note 52, art. 2.1.b.

[291] Côte d'Ivoire, "Proposal, Revised Text of doc. A/C.6/55/WG.1/CRP," U.N. Doc. A/AC.252/2001/WP.1/Rev.1, *reprinted in:* 2001 Ad Hoc Comm. Report, *supra* note 82*,* Annex III, ¶ 1.

[292] Egypt, Iraq, Libya, Qatar, Sudan, Syria, and Yemen.

of delegations,[293] though, supported its inclusion. It was then agreed to record the objections of the Arab states in a footnote.[294]

After September 11, and notwithstanding the repeated calls for flexibility,[295] the positions on the question of armed forces, state terrorism, and self-determination became more entrenched. On one side, Western powers and some developing nations that had been victims of terrorist attacks argued more forcefully against any exception based on self-determination. On the other side, Islamic countries, fearing that the fight against terrorism would become an excuse to prosecute those that they saw as freedom fighters in Palestine and Kashmir, upheld even more forcefully the need to distinguish between self-determination and terrorism and need to condemn, as terrorist, state repressive action. The "Western" side took a high moral tone. The Secretary-General said: "There can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance. If there is one universal principle that all peoples can agree on, surely it is that. Even in situations of armed conflict, the targeting of innocent civilians is illegal, as well as morally unacceptable."[296] Similarly, Turkey argued that:

---

[293] Algeria, Australia, Belgium, Canada, Chile, Costa Rica, Czech Republic, Ecuador, Finland, Germany, Greece, Israel, Italy, Japan, Peru, Russian Federation, Sri Lanka, Sweden, Turkey, United Kingdom, United States, and Venezuela. Costa Rica linked its acceptance of this paragraph to the retention of draft art. 15, on the non-refoulement principle.

[294] U.N. Codification Division, "Working Group, Feb. 13, 2001" at 2 (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the Bureau, Feb. 13, 2001) (on file with the author); India, "Text of arts. 4, 5, 9, 10, 12, and 13 prepared by India for reference," U.N. Doc. A/AC.252/2001/CRP.4, *reprinted in:* 2001 Ad Hoc Comm. Report, *supra* note 82*,* Annex II, n.**, at 4:

> While it is understood that all draft articles remain under discussion until final agreement has been reached on the whole text of the draft convention, several delegations were of the view that, in particular, an agreement on article 5 is linked to an agreement on the scope of the draft convention and the definition of terrorism.

[295] See *supra:* subsection B.4.

[296] U.N. Secretary-General, "Statement," *supra* note 103, at 3.

> If there were any arguments that terrorists might also have a defensible cause, 11 September must have put this forever to rest. There are no grey areas in the fight against terrorism, nor there are good terrorist and bad terrorists. This is the time for the international community as a whole to condemn unequivocally all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation.[297]

On the Islamic side, the question of state terrorism and self-determination were viewed in tandem. Libya, speaking on behalf of the Arab group, argued that:

> The Arab Palestinian people are the victims of modern-day terrorism in the fullest sense of the word. Their land is occupied; their property is seized or destroyed by bulldozers. Most of their sons and daughters are displaced, imprisoned, tortured, expelled or deported to the farthest corners of the Earth in order to empty their land for settlement by foreigners. The Palestinian people are subjected to repression and suppression to prevent them from even expressing their rejection of the occupation. (…) Here, the Arab Group expresses its determination to oppose any attempt to classify resistance to occupation as an act of terrorism. Such an injustice would turn the facts upside-down and would only give rise to hatred. Freedom is indivisible, and must not be diminished in any way. Anyone who maintains otherwise cannot be convincing in his resistance to terrorism in the name of freedom or justice."[298]

Similarly, Kuwait said that:

> The struggle of the Palestinian people, for example, in its legitimate resistance to Israeli occupation, cannot by any means be considered a form of

---

[297] Turkey, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 8 - 9, at 9, U.N. Doc. A/56/PV.13 (Oct. 1, 2001). See also*:* India, "Statement," supra note 104, at 25:

> Some argue that a distinction must be drawn between freedom fighters and terrorists. To this we would say, as the Secretary-General reminded us on Monday, that the laws of civilized behavior should apply to all. Normatively, international humanitarian law does not permit methods or means that can only be described as terrorist in the pursuit of any cause. The great leap forward in international law over the last few years has been the emergence of the norm that there can be no impunity for crimes that constitute a grave violation of human rights. (…) it cannot be admissible to argue that freedom fighters or any other group would be the only individuals who would be above the law. Terrorism is defined by the act, not by a description of the perpetrator.

[298] Lybia, "Statement on behalf of the Arab Group," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 19 - 23, at 19, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

> terrorism. It is a legitimate form of self-defense and a defense of the rights of the people, pre-eminent among which is the right to life, to land and to sovereignty.[299]

In this context, Arab countries denounced the Israeli practices in the occupied territories as state terrorism. Yemen, for example, said:

> We call for combating terrorism, including State terrorism, which is practiced by Israel against the Palestinians. The terrorism, systematic killing, violence, and sieges witnessed and suffered by the Palestinians, the elderly, women and children at the hands of the Israeli army and heavy armed settlers should also be denounced and condemned.[300]

It seems that the renewed commitment among Arab states to self-determination arose from a perception that the political environment after September 11 would jeopardize the Palestinian cause. Syria, for instance, noted that:

> Foreign occupation is indeed one of the most appalling forms of terrorism. Therefore, resistance to such occupation, including Israeli occupation, is legitimate – all the more so since in that occupation an attempt is being made to take advantage of the present situation and the present state of grief to crush the will of the Palestinian people to liberate themselves.[301]

Israel strongly rejected these arguments. In its view, any attempt to justify terrorism was unacceptable. The Israeli delegation argued that:

---

[299] Kuwait, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., pp. 5 - 7, at 6, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

[300] Yemen, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 2 - 4, at 4, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

[301] Syria, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 17 - 19, at 18, U.N. Doc. A/56/PV.16 (Oct. 3, 2001). See also: Sudan, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 5 - 6, at 5, U.N. Doc. A/56/PV.14 (Oct. 2, 2001.): "The Sudan also stresses the importance of respect for the inalienable right of all peoples under foreign occupation to self-determination and independence. In that connection, we warn that Israeli exploitation of the current situation in order to escalate oppression of the Palestinian people would be a grave matter."

> While most nations and peoples have lowered their flags in solidarity with America, some have raised their voices in an attempt to justify the unjustifiable and to artificially distinguish between one kind of terror and another. These apologists, by purporting to identify the underlying causes of these attacks, not only justify, in effect, the heinous crimes of 11 September, but lay the foundation for future attacks. (…) We have heard those who claim that certain types of terrorism are acceptable and that some innocent civilians are legitimate targets. The United Nations must reaffirm today that there is no justification, and that there can never be any justification, for the calculated murder of innocents. Let us be clear: the indiscriminate murder of innocent civilians to advance political or religious objectives is terrorism, no matter how its apologists seek to label it.[302]

Similarly, the United Kingdom rejected the concept of state terrorism. It stressed that:

> There are also wars and armed struggles where actions can be characterized, for metaphorical and rhetorical force, as terrorists. This is a highly controversial and subjective area, on which, because of the legitimate spectrum of viewpoints within the United Nations membership, we will never reach full consensus. War in human history has, for the most part, thank goodness, engaged human honour: there are rules. At the edges, dishonourable actions may share some of the characteristics of terrorism. Let the corpus of international humanitarian law deal with that. Our job now is to confront and eradicate terrorism pure and simple: the use of violence without honour, discrimination or regard for human decency.[303]

Finally, some developing countries tried to balance both positions, upholding the right of self-determination while condemning any attack against innocent civilians. Malaysia, for example, argued that:

> Acts of pure terrorism, involving attacks against innocent civilian populations – which cannot be justified under any circumstances – should be differentiated from the legitimate struggles of peoples under colonial or alien domination or foreign occupation for self-determination and national liberation as recognized by the relevant resolutions of the United Nations and international

---

[302] Israel, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., pp. 19 - 22, at 20, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

[303] United Kingdom, "Statement," *supra* note 114, at 18 – 19,

> declarations. All States Members of this Organization that gained their freedom through a liberation struggle or war of independence would fully appreciate and support that inherent, inalienable and legitimate right.[304]

Similarly, Sierra Leone note that while it supported "the legitimate struggle of peoples all over the world for independence and dignity, we condemn attacks on innocent civilians as cowardly and despicable crimes against the peace and security of mankind."[305] Moreover, the position of the Islamic states hardened further after the Ninth Extraordinary Session of the Foreign Ministers of the Organization of the Islamic Conference, held at Doha, Qatar, on October 10, 2001. After Yasir Arafat explained the situation in the occupied territories, the ministers coupled the fight against terrorism with a satisfactory solution to the Palestinian question, and stressed their "rejection of any linkage between terrorism and the rights of the Islamic and Arab peoples, including the Palestinian and Lebanese peoples, the right to self-determination, self-defense, sovereignty and resistance against Israeli and foreign occupation, all of which are legitimate rights enshrined in the United Nations Charter and international law."[306] In addition, they "expressed hope that preoccupation with the effects of the events which befell the United States would not lead the international community to neglect

---

[304] Malaysia, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 10 - 12, at 11, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

[305] Sierra Leone, "Statement," U.N. GAOR 56th Sess. 21st plen. mtg., pp. 14 - 16, at 15, U.N. Doc. A/56/PV.21 (Oct. 5, 2001).

[306] Organization of the Islamic Conference, "Final communiqué of the Ninth Extraordinary Session of the Organization of the Islamic Conference of Foreign Ministers, held at Doha, Qatar, on 10 October 2001," ¶ 6, *reproduced in:* Qatar, Letter from the Permanent Representative of Qatar to the United Nations to the Secretary-General (Oct. 11, 2001), annex II, U.N. Doc. A/56/462 - S/2001/962 (Oct. 12, 2001). ¶ 10 said:

> 10. The Conference stressed that the international initiative towards achieving security and stability in a world free from terrorism and injustice must also include the achievement of security and justice for the Palestinian people, the establishment of an independent Palestinian State with Al-Quds Al-Sharif as its capital, and the protection of the Christian and Islamic holy places.

shouldering its responsibilities vis-à-vis the State terrorism practiced by the Israeli Government and to which the Palestinian people is being subjected and Israel's serious escalation of the situation in the region."[307]

E) A failed end-game

At the 2001 meeting of the Working Group, the question of an exception for armed forces and self-determination movements became the key issue. Arab delegations made their agreement on the definition of the offence, and on the convention as a whole, conditional on a satisfactory solution on these issues. At the same time, Western delegations became more adamant in not granting any exception to freedom fighters. The negotiations became hectic, moving back and forward between open meetings of the working group and private consultations between a small group of key delegations. Moreover, there were continuous consultations within the most interested regional groups: the Arab Group, the Organization of the Islamic Conference, and the European Union. The coordinator, Ambassador Richard Rowe, then Australia's Foreign Ministry legal advisor, made enormous efforts to keep delegations engaged.

At the opening of the 2001 session of the Working Group, delegations were already well aware of the importance and difficulty of the question of armed forces and self-determination movements. The Chairman of the Working Group, rather than begin formal negotiations on this question, decided to give time to delegations to consult among themselves and began discussion on the less conflictive, technical cooperation provisions. Consequently, India, which had taken the lead in proposing the first draft of the

[307] *Ibid.,* ¶ 7.

comprehensive convention, began to explore possible solutions to these issues. Thus, early in the week of October 15 to 21, India held private, bilateral consultations with some key actors, including the United States, Egypt, and Iran. In addition, on October 17, India held two informal meetings on this question, one with moderate developing countries[308] and another one with some of most active developed nations.[309] In those meetings, India expressed its wish to finalize the draft comprehensive convention at that session of the Working Group, that is, by October 26, 2001. Originally, it said, it had intended to conclude the convention at the spring session of the following year, 2002, but September 11 had made its adoption urgent. India suggested two possible solutions to the questions of freedom fighters: to add a reference to self-determination in the preamble, or to include in the convention an exception for national liberation movements based on the one contained in the Hostages Convention.[310] Arab countries, though, thought that a reference in the preamble did not sufficiently address their concerns while the United States could not accept the formulation of the Hostages Convention since it was based on the First 1977 Protocol to the Geneva Conventions, which it had rejected.[311] In addition, India announced that it was beginning to consider the possibility of putting the draft convention to a vote, if there was no agreement. However, most delegations participating in those meetings felt that it was still too early to decide resorting to a vote and that a consensus on the convention would send a good sign on the commitment of the international community to fight terrorism.[312] That same day, October 17, the Working

[308] Algeria, Argentina, Brazil, Chile, Costa Rica, Morocco, South Africa, Sri Lanka, and Turkey.

[309] Austria, Belgium, France, Germany, Japan, Sweden, Switzerland, and the United States.

[310] Hostages Convention, *supra* note 158, art. 12.

[311] See *supra*: Chapter 1.B.2.c.

[312] By Algeria, Brazil, and Sri Lanka. Diaz, Autograph notes, *supra* note 119, Oct. 17, 2001.

Group considered in informal consultations draft article 5, which asked states to ensure that terrorism was deemed unjustifiable in all circumstances. Although there were no major differences of view, apart from a suggestion to include gender among the factors that cannot be claimed to justify terrorism,[313] there was no agreement because this provision was linked to the question of self-determination.[314]

On Friday October 19, 2001, the Working Group held for the first time informal consultations, open to all delegations, on the question of armed forces and self-determination. At the outset, Malaysia reiterated the OIC position that it was necessary to distinguish acts performed in pursuit of self-determination from terrorism. Thus, Malaysia proposed adding, to the definition of the offence, a new paragraph explicitly excluding from the scope of the convention armed struggle against foreign occupations and colonialism which read:

> The right of self-determination of peoples, including armed struggle against foreign occupation and colonialism, in accordance with the principles of international law, including the purposes and principles of the United Nations, is not an offence within the meaning of this Convention.[315]

Members of the Islamic Conference, some African states, and Cuba, supported both making such a distinction and making it in the context of the definition of the

---

[313] By Barbados and Thailand, but opposed by Finland, Jordan, and the United Kingdom.

[314] U.N. Codification Division, "Informals on 17 Oct. (afternoon) articles 3, 4, 5, 8, 9, 11, 12, and 13," (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 17, 2001) (on file with the author), at 1; Diaz, Autograph notes, *supra* note 119, Oct. 17, 2001.

[315] U.N. Codification Division, "Informal consultations on 19 Oct. (morning and afternoon) article 2 / article 18, (Oct. 19, 2001, 19:00)" (TD, summary of oral proposals made in close meetings of the Working Group, for the use of the Friends of the Chairman, Oct. 19, 2001) (on file with the author) at 1.

offence.[316] Some of them supported the previous formulation proposed by the OIC,[317] but most of them were flexible on the actual language used as long as the principle was recognized.[318] Lebanon forcefully argued that self-determination must be recognized as it was a *ius cogens* principle that cannot be derogated. Meanwhile, Cuba, Ecuador, Jordan, and Thailand argued that the exercise of the right of self-determination should not be abused and that, therefore, it should be subject to the rules in international humanitarian law.[319] Conversely, western delegations, including the United States, the United Kingdom, and Israel,[320] supported the Indian draft of article 18.2, based on the Bombings Convention.[321] For them, there should be no other exceptions than those already recognized in the previous instrument. The United States stressed that it was important to ensure that the draft convention would be a workable instrument; therefore, in its view, no ambiguities or politically contentious issues that could make implementation more difficult should be introduced in the text. For its part, Colombia suggested recognizing the principle of self-determination in the preamble rather than in the body of the convention as an exception to its scope.[322] It suggested: "Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-

---

[316] Algeria, Bangladesh, Brunei Darussalam, Burkina Faso, Cuba, Egypt, Ethiopia, Iran, Iraq, Lebanon, Libya, Malaysia, Mali, Morocco, Mozambique, Oman, Pakistan, Palestine, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, and Yemen.

[317] Cuba, Egypt, Iran, Mali, Mozambique, and Sudan supported: Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new para.

[318] Egypt, Jordan, and Syria

[319] U.N. Codification Division, "Informal consultations on 19 Oct.," *supra* note 315, at 1; Diaz, Autograph notes, *supra* note 119, Oct. 19, 2001.

[320] Also Belarus, Brazil, Canada, France, Russian Federation, and Spain.

[321] India's Revised Draft Convention, *supra* note 39, art. 18.2.

[322] Supported by, Austria, Chile, Costa Rica, and the Russian Federation.

neighbourliness and friendly relations and cooperation among states."[323] The United Kingdom argued that this proposal was not necessary since the general principles of international law were already covered in India's draft article 18.1.[324] Specifically on the exclusion of state armed forces from the scope of the proposed instrument, there was a repetition of the debate held in the context of the negotiation of the Bombings Convention.[325] Some delegations sought to restrict the exception only to activities carried out in conformity with international humanitarian law. New Zealand, for example, reintroduced its proposal to amend draft article 18.2 as follows:

> 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, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are **in conformity with** international law, are not governed by this Convention.[326]

This suggestion was supported by Austria, Costa Rica, Syria, and Switzerland, among others.[327] Lebanon suggested restricting the exception to the lawful activities of state armed force performed where their presence was legal. Algeria, Iraq, Jordan, Libya, Malaysia, and Pakistan proposed to eliminate completely the exception for armed forces by deleting the second part of draft article 18.2 by India.[328] Meanwhile, some delegations that preferred the deletion of the whole exclusion clause expressed flexibility since they

---

[323] Colombia, "Proposal concerning a new pre. para. 1" U.N. Doc. A/C.6/56/WG.1/CRP.4. (Oct. 19, 2001) *reprinted in*: 2001 Working Group Report, supra note 118, Annex II, ¶ 4, p. 28.

[324] U.N. Codification Division, "Informal consultations on 19 Oct.," *supra* note 315, at 1; Diaz, Autograph notes, *supra* note 119, Oct. 19, 2001.

[325] See *supra:* Chapter 4.F.

[326] New Zealand and Switzerland, "Proposal on art. 18.2," *supra* note 272, art. 18.2 (bold in the original).

[327] Also Chile, South Africa, Ecuador, Iran, Iraq, Bangladesh, Jordan, Algeria, Sudan, Colombia, Lebanon, Brazil, Egypt and Thailand.

[328] U.N. Codification Division, "Informal consultations on 19 Oct.," *supra* note 315, at 2,

had already accepted a similar provision in the Bombings Convention.[329] In contrast, France, the Russian Federation, the United Kingdom, and the United States, upheld the exclusion clause and supported the text proposed by India. Even more, they suggested adding to the preamble a formulation taken from the Bombings Convention in the sense that "activities of military forces of States are governed by other rules of international law," and that the exclusion of those activities from the scope of the convention "does not condone or make unlawful otherwise unlawful acts, or precludes prosecution under other laws."[330] This formula, which was part of the package deal used in the Bombings Convention, would have enabled them to interpret the exclusion clause as an absolute exception.[331] In addition, Bangladesh, Iran, and Sudan proposed to define which official duties of state armed forces were being excluded from the proposed convention. However, the United States argued that each state should be able to define which duties it wishes to assign to its own armed forces.[332] In the end, while this meeting was rather inconclusive, some Islamic states showed flexibility on the language of a possible exception for self-determination movements and moved away from the original OIC proposal.[333]

On Monday October 22, 2001, the coordinator invited a group of key delegations to a private meeting at the Australian mission.[334] At the outset, he suggested working on

---

[329] Costa Rica, Sudan, Lebanon, Egypt.

[330] Bombings Convention, *supra* note 48, pre. para. 11.

[331] See *supra*: Chapter 4.F.

[332] U.N. Codification Division, "Informal consultations on 19 Oct.," *supra* note 315, at 2.

[333] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new para.

[334] Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Ecuador, Egypt, Lebanon, France, Hungary, India, Iran, Japan, Malaysia, New Zealand, Pakistan, Russian Federation, Spain, Switzerland, United Kingdom, and the United States.

the basis of India's proposed article 18,[335] but making some changes. In his view, it was possible to include in it a stronger reference to the right of self-determination, even if its form and placing needed to be further discussed. He also suggested dividing draft paragraph 2 in two sections, so as to have one provision on activities during armed conflicts and another one on the state military. Furthermore, he suggested adding a new paragraph to that article, based on preambular paragraph 11 of the Bombings Convention, in the sense that the exception of armed forces did not preclude prosecution under other laws.[336] Finally, he proposed adding "humanitarian" to international law in paragraph 2, which India had inadvertently omitted, in order to make the text identical to the one contained in the Bombings Convention.[337] In response, Egypt, Iran, Jordan, Malaysia, and Pakistan argued that it was necessary to clearly distinguish terrorism from legitimate acts of self-determination. Pakistan suggested adding the following new paragraph, based on the OIC's original proposal,[338] to draft article 18:

> Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be covered by this convention.[339]

India objected. In its view, the right to self-determination was limited to the fight against colonialism and subject to the prohibition of the use of force and the principle of territorial integrity. India emphasized that it could not agree on anything beyond what

---

[335] India's Revised Draft Convention, *supra* note 39, art. 18.

[336] Bombings Convention, *supra* note 48, pre. para. 11.

[337] Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

[338] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new para.

[339] Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

was already recognized in the United Nations Charter and in the Declaration on the Principles of International Law.[340] The United Kingdom was satisfied with the text proposed by India, but it could accept a provision on the possible prosecution of members of state military forces under other laws in the preamble. For the United States it could be possible to recognize the right to self-determination in the context of article 18, using what they called "a sensible statement." However, it felt that an elaborate statement of that right would create greater problems. For them, it was essential to ensure that the new convention was a workable law enforcement instrument. Similarly, France was open to include a saving clause on the right to self-determination but not to an outright exclusion of any category of violent acts from the scope of the convention. Australia suggested: "Nothing in this convention shall affect the right to self-determination in accordance with the Charter of the United Nations and International Humanitarian Law."[341] For its part, Iran proposed the following exclusion clause, based on the idea that the acts performed in exercise of self-determination were already governed by international humanitarian law and, in particular, by the 1977 Protocol I to the Geneva Conventions:[342]

> The peoples' fight against colonial domination and alien occupation in exercise of their right of self-determination as enshrined in the Charter of the United Nations and International Law are covered by other rules of International Law and not by this convention.[343]

---

[340] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), annex (Oct. 24, 1970).

[341] Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

[342] Protocol Additional to the Geneva Conventions of 12 August 1943, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted on* June 8, 1977, 1125 U.N.T.S. 3-608, art. 1.3 and 1.4.

[343] Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001. That same day, Nepal, which had not taken part in the informal consultations, first proposed and then withdrew the following formulation: "Peoples' legitimate activities undertaken in their struggle against foreign occupation, domination and colonialism, aimed at liberation, freedom and political independence and consistent with international law, are not

To prevent impunity, India suggested restricting this exclusion only to "the extent that those activities are covered by other rules of International Law," even if they still preferred a reference to self-determination only in the preamble. Canada noted, though, that such formulation would be difficult to implement in practice since it would be difficult to determine when those activities were governed by other rules of International Law. Pakistan retorted that precisely that problem already existed regarding draft article 18.2. Costa Rica proposed limiting the exclusion only to those acts performed "in conformity with international law." Iran agreed but the United States noted that, if the acts performed in exercise of the right of self-determination were already covered by international humanitarian law, the Iranian proposal was unnecessary because those acts were already excluded from the scope of the convention by the first part of draft article 18.2. For their part, Jordan and Switzerland saw a link between the exclusion of the activities of state military forces and the exclusion of freedom fighters. For them, both categories had to be treated equally. [344] In the end of the meeting, there was no agreement on any suggestion. To facilitate discussions, New Zealand requested the coordinator to prepare a new draft for further consideration.

Meanwhile, Human Rights Watch tried to influence the process by circulating some comments on the draft convention. It argued that the new treaty should not criminalize the military activities of rebel forces in non-international armed conflicts as long as they respect the basic laws of war. This position, however, went far beyond the

---

covered by this convention." Nepal, "Proposal concerning arts. 2 and 18" U.N. Doc. A/C.6/56/WG.1/CRP.7 (Oct. 22, 2001) (later withdrawn).

[344] Diaz, Autograph notes, *supra* note 119, Oct. 22, 2001.

understanding of most states who believe that participants in civil wars, not subject to Protocol I, can be criminalized. Human Rights Watch also questioned the second part of draft article 18.2 because it could create impunity since "serious human rights violations carried out by military personnel in times of peace – which are thus not covered by international humanitarian law – may not be covered either by the Comprehensive Convention."[345] It does not seem, however, that these observations had any immediate impact on the negotiations.

On Tuesday October 23, 2001, the coordinator called together the same group delegations for a new round of informal-informals.[346] Based on the previous consultations, the coordinator suggested the following text:

> Article 18
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations**, including the principle of equal rights and self-determination of peoples,** 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, ~~**and**~~
>
> **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.**"[347]

---

[345] Human Rights Watch, "Commentary 2 on the Draft Comprehensive Convention on Terrorism: Articles 2 and 18," at 2, (TD, observations circulated to delegations, Oct. 22, 2001) (on file with the author).

[346] Belgium (on behalf of the European Union), Canada, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, New Zealand, Pakistan, Russian Federation, Switzerland, and the United States were present.

[347] Australia (Richard Rowe), "Coordinator's Non-paper on Exclusion from the Scope of the Convention, Oct 23, 2001" art. 18, (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author) (bold in the original).

In this proposal, the coordinator incorporated an express reference to the right of self-determination among the principles that would not be affected by the proposed instrument. He also divided old paragraph 2 in two sections, one for situations of armed conflict and another one for the activities of state military forces, while he included in paragraph 2 a reference to international humanitarian law, following the precedent of the Bombings Convention. Finally, he added a new saving clause stressing that this exception should neither preclude prosecution for unlawful acts nor be interpreted as legitimizing unlawful acts of armed forces. Canada, Costa Rica, and New Zealand welcomed this proposal as a pragmatic package deal that could bridge the various positions. They emphasized the need to reach an agreement as soon as possible. Switzerland noted that, as a package deal, paragraph 4 eased their difficulties with the exclusion clause contained in new paragraph 3 on the activities of military forces in peacetime and that, as such, the whole package was acceptable. Costa Rica then suggested that this text be accepted ad referendum and be referred to the consideration of capitals.[348] Egypt, Jordan, Malaysia, and Pakistan found, however, that this new text did not fulfil the requirements of the common position of the Organization of the Islamic Conference. Pakistan reiterated its demand that the convention clearly distinguish between self-determination and terrorism. Egypt asked for an express reference to national liberation movements, and Iran suggested that the OIC needed some time to study and adopt a common stance towards the coordinator's new proposal. For their part, Belgium, India, the Russian Federation, and the United States considered that the text had gone beyond what was acceptable. India stressed the need to preserve the previous

[348] Diaz, Autograph notes, *supra* note 119, Oct. 23, 2001.

balances. Russia and the United States found that the emphasis on self-determination was inappropriate. For them, the principles of peaceful settlement of disputes and territorial integrity were equally important. Belgium argued that the legitimate exercise of the right of self-determinations was already properly covered in paragraph 2, which referred to armed conflict as understood under international humanitarian law. Thus, for the European Union, any additional reference of a general character to the principle of self-determination had to be placed in the preamble. The meeting dissolved without reaching any agreement.[349]

That evening, the coordinator introduced his proposal to a broader group of delegations. Austria, Chile, Japan, and Spain objected to the addition to 18.1 because, in their view, any explicit reference to the right to self-determination should be located in the preamble. Conversely, Pakistan, Palestine, and Syria found that the reference to self-determination was insufficient. They requested a separate paragraph explicitly excluding from the scope of the convention those peoples fighting against foreign occupation. India rejected this suggestion, arguing that there could not be immunity for terrorist acts committed by self-determination movements. Egypt suggested then using language from the First 1977 Protocol to the Geneva Conventions to make explicit that armed conflict included the fight against alien occupation. India retorted that the Geneva Protocol was limited only to the fight against colonial regimes. Jordan then argued that the new convention should give the same treatment to freedom fighters and to governmental armed forces. This prompted Egypt and Iran to demand either the deletion of paragraph 3, on the exclusion of state military forces, or that "official duties" be defined. Egypt,

[349] *Ibid*.

Syria, Jordan, and Pakistan, recalling a previous proposal by Switzerland and New Zealand,[350] suggested that only those activities of the armed forces in conformity with international law should be excluded from the scope of the convention. They argued that state armed forces must always act in accordance with international law.[351] France and the United States responded that the official duties of the military forces are defined by each state.[352] Thus, if a state's military forces, following orders, commit acts contrary to international law, the state itself should be deemed responsible, not the individual members of the military who just followed orders. Consequently, they could not accept deleting or qualifying of the exclusion of the armed forces. They noted, moreover, that this formulation was agreed language from the Bombings Convention. Switzerland argued that it was necessary to adopt an unambiguous formulation that would not create grey areas. Hence, it suggested that the exclusion of military forces should not cover acts that were in manifest contradiction with, "not in clear violation of," international law.[353] Costa Rica underlined the usefulness of draft paragraph 4, on the possibility of prosecution under other laws, as part of a package deal. New Zealand argued for a pragmatic approach in view of the "big picture." It noted that, although the formulation proposed was far from their preferred outcome and that they had suffered terrorist acts committed by members of armed forces, they were ready to accept it in order to secure the adoption of the draft convention. India endorsed this pragmatic approach.[354] Once more, the meeting dissolved without reaching any agreement.

---

[350] New Zealand and Switzerland, "Proposal on art. 18.2," *supra* note 272, art. 18.2.

[351] Diaz, Autograph notes, *supra* note 119, Oct. 23, 2001.

[352] Supported by the Russian Federation.

[353] Supported by Malaysia.

[354] Diaz, Autograph notes, *supra* note 119, Oct. 23, 2001.

The following morning, October 24, 2001, the coordinator called a short meeting to introduce a further revised text of article 18. It read:

> Article 18
>
> 1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
>
> **1. bis. For the avoidance of doubt, nothing in this Convention shall affect the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations.**
>
> 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, ~~**and**~~
>
> **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.**[355]

The main change was the inclusion of new paragraph 1.bis, which sought to preserve the right of self-determination. Nevertheless, it did not exempt self-determination movements from the scope of the proposed instrument. Consequently, Egypt and Syria rejected it on behalf of the OIC. Meanwhile, Iran suggested a new formulation of such an exception, while Lebanon insisted that all previous proposals, including the original OIC's suggestion for defining terrorism, were still on the table and should be considered together.[356] It seemed that in the course of the previous evening the position of the Arab delegations had hardened. Hence, since no progress had been made,

---

[355] Australia (Richard Rowe), "Coordinator's Non-paper on Exclusion from the Scope of the Convention, Oct. 24, 2001," art. 18, (TD, non-paper circulated to delegations, Oct. 24, 2001) (on file with the author) (bold in the original).

[356] Diaz, Autograph notes, *supra* note 119, Oct. 24, 2001. Iran proposed: "The activities of armed forces during an armed conflict **including armed conflict in which peoples are fighting against colonial domination and alien occupation and against racist regimes,** as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention."

and delegations began making speeches rather than negotiating, the coordinator adjourned the meeting.

That afternoon, the coordinator convened again a small group of delegations, in an effort to find a new solution.[357] He recognized that the text he had circulated during the morning had not been acceptable and that it was necessary to start anew. Pakistan and Iran put forward, once more, the OIC proposal for exempting the activities of liberation movements from the scope of the convention.[358] India replied that his delegation could not accept such an exception because it would create a "grey area" not governed by any laws. In their view, article 18.2 already covered adequately the legitimate acts of self-determination. India underlined that it could accept further references to the right to self determination only in the preamble. Similarly, the United States emphasized that the first part of draft article 18.2 protected both the armed of states and the sub-national forces that fulfil the criteria of international humanitarian law. [359] For its part, Belgium argued that, for both technical and psychological reasons, they could not accept an exception which would create the impression of impunity.[360] Pakistan then explained that its proposal sought to exempt only those acts performed in the exercise of the right of self-determination that were performed in accordance with international humanitarian law. Moreover, he noted that many delegations had not been satisfied with article 18 when it had been adopted in the context of the bombing convention. For Egypt, to prevent any "grey areas," it was necessary to distinguish

---

[357] Australia, Belgium (on behalf of the European Union), Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Pakistan, Sri Lanka, and the United States.

[358] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new para.

[359] Supported by Belgium, on behalf on the European Union.

[360] Supported by Ecuador.

clearly between legitimate activities under international humanitarian law and those punishable under the new convention.[361] Jordan argued that draft article 18.3, on the military forces of states, was being abused in the Middle East and that, for that reason, it had to be balanced with a reference to the right to self-determination. He proposed mentioning the rights of "peoples" in the general savings clause contained in draft article 18.1. He also suggested that draft article 18.2 should exempt the parties to a conflict, and not only the armed forces, to excluded sub-national armed groups. Similarly, Pakistan suggested mentioning specifically the struggle against colonial domination or alien occupation in exercise of the right of self-determination. Australia thought that inclusion of the word "peoples," suggested by Jordan, would suffice. However, both proposals were unacceptable for India, which could accept the right to self-determination only against colonial domination. Belgium could not accept the term "parties." In its view, "armed forces" was the right term to refer to those groups actually engaged in an armed conflict. Jordan then suggested the term "combatants" as an alternative.[362] As a possible solution, Belgium, on behalf of the European Union, suggested adding the following reference to the right of self-determination to the preamble:

> *Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among states, *including* the principles of equal rights and self-determination of peoples and the territorial integrity of all States, as enshrined in the Charter of the United Nations and the Declaration of Principles on International Law concerning Friendly Relations and Cooperation among States.[363]

---

[361] Diaz, Autograph notes, *supra* note 119, Oct. 24, 2001.

[362] *Ibid.*

[363] Belgium, on behalf of the European Union, "New Preambular Para. PP.5" (TD, non-paper circulated to delegations, Oct. 24, 2001) (on file with the author).

This proposal merged some language originally suggested by Colombia with preambular paragraph 3 of the Hostages Convention.[364] It seems that, within the European Union, the initiative had come from Spain which could accept references to the right of self determination only in the preamble of the convention but not in its binding provisions. Costa Rica finally suggested adding to this text a reference to the principle of peaceful settlement of disputes.[365] The meeting was then suspended for the coordinator to prepare a consolidated text containing the proposals by the European Union, Costa Rica, Jordan, and Pakistan. This new text read:

> Preamble p.p. 5
>
> *Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among states **and the peaceful settlement of disputes,** *including* the principles of equal rights and self-determination of peoples and the territorial integrity of all States, as enshrined in the Charter of the United Nations and the Declaration of Principles on International Law concerning Friendly Relations and Cooperation among States.
>
> Article 18
>
> 1. Nothing in this Convention shall affect **the exercise, in accordance with international law, of** other rights, obligations and responsibilities of States 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 **[parties] [combatants in]** armed conflict, as those terms are understood under international **humanitarian** law, which are governed by that law, are not governed by this Convention, ~~**and**~~

[364] Colombia, "Proposal concerning a new pre. para. 1" *supra* note 323; Hostages Convention, *supra* note 158, pre. para. 3:

> *Reaffirming* the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as other relevant resolutions of the General Assembly.

[365] Diaz, Autograph notes, *supra* note 119, Oct. 24, 2001.

> **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.**"[366]

On paragraph 1, India had difficulties with the word "exercise" since it included an open-ended range of activities. It preferred instead an abstract reference to the principle. In contrast, Egypt, Iran, and Jordan preferred the retention of that word. Pakistan still had difficulties with paragraph 2 since it did not exclude the activities of self-determination movements. Australia and Belgium argued that, under the proposed text, legitimate activities of self-determination movements during an armed conflict would, in fact, be excluded from the convention. Iran suggested that, in order to make the proposed text acceptable to the OIC, it might be useful to include an express reference to the fight against foreign or alien occupation, even if it acknowledged that it was implicit in the reference to "armed conflict."[367] On paragraph 3, Egypt reiterated its position against creating an absolute immunity for the activities of state armed forces. Australia argued that that provision did not create any immunity but only refers to a separate body of law. Besides, paragraph 4 makes clear that those activities could be prosecuted under other laws. Egypt replied that paragraph 3 was not clear because of the ambiguity of key phrase: "inasmuch as." Costa Rica recalled that, in the negotiation of the Bombings Convention, those terms had been used precisely because they have several possible meanings including "if," "in so far as," "to the extent that," and "because." The United States argued that, in their view, "inasmuch" should not be

---

[366] Australia (Richard Rowe), "Proposal (Oct. 24, 2001, 8:30 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations, Oct. 24, 2001) (on file with the author).

[367] Diaz, Autograph notes, *supra* note 119, Oct. 24, 2001.

construed as meaning "if." Consequently, Egypt proposed deleting those words as there was no common understanding.[368] Later that evening, the coordinator circulated a revised version of his proposal, adding a reference to the right of peoples, as proposed by Jordan, and to the fight against foreign occupation, as proposed by Iran, but excluding the reference to the "exercise" of the rights under the Charter, as suggested by India.[369] He requested delegations to submit the revised text to their regional groups and to their capitals.

The negotiation of this issue continued the following day, October 25, 2001, among the same small group of delegations.[370] This time, delegations reported on the reactions from their capitals and regional groups to the text proposed by the coordinator the previous evening, which read:

> Preamble p.p. 5
>
> *Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among states and the peaceful settlement of disputes, *including* the principles of equal rights and self-determination of peoples and the territorial integrity of all States, as enshrined in the Charter of the United Nations and the Declaration of Principles on International Law concerning Friendly Relations and Cooperation among States.
>
> Article 18
>
> 1. Nothing in this Convention shall affect the exercise, in accordance with international law, of 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.

---

[368] *Ibid.*

[369] Australia (Richard Rowe), "Proposal (Oct. 24, 2001, 9:00 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations, Oct. 24, 2001) (on file with the author).

[370] Australia, Belgium, Costa Rica, Ecuador, Egypt, Iran, Jordan, Pakistan, Russian Federation, Sri Lanka, and the United States.

> 2. The activities of [parties to] [combatants in] armed conflict, including the fight against foreign occupation, 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.[371]

The new preambular paragraph was acceptable to most delegations.[372] The United States, though, had reservations to the express reference to the right of self-determination, while Pakistan could accept the deletion of that reference to self-determination in the preamble as long as there was a clear recognition of the right to fight against foreign occupation in the body of the convention.[373] The United States could not accept the reference to "peoples" in draft article 18.1. The Russian Federation and the European Union also had reservations to that reference since it was not clear for them which rights, obligations, and responsibilities peoples – as opposed to states – actually have under international law. In this context, Belgium asked if peoples' rights would be interpreted as referring only to self-determination and to nothing else. When Jordan replied affirmatively, Belgium said the European Union would reconsider its stance in light of this new understanding. Meanwhile, paragraphs 2 and 3 caused considerable problems. India, the European Union, and the United States preferred the language used in the Bombings Convention. They could not accept the reference neither to foreign occupation nor to parties in paragraph 2. For the United States, the term "parties" was

---

[371] Australia (Richard Rowe), "Proposal (Oct. 24, 2001, 9:00 p.m.)," *supra* note 369.

[372] The Russian Federation, India, Ecuador (speaking on behalf of some Latin American countries), and Belgium (on behalf of the European Union).

[373] Diaz, Autograph notes, *supra* note 119, Oct. 25, 2001.

too broad while "combatants" was not precise enough. According to Belgium, members of the European Union were concerned with the possible domestic interpretations of the proposed formulation, mainly in Northern Ireland and in the Basque region. Egypt, Jordan, and Pakistan said that they had not really accepted the language of the Bombings Convention since, at the time, neither Pakistan nor Jordan had ratified it, and Egypt had made a formal reservation. Meanwhile, according to Egypt, proposed paragraph 3 was not acceptable for the members of the OIC since it created a broad exception for state violence and the use of weapons of mass destruction. Conversely, the United States noted that such an exception was indispensable for its acceptance of the draft convention.[374] Finally, proposed paragraph 4 was not controversial. The United States, while preferring the Bombing's formulation, could accept it as part of a package deal.

Once it became clear that there was no agreement, the coordinator asked delegations for guidance on how to proceed, considering that the session of the Working Group was coming to a close. Egypt suggested adopting the language proposed but allowing for reservations so that members of the OIC could make reservations of proposed paragraph 3 while Western countries could make reservations on the right to self-determination. Iran retorted that the basic principle of self-determination could not be subject to any reservations. As there was no agreement, the meeting was dissolved to allow both the OIC and the European Union to meet once more.[375]

That evening, after the main players had consulted again with their regional groups, allies, and capitals, the small negotiating group met again. This time, the European Union was willing to accept the inclusion of the word "peoples" in paragraph

---

[374] *Ibid.*

[375] *Ibid.*

1, as a final concession, with the rest of the article remaining identical to that of the Bombings Convention, that is, without a reference to foreign occupation and without mentioning self-determination in the preamble. Jordan recognized that this was a major concession on the part of the European Union. For Australia and the European Union self-determination could be recognized as a general principle in paragraph 1, but that it should not affect the implementation of the convention by becoming a defence or justification for those persons accused of terrorist acts. The United States privately said that it could accept the preamble in exchange for the Arabs agreeing to paragraph 3, on the exclusion for state armed forces. Meanwhile, Russia felt that there was a need for a political decision rather than a technical one. Consequently, it advocated preserving the ambiguity of the Bombings Convention regarding both self-determination and governmental armed forces. Nonetheless, it was willing to accept the preamble and proposed paragraph 4, if that helped other delegations. Meanwhile, Egypt and Pakistan noted that the member states of the Organization of the Islamic Conference had considered the coordinator's proposal thoroughly and had only two demands: that the right to fight against foreign occupation be expressly recognized, and that the exception for state armed forces be limited, even if they were flexible on the specific language. Pakistan stressed that neither the preamble nor the reference to "peoples' rights" in paragraph 1 were sufficient for the OIC. Moreover, according to Egypt, a general reference to the right to self-determination was not sufficient since it did not include the right to fight against foreign occupation in Palestine and in the Golan Heights. By the end of the meeting, the coordinator argued that, since there was no agreement, it was impossible to conclude the convention at that time. Belgium and Costa Rica urged the

Islamic states to asses the text as a whole and discover how much they had won with the inclusion in the text of the concept of "peoples' rights" in paragraph 1, and the reference to possible prosecution under other laws, in paragraph 4.[376]

On the last day of meetings of the 2001 session of the Working Group, there were some last minute efforts to find an acceptable solution. In the morning, the OIC met to develop a common position. It seems that the group was divided.[377] Algeria, Kazakhstan, and Turkey had difficulties with the group's position. They opposed the inclusion of exclusions from the scope of the convention based on self-determination. Morocco and Jordan believed that the group should accept the package deal proposed by the European Union, that is, accept the reference to "people's rights" in paragraph 1, while using the formulation of the Bombings Convention in paragraphs 2 and 3. Conversely, Egypt, Palestine, and Syria urged the group to demand an express recognition of the right to self-determination while they were very critical of those delegations more willing to make concessions, such as Jordan. It was suggested to raise the issue to the foreign ministers to formulate a common position at the highest level.

In parallel, the United States approached several European capitals asking a firm position on draft article 18, in order not to be isolated. The Secretary of State, Collin Powell called the foreign minister of Egypt asking for more flexibility. The United States also approached Switzerland and New Zealand, in their capitals, asking for more flexibility on the exception for state armed forces. Meanwhile, European ambassadors tried, unsuccessfully, to convince the United States that the reference to "people's rights"

---

[376] *Ibid.*

[377] Diaz, Autograph notes, *supra* note 119, Oct. 26, 2001, recording discussions in the corridors.

was an acceptable compromise. In parallel, it seems that the Moroccan ambassador was actively trying to soften the position of the OIC.[378]

That afternoon, the coordinator, urged by the Legal Counsel of the United Nations, convened another meeting of the small negotiating group.[379] The Legal Counsel informed delegations that the Secretary-General was most concern by the lack of agreement and feared a backlash from the media against both the Organization and the states for the lack of progress. He informed delegations that the Secretary-General had contacted some leaders asking greater flexibility, including the foreign minister of Egypt with whom he had just had lunch. Egypt replied that the OIC basic position had not changed and that more time was needed to consider the alternatives. Moreover, he noted that the position of Egypt had not changed notwithstanding that both the Secretary-General of the United Nations and the Secretary of State of the United States had asked for more flexibility from his foreign minister. The Chairman then proposed to delegations a broad overall package containing the last version of the definition of the offence (article 2), the preamble, article 18, with the reference to "peoples' rights," and the last version of the relationship clause. The text on article 18 read:

> Article 18
>
> 1. Nothing in this Convention shall affect the exercise, in accordance with international law, of 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, including the fight against foreign occupation, as those terms are understood under

[378] *Ibid,* recording discussions in the corridors.

[379] Australia, Belgium (on behalf of the European Union), Costa Rica, Egypt, India, Iran, Jordan, Russian Federation, Sri Lanka, and the United States were present.

> 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**.[380]

This package was rejected by Pakistan, who reiterated the original OIC proposal,[381] and by Jordan, who felt that the reference to "peoples" was part of a broader set of suggestions by the OIC. Meanwhile, Belgium, on behalf on the European Union, and India argued instead that accepting the reference to "peoples' rights" was a major concession for their part and that they were not prepared to yield further. The Russian Federation was concerned that any change in the formulations used in the Bombings Convention would create inconsistencies in the counter-terrorism legal regime. Finally, Jordan suggested adding an express reference to the 1991 General Assembly resolution on terrorism, which had been the last one to recognize the right of self-determination against foreign occupation,[382] but the United States objected. Privately, the United States said that they could not accept even the reference to "peoples' rights." The meeting was

---

[380] Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations on Oct. 26, 2001) (on file with the author) *reproduced in*: U.N. Legal Counsel (Hans Corell), "Talking Points at a meeting with representatives of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Mali, Malaysia, Pakistan, Russian Federation, Sri Lanka, and the United States, on a comprehensive convention against terrorism, Oct. 31, 2001, annex I, p. 6, (TD, on file with the author).

[381] Malaysia, on behalf of the OIC group, "Additional para.," *supra* note 57, art. 2, new para.

[382] G.A. Res. 46/51, pre. para. 15, U.N. Doc. A/RES/46/51 (Dec. 9, 1991):

> Reaffirming also the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and foreign occupation, and upholding the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

then dissolved to allow OIC delegations to meet and request further instructions from their capitals.[383]

That evening, the small negotiating group met once more.[384] This time, however, the delegations representing the Organization of the Islamic Conference changed. Instead of Pakistan, Jordan, and Egypt, the OIC was represented by its chair, Mali, assisted by Malaysia, and Tunisia. At the outset, Mali said that the OIC was not prepared to reach an agreement at that time and that they could wait until the end of the Sixth Committee or even to the next session of the *Ad Hoc* Committee, in February 2002. It also proposed, as the last concession for the OIC, to add to paragraph 2 a reference to foreign occupation, and to limit the exception to state armed forces to acts performed "in conformity with international law."[385] The United States and the Russian Federation argued that it was too late in the session to consider new proposals of this magnitude which would require time to consult with capitals.[386] Since the positions were so far apart, the coordinator felt that he could not fairly put forward any text for the consideration of the plenary. Moreover, since the session of the Working Group was coming to a close, it was decided

---

[383] Diaz, Autograph notes, *supra* note 119, Oct. 26, 2001.

[384] Belgium (on behalf of the European Union), Costa Rica, Ecuador, India, Malaysia, Mali (on behalf of the OIC), Russian Federation, Tunisia, and the United States, and the UN Legal Advisor (Mr. Hans Corell) were present.

[385] The text proposed by Mali was later formally submitted as: Organization of the Islamic Conference, "Text proposed by the Member States of the OIC" art. 18.2 and 8.3, *in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), Report, Annex IV, at 17,U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002) [hereinafter 2002 Ad Hoc Comm. Report]:

> 2. The activities of the parties during an armed conflict, **including in situations of foreign occupation,** 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 in conformity with international law**, are not governed by this Convention. (Emphasis added)

[386] Diaz, Autograph notes, *supra* note 119, Oct. 26, 2001.

to recommend to the Sixth Committee to continue working "as a matter of urgency on the elaboration of the comprehensive convention on international terrorism, building upon the work accomplished during the meeting of the Working Group."[387]

E) The Secretary-General intervenes

By the end of its 2001 session, the Working Group had produced an almost completed text of the draft comprehensive convention. The technical, police and judicial cooperation provisions as well as the final clauses, articles 3 to 17 bis and 20 to 27, were agreed.[388] In addition, the coordinator's proposals on the definition of the offence, article 2, and on the relationship with the previous conventions, article 2 bis, were agreed also, even if some delegations were still waiting for a satisfactory solution on the pending issues before giving their final consent.[389] What was really missing was agreement on the question of the exception for military forces and self-determination. At this point, the Secretary-General decided to intervene in the negotiations. He was concerned that the failure to conclude the comprehensive convention would have, after September 11, a negative impact on the image of the Organization. Moreover, he felt that the technical, legal negotiations at the expert level were exhausted and what was needed to reach an agreement was a political decision from the ambassadors. Thus, he invited the

---

[387] 2001 Working Group Report, *supra* note 118, ¶ 19.

[388] Friends of the Chairman, rolling text of Oct. 25. 2001, *supra* note 223.

[389] Australia (Richard Rowe), "Informal text," *supra* note 151.

ambassador of the states that had participated in the small-group, informal, informals to meet with him on November 5, 2001.[390]

On October 31, 2001, in preparation for the ambassadorial meeting with the Secretary-General, the Legal Counsel of the United Nations meet with the legal experts who had participated in the previous small-group consultations.[391] At that meeting, the Legal Counsel stressed the need to reach an agreement before November 10, 2001, when that year's General Debate in the General Assembly was set to start. In his view, if no agreement was found by that date, the General Assembly would have been seen as having "fallen short of expectations," and that it would have been "very difficult to explain to the general public and the mass media why it was not possible to come to a conclusion when, basically, Member States have agreed on a complete text and the only remaining issue can be solved at the political level," by heeding the Secretary-General's call for moral clarity against terrorists.[392] At the meeting, however, there was not much enthusiasm for these suggestions. In fact, the previous agreement on the other sections of the draft convention began to unravel. The United States still could not accept the proposed

---

[390] U.N. Secretary General, Letter to the Permanent Representatives of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, Mali, Pakistan, Russian Federation, Sri Lanka, and the United States, Oct. 30, 2001 (TD, convening a meeting on the draft comprehensive convention against terrorism) (on file with the author):

> I refer to the fact that the Working Group of the Sixth Committee established pursuant to General Assembly resolution 51/210 of 17 December 1996 and 55/158 of 12 December 2000 was not able to conclude last week the text of the Comprehensive Convention on International Terrorism. However, great progress was made and it would seem that the solution is within reach. (…) The remaining issues require political will and compromise in order to reach consensus, and I think that the experts who negotiated the text have come as far as they can at the present. (…) In light of the events of 11 September, (…) we cannot fail in our endeavours to conclude an international convention against terrorism.

[391] U.N. Legal Counsel (Hans Corell), Letter to the legal advisors of the permanent missions of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, Mali, Pakistan, Russian Federation, Sri Lanka, and the United States, Oct. 30, 2001 (TD, convening a meeting at the expert level to prepare an ambassadorial level meeting with the Secretary-General on Nov. 5, 2001) (on file with the author).

[392] U.N. Legal Counsel (Hans Corell), "Talking Points," *supra* note 380, p. 3.

reference to "peoples' rights" in the coordinator's text,[393] notwithstanding efforts by Belgium and the United Kingdom to convince it. Egypt and India expressed their desire to reconsider the relationship provision, while Pakistan said that, if there was no satisfactory agreement of the question of self-determination in the context of article 18, it will propose new suggestions for the definition of terrorism in article 1.[394] In parallel, the European Union met to consider lack of progress in the negotiations. It seems that Germany invited delegations to consider the possibility of asking for a vote to adopt the convention. Most European countries, however, were opposed to a vote since it would have weakened the outcome and because, on an issue related to Palestine, it was likely that the over-50 members of the OIC might vote united against the convention.[395] Meanwhile, the United States lobbied those ambassadors invited to attend the meeting with the Secretary-General requesting them to oppose the OIC position.[396]

The Secretary-General began the November 5, 2001, ambassadorial meeting by stressing that the deliberate killing of civilians should never be justified and that it was indispensable to conclude the draft convention before November 10.[397] The Legal Counsel stressed that freedom fighters are not entitled to commit terrorist acts and that

---

[393] Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)," *supra* note 380, art. 18.1.

[394] Diaz, Autograph notes, *supra* note 119, Oct. 31, 2001.

[395] *Ibid.,* recording discussions in corridors.

[396] United States (Amb. Richard C. Brown), Letter to Amb. Bernd Niehaus, Permanent Representative of Costa Rica to the United Nations, on the meeting convened by the U.N. Secretary-General on the draft comprehensive convention, Nov. 5, 2001. (TD, photocopy) (on file with the author).

[397] The Permanent Representatives of Australia, Belgium (as chair of the European Union), Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, Mali (as chair of the OIC), Pakistan, Russian Federation, Sri Lanka, and the United States, their respective legal advisors, the Secretary-General, and the U.N. Legal Counsel were present.

their conduct should be governed by international humanitarian law.[398] The European Union, India, the Russian Federation, and the United States said that they could accept, as a final effort to reach an agreement, the text proposed by the coordination on October 26.[399] This was a change of position by the United States, which now accepted the reference to "peoples' rights" in the body of the convention. In contrast, Mali, speaking on behalf of the OIC, said that they still had difficulties with the proposed text. The Egyptian ambassador openly explained that their difficulties arose from the fact that they feared that Israel was going to use the proposed convention against the Palestinians in the occupied territories. Having suffered terrorist attacks, Egypt supported the conclusion of the treaty, but not to the price of compromising the rights of the Palestinian people. Similarly, Pakistan argued that all Islamic countries condemned terrorism but that they could not sacrifice the right of peoples to self-determination. Moreover, for Pakistan, the convention had to address state terrorism. The Ambassador of Jordan was more constructive. He noted that there were various positions within the OIC and that many of its members had a more flexible approach. In his view, at that point, the OIC had not yet rejected the coordinator's proposal but was only making some additional suggestions. Towards the end of the meeting, the Secretary-General concluded that, since the United States had dropped its objections to the coordinator's text, only the OIC needed more time to consult. Iran immediately objected to the impression given that the OIC was the

[398] Diaz, Autograph notes, *supra* note 119, Nov. 5, 2001.

[399] Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)," *supra* note 380, art. 18.

one impeding agreement. In its view, the Western side had to be more flexible.[400] The meeting was then adjourned without reaching any agreement.

The Secretary-General reconvened the same group of Ambassadors on October 7, 2001. This time, he invited also the chairs of the main regional groups.[401] By this time, the OIC had produced a common position, based on the Final Communiqué of the Doha meeting of OIC foreign ministers.[402] Mali stressed that the OIC supported the conclusion of the comprehensive convention but that there were complex legal and political issues still pending. In their view, OIC members had been flexible and they now expected the other side to reciprocate. Mali said that they had only two basic demands, that the right of self-determination in situations of foreign occupation be clearly distinguished from terrorism and that the exception for state armed forces be limited only to legitimate activities performed in conformity with international law by clarifying the reference to "official duties." Mali expressed the stance of the OIC regarding self-determination, as follows:

> The "principle of equal rights and self-determination of peoples" is enshrined in the UN Charter, and reflected in many resolutions adopted by the General Assembly. Thus, those who fight against colonial domination and foreign occupation in the exercise of their legitimate rights should be distinguished from terrorists. The point needs to be clarified that in the course of negotiations the Islamic Group has never sought **exclusion or impunity** for those who violate relevant norms and principles of international humanitarian law. By contrast, it is demanding that an express provision be provided in the draft convention as to the **application of principles of international law including**

---

[400] Diaz, Autograph notes, *supra* note 119, Nov. 5, 2001.

[401] Australia, Belgium (as chair of the European Union), Ecuador, Egypt, Honduras (as chair of GRULAC), India, Iran, Jordan, Mali (as chair of the OIC), Norway (as chair of WEOG), Pakistan, Russian Federation, Sri Lanka, Sri Lanka, Syria (as chair of the Asian Group), Uganda (as chair of the African Group), and the United States, were present.

[402] Organization of the Islamic Conference, "Final communiqué of the Ninth Extraordinary Session," *supra* note 306.

> **International Humanitarian Law** in the exercise of the above mentioned rights and in situations of foreign occupations. [403]

Hence, Mali reiterated the OIC's proposals of October 26.[404] The ambassadors of Egypt and Pakistan then proposed that negotiations be continued at the expert level, in the context of the Sixth Committee and its subsidiary bodies. They were not prepared to enter into negotiations right then, at the ambassadorial level.[405] The Secretary-General argued in vain for reaching an agreement at that moment. He believed that the experts could not make any further progress.[406] In supporting the Secretary-General, Australia said that the coordinator, Mr. Richard Rowe, feared that another round of negotiations would unravel the rest of the text. The UN Legal Counsel suggested that agreement was very close since the coordinator's text contained a good technical solution.[407] The Secretary-General then proposed to continue negotiations on the basis of the coordinator's text. However, this was opposed by Pakistan and Malaysia. For Pakistan, both the coordinator's text, accepted by the Western powers, and the OIC proposals should have the same standing. For Malaysia, the last OIC proposals were their bottom line. Pakistan underlined that there was a real stalemate and that no one should have false illusions; in his view, agreement was not "around the corner."[408] Most ambassadors remained silent. Consequently, the Secretary-General had to recognize that there was no

---

[403] Mali, "Aide-memoire" (Nov. 7, 2001) p. 2, (TD, containing the statement by Mali on behalf of the Organization of the Islamic Conference at the ambassadorial level consultations with the Secretary-General on art. 18 of the draft comprehensive convention) (on file with the author) (bold in the original).

[404] *Ibid*., pp. 2 – 3; Organization of the Islamic Conference, "Text proposed by the Member States of the OIC," *supra* note 385, arts. 18.2 and 18.3.

[405] Diaz, Autograph notes, *supra* note 119, Nov. 7, 2001.

[406] Supported the Russian Federation.

[407] Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)," *supra* note 380, art. 18.

[408] Diaz, Autograph notes, *supra* note 119, Nov. 7, 2001.

real will to negotiate and that the issue had to be returned to the experts. He then asked the Australian ambassador to explore the best way to continue the discussions.[409]

Regrettably, it seems that the well-intentioned intervention by the Secretary-General actually had a negative impact on the negotiations. The Secretary-General, and his Legal Counsel, gave the impression, rightly or wrongly, of having sided with the Western countries and of trying to push the OIC into a corner. From the very beginning, the position of the Arab states, arising from the concrete conflict in the Middle East, was belittled with a call for moral clarity.[410] As a result, the OIC hardened its positions and its more flexible members, such as Turkey, Morocco, and – to a certain extent – Jordan, were silenced. Moreover, it seems that, by raising the discussions to the level of the ambassadors, the general environment of the negotiations became more overtly political and confrontational and less technical and constructive.

The coordinator, who had left New York at the end of the Working Group, in late October, 2001, returned on November 19 to continue consultations on the issues related to armed forces and self-determination. Since he feared that any open meeting on the convention would unravel the delicate agreement on other issues, he chose to limit himself only to bilateral consultations with the most interested delegations.[411] Not

---

[409] *Ibid.*

[410] See U.N. Secretary-General, "Statement," *supra* note 103, at 3: "I understand that there are outstanding issues, which until now have prevented agreement. (…) But let me say frankly that there is also a need for moral clarity. There can be no acceptance for those who seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance."

[411] Australia, Letter from the Permanent Representative of Australia to the United Nations, Amb. John Dauth, to the Permanent Representative of Costa Rica, Amb. Bernd Niehaus, on the organization of consultations regarding the draft comprehensive convention against terrorism, file # 151/7, (Nov. 9, 2001) (on file with the author).

surprisingly, there were no changes on the substantive positions.[412] Consequently, the General Assembly decided to continue negotiations the following January, during the next meeting of the *Ad Hoc* Committee.[413] Nonetheless, there were some efforts, to put the failure to agree in the best light possible, for the benefit of the general public and the media. The General Assembly welcomed "the important progress attained in the elaboration of the draft comprehensive convention on international terrorism" during 2001.[414] The chairman said that "[w]orking in a spirit of compromise and flexibility, the Working Group had made considerable progress towards completing the text of the draft convention on international terrorism."[415] The coordinator stressed that "all delegations had reiterated their commitment to achieving a comprehensive convention as quickly as possible,"[416] and the Legal Counsel underlined that the Secretary-General, "who was following the Committee's work with interest, found the outcome of the meetings of the Working Group (…) most encouraging."[417]

F) A long winter

After the failure to agree at the end of 2001, the negotiations fell into an impasse. For several years, the *Ad Hoc* Committee and the Working Group continued to meet, but

---

[412] Australia, "Statement," (Amb. Rowe, coordinator on the draft comprehensive convention) U.N. GAOR 56th Sess. Sixth Comm. 28th mtg., ¶ 8, U.N. Doc. A/C.6/56/SR.28 (Nov. 21, 2001).

[413] G.A. Res. 56/88, ¶¶ 16 – 17, U.N. Doc. A/RES/56/88 (Dec. 12, 2001).

[414] *Ibid.,* ¶ 15.

[415] Sri Lanka, "Statement," (Amb. Perera, Chairman of the Working Group) U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶¶ 64 - 68, at 68, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

[416] Australia, "Statement," *supra* note 412.

[417] U.N. Legal Counsel, "Statement" U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶ 74, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

no real progress was made. The main goal of the chairman and the successive coordinators was to preserve the agreements reached in 2001 and to wait for a breakthrough on the question of self-determination and state armed forces. Moreover, they tried to avoid giving the impression of failure. They stressed the constructive spirit of the negotiations and the fact that agreement was imminent. Meanwhile, the position of delegations, if anything, became more entrenched.

In 2002, the *Ad Hoc* Committee met for only one week, beginning on January 28, 2002. It focused on the preamble and on draft article 18, on self-determination and the exception for armed forces.[418] Article 18 was discussed on Monday, January 28, 2002, in informal consultations open to all delegations. The coordinator introduced to the broader group of delegations his last proposal, dated October 26, 2001.[419] Simultaneously, the Organization of the Islamic Conference circulated the final amendments to article 18 presented by Mali, as well as its position paper of November 7, 2001.[420] These texts were not necessarily known to those delegations that had not participated in the small-group negotiations with the Secretary-General.[421] During the discussions, not surprisingly, members of the OIC supported the proposal to replace the term "armed

---

[418] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report, ¶¶* 1 and 10, U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002) [hereinafter: 2002 Ad Hoc Comm. Report].

[419] Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)," *supra* note 380, art. 18.

[420] Organization of the Islamic Conference, "Text proposed by the Member States of the OIC," *supra* note 385; Mali, "Aide-memoire," *supra* note 403.

[421] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator, "Report on the results of the informal consultations," *in:* 2002 Ad Hoc Comm. Report, *supra* note 418, Annex VI, ¶ 2; U.N. Codification Division, "Informal consultations on 28 Jan. 2002, Article 18," (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the Bureau, Jan. 29, 2002) (on file with the author); Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations, Jan. – Feb. 2002, at Jan. 28, 2002 (on file with the author).

forces" with "parties" in draft article 18.2 and to add an express reference to situations of foreign occupation.[422] As before, the European Union, the United States, and the Russian Federation objected. Similarly, OIC members supported limiting the exception for state armed forces, in draft article 18.3, only to those acts performed in conformity with international law.[423] Jordan, in particular, argued that the problem arose because international law does not define the legitimate, official duties of state armed forces. Once again, the United States, the European Union, the Russian Federation, and others objected.[424] Switzerland, which had suggested that language in the first place,[425] was willing to compromise and accept the coordinator's text.[426] Several delegations sought to include references to self-determination in the preamble. Lebanon and Syria recalled their earlier proposal to refer to General Assembly Resolution 46/51, the last one to expressly recognize the right of self-determination in the context of terrorism,[427] as well as to the Declaration on the Fiftieth Anniversary of the United Nations,[428] which also mentioned that right.[429] This suggestion was supported by most Islamic states but opposed by the Western powers.[430] Moreover, there was also a discussion on state terrorism. One of the paragraphs proposed by India for the preamble read:

---

[422] Iran, Iraq, Jordan, Libya, Malaysia (on behalf of the OIC), Pakistan, Palestine, and Syria.

[423] Egypt, Iraq, Jordan, Malaysia (on behalf of the OIC), Palestine, and Syria.

[424] Also Belgium, China, Israel, Japan, Netherlands, and Poland.

[425] New Zealand and Switzerland, "Proposal on art. 18.2," *supra* note 272, art. 18.2.

[426] U.N. Codification Division, "Informal consultations on 28 Jan. 2002, Article 18," *supra* note 421; Diaz, Autograph notes, *supra* note 421119, at Jan. 28, 2002.

[427] G.A. Res. 46/51, *supra* note 382,

[428] Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, G.A. Res. 50/6, annex, U.N. Doc. A/RES/50/6 annex (Oct. 24, 1995).

[429] Lebanon and Syria, "Proposal on new preambular para.," *supra* note 267, pre. para 15.

[430] Supported by: Cuba, Djibouti, Egypt, Iran, Iraq, Lebanon, Malaysia, Pakistan, Palestine, Saudi Arabia, Sudan, Syria, Tunisia, and the United Arab Emirates. Opposed by: Argentina, Belgium, France, Russian

> *Convinced* that the suppression of acts of international terrorism, including those which are committed or supported by States, directly or indirectly, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States, [431]

Canada, Japan, and the United States sought to delete the reference to terrorist acts "committed" by states, since this would have recognized that states themselves could be criminal actors. Finland suggested replacing the reference to acts "committed" with states with acts "in which States are directly or indirectly involved."[432] Australia, Russia, and Spain proposed to delete the reference to states, while Belgium suggested deleting the whole preambular paragraph. Conversely, most members of the OIC supported the text as proposed by India.[433] Since this issue was linked to the question of armed forces, there was no agreement.[434] Finally, Pakistan, Syria, and Tunisia suggested adding the following paragraph on the need to address the root causes of terrorism, including foreign occupation:

> *Recalling* General Assembly resolution 40/61 of 9 December 1985, which, inter alia, 'urges all States, unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those

---

Federation, Spain (on behalf of the European Union), and the United Kingdom. U.N. Codification Division, "Informal consultations, 29 Jan. 2002, morning and afternoon, Preamble," p. 1, (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the Bureau, Jan. 29, 2002) (on file with the author).

[431] India's Revised Draft Convention, *supra* note 39,

[432] Supported by Brazil, Cuba, Ecuador, and Liechtenstein.

[433] Bangladesh, Iraq, Jordan, Lebanon, Libya, Malaysia, Morocco, Pakistan, Palestine, Sudan, Syria, Tunisia, Turkey, and Uganda.

[434] 2002 Ad Hoc Comm. Report, *supra* note 418, Appendix: "list of proposal made during informal consultations on the preamble", p 23; U.N. Codification Division, "Informal consultations, 29 Jan. 2002, morning and afternoon, Preamble," *supra* note 430, at 3.

> involving alien occupation, that may give rise to international terrorism and may endanger international peace and security'[435]

Nonetheless, the United States objected to this text.[436]

By the end of the session, the coordinator suggested including his October 26 proposal in the Committee's report, for further discussions. However, members of the OIC demanded that both the coordinator's proposal and their own be given the same status. Moreover, Lebanon insisted that a footnote be added to all the rolling texts, including to those provisions that were not controversial and that had already been preliminarily agreed, stating that it was "understood that further consideration will be given to these proposals, together with all other written and oral proposals, in future discussions, including the outstanding issues." Since the report of the committee had to be adopted by consensus, delegations had to agree to these demands.[437] Consequently, by the end of the 2002 session of the *Ad Hoc* Committee, positions were more polarized than before and all the previous agreements were being questioned.[438]

A few months latter, the OIC ministers of foreign affairs reaffirm their group position. In their Kuala Lumpur Declaration on Terrorism, adopted on April 3, 2002, they said:

> 2. We will work towards the early conclusion of a Comprehensive Convention on International Terrorism. In this regard, we reiterate our support to

---

[435] 2002 Ad Hoc Comm. Report, *supra* note 418, Appendix: "list of proposal made during informal consultations on the preamble", p 23, new pre. para.

[436] U.N. Codification Division, "Informal consultations, 29 Jan. 2002, morning and afternoon, Preamble," *supra* note 430, at 4.

[437] See 2002 Ad Hoc Comm. Report, *supra* note 418, Annex IV: Text relating to art. 18 of the draft comprehensive convention; See also *Ibid.,* identical nn. at pp. 3, 6, 8, 17, 18, 22.

[438] Diaz, Autograph notes, *supra* note 421, at Feb. 1, 2002.

> the positions adopted by OIC member states at the ongoing negotiations on the said Convention.
>
> 3. We will work towards an internationally agreed definition of terrorism and terrorist acts, which shall be differentiated from the legitimate struggle and resistance of peoples under colonial or alien domination and foreign occupation for national liberation and self-determination, for incorporation into the draft Comprehensive Convention on International Terrorism.[439]

This decision further consolidated that group's common stance in the negotiation and silenced the dissenting voices within the OIC.

Later that year, as it was feared that an extended discussion of the draft convention would actually extend the areas of disagreement, the bureau of the Sixth Committee decided that the Working Group on terrorism should only meet two days: October 15 and 16, 2002.[440] At the outset, the coordinator stressed the need not to reopen "texts on which there was already a large measure of agreement," as well as the "importance of a 'package-approach' to resolve the outstanding issues."[441] The discussion on article 18, on self-determination and armed forces, was reduced to the minimum. Although Syria and Saudi Arabia supported the OIC proposal, Denmark, speaking on behalf of the European Union, the United States, and Costa Rica supported the coordinator's text. India argued, in support of the coordinator's text, that this provision should follow, as far as possible, the existing precedent of the Bombings

---

[439] Organization of the Islamic Conference, "Kuala Lumpur Declaration on International Terrorism," adopted at the extraordinary session of the Islamic Conference of Foreign Ministers on Terrorism (April 3, 2002)" plan of action, ¶¶ 2 – 3, http://www.oic-oci.org/english/conf/fm/11_extraordinary/declaration.htm accessed on Aug. 12, 2007.

[440] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II, U.N. Doc. A/C.6/57/L.9, ¶ 9, (Oct. 16, 2002) [hereinafter: 2002 working Group Report]; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations, Oct. 15 – 16, 2002, at Oct. 15, 2002 (on file with the author).

[441] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator, "Report on the results of the informal consultations," *in:* 2002 working Group Report, *supra* note 440, Annex II, ¶ 2.

Convention. On the relationship clause, draft article 2.bis, the Philippines argued that the coordinator's text limited too much the scope of application of the convention and would discourage states from ratifying it. The European Union believed that the discussion of this text should not be reopened until there was agreement on article 18. Demark, Finland, Sweden, and Switzerland noted that, for them, the proposed relationship clause was an essential element of the package-deal. Canada, the European Union, and the United States argued that the preamble should not refer to acts of terrorism committed by states but rather by acts of terrorism supported by states. Islamic countries, though, preferred the original text proposed by India, which recognized state terrorism.[442] Similarly, Islamic countries supported the addition of a reference to the root causes of terrorism in the preamble while Western countries opposed it.[443] By the end of the 2002 session of the Working Group, the coordinator underlined that the key question was article 18; that once agreement was found regarding that provision, the committee should be able to find the solution for all other pending issues.[444]

In 2003, the *Ad Hoc* Committee met only for 3 days, from 31 March to April 2, 2003, since it was felt that extensive discussion could unravel the previous agreements. Moreover, the bureau felt that direct consultations among interested delegations would not be useful unless there was a major change in positions. Consequently, it was decided to have a general exchange of views, to give delegations an opportunity to deliver formal statements, and to move immediately after to bilateral consultations between the

---

[442] Egypt, Jordan, Lebanon, Pakistan, Sierra Leone, and Syria.

[443] Supported by Egypt, Indonesia, Jordan, Malaysia, Pakistan, Saudi Arabia, Sierra Leone, Syria, and Tunisia; but opposed by Argentina, Canada, Costa Rica, India, and Japan. Diaz, Autograph notes, *supra* note 421, at Oct. 15, 2002.

[444] U.N.G.A. Sixth Comm. Working Group, Coordinator, "Report on the results of the informal consultations," *supra* note 441, ¶ 12.

coordinator and some interested delegations thus avoiding open consultations on the text.[445] At those private, bilateral meetings, there was little real progress.[446] The majority of delegations reiterated their previous positions. Switzerland said that it had already arrived to at bottom line regarding the relationship clause. Conversely, the Philippines wanted to review that provision. The United States thought that, once there was agreement on article 18, it might be worth the effort to revisit the question of the relationship of the new convention with the sectoral treaties since they favored in general the application of the most recent instrument. During the bilaterals, the future of the negotiations was discussed. Israel believed that taking a break of a couple of years, waiting for an improvement in the Middle East situation, could be useful. In his view, having pointless meetings was unnecessary. The European Union feared that slowing down the rhythm of meetings could be perceived as a failure. Syria felt that having only one negotiating session a year might be appropriate, while the United States was flexible.[447] Moreover, there were several interesting reflections on the whole process. India speculated that, if the Security Council had not adopted resolution 1373, delegations probably would have been more committed to the adoption of the

---

[445] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* ¶¶ 9 and 11, U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003) [hereinafter 2003 Ad Hoc Comm. Report].

[446] There were bilateral meeting between the coordinator and Brazil, Colombia, India, Israel, Japan, Liechtenstein, Mexico, Pakistan, Philippines, Republic of Korea, Romania, Switzerland, Trinidad and Tobago, and the United States. There was also a meeting between the coordinator and various members of the OIC (Algeria, Jordan, Libya, Malaysia, Pakistan, Saudi Arabia, Syria, and Tunisia).

[447] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention, "Report of the results of the informal bilateral consultations," 2003 Ad Hoc Comm. Report, *supra* note 445, Annex II.A; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, March 31 – April 2, 2003, at March 31, 2003 (on file with the author).

comprehensive convention.[448] Israel noted that the draft convention should not be adopted at any cost. In his view:

> In our efforts to conclude the drafting of this convention, we cannot risk further compromises that would serve those who seek a purported justification for engaging in terror rather than preventing it. (…) Israel supports the conclusion of the draft comprehensive convention and the draft convention on nuclear terrorism, but not at any price. It should be recalled that considerable compromise has already been made in respect of Article 18 of the draft comprehensive convention, and further erosion of the language circulated by the coordinator would undermine any efforts to reach a successful conclusion based on acceptable and enforceable legal standards.[449]

The negotiations continued between the 6th and the 10th October, 2003, in the framework of the Working Group of the Sixth Committee.[450] On October 7, the coordinator held both informal consultations open to all delegations, while, on October 8, 2003, he held a series of private, bilateral meetings.[451] The position of delegations remained essentially unchanged. The United States, the European Union, and the Russian Federation still supported the coordinator's text. Italy noted that the coordinator's text was the European Union's bottom line. The United States argued that, although the OIC's suggestion to exclude from the convention only those activities of state armed forces that are performed in conformity with international law might appear, at first glance, attractive, it was dangerous since it would transform any violation of international law into terrorism. He stressed that draft art. 18.3 was not intended to create

---

[448] Diaz, Autograph notes, *supra* note 447, at March 31, 2003.

[449] Israel, "Statement at the Ad Hoc Comm. established by G.A. Res. 51/210, March 31, 2003," at 2, (TD, March 31, 2003) (on file with the author).

[450] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003) [hereinafter: 2003 Working Group Report].

[451] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," *in:* 2003 Working Group Report, *supra* note 450, Annex II.A, ¶ 1.

impunity but only called the attention to the fact that activities of state armed forces are governed by other bodies of law, such as the law of state responsibility. Conversely, Islamic countries and Cuba supported the OIC position. Iran argued that freedom fighters and state armed forces should be treated equally, and that there should be no double standards. Jordan stressed that the OIC proposal was not intended to address the responsibility of states as such but the criminal responsibility of individuals who act on behalf of their states.[452] This time, more delegations became interested on the relationship clause. India, the Philippines, Sierra Leone, and Syria favoured giving precedence to the new instrument. Jordan tried to link agreement of this provision to a satisfactory solution on article 18. Meanwhile, Israel and Liechtenstein upheld the proposed provision giving precedence to the sectoral instruments. For its part, Guatemala proposed a complex formulation to enable state non-parties to the comprehensive convention to apply its provision, on an *ad hoc* basis, regarding state-parties.[453] Most delegations, though, found Guatemala's suggestion was unnecessary and exceedingly complex.[454] In bilateral consultations, the United States suggested deleting the environment from among the list of possible targets of the crime. However, this proposal was not discussed in informal consultations since it was feared that it could have serve as

[452] *Ibid.,* ¶¶ 3 – 7; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, Oct. 6 - 10, 2003, at Oct. 7, 2001 (on file with the author).

[453] Guatemala, "Proposal on additional art. 2 ter," U.N. Doc. A/C.6/58/WG.2/CRP.1, *reprinted in:* 2003 Working Group Report, *supra* note 450, Annex I.A, at 6 – 7.

[454] U.N.G.A. Sixth Comm. Working Group, Coordinator on the draft comprehensive convention, "Report," *supra* note 451, ¶¶ 8 – 11; Diaz, Autograph notes, *supra* note 452447, at Oct. 7, 2003.

an excuse to reopen the definition of the offence.[455] At the end of the session, the coordinator concluded that:

> Although there was no major breakthrough, the consultations proceeded quite smoothly and in a constructive spirit. While delegations continued to reiterate their positions, it seemed clear that the fundamental difference in substance lay largely in the formulation of article 18, which in my assessment remains the key provision. Agreement on this article would facilitate agreement on other issues. The actual scope of article 2 bis needs to be further clarified in light of discussions on article 18.[456]

In 2004, the *Ad Hoc* Committee met from June 28 to July 2. On June 28, there was a general exchange of views. On June 29, there were informal consultations on the draft comprehensive convention; and on June 28 and 30, the coordinator held informal consultations with interested delegations.[457] Work focused on the questions of the relationship of the new convention with the pre-existing sectoral treaties and the exception for armed forces and self-determination movements. There were, however, no major changes in the delegations' positions.[458] On article 18, the European Union and the United States supported the previous coordinator's text, while Iran, Jordan,[459] Morocco

---

[455] U.N.G.A. Sixth Comm. Working Group, Coordinator on the draft comprehensive convention, "Report," *supra* note 451, ¶ 12; Diaz, Autograph notes, *supra* note 452447, at Oct. 7, 2003.

[456] U.N.G.A. Sixth Comm. Working Group, Coordinator on the draft comprehensive convention, "Report," *supra* note 451, ¶ 14.

[457] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report, ¶¶* 8 - 11, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004) [hereinafter: 2004 Ad Hoc Comm. Report].

[458] See*:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary of the general discussion at the plenary meeting held on June 28, 2004," *in:* 2004 Ad Hoc Comm. Report, *supra* note 457, Annex I., ¶¶ 14 – 20.

[459] Jordan, "Statement at the Ad Hoc Comm. established by G.A. Res. 51/210, June 28, 2004," at 2, (TD, photocopy, June 28, 2004) (on file with the author):

> We would also like to reiterate that a civilian who exercises his or her right under international law and international humanitarian law is not a terrorist as long as this person exercises such rights within the limits of such laws, thus not targeting other civilians or terrorizing them. It should also be noted, in this context, that IHL does not consider such a civilian an illegal

and Syria supported the OIC text. On the relationship clause, India suggested deleting the proposed article to give precedence to the comprehensive convention over the sectoral treaties. This suggestion was supported by Algeria, Cuba, Iran, Jordan, Morocco, and Syria. Switzerland, the European Union, and Kenya preferred retaining draft article 2.bis in order to preserve the *aquis* of the previous instruments. For its part, Guatemala withdrew its proposal for a new article 2.ter, on the applicability of the new convention among state-parties to different sets of conventions.[460] In bilaterals, Cuba suggested an amendment to the definition of the offence to make explicit the responsibility to the commanders of armed forces for any acts of terrorism committed by its troops.[461]

In parallel, the delegation of the United States consulted with the member of the G-8 on the future of the negotiations. The United States saw no use in having two negotiating meetings a year. It suggested that the *Ad Hoc* Committee should meet once every two years. It seems, in fact, that the United States was ready to support, but not propose, the termination of the whole process. The European Union believe that there should still be regular meetings, but shorter, since no agreement was forthcoming. India

---

> combatant – there is no such category under such a law. Further, a civilian who does not fit IHL definition of combatant is not necessarily a terrorist. And losing his/her protections including those under Geneva IV does not render this person a terrorist.

[460] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," in: 2004 Ad Hoc Comm. Report, supra note 457, Annex II.A; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, June – July, 2004, at June 29, 2004 (on file with the author).

[461] Cuba, "art. 2.d" (TD, non-paper proposing the addition of a new paragraph to art. 2 on the responsibility of those in command of state armed forces, June 30, 2004) (on file with the author):

> d) Being in the position of effectively controlling or directing the actions of troops belonging to the armed forces of the State, orders, permits, or participates actively in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2, or 3 of this article, in a manner incompatible with international law, including the charter of the United Nations.

believed that a final decision on this question had to be left to the Sixth Committee.[462] In the end, it was decided that the *Ad Hoc* Committee should recommend to the Sixth Committee only to "consider establishing a working group, if appropriate, to continue the elaboration of a draft comprehensive contention on international terrorism."[463]

The Working Group of the Sixth Committee on terrorism met from October 4 to October 8, 2004. There were informal consultations on the draft comprehensive convention on October 5, and private, bilateral consultations between the coordinator and interested delegations on October 5, 6, and 7. The position of delegations had not changed. In fact, in informal consultations, very few delegations took the floor,[464] and Western countries did not enter the debate.[465] In the end, the Working Group recommended to the Sixth Committee that the work be continued, but it did not recommend the reestablishment of the *Ad Hoc* Committee.[466]

G) Renewed interest

At the same time that the negotiations on the comprehensive convention were reaching a low point, several external factors were contributing to a renewed interest in

---

[462] Diaz, Autograph notes, *supra* note 460, at June 17 and 24, 2004, recording discussion in corridors.

[463] 2004 Ad Hoc Comm. Report, *supra* note 457, ¶ 14.

[464] Jordan, Libya, Sierra Leone, Syria, Turkey, United States, and Venezuela.

[465] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," *in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex A, pp. 4 - 5, U.N. Doc. A/C.6/59/L.10 (Oct. 8, 2004) [hereinafter 2004 Working Group Report]; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, Oct. 5, 2004 (on file with the author).

[466] 2004 Working Group Report, *supra* note 465, ¶ 10.

the negotiating process, mainly the adoption of Security Council resolution 1566,[467] and the issuance of the Report of the United Nations High-level panel on Threats, Challenges and Change.[468] On October 8, 2004, the Security Council, prompted by the Beslan terrorist attack,[469] adopted resolution 1566 (2004) which contained what has been called a "working definition of terrorism."[470] It read as follows:

> *Recalls* that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and *calls upon* all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.[471]

In strict terms, though, this text was not a technical, legal definition of the crime of terrorism. It mixed some of the elements of the Financing Convention with a reference to the pre-existing sectoral treaties and a general condemnation of terrorist acts.[472]

---

[467] S.C. Res. 1566 (2004), ¶ 3, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

[468] U.N. High-level Panel on Threats, Challenges and Change, *Report: A More Secure World: our shared responsibility,* U.N. Doc. A/59/565 (Dec. 2, 2004).

[469] On September 1, 2004, group of thirty to thirty-five armed Chechen separatists seized a school in the Southern Russian town of Belsan and took hostage between 1,000 and 1,500 students, parents, and teachers in the school gym. The hostage-takers mined the building and demanded the end of the war in Chechnya, the withdrawal of Russian troops, and the independence of Chechnya. On September 3, when Russian troops were removing the dead from around the school, the hostage-takers opened fire. The troops stormed the building and the roof collapsed. The official death toll was of 338 victims. At least 727 people were hospitalized. About 10 hostage-takers were killed while the others escaped. MIPT Terrorism Knowledge Base, "Riyad us-Saliheyn Martyrs' Brigade attacked Educational Institutions target (Sept. 1, 2004, Russia)" database on line available from http://www.tkb.org/Indicent.jsp?incID=19321 accessed on Ago. 29, 2007.

[470] Saul, *supra* note 109, at 247.

[471] S.C. Res. 1566 (2004), *supra* note 467471, ¶ 5.

[472] Financing Convention, *supra* note 52, arts. 2.1 and 6; see Saul, *supra* note 109, at 247 - 8.

Moreover, for any act to be considered terrorism under this "definition," it had to be criminal in itself and constitute an offence under one of the pre-existing counter-terrorism treaties.[473] Thus, rather than defining terrorism, this formulation referred back to the technical definitions contained in the sectoral instruments. Hence, this text could not be incorporated as such into the comprehensive convention since the new instrument was supposed to establish the criminality of the wrongful acts themselves. In addition, in resolution 1566, the Security Council called states "to cooperate fully on an expedited basis in resolving all outstanding issues with a view to adopting by consensus the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism."[474] It should be underlined that the Council expressly asked for a decision by consensus, when, from a procedural point of view, a vote was always possible.

Some states received positively this call for renewed effort to find a solution.[475] However, others were critical. Switzerland and Costa Rica,[476] for instance, objected to the Security Council entering into the codification of international law. Switzerland

---

[473] The key wording of this paragraph is "criminal acts (…) which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism,"

[474] S.C. Res. 1566 (2004), *supra* note 467471, ¶ 5.

[475] See *e.g.:* India, U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., ¶ 17, U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004); Afghanistan, U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶ 53, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004); Peru, U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶ 9, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

[476] Costa Rica, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶¶ 59 - 61, at ¶ 60, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004):

> The quasi-legislative efforts of bodies with a limited representation could not have the same legitimacy as codification by the fully representative General Assembly. Moreover, the legal instruments adopted by the General Assembly struck a better balance between the different principles governing the international community. The two draft conventions under consideration incorporated important guarantees of respect for due process, human rights, international law relating to refugees and the principle of non-refoulement.

> [N]oted the adoption by the Security Council of resolution 1566 (2004) and welcomed the Council's efforts in that regard. However, when taking long-term legislative measures that affected the entire international community, all States must have an opportunity to participate in the drafting of such measures. (…) Furthermore, resolution 1566 (2004) contained formulations of a legislative nature that did not correspond to definitions used in the draft comprehensive convention on international terrorism or in existing counter-terrorism conventions. The General Assembly must rapidly reach a consensus on the draft comprehensive convention so as to avoid future overlaps between the work of the Assembly and the Security Council. The prerogatives of the Assembly as a legislative body would thus be reinforced, and an objective definition of terrorism would assist the Council in its drafting of counter-terrorism resolutions.[477]

For its part, Jordan, while maintaining its position on self-determination, argued that Security Council resolution 1566 did not create a new definition of terrorism. It

> [W]elcomed the fact that Security Council resolution 1566 (2004) had not created new elements to define a terrorist act but merely reiterated elements to be found in existing instruments, thus avoiding any misunderstanding concerning the Council's authority to legislate on how terrorism should be understood. The resolution had also reiterated the fact that terrorist acts could not be justified on political, philosophical, or other grounds. At the same time, if a given action was legal under international law or the Charter of the United Nations, it was by definition not a terrorist action, even though it might be violent and brutal. The issue of political or other justifications thus became irrelevant.[478]

For its part, Israel questioned the Council's call for consensus. It said that "Consensus, while truly worthy, was not a panacea. The positions of the Member States of the Islamic Conference were untenable and at odds with the thinking of ordinary people all over the world."[479] Mongolia, however, justified the Security Council's proactive behavior:

---

[477] Switzerland, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., ¶¶ 48 – 52, at ¶¶ 51 – 52, U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004).

[478] Jordan, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 46 - 48, at ¶ 47, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

[479] Israel, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶ 41, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004).

> "the current tendency within the Security Council to resort increasingly to the adoption of international norm-setting resolutions was, above all, a consequence of the General Assembly's inability, or even failure, to play its role as the legislative body. Security Council resolution 1566 (2004) contained that body's definition of terrorism only because the General Assembly had not adopted a widely recognized and negotiated legal definition of that phenomenon."[480]

Another factor that generated new interest in the draft comprehensive convention was the report and recommendations of the High-Level Panel on Threats, Challenges and Change. By late 2003, the Secretary-General had convened a group of eminent persons to "assess the current threats to international peace and security; to evaluate how our existing policies and institutions have done in addressing those threats; and to make recommendations for strengthening the United Nations so that it can provide collective security for all in the twenty-first century."[481] In its December 2004 report, the panel elaborated extensively on the need to define terrorism. It underlined the symbolic, normative value of adopting a comprehensive convention rather than its practical usefulness in promoting police and judicial cooperation. Thus, the panel stressed that "the inability of Member States to agree on an anti-terrorism convention including a definition of terrorism (…) prevents the United Nations from exerting its moral authority

---

[480] Mongolia, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 53 -54, at ¶ 54, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

[481] U.N. High-level Panel on Threats, Challenges and Change, *supra* note 468, p.1. The members of the panel were: Robert Badinter (France), Joao Baena Soares (Brazil), Grö Harlem Brundtland (Norway), Mary Chinery Hesse (Ghana), Gareth Evans (Australia), David Hannay (United Kingdom), Enrique Iglesias (Uruguay), Amre Moussa (Egypt), Satish Nambiar (India), Sadako Ogata (Japan), Yevgeny Primakov (Russian Federation), Qian Qiqian (China), Salim Salim (Tanzania), Nafis Sadik (Pakistan), and Brent Scowcroft (United States). The panel was chaired by Anand Panyarachun (Thailand).

and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes."[482] It added,

> Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statute. Legal scholars know this, but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties and the compelling normative framework, understood by all, that should surround the question of terrorism. (…) Lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.[483]

Consequently, the Panel stressed the need for the General Assembly to reach consensus on a definition of terrorism and to "rapidly complete negotiations" on the comprehensive convention.[484] Moreover, the Panel sided with the Western countries on the question of state armed forces and self-determination:

> The search for an agreed definition usually stumbles on two issues. The first is the argument that any definition should include States' use of armed forces against civilians. We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling. The second objection is that peoples under foreign occupation have a right to resistance and a definition of terrorism should not override this right. The right to resistance is contested by some. But it is not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians.[485]

---

[482] *Ibid.,* ¶ 157; see also U.N. Special Advisor to the Secretary-General (Stephen Stedman), "Briefing on the hearing on the United Nations and the Fight Against Terrorism, March 17, 2005," United States House of Representatives, Comm. on International Relations, Subcommittee on International Terrorism and Non-proliferation, available in line from: http://wwwa.house.gov/international_relations/109/sted031705.htm, accessed on March 25, 2005.

[483] U.N. High-level Panel on Threats, Challenges and Change, *supra* note 468, ¶ 159.

[484] *Ibid.,* ¶ 163.

[485] *Ibid.,* ¶ 160.

To conclude, the panel proposed a possible package solution to the question of the definition of terrorism which included: first, a recognition in the preamble that the use of force against civilians by states is regulated by the Geneva Conventions and other instruments, and that, "if of sufficient scale," it constitutes a war crime or a crime against humanity; second, a restatement that acts under the 12 preceding anti-terrorism conventions are terrorism and that terrorist acts in times of war are prohibited by the Geneva Conventions and its Protocols; third, a reference to the definitions contained in the Financing Convention and in Security Council resolution 1566 (2004); and, fourth, an actual definition of terrorism as:

> any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act. [486]

Regrettably, this well-intentioned effort to assist the negotiations had several problems. On the one hand, it disregarded the principled position of the OIC on the question of self-determination and state armed forces. On the other hand, it sought to create an all-encompassing legal regime ignoring the strategic choice of Western countries that preferred a filling-the-gaps convention. In addition, by highlighting the symbolic role of the convention, the panel lost sight of its equally important function as a workable criminal law, mutual legal assistance instrument. Nonetheless, the Secretary-General welcomed this proposal enthusiastically.[487] At the Madrid Summit on

---

[486] *Ibid.,* ¶ 164.

[487] It seems that the Secretary-General was opportunely informed of the political and technical shortcomings of the Panel's suggestions. See: United Nations, *"Press briefing on Secretary-General's*

Democracy, Terrorism, and Security he stressed that: "[f]or too long the moral authority of the United Nations in confronting terrorism has been weakened by the spectacle of protracted negotiations. But the report of the High-Level Panel offers us a way to end these arguments."[488] He added,

> The Panel calls for a definition of terrorism which would make it clear that any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants, with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it, with a view to adopting the comprehensive convention as soon as possible.[489]

Similarly, in his report "In Larger Freedom," the Secretary-General argued that "[w]e must act to ensure that catastrophic terrorism never becomes a reality. This will require a new global strategy, which begins with Member States agreeing on a definition of terrorism and including it in a comprehensive convention."[490] He noted,

> [T]he moral authority of the United Nations and its strength in condemning terrorism have been hampered by the inability of Member States to agree on a comprehensive convention that includes a definition. It is time to set aside debates on so-called "State terrorism." The use of force by States is already thoroughly regulated under international law. And the right to resist occupation

---

report 'In Larger Freedom'," (by Mr. M. Malloch-Brown, and Mr. R. Orr) available on line from: http://www.un.org/News/briefings/docs/2005/Malloch_Brown_Orr_050320.doc.htm, accessed on March 24, 2005:

> Other recommendations remained "bravely the same" as they had been presented by the High-Level Panel, he [Mr. Malloch-Browen] added. Contrary to some earlier reports, Mr. Annan had stood by the tough language the panel had suggested for defining terrorism and crafting an anti-terror convention, "despite the fact there had been huge pressure by some against that."

[488] U.N. Secretary-General, "A Global Strategy for Fighting Terrorism" (Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, Madrid, March 10, 2005) available on line from http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html#transcripcion, accessed on March 24, 2005.

[489] *Ibid.*

[490] U.N. Secretary-General, *In Larger Freedom: towards development, security and human rights for all,* ¶ 84, U.N. Doc. A/59/2005 (March 21, 2005).

> must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians."[491]

Therefore, he fully endorsed the High-level Panel's definition of terrorism, urged world leaders to unite behind it, and asked them to conclude the comprehensive convention before the end of the sixtieth session of the General Assembly, that is, before September 2006.[492] States were less enthusiastic about this approach. The Non-Aligned Movement (NAM), representing close to 120 developing states, considered that

> [S]ome of the Panel's suggestions on the elements of the definition of terrorism are useful. However, NAM believes that the Panel presented a distorted approach by de-emphasizing certain elements in its definition of terrorism. NAM is of the view that the Panel's definition suggested in the Report is flawed, incomplete, technically inaccurate, and not fully satisfactory.[493]

In diplomatic usage, this was extremely harsh criticism. Simmilarly, the African Group noted that

> Political, philosophical, ideological, racial, ethnic, religious, or other motives cannot be a justifiable defense for a terrorist act. However, there is a difference between terrorism and the legitimate struggle waged by peoples for their liberation or self-determination in accordance with the principles of international law. (…) The legal definition of terrorism should be the subject of a treaty concluded by the General Assembly and it is not a matter to be determined and imposed by the other organs of the UN."[494]

---

[491] *Ibid.,* ¶¶ 90 – 91.

[492] *Ibid.,* ¶ 91.

[493] Non-Aligned Movement, *Comments of the Non-Aligned Movement on the observations and recommendation contained in the Report of the High-Level Panel on Threats, Challenges and Change*, ¶ 38, (position paper conveyed to the Secretary-General, Feb. 28, 2005) available on line: www.un.int/malaysia/NAM/Positionpaper280205.doc accessed Ago. 29, 2007.

[494] Malawi, "Statement on behalf of the African Group, at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

For its part, Egypt stressed that:

> As much as we appreciate the Secretary-General's endeavor to formulate a strategy against terrorism, we believe that it lacks elements of particular importance. State Terrorism should be condemned and criminalized regardless of who committed it. The right to resist occupation should not be labeled as "terrorism," as it is already established and governed within the principles of International Law. (…) We believe that the development of an agreed definition of terrorism should be by consensus and through the General Assembly (…).[495]

In the same line of thought, the ambassador of Malaysia noted that his delegation could not "support the Secretary-General's recommendation on the definition as it does not clearly differentiate between terrorism and the legitimate struggles of peoples fighting to be free of colonial and alien domination, foreign occupation and their right to national liberation. It does not also address the root causes of terrorism."[496] Pakistan argued that the "Panel's focus on terrorism is appropriate, but is recommendations are inadequate,"[497] while Bangladesh[498] focused on the question of state terrorism:

> We agree with the Secretary-General that the moral authority of the United Nations and its strength in condemning terrorism have been hampered by the inability of Member States to agree on a comprehensive convention that includes a definition of terrorism. But he queers the pitch somewhat when ha calls upon Member States to set aside debates on "so-called State terrorism."

---

[495] Egypt, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 21, 2005," p. 2, (TD, photocopy) (on file with the author).

[496] Malaysia, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

[497] Pakistan, "Statement at the 4th informal meeting of the G.A. on the recommendations contained in the report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," (TD, photocopy) (on file with the author).

[498] Also Cuba and Venezuela. Cuba, "Statement, in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Feb. 23, 2005," p. 2, (TD, photocopy) (on file with the author); Venezuela, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005," p. 3, (TD, photocopy) (on file with the author).

> "State terrorism" is not synonymous with the use of force by states in consonance with international law. The concept cannot be so easily brushed aside.[499]

Other delegations had objections of a more of technical nature. The Republic of Korea argued that the definitions of terrorism outlined in the High-level Panel Report and in Security Council resolution 1566 could "provide good basis for our discussion, but cannot substitute for a clear legal definition befitting a law enforcement treaty."[500] Similarly, Costa Rica argued that the definition of terrorism to be included in the draft comprehensive convention had to be a workable, technical provision adequate for a mutual legal assistance treaty rather than a political statement.[501] Another group of states supported only the general thrust of the High-level Panel's approach. Luxembourg, speaking on behalf of the European Union, said that it shared the Panel's belief that "achieving consensus in the framework of the GA on an overall definition of terrorism would be highly valuable."[502] Israel said that it appreciated "the sincere attempt by the Panel to recommend an approach to the definition of terrorism (…) We particularly support the point made in the Report that there is no justification for the targeting and killing of innocent civilians,"[503] while the United States agreed with the Panel that "a definition of terrorism needs to exclude state military operations and underscore that the

---

[499] Bangladesh, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

[500] Republic of Korea, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 21 – 22, 2005" (TD, photocopy) (on file with the author).

[501] Costa Rica, "Statement, in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 31, 2005," p. 2, (TD, photocopy) (on file with the author).

[502] Luxembourg, "Statement, on behalf of the European Union in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," p. 2, (TD, photocopy) (on file with the author).

[503] Israel, "Statement, in the informal consultations on the Report of the High-Level Panel on Threats, Challenges and Change, Feb. 24, 2005," p. 2, (TD, photocopy) (on file with the author).

fact of occupation does not justify the targeting and killing of civilians."[504] A final group of states wholeheartedly supported the Panel's proposal. The ambassador of Singapore, for instance, said that "it is significant that the 16 panelists, with their very varied backgrounds and informed by different perspectives of history and international politics, value systems, beliefs and cultures, were able to reach agreement on a package of elements that could go towards a definition of terrorism. My delegation hopes that the General Assembly would be able to take up the package as a whole for consideration with a view to reaching consensus on a definition of terrorism."[505] Similarly, Norway said that, from its point of view, "the proposed definition in paragraph 91 of the Secretary-General's report provides a good basis for agreement and we urge all States to come to the negotiating table in a spirit of compromise."[506]

Soon after the High-level Panel released its report, the *Ad Hoc* Committee met, for the ninth time, from March 28 to April 1, 2005. Negotiation focused mostly on the draft Nuclear Convention, which was then concluded.[507] Nonetheless, the coordinator on the comprehensive convention held informal consultations, open to all delegations, as well as private, bilateral meetings with the most interested parties.[508] In the general exchange of views, most delegations stressed the need to conclude the comprehensive

---

[504] United States, "Statement, at the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 31, 2005," p. 2, (TD, photocopy) (on file with the author).

[505] Singapore, "Statement at the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," p. 2, (TD, photocopy) (on file with the author).

[506] Norway, "Statement, at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

[507] See *supra:* Chapter 5.G.

[508] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* ¶ 14, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005) [hereinafter 2005 Ad Hoc Comm. Report].

convention within the timeframe suggested by the Secretary-General.[509] India, for instance, said that:

> The General Assembly which had successfully evolved the legal framework of twelve international conventions on terrorism, should not delay any further in completing the two draft conventions pending before this committee. Any further delay on their completion would only convey a wrong signal to the international community. We welcome the recommendations made in this regard in the Report of the Secretary-General's High-level Panel on Threats, Challenges and Change. We further welcomed the categorical recommendation in the Secretary General's March 21st Report that the General Assembly should rapidly complete the negotiations on the Comprehensive Convention on Terrorism before the 60th Session.[510]

Similarly, the European Union argued that:

> As the threat of terrorism has grown dramatically globally in the last five years, not one meeting of this Ad-Hoc Committee has gone by without the list of atrocious attacks growing longer. No single state is not directly or indirectly affected. Therefore, action must be taken now.[511]

For its part, Turkey, speaking on behalf of the members of the Organization of the Islamic Conference, said that they:

> [F]urther reiterated the need for progress in the negotiations of the 'Draft Comprehensive Convention on International Terrorism,' and stand ready to work in a constructive way with other UN members. The Group is willing to explore

---

[509] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary of the general discussion at the plenary meeting held on March 28, 2005," *in:* 2005 Ad Hoc Comm. Report, *supra* note 508, Annex I, ¶¶ 6 – 7; United Nations, "Action needed on two draft conventions this year, Ad Hoc Committee on terrorism told, as it begins current session," (press release L/3081) March 28, 2005.

[510] India, "Statement at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" (TD, photocopy) (on file with the author).

[511] Netherlands, "Statement on behalf of the European Union at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" p. 2, (TD, photocopy) (on file with the author).

> new ideas and proposals which will help to overcome remaining differences and finalize the draft convention as soon as possible.[512]

Notwithstanding this renewed commitment to conclude the negotiations, the substantive positions on the pending issues remained unchanged: Islamic delegations still preferred the text proposed by the OIC for article 18,[513] while Western delegations still preferred the text proposed by the previous coordinator.[514] More concretely, Jordan advocated for using of term "parties to a conflict" in draft article 18, as a term-of-art recognized by the International Committee of the Red Cross, while Western delegation preferred the use of "armed forces" as a more precise and better known concept, more suitable for a criminal law instrument.[515] Cuba introduced formally its previous proposal for a new paragraph establishing the criminal responsibility of those in command and control of state armed forces,[516] while the United States informally suggested simplifying the definition of the offence by merging the two subparagraphs on material damage and raising the threshold of damage required to "major economic loss," in order not to criminalize, at the international level, the commission of minor damage during peaceful, political manifestations and rallies.[517]

---

[512] Turkey, "Statement on behalf of the Member States of the Organization of the Islamic Conference at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" p. 2, (TD, photocopy) (on file with the author).

[513] Iran, Jordan, Pakistan and Syria.

[514] The European Union, Germany, Israel, Japan, and the United States.

[515] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," *in:* 2005 Ad Hoc Comm. Report, *supra* note 508*,* Annex II.B, ¶¶ 24 – 28; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, March 28 – April 1, 2005, (on file with the author).

[516] Cuba, "Proposal: new art. 2.4.d," U.N. Doc. A/AC.252/2005/WP.2 (March 9, 2005) *reprinted in:* 2005 Ad Hoc Comm. Report, *supra* note 508*,* Annex III.A.

[517] United States, "Art. 2, ¶1, Proposed Combined Text," (TD, non-paper proposing merging 2.1.b and 2.1.c, March 30, 2005) (on file with the author).

In addition, the coordinator asked delegations to consider the possible impact of the recommendations contained in the reports of the High-Level Panel and the Secretary-General on the negotiations. In response, Germany and Demark argued that the panel had not produced a definition of terrorism but only a description of its core elements. Consequently, in their view, the panel's suggestion could not replace the definition of the criminal offence contained in the draft comprehensive convention. Demark stressed the mandate of the committee was to draft a legal instrument and not a political declaration. Similarly, the United States and Israel sought to distinguish between the basic principles embodied in the panel's recommendation and the actual language to be used in the definition of the offence. For the American delegation, the value of the panel's report resided in its useful formulations on the limits of self-determination and the question of state armed forces, rather than on the definition itself.[518] Similarly, the European Union and Japan argued that it was not necessary to modify the draft definition of the offence since the essential elements of the High-level Panel's proposal were already covered by draft article 2. For them, the proposed definition of the offence was better drafted, from a technical, legal point of view, than the Panel's recommendation. Demark stressed that the term "persons," used in the proposed definition of the offence, was more accurate and neutral than the expression "civilians or non-combatants," used in the High-level Panel's report. Furthermore, it noted that the negotiated text covered other forms of terrorist criminal activity, such as participation, inchoate crimes, and criminal conspiracy, which the Panel had not considered.[519] Meanwhile, for Syria and Pakistan, neither the definition

[518] U.N.G.A. Ad Hoc Comm., Coordinator, "Report of the results of the informal consultations," *supra* note 515, ¶¶ 8 – 9; Diaz, Autograph notes, *supra* note 515, March 28 – 29, 2005.

[519] U.N.G.A. Ad Hoc Comm., Coordinator, "Report of the results of the informal consultations," *supra* note 515, ¶ 10; Diaz, Autograph notes, *supra* note 515, March 28 – 29, 2005.

proposed by the panel nor the suggestions of the Secretary-General were balanced or comprehensive. In their view, both ignored the right of national liberation movements to fight against colonial domination and alien occupation, in exercise of their right of self-determination, as well as the question of state terrorism. For them, such omissions were inexcusable and made progress more difficult. For its part, Jordan noted that the suggestion contained in the report of the Secretary-General that "it was time to set aside debates on the so-called 'State terrorism' because the use of force by States was already thoroughly regulated under international law" was inaccurate, insofar as, at the time, there were situations where international humanitarian law did not regulate the activities of state military forces. In his view, this question depended on whether the violent act was committed during an armed conflict or in times of peace and where did they occured.[520]

At the end of the consultations, the coordinator made an assessment on the progress of the negotiation, the panel's recommendations, and the nature of the committee's work. On the progress of the negotiations, he said that the suggestions contained in the High-level Panel report and Secretary-General's report had "served to re-energize our negotiations" and that he was "personally confident that we will be able to achieve a positive result within the time frame suggested by the Secretary-General," that is, by the end of the 60th session of the General Assembly.[521] On the definition of the offence, he noted, however, that "the essential elements for a possible definition of terrorism contained in the report of the High-level Panel and the Secretary-General's

---

[520] U.N.G.A. Ad Hoc Comm., Coordinator, "Report of the results of the informal consultations," *supra* note 515, ¶¶ 12 – 15; Diaz, Autograph notes, *supra* note 515, March 28 – 29, 2005.

[521] U.N.G.A. Ad Hoc Comm., Coordinator, "Report of the results of the informal consultations," *supra* note 515, ¶ 30.

report are already reflected adequately in the text of draft article 2," and that "draft article 2 uses more precise technical legal language, more suitable for a criminal law instrument than the language used in the report of the High-level Panel."[522] Meanwhile, regarding the nature of the work of the *Ad Hoc* Committee, he said that:

> [T]he mandate of the *Ad Hoc* Committee is to draft a technical, legal, criminal law instrument that would facilitate police and judicial cooperation in matters of extradition and mutual assistance. Our mandate is not to draft a political definition of terrorism. Therefore, this *Ad Hoc* Committee must elaborate a text that fulfils the requirements of criminal law — legal precision, certainty and fair labeling of the criminal conduct — all of which emanate from the basic human rights obligation to observe due process.[523]

Finally, regarding the possibility of overcoming the stalemate by adopting a political solution to the convention and by brushing aside the controversial issues, as suggested by the High-Level Panel and Secretary-General, the coordinator said

> [W]e still have some pending issues, mainly on questions of choice of law and the precise delimitation between international humanitarian law and the legal regime to be established by the new convention. These issues of a technical character have a wide range of legal and political implications. These issues cannot simply be set aside. We must confront them resolutely in order to attain a successful result.[524]

In parallel, from the issuance of the Secretary-General's report "In Larger Freedom," on March 21, 2005, to the start of the 60th session of the General Assembly, on September 16, 2005, there were hectic negotiations to prepare the outcome document of the 2005 Summit of Heads of State and Government on the basis of the

---

[522] *Ibid,* ¶ 31.

[523] *Ibid,* ¶ 32.

[524] *Ibid,* ¶ 34.

recommendations contained in that report.[525] Those discussions were held, not in the Sixth Committee, but in an informal working group of the General Assembly, composed mostly by the permanent representatives to the United Nations and chaired by the president of the General Assembly himself. Since the reaction of most delegations to the Secretary-General's recommendations on terrorism had been rather guarded,[526] the first draft of the outcome document did not try to define terrorism. It contained only a general clause condemning attacks against civilians to intimidate the population or to compel a government:

> We recognize that the targeting and deliberate killing of civilians and non-combatants cannot be justified or legitimized by any cause or grievance, and we declare that any action that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to carry out or to abstain from any act cannot be justified on any grounds.[527]

In addition, the first draft contained a commitment to strive to conclude the comprehensive convention no later than June 2006.[528] This approach was welcomed by some delegations. Pakistan, for instance, argued that "the draft has wisely refrained from unilaterally advancing a definition of terrorism. Intense negotiations may be required to achieve such a definition – given the divergent positions of the member states. Nor is the achievement of another international convention on terrorism, no matter how important,

---

[525] U.N. Secretary-General, *In Larger Freedom, supra* note 490, ¶¶ 145 – 164, in particular ¶¶ 163 – 164.

[526] See *supra* subsection F.2.

[527] U.N.G.A. President, "Draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," ¶ 54, U.N. Doc. A/59/HLPM/CRP.1 (June 8, 2005).

[528] *Ibid.,* ¶ 57.

likely to be decisive for the success of counter-terrorism."[529] Other delegations were more negative. The Russian Federation said that:

> The inclusion of the *definition of terrorism* in the draft document is hardly justified. From the legal point of view, such definition looks quite vulnerable and does not remove the problem of developing a universal legal definition. Its inclusion into the document may have a negative effect of the work of the UN General Assembly Special Committee discussing the comprehensive counter-terrorism convention.[530]

Some delegations were in favor of endorsing the target date for the conclusion of the convention suggested by the Secretary-General. Japan considered that,

> It is important to clearly state, at the September summit, that the targeting and deliberate killing of civilians and non-combatants cannot be justified or legitimized by any cause or grievance. We must show the determination of all the Member States of the UN to engage in the negotiation of the draft Comprehensive Convention on Terrorism aiming for its conclusion by June 2006.[531]

Conversely, other delegations were opposed to any specific time-frame. Indonesia, for instance, said that it supported "the negotiation and adoption by consensus, through the General Assembly, of a comprehensive Convention on Terrorism. In order to avoid undermining the negotiating process of this serious issue, however, we urge that no

---

[529] Pakistan, "Statement in the informal meeting of the Plenary to exchange views on the President's draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005 (A/59/HLPM/CRP.1), June 21, 2005," p. 4, (TD, photocopy) (on file with the author).

[530] Russian Federation, "Statement in the informal meeting of the Plenary to exchange views on the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005, June 21, 2005," p. 4, (TD, photocopy) (on file with the author).

[531] Japan, "Statement, June 21, 2005," p. 3, (TD, photocopy, delivered at the informal meeting of the Plenary to exchange views on the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005) (on file with the author).

deadline or time-frame should be imposed for achieving this objective."[532] Notwithstanding these differences of view, the two subsequent drafts prepared by the president of the General Assembly not only retained the description of wrongful conduct but phase it as a definition of terrorism.[533] That text read:

> We affirm that the targeting and deliberate killing of civilians and non-combatants cannot be justified or legitimized by any cause or grievance, and we declare that any action intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to carry out or to abstain from any act, cannot be justified on any grounds and constitutes an act of terrorism.[534]

This text was subject to intensive discussion among a small "core group" of ambassadors.[535] There, France, the United Kingdom, and Chile supported the president's draft text. Conversely, Egypt, Cuba, and Iran proposed deleting it. Most countries, though, objected to the latter part of this text since it seemed to create a legal definition of terrorism.[536] The United Kingdom, on behalf of the European Union, defended it, arguing that a strong political definition of terrorism was needed. For its part, and to avoid creating the impression of a definition, the United States suggested that those acts would be terrorism if committed by terrorists. Meanwhile, Pakistan, Egypt, the Russian

---

[532] Indonesia, "Statement at the informal meeting of the Plenary to exchange views on the President's draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005 (A/59/HLPM/CRP.1), June 30, 2005," p. 4, (TD, photocopy) (on file with the author).

[533] U.N.G.A. President, "Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," ¶ 85, U.N. Doc. A/59/HLPM/CRP.1/Rev.1 (July 22, 2005); U.N.G.A. President, "Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," ¶ 65, U.N. Doc. A/59/HLPM/CRP.1/Rev.2 (Aug. 10, 2005).

[534] U.N.G.A. President, "Revised draft outcome document," (Aug. 10, 2005), *supra* note 533, ¶ 65.

[535] On the issue of terrorism, they were: Algeria, Brazil, Canada, Chile, China, Costa Rica, Cuba, Egypt, France, Iran, Japan, Mexico, Myanmar, Norway, Pakistan, Russian Federation, Syria, Turkey, United Kingdom (on behalf of the European Union), United States, and Venezuela.

[536] Algeria, China, Egypt, Myanmar, Pakistan, Russian Federation, Syria, and Venezuela.

Federation, and Brazil suggested deleting the reference to non-combatants, so as to exclude from the definition the killing of soldiers in peace-time or out of combat. The European Union, the United States, Japan, and Chile objected. Turkey proposed to include the attacks against military and security forces. Egypt, Syria, Iran, Cuba, and Algeria proposed to add a formulation distinguishing terrorism from self-determination, but the EU objected once more. Finally, Venezuela proposed to include a reference to state terrorism.[537] In the end, no agreement could be found on this "political definition" of terrorism. Thus, the final text, adopted by the heads of state and government participating in the summit, did not attempt to define terrorism. The text did include, however, a call to "make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism during the 60th session of the General Assembly."[538]

H) Another failed end-game

By June 2005, the renewed interest in the comprehensive convention had reached the highest level. Thus, on June 28, the United States Secretary of State Rice met with the president of the General Assembly and informed him that the conclusion of the comprehensive convention was the top priority for the United States for the 60th of the General Assembly. She asked him to convene an urgent session of the *Ad Hoc*

[537] U.N. Secretariat, "Terrorism, Discussion in the Core Group meeting" (TD, informal summary of the comments on the section on terrorism of the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005, Sept. 1 – 3, 2005) (on file with the author); Carlos F. Díaz, Autograph notes on the negotiation of the 2005 High-level Summit Outcome Doc. taken as a delegate of Costa Rica in those negotiations, Sept. 1 – 3, 2005 (on file with the author).

[538] G.A. Res. 60/1, ¶ 83, U.N. Doc. A/60/1 (Sept. 16, 2005).

Committee to continue the work as soon as possible.[539] Regrettably, such a meeting was not scheduled. To convene it, the General Assembly would have had to adopt a new resolution. Since this was likely to be controversial, after consultations between the bureau of the Sixth Committee, the UN Secretariat, and the American delegation, it was decided that the chairman of the Sixth Committee, Ambassador Bennouna, of Morocco, would convene, under his own authority, informal consultations of the Sixth Committee on the outstanding issues concerning the draft convention. Those consultations were held from July 25 to 29, 2005, under the chairmanship of the coordinator for the comprehensive convention.[540]

Before the consultations took place, on July 8, 2005, the Heads of State and Government of the Eight Most Highly Industrialized Countries (G-8) adopted a statement on terrorism that said:

> We call on our partners at the Summit in September to reiterate the international community's clear condemnation of terrorist acts. We also urge our partners to capitalize on the new momentum at the UN and conclude swiftly the draft Comprehensive Convention for the Suppression of International Terrorism. These instruments will complement the broad legal framework set out in Security Council resolutions and the 12 UN counter-terrorism conventions and protocols.[541]

---

[539] Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, June – July, 2005 (on file with the author), recording discussion in corridors.

[540] U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), U.N. Doc. A/59/894 (Aug. 12, 2005).

[541] Group of Eight Major Industrialized Nations, *G-8 Statement on Counter-Terrorism,* ¶, 12, G-8 Summit 2005, Gleneagels, Scotland, July 8, 2005, available at: http://216.71.84.120/e/p/tp-20050711-35.html accessed on July 13, 2005.

Based on this high-level commitment, the members of the G-8 began making demarches in capitals urging other states to finalize the convention on the basis of the coordinator's draft article 18 and to reject the OIC's proposals.[542]

The first day of the consultations, July 25, 2005, saw a reiteration of the already well-known positions. Western countries and India called for the early conclusion of the convention on the basis of the previous coordinator's draft article 18.[543] Islamic delegations, for their part, also supported its early conclusion but on the basis of the OIC proposal.[544] Syria, South Africa, and Palestine stressed also the need to look at the root causes of terrorism. Meanwhile, Cuba and Venezuela underlined the need to address state terrorism.[545] In parallel, the United States circulated to the G-8, and their closest allies, two possible new paragraphs for the preamble. The first one, on the right of self-determination, read:

> *Recalling* that all peoples have the right of self-determination; and that the State Parties to the International Covenant on Civil and Political Rights, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination,

---

[542] Japan, Aide Memoire on the draft comprehensive convention on international terrorism, July 2005 (TD, photocopy, used for demarches in capitals) (on file with the author); United Kingdom, Talking Points on the draft comprehensive convention on international terrorism, July 2005 (TD, photocopy, used for demarches in capitals) (on file with the author); United States, "Comprehensive convention on International Terrorism," (TD, photocopy, Aide Memoire used for demarches in capitals, July 2005) (on file with the author). The United States asked foreign ministers to: "instruct your delegation in New York to work constructively before and during the consultations in July to find a bridge that will resolve the outstanding impediments to concluding the convention."

[543] Canada, Germany, India, Israel, Japan, Russian Federation, Ukraine, United Kingdom, and the United States.

[544] Iran, Jordan, Saudi Arabia, Syria, and Pakistan.

[545] U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* p. 3, in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005) [hereinafter July 2005 Coordinator's Report]; Diaz, Autograph notes, *supra* note 539, at July 25, 2005.

> and shall respect that right, in conformity with the provisions of the Charter of the United Nations, in keeping with that Covenant.[546]

The United States could live with this text because the Covenant on Political and Civil Rights, which the United States had ratified, frames self-determination in terms of self-government and not in terms of armed struggle against foreign occupation or colonialism.[547] The second proposal sought to make explicit that the exclusion of activities of state armed forces did not created impunity. It read:

> *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.[548]

Regrettably, Islamic delegations felt that these texts did not address their concerns adequately. Consequently, the United States dropped these suggestions. Thus, on the second day of meetings, the coordinator circulated the following text, based on some informal suggestions from the Russian delegation and inspired on General Assembly 46/51 of 1991:[549]

> *Reaffirming* that nothing in this Convention shall in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right or the

---

[546] United States, "Proposals on additional preambular language," new PP. X, (TD, non-paper, July 25, 2005) (on file with the author).

[547] International Covenant on Civil and Political Rights, art. 1.1, *adopted on* Dec. 16, 1966, 999 UNTS 171: "1.1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

[548] United States, "Proposals," *supra* note 546, new PP. Y.

[549] G.A. Res. 46/51, *supra* note 382, pre. para. 15.

> right of these peoples to struggle to this end in conformity with international law.[550]

Yemen, on behalf of the OIC, thanked the efforts to produce new language to address their concerns but still preferred its original suggestion on article 18. Jordan argued that this text did not add anything new to the convention, from a legal point of view, since the right of self-determination was already covered by draft article 18.1. Jordan preferred the actual language of the 1991 resolution, which recognized the legitimacy of the struggle of national liberation movements against foreign occupation and colonialism.[551] Cuba, Libya, Sudan, Syria, and Pakistan suggested moving this paragraph to the operative part of the convention. Conversely, the European Union, India, the Russian Federation, and the United States were willing to considering an appropriate reference to self-determination in the preamble, as part of the package deal with the coordinator's text of article 18. However, they had difficulties with the proposed text, particularly with the reference to "forcibly deprived" and "struggle." The United Kingdom and the United States suggested that this text be framed as a positive restatement of the law rather than as a saving clause, while India suggested adding a reference to the Declaration on the Principles of International law.[552] Meanwhile, Jordan proposed the following text to replace draft article 18.2:

> Except for an offence under article 2(1)(a) of this Convention committed against a protected civilian to which this Convention shall be applicable, the activities during an armed conflict, as those terms are understood under

---

[550] Costa Rica, "New Preambular Paragraph" (proposed by the coordinator on the question of self-determination, July 26, 2005) *reproduced in:* July 2005 Coordinator's Report, *supra* note 545, at 3 - 4.

[551] G.A. Res. 46/51, *supra* note 382, pre. para. 15.

[552] July 2005 Coordinator's Report, *supra* note 545, at 4; Diaz, Autograph notes, *supra* note 539, at July 26, 2005.

> international humanitarian law, which are governed by that law, are not governed by this Convention.[553]

This language would have had the effect of limiting the scope of the convention, during situations of armed conflict, only to attacks against civilians entitled to special protection under the international humanitarian law. Thus, any attack against the military during an armed conflict, regardless of who performed it, would have been excluded from the convention. In this sense, by excluding from the scope of the convention any non-state armed groups and even individuals who take up arms during an armed conflict, this text created a much broader exception than both the coordinator's text and the OIC language. On the other hand, by creating a radical separation between the legal regime of the new convention and international humanitarian law, it circumvented the problem of defining who is a member of the armed forces and who the parties to the conflict are. Nevertheless, both the European Union and the United States had difficulties with this text because it created a very broad exception.[554] They still preferred a solution in the terms of a general reference to self-determination in the preamble while retaining the coordinator's text. The European Union stressed that the coordinator's text still was their bottom-line; the only change in their position was that they had a little more flexibility regarding the preamble.[555] The coordinator then suggested a revised version of his preambular language, replacing the reference to the Civil and Political Rights Covenant

---

[553] Jordan, "Proposal" (on armed forces, July 26, 2005) *reproduced in:* July 2005 Coordinator's Report, *supra* note 545, at 5.

[554] Also Canada, France, and Japan.

[555] July 2005 Coordinator's Report, *supra* note 545, at 5; Diaz, Autograph notes, *supra* note 539, at July 27, 2005.

with the Declaration on Principles of International Law, as suggested by India, and framing it in more positive terms. It read:

> *Reaffirming* that, in accordance with the UN Charter and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States, all peoples have the right to self-determination, freedom and independence; and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the abovementioned Declaration. [556]

The United States and the European Union welcomed this text since it was intended for the preamble and were ready to consider it as part of a package with the previous coordinator's text. [557] They still had, though, some difficulties with the specific language. They stressed, however, that agreeing to this text would be a major concession for their part. Liechtenstein, New Zealand, and the United States preferred a reference to the Human Rights Covenant rather than to the Declaration, since the Covenant was a legally binding instrument. Islamic delegations had no difficulties with it, even though they preferred the previous formulation as a saving clause.[558] However, they stressed that the inclusion of this text did not solve their difficulties with article 18, and demanded a solution in the operative part of the Convention.[559] Thus, on the last day of meetings, the coordinator proposed a further revised version of his text which read:

> *Reaffirming* that, in accordance with the UN Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration of Principles of International Law

---

[556] Costa Rica, "New P.P." (proposed by the coordinator on the question of self-determination, July 27, 2005) *reproduced in:* July 2005 Coordinator's Report, *supra* note 545, at 4.

[557] Supported by Australia, Germany, Japan, and Ukraine.

[558] Algeria, Jordan, Syria, Pakistan.

[559] July 2005 Coordinator's Report, *supra* note 545, at 4; Diaz, Autograph notes, *supra* note 539, at July 28, 2005.

> concerning Friendly Relations and Cooperation among States, all peoples have the right to self-determination, freedom and independence; and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the abovementioned Declaration. [560]

At the end of the meeting, the OIC stated that it was willing to consider this text further in the fall 2005 session of the Working Group. Western countries did not react since it became evident that their offer of a solution though a reference to self-determination in the preamble was not being accepted. Moreover, there was the impression among Western delegations that they had made a concession "for free," that is, without being reciprocated. Consequently, the consultations were adjourned without reaching any agreement.[561]

In bilateral meetings, several delegations told the coordinator that the lack of a consolidated text of the whole convention made decision-making more difficult. In fact, up to this point, there were different pieces of the convention lying separately in various documents.[562] Consequently, the coordinator decided to present a single consolidated text of the draft convention in the hope that it would assist further discussions and serve as the basis for agreement.[563] On the key question of self-determination and armed forces, this consolidated text used the previous coordinator's language on article 18 and the new preambular language submitted by the coordinator during the last session of

---

[560] Costa Rica, "Coordinator's text, 3rd Revision, July 29th, 2005, New P.P." (proposed by the coordinator on the question of self-determination, July 29, 2005) *reproduced in:* July 2005 Coordinator's Report, *supra* note 545, at 5.

[561] July 2005 Coordinator's Report, *supra* note 545, at 5; Diaz, Autograph notes, *supra* note 539, at July 28, 2005.

[562] Friends of the Chairman, rolling text of Oct. 25. 2001, *supra* note 223; Australia (Richard Rowe), "Informal text," *supra* note 151; 2002 Ad Hoc Comm. Report, *supra* note 418, Annex IV: Texts on art. 18;

[563] July 2005 Coordinator's Report, *supra* note 545, at 2 and 6.

informal consultations.[564] Moreover, the text was renumbered and submitted as if ready for action. However, the coordinator stressed that it "does not prejudice — in any way — the proposals made by delegations. It is understood that all proposals remain on the table until withdrawn by their sponsors and that "nothing is agreed until everything is agreed."[565] The Organization of the Islamic Conference rejected this text. It noted that the coordinator had "attempted to produce a 'consolidated text,' which not only omitted the proposal made by the OIC group on article 18, but also renumbered the articles of the draft convention, besides making certain technical changes. The Group believes that such a text raises serious issues of mandate and prejudices the negotiation process and the efforts for the early conclusion of the draft convention."[566] Understandably, the OIC feared that a such text would degrade the status of its own proposal on article 18, which, in 2002, they had managed to put at the same level as the coordinator's text.[567] Moreover, by presenting a clean text, ready for action, the coordinator had prepared the ground for any delegation to formally ask for its adoption, something that would have forced the OIC either to ask for a vote or to abandon its demands and concede defeat.

The working group of the Sixth Committee met from October 10 to 14, 2005. Most of the work took the form of bilateral consultations between the chairman and the most interested delegations as well as a series of bilateral of discussions led by Jordan,

---

[564] Coordinator, "Draft comprehensive convention against international terrorism, Consolidated text prepared by the coordinator for discussion," pre. para. 10 and art. 20, *in:* U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Appendix II, U.N. Doc. A/59/894 Appendix II (Aug. 12, 2005).

[565] July 2005 Coordinator's Report, *supra* note 545, at 6.

[566] Yemen, Letter for the Permanent Representative of Yemen, in his capacity as chairman of the Organization of the Islamic Conference, to the Chairman of the Sixth Committee on the informal consultation on the draft comprehensive convention on international terrorism, Oct. 5, 2005, U.N. Doc. A/C.6/60/3 (Oct. 5, 2005).

[567] See *supra* subsection F.1.

Liechtenstein, the United Kingdom, and the United States. On October 11, 2005, the chairman of the working group presided over a session of informal consultations.[568] Work began with a discussion of the preambular paragraph on self-determination proposed by the coordinator at the end of the July meeting.[569] Egypt, Indonesia, Jordan, Malaysia, and Syria believed that this text did not add anything to the convention. Some believed that it was better to focus on article 18.[570] Sudan suggested moving that text to the operative part. Conversely, the European Union considered that their acceptance of the new preambular paragraph had to be a package deal with the OIC's acceptance of the coordinator's article 18. Moreover, the European Union suggested deleting the second part, which stated that peoples have a right to struggle to regain freedom and independence. This suggestion was supported by most Western delegations.[571] Egypt complained that a real package-deal had to bring both sides on board, but that the deal suggested by the EU was helping only one side. Finally, Mexico had difficulties with the text proposed since, in its view, it confused internal and external self-determination.[572]

Positions on article 18 remained unchanged. OIC members[573] still supported their 2001 suggestion while Western countries preferred the previous coordinator's text.[574]

---

[568] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/60/L.6 (Oct. 14, 2005) [hereinafter 2005 Working Group Report]; Carlos F. Díaz, Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as "Friend of the Chairman," October, 2005 (on file with the author).

[569] Costa Rica, "Coordinator's text, 3rd Revision," *supra* note 560.

[570] Algeria, Indonesia, Malaysia, Pakistan and Yemen. Also Cuba and Venezuela.

[571] Australia, Canada, Germany, Japan, Switzerland, Turkey, and the United States.

[572] U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the results of the informal consultations on the draft comprehensive convention," *in:* 2005 Working Group Report, *supra* note 568, Annex A, ¶¶ 2 – 8; Diaz, Autograph notes, *supra* note 568, at Oct. 10, 2005.

[573] Cuba, Syria, and Palestine.

[574] United Kingdom (on behalf of the European Union) and the United States.

The United States argued that the OIC proposal seemed to create an exception for suicide bombers, which was unacceptable and contrary to the High-level Panel's call for a clear condemnation of any attacks against civilians and non-combatants. In response, Iran argued that the coordinator's text could be considered as a blank check for the illicit activities of state armed forces. Several African countries, that previously had not been very active in the negotiations, supported the OIC text because it gave better recognition to the right of self-determination.[575] Jordan argued that the solution lay in establishing a clear distinction between the situations ruled by international humanitarian law and those sanctioned by the new convention as terrorism. This idea was supported by Algeria, Egypt, Syria, and Pakistan. Finally Cuba reiterated its proposal to cover state terrorism,[576] but this was rejected by the European Union and the United States.[577] Syria suggested defining "persons" in draft article 1, so as to make clear that the possible criminals could be civilians, soldiers, or persons in command and control of state armed forces. Switzerland replied that this question was already addressed in article 18.4 which was already accepted by both the OIC and Western countries.[578]

Privately, the European Union and Canada acknowledged that the OIC was not willing to accept a solution through a general statement in the preamble. Thus, while the coordinator's text of article 18 was still their bottom-line and they were not willing to consider any changes to its text, they were open to consider suggestions for additions to the operative part. Moreover, the European Union was not ready to offer any suggestions

---

[575] Botswana and South Africa.

[576] Supported by Botswana, the Democratic Republic of Congo, Iran, and Venezuela.

[577] Also Belgium, Canada, and India.

[578] U.N.G.A. Sixth Comm. Working Group, Chairman, "Informal summary," *supra* note 572, ¶¶ 9 – 23.

because they did not want to make more unilateral concessions. Meanwhile, Jordan, Syria, and Iran expressed their confidence that a solution could be found by making a clear distinction between international humanitarian law and the criminal law regime established in the convention, so as to carve out from the convention all situations governed by the laws of war. Liechtenstein then suggested informally the following language as an attempt to distinguish the two legal regimes: "Nothing in this Convention makes acts unlawful that are governed by international humanitarian law and that are not unlawful under that law."[579] This text was intended to be an addition to the previous coordinator's draft article 18. Meanwhile, Tunisia was considering a similar language: "this convention does not apply to situations governed by international humanitarian law," to be used either to replace article 18.2 and 18.3 or as general principle covering those two paragraphs. Cuba noted that, if state terrorism was not addressed in the new convention, it would not really be a comprehensive instrument. It suggested then that a possible solution would be to amend the title of the convention so as to recognize that there were other forms of terrorism not necessarily covered by it.[580]

In the following days, consultations both within each group and across the various groups focused on Jordan's idea of separating both legal regimes and on Liechtenstein's proposed language. Members of the European Union and of the G-8, as well as the United States, had a strong preference for not reopening the text of draft article 18. However, their authorities in capitals were considering Liechtenstein's proposal. Although they had not yet received final instructions on Liechtenstein's suggestion, they

---

[579] This text was later issued as: Friends of the Chairman, "Proposal to facilitate discussion, addition to article 18 of the draft comprehensive convention on international terrorism," new art. 18.5, U.N. Doc. A/C.6/60/INF/1 (Oct. 20, 2005).

[580] Diaz, Autograph notes, *supra* note 568, at Oct. 10, 2005.

did not want to accept it without having assurances that it would also be accepted by the OIC as a final deal. They were concerned that the Western side appeared to be making concessions unilaterally, without any reciprocity.[581] The American delegation, in particular, did not like "negotiating with oneself." For the United States, the important question was to have the majority of the OIC members on board, even if not all. Similarly, some moderate members of the OIC were interested in the suggestion by Liechtenstein.[582] Iran and Pakistan, though, had difficulties with Liechtenstein's suggestion; they preferred to refer to "situations" rather than to "acts."[583] For its part, Cuba felt that Liechtenstein's proposal was not useful. Since the reference to self-determination in the preamble was not useful for Arab delegations, the European Union suggested deleting it. However, African delegations[584] preferred its retention.[585] In parallel, the International Committee of the Red Cross actively lobbied delegations to accept Liechtenstein's proposal.[586] While the ICRC preferred a more precise formulation, and still had some concerns with the broad exception of state armed forces, it believed that Liechtenstein's suggestion was the best solution possible.[587]

---

[581] This was called "creeping concession" and "salami tactics."

[582] Indonesia, Malaysia.

[583] Iran suggested: "Nothing in the present convention makes unlawful acts which are lawful in situations governed by international humanitarian law."

[584] Tunisia and South Africa, on the basis of consultations within the African Group.

[585] Diaz, Autograph notes, *supra* note 568, at Oct. 12 - 14, 2005.

[586] The ICRC delegation met at least with Egypt, France, Jordan, Liechtenstein, Malaysia, Palestine, and the United States.

[587] *Ibid.,* at Oct. 14, 2005; International Committee of the Red Cross, "Non-paper" (TD, photocopy, containing two formulations for a clause separating the legal regime created by the draft comprehensive convention on international terrorism and international humanitarian law, Oct. 13, 2005) (on file with the author). The ICRC's preferred formulation read:

> "Acts committed in the context of and associated with an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this convention."

Although the working group formally concluded its work on October 14, it continued to meet informally. Thus, on October 18, the chairman urged delegations to consult with their capitals on a possible package deal containing a shorter preambular paragraph on self-determination,[588] the previous coordinator's article 18,[589] and the new paragraph 18.5 suggested by Liechtenstein.[590] In replay, the European Union was very cautious. They could not agree to it until being assured that this would be the final deal and that the OIC would accept the rest of the coordinator's draft. The United States and France still had reservations on the content of Liechtenstein's proposal. For the United States, that proposal would create more ambiguity and confusion. On the one hand, if read with article 18.2, it could be interpreted as granting new rights to self-determination movements to engage in violent action. On the other hand, Liechtenstein's proposal could be interpreted so that any unlawful act under international humanitarian law be considered as terrorism. In their view, once article 18 was opened, other issues were being opened as well, and the negotiations began to lose momentum.[591] For their part, members of the OIC[592] and Cuba felt that Liechtenstein's proposal eased their concerns regarding acts performed in the context of an armed conflict, article 18.2, but that it did not address their concerns regarding the activities of state military forces in peacetime. Pakistan, in particular, believed that Liechtenstein's proposal was insufficient and

---

[588] Friends of the Chairman, "Proposal to facilitate discussion, proposed preambular para. of the draft comprehensive convention on international terrorism," new pre. para., U.N. Doc. A/C.6/60/INF/2 (Oct. 20, 2005):

> *Reaffirming* the right to self-determination of peoples in accordance with the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

[589] Friends of the Chairman, "Proposal," *supra* note 579, new art. 18.5.

[590] Diaz, Autograph notes, *supra* note 568, at Oct. 18, 2005.

[591] Diaz, Autograph notes, *supra* note 568, at Oct. 20, 2005.

[592] Mainly Lebanon and Syria.

suggested replaying draft article 18.2 with: "activities of armed forces and other parties which are in conformity with the United Nations Charter and international humanitarian law and which are governed by that law are not governed by this convention."[593] In their view, the coordinator's text would have punished as terrorist the activities of national liberation movements. Similarly, Iran preferred replacing the coordinator's article 18.2 with Liechtenstein's. At this point, it became obvious that there was no agreement. Yemen, on behalf of the OIC, said that Liechtenstein's proposal was only a good basis for further work and Egypt said that there was no need to rush the work; he objected to any deadlines.[594]

At this point, the president of the General Assembly asked the chairman of the Sixth Committee to make a final effort to consult with delegations to determine whether an agreement before the end of 2005 was still possible.[595] However, delegations were already prepared to go to a new session of the *Ad Hoc* Committee in early 2006. Thus, on November 29, 2005, the Sixth Committee adopted a resolution reconvening the *Ad Hoc* Committee the following year to continue to elaborate the draft comprehensive convention on international terrorism "on an expedited basis."[596] The Secretary-General then "was disappointed to learn that it has not been possible to reach agreement in the

---

[593] Pakistan, "18(2)," (informal suggestion on the question of self-determination and armed forces on the draft comprehensive convention on international terrorism, Oct. 20, 2005) (on file with the author).

[594] Diaz, Autograph notes, *supra* note 568, at Oct. 20 - 21, 2005.

[595] U.N.G.A. President, Letter to all Permanent Representatives to the United Nations on the follow up to the 2005 High-level summit, 2 – 3, (Nov. 3, 2005) (on file with the author).

[596] G.A. Res. 60/43, ¶ 21, U.N. Doc. A/60/43 (Dec. 8, 2005); U.N. GAOR 60th Sess. Sixth Comm. 23rd mtg., ¶¶ 1 – 7, U.N. Doc. A/C.6/61/SR.23 (Nov. 29, 2006).

Sixth Committee of the General Assembly on a draft comprehensive convention on international terrorism."[597]

After the failure to agree at the end of 2005, negotiations continued without much success. The *Ad Hoc* Committee met again from February 27 to March 3, 2006, and from February 5 to 15, 2007, while the working group met on November 3, 2006.[598] Delegations, however, maintained their basic position from 2001. A new coordinator tirelessly explored formulas similar to Liechtenstein's, of separating the legal regime of the convention from that of international humanitarian law, as well as various additions to the preamble. Regrettably, none of those formulations seemed able to bridge the differences of view.[599] Although delegations continued to reaffirm the importance of concluding the convention, they seemed to have lost hope of a positive conclusion. Key delegations seemed to have fallen back to their previous positions.[600]

---

[597] United Nations, "Secretary-General disappointed no agreement reached in legal committee on comprehensive terrorism convention," (press statement SG/SM/10242, GA/L/3293) Dec. 1, 2005, available on line at: http://www.un.org/News/Press/docs/2005/sgsm10242/doc/htm accessed on Dec. 1, 2005.

[598] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Tenth session, Feb. 27-March 3, 2006), *Report*, U.N. GAOR 61st Sess. Supp. No. 37, U.N. Doc. A/61/37 (2006); U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eleventh session, Feb. 5, 6, and 15, 2007), *Report*, U.N. GAOR 62nd Sess. Supp. No. 37, U.N. Doc. A/62/37 (2007); U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Oral report by the chairman of the Working Group, in: U.N. GAOR 61st Sess. Sixth Comm. 21st mtg., ¶¶ 38 – 42, U.N. Doc. A/C.6/61/SR.21 (Nov. 9, 2006).

[599] U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary on the exchange of views in plenary meeting and on the results of the informal consultations and informal contacts on the draft comprehensive convention on international terrorism," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eleventh session, Feb. 5, 6, and 15, 2007), *Report*, Annex B, U.N. GAOR 62nd Sess. Supp. No. 37, U.N. Doc. A/62/37 (2007).

[600] The position of the United States is significant. United States (Condolezza Rice), Letter from the US Secretary of State to the foreign minister of Sri Lanka on the then forthcoming meeting of the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, dated Feb. 24, 2006 (TD, photocopy) (on file with the author):

> As you know, we and others could not agree to a Convention that would appear to exclude terrorist who claim to act in the name of national liberation movements, not could we agree that certain actions of state military forces are terrorist acts. We were close to an agreement in the fall of 2001. A Coordinator's draft text was put forward that we and many other states could accept. Although various other formulations have been put forward since that time, none

has achieved the acceptance of all parties. It is our considered view that the Coordinator's draft text may represent the best opportunity to achieve consensus.

Conclusions – Analyzing international, multilateral law-making negotiations

As noted in the introduction, this work seeks to answer two basic questions: how participants in an international, multilateral, legal negotiation actually behave and why they do so. To answer these questions, in this concluding chapter, I first revisit the previous findings on international multilateral negotiation to individualize, in light of the cases studied, the characteristic traits of international, multilateral legal negotiation; and, second, I revisit the synthetic model of the negotiating process proposed in chapter 2 to explore the rationale of the participants in those cases. I conclude by advancing an explanation of the outcome of those negotiations, that is, why the 1997 Terrorist Bombings Convention and the 1999 Convention on the Financing of Terrorism were concluded in a relatively brief period of time, while the negotiation of the 2005 Nuclear Terrorism Convention took much longer, and the negotiation of the draft Comprehensive Convention against Terrorism is still deadlocked.

A) Characteristic traits of international, multilateral, legal negotiations

The characteristic traits of international, multilateral, legal negotiations can be approached either from a dynamic point of view or from a static point of view. A dynamic approach, such as Chasek's multilateral environmental negotiating process model[1] and Hampson's model of coalition building,[2] focuses on the stages that a negotiation goes through as the participants move towards an agreement. A static

[1] Pamela S. Chasek, *Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy,* (Tokio, New York, Paris: United Nations University Press, 2001) 134 – 173; see *supra:* Chapter 2.C.

[2] Fen Osler Hampson and Michael Hart *Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment* (Baltimore and London: Johns Hopkins, 1995) 8 – 19; see *supra:* Chapter 2.C.

approach, such Friedheim's listing of the attributes of parliamentary diplomacy,[3] focuses on the stable elements that permeate the whole process. I will concentrate first on the stable elements of the negotiation to consider later the various stages in the negotiating process.

1.- Multiple actors. The first aspect that comes to the fore from the cases studied is that they were truly multilateral negotiations. No issue was purely bilateral. There were always a variety of points of view and preferred policy alternatives, that is, of preferred outcomes. The primary actors were the official delegations formally representing their states in the negotiations. It should be noted, though, that while potentially all member states of the Untied Nations could have been active in those negotiations, only a maximum of forty delegations took active part in the discussions. In fact, it seems that most delegations were either not present or completely silent. Moreover, as the negotiations progressed, the number of actors was reduced either by selecting informal spokesmen representing certain points of view or by excluding those actors that had not expressed a strong stance on the issues being discussed. The coordinators played an important role in selecting the key participants by inviting only those delegations that they deemed indispensable to the smaller meetings. However, those actors that were less active in the negotiation still had an important impact on the process. Since consensus or a majority vote was required for making any decision, in case of a conflict, the actual or foreseen stance of those delegations was determinant. I will return to this point later.

[3] Robert L. Friedheim, *Negotiating the New Ocean Regime* (Columbia, SC: University of South Carolina Press, 1993) 44 - 48, 315; see *supra:* Chapter 1.A.3.

Very few non-state entities took part in these negotiations. The International Committee of the Red Cross and Human Rights Watch were active in the negotiation of the draft Comprehensive Convention, while the International Atomic Energy Agency made suggestions during the negotiation of the Nuclear Convention. The United Nations Secretary-General both made suggestions and tried to mediate in the negotiation of the Comprehensive Convention. In this sense, the negotiations studied follow the traditional pattern that reserved the elaboration of international law only to states.

2.- Complex issues. These negotiations were characterized not by the number of issues being considered but by their technical complexity. The subject matter of each negotiation was relatively discreet: the adoption of binding measures to facilitate police and judicial cooperation for the prosecution and punishment of certain types of terrorist activities. However, to adopt those measures, it was necessary to coordinate the diverse legal systems and to balance opposing policy preferences that were based on contradictory legal principles and diverging bodies of law. These negotiations did not create new norms on a blank slate, but had to formulate new provisions compatible with the pre-existing, and sometimes competing, legal regimes. This was especially on the questions of armed forces and self-determination, but it was also present in the negotiations regarding the political exception, bank secrecy, and compensation for nuclear damage. In addition, human rights principles demanded that the final outcome be very precise and detailed.

3.- Legal discourse. Since the purpose of these negotiations was to adopt legally binding instruments to regulate police and judicial cooperation on criminal law questions, legal argumentation was the dominant form of discourse. Actors tried to convince each

other of the validity of their position by resorting to general principles of justice, reason, and legal precedent. There was no possibility of exchanging material concessions and the relative structural power of the states was not immediately obvious. Some of the most influential actors in the negotiations were those who could make sound legal arguments and propose creative legal solutions, independently of their structural power, such as Switzerland, during the negotiation of the Bombings Convention; and Jordan and Liechtenstein, during the negotiation of the Comprehensive Convention. Moreover, since the outcome sought was a legal instrument on legal issues, proposals and solutions were couched in legal terms. In this sense, there was no difference between searching for a "formula solution" and "bargaining over the details." In these negotiations, finding a principled solution and fine-tuning the details of the legal formulation was one and the same task. The negotiations on the question of the exemption of armed forces and self-determination both in the Bombings Convention and the Comprehensive Convention reflect this fact. The success or failure of the solution depended on its subtle formulation: on using "in as much as" or "inasmuch as," or on putting a comma here or there.

4.- Changing preferences. These negotiations also reveal that the actors do not have a pre-ordered set of preferences from the start of the negotiation. At the beginning of each negotiation, only the delegation that submits a complete draft of the convention has preferences on all the issues. All other delegations learned of the issues during the discussion and elaborated their preferences in response to the proposals made. In addition, delegations reassessed their preferences during the negotiation, in light both of the new proposals and of the likelihood or not of their own proposals being accepted. In this sense, the interaction between the actors was essentially a dialogue. With the

exceptions of the opposing views regarding self-determination and the United States' demand for an absolute exemption for governmental armed forces, there were no clear bottom lines. Moreover, actors tried to influence each others' preferences, mainly through legal argument and reasoning, but occasionally through political pressure. The coordinated Russian and American demarche on Pakistan at the end of the negotiation of the Bombings Convention to convince it to withdraw its proposals is the clearest example of a successful use of political pressure to modify the preferences of another delegation. Moreover, preferences could also change due to external events. For many delegations, the September 11 attacks raised the value of adopting the Comprehensive Convention, making them more willing to make concessions in the 2001 fall session of the terrorism working group. Similarly, the adoption by the Security Council of mandatory measures against terrorism seems to have modified the delegations' assessment of the usefulness of the draft Comprehensive Convention.

5.- Leadership. The negotiations studied highlight the central role of leadership in moving the negotiations forward. Without effective leadership, the negotiations tend to fall into a standstill. It is possible to distinguish three types of leader. The first type of leaders were initiators who propose the negotiation of a new legal instrument, push for the adoption of a negotiating mandate, prepare a first draft, defend its key provisions, and push for the adoption of the resulting outcome. The initiators made a substantial investment in time, manpower, and reputation in the success of the negotiations. The United States, the Russian Federation, France, and India were respectively the initiators of the negotiation of the Bombings, Nuclear, Financing, and Comprehensive Conventions. The second type of leaders were the elected officials: the chairman, the

bureau, and the Group of Friends of the Chairman. In the negotiations studied, they not only conducted the debate but also moved the discussions forward by making consensus proposals and consolidated texts and by mediating among diverging parties. The third type of leadership is constituted by informal, entrepreneurial leaders who have both a substantive position to defend and a commitment to find a generally acceptable solution. The creative role of the entrepreneurial leaders was essential in the formulation of new agreements and in mediating among the opposing positions. In the cases studied, the most conspicuous examples are Finland, on the question of the political offence exception in the Bombings Convention, and Hungary, regarding the relationship clause in the draft Comprehensive Convention.

6.- The rhythm of the formal process. The structure of the Sixth Committee with its yearly debates, the alternation between working groups and *ad hoc* committees, and the succession of open debates and close consultations imposes a rhythm upon the negotiations: the decisions are not rushed; the same issues are revisited time and time again, up to exhaustion; and before a new round of discussions, delegations have plenty of time to assess the previous negotiations and to reconsider their own positions. This rhythm has an important impact on the negotiations. On the one hand, it slows the process. Normally, a full year is required to take even a simple decision. If no agreement is forthcoming, the discussion can always be deferred to the following session. Hence, the discussions can easily degenerate into an automatic repetition of the same issues and the same positions, as was seen in the negotiation of both the Nuclear Convention and the draft Comprehensive Convention. On the other hand, this rhythm may help the discussions in a double sense. First, it creates deadlines that may encourage delegations

to find a solution before the negotiating session concludes. In essence, the in-built rhythm of the negotiation puts to delegations the choice of either to agree now or wait a full year for an uncertain result. Second, the repetitive and measured process encourages delegations to assess realistically the chances of success of their own preferred policy options. A proposal is discussed as many times as is necessary either to discover that it is acceptable to all or to convince its proponent that it will never be adopted and that he needs to make a concession. In this sense, this repetitive process has an element of fairness since it convinces delegations that the final outcome is the best possible agreement that they could obtain in light of the others' positions, thus ensuring greater legitimacy for the final solution. Moreover, the frequent breaks enable delegations to reassess the debates and to modify their positions as it might be necessary. This is of particular importance for those states that require approval from various government departments or from a long bureaucratic chain to change their stance.

7.- Disaggregating and re-aggregating the issues. These negotiations were complex. The treaties proposed were complex in themselves since each one of them contained a series of separate measures to combat terrorism and to facilitate police and judicial cooperation. Moreover, each individual provision was complex from a technical point of view. The definition of the four crimes illustrates this point. A successful definition had to describe at least: the actor, the criminal conduct, the possible targets, the possible means, and the intentionality requirements. The basic strategy followed in the terrorism negotiations to manage this complexity was to divide the issues into discreet segments that could be discussed separately. Once agreement was found on most

questions, these issues were re-aggregated into increasingly broader packages culminating eventually into a broad package deal.

8.- Informal processes. The second mechanism used in these negotiations to cope with complexity was a gradual reduction of the number of active participants coupled with greater confidentiality. All discussions began with formal, public debates; then moved to closed meetings of a working group; subsequently, they moved to closed informals and then to private informal-informals. Finally, some of the key agreements were made in private, bilateral discussions between the most interested delegations. In parallel, those actors with similar positions tended to form informal coalitions and to choose a spokesperson that represented their common position in the more private discussions. Thus, the number of possible interactions was reduced; communication among the key actors was facilitated; and data processing was made easier since there were fewer proposals and positions to be taken into account. Moreover, this process excluded from the actual negotiation those actors who did not have a strong stance or who were silent, thus reducing the process only to the indispensable parties.

9.- Single, consolidated rolling text. The terrorism negotiations also reveal the importance of single, consolidated negotiating texts to focus the discussion and to consolidate agreements. By highlighting the proposal most enjoying the greater support, a rolling text helps delegations to abandon those suggestions that have little or no possibility of being adopted. Moreover, a consolidated text also serves to inform delegations that did not take part in private negotiations of the general thrust of the discussion. However, consolidated texts were useful only at a late stage of the negotiation, when there was agreement or at least a growing body of support for some

proposals. In this sense, it is revealing that, in the cases studied, the bureau frequently submitted only partial rolling texts, since it felt that not all issues were equally "ripe" to be included in a consolidated text.

10.- Few linkages. These negotiations evidence a limited use of linkages among separate issues. It seems that, since there were limited possibilities of exchanging concrete concessions on disconnected issues, delegations saw little advantage in conditioning one issue on another. Nevertheless, some provisions were naturally linked because they were related to the same question. For instance, the provisions on the political offence exception and on the principle of non-refoulement were linked because both referred to the possibility of denying extradition based on the political opinions of the person accused. Similarly, in the negotiation of the draft Comprehensive Convention, the definition of the offence and the provision on the relationship with previous instruments were linked since both referred to the scope of application of the proposed convention. Moreover, it is possible to identify some instances where unrelated issues were successfully linked. India, for instance, was able to link the negotiation of the Bombings and Financing Conventions to that of the Comprehensive Convention, so as to trade its acceptance of the mandate to negotiate sectoral instruments for the Western countries' acceptance of the negotiation of the comprehensive treaty. It seems unlikely that, without this linkage, the Western delegations would have agreed to launch negotiations on a comprehensive counter-terrorism instrument. Similarly, the Russian Federation was able to link the negotiation of the Bombings Convention to its own proposal for a Nuclear Convention. Meanwhile, at the end of the negotiation of the Nuclear Convention, a series of mutually incompatible proposals by Cuba, Egypt, Iran,

and the United States were linked by the chairman so as to obtain their simultaneous withdrawal.

11.- External events. The terrorism negotiations were not immune to external events and crisis. However, the impact of those external events was not univocal. An external event may trigger the negotiation of a new treaty. Thus, the terrorist attack against the American military base Dhahram, Saudi Arabia, was the immediate precipitant of the negotiation of the Bombings Convention. However, not all terrorist attacks prompted the negotiation of a new treaty. For instance, the attack against the Israeli Cultural Center in Buenos Aires, Argentina, did not create a new call for counter-terrorism instrument. Conversely, not all negotiations arise from a clearly distinguished incident. The negotiations of the Financing, Nuclear, and Comprehensive conventions did not respond to a concrete incident but rather to a general insatisfaction with the existing legal regime. Moreover, the September 11 attacks and the Beslan hostage crisis prompted law-making efforts in the Security Council rather than in the General Assembly. In this sense, it seems that whether an external crisis prompts the negotiation of a new instrument depends on whether some state is sufficiently mobilized by that incident as to initiate a new international legal negotiation. Moreover, legal and political developments seem to have had greater impact on the negotiations than actual terrorist incidents. Thus, the assumption of a legislative role by the Security Council and its enacting of legally binding norms against terrorism reduced the need for a comprehensive convention against terrorism, thus removing the incentives for Western delegations to make concessions and undermining the possibilities of that instrument being adopted.

Moving now to the dynamic aspect of the multilateral, international, legal negotiation, I propose that it is possible to distinguish five stages: the issue definition phase, the mandate negotiation phase, the disaggregation phase, the re-aggregation phase, and the end game. The issue definition phase occurs even before the idea of negotiating a new legal instrument arises. At that stage, states discover that there is a problem that requires their coordinated action and begin to consider measures to address that problem, which are not necessarily of a legal nature. More precisely, they negotiate a common understanding of what the problem is. In the case of terrorism, the first task was precisely agreeing on the real problem: violent action by non-state groups or repression by states in colonial situations. Moreover, at this stage, some basic understandings that form the basis of later negotiations are agreed. In the case of terrorism these include the condemnation of all acts and forms of terrorism and the principle that it is desirable to prosecute or extradite all terrorists, even if this was not yet a legally binding norm. At the mandate negotiation phase, negotiations center on a concrete proposal to elaborate a new legal instrument. There has to be agreement of the forum and time frame of the negotiations as well as on the general scope of the proposed instrument. In the disaggregation phase, the issues are gradually divided into discreet segments that can be discussed separately. Delegations make concrete proposals on the language of the proposed provisions, they try to convince each other of their positions, and they suggest creative solutions to overcome the differences. Debates are repeated until some formulations begin to gather substantial support. In the re-aggregation phase, the formulations that enjoy the greater support are gradually gathered into broader consolidated texts to form an overall package. Debates on the single positions are

continued both to determine if some concessions can be made to accommodate those delegations that still have objections and to convince those objectors that their position is not sustainable. At the end of this stage, there should be an all-encompassing consolidated text that contains an overall package deal. If all delegations are satisfied with this text, it is adopted. However, if some delegations want to block its adoption, the negotiations then move to the end game stage. At this stage, the various procedural alternatives are considered, in particular, whether the minority position has the strength to block the adoption and whether the majority is willing to go to a vote.

From this discussion, I propose to synthesize the characteristic traits of international, multilateral, legal negotiations as follows:

1. International, multilateral, legal negotiations are characterized by the presence of multiple actors representing states.
2. The issues discussed, while not necessarily numerous, are technically complex.
3. The negotiation is dominated by legal discourse, both in the arguments used and form of the proposals and outcomes.
4. The actors' preferences change along the negotiation depending on the options available, their own assessment of the process, and the impact of external events.
5. Leaders play a key role in moving the negotiations forward. It is possible to distinguish among:
    a) Initiators,
    b) Officials, and,

c) Entrepreneurial leaders

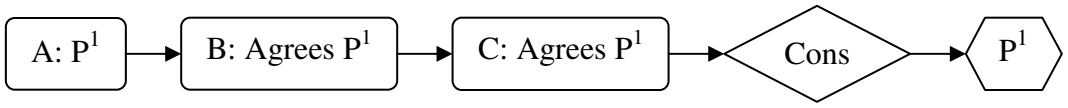
6. The formal process of the negotiation imposes a slow rhythm that enables delegations to discuss all proposals repeatedly, favoring agreement and giving greater legitimacy to the process.
7. To manage complexity, issues are first disaggregated into discreet segments and then reassembled into broad package deals.
8. Also to manage complexity, the discussions gradually move from open debates into closed, private meetings, gradually reducing the number of participants.
9. The use of single, consolidated negotiating texts is essential for the formation of the overall package deal that constitutes the final instrument.
10. While linking issues that are not intrinsically connected is possible, it is relatively rare.
11. External events impact the negotiations by altering the actors' preferences. This impact, however, may favor agreement or may make it more difficult, depending on the impact that that event has on the options available to the actors at that time and their subsequent behavior.
12. International, multilateral, legal negotiations usually follow five stages:
    a) the issue definition phase,
    b) the mandate negotiation phase,
    c) the disaggregation phase,
    d) the re-aggregation phase, and
    e) the end game phase.

B) Interaction patterns

The previous discussion highlights the characteristic traits of international, multilateral, legal negotiations but it does not explain why actors behave the way they do. I propose that the outcome of the negotiation is the direct result of the interaction among the negotiating parties and that their behavior results from their intentional efforts to maximize their benefits in light of their preferences and the options available. In other words, when confronted with an array of possible paths of action, an actor chooses the one that he believes would best serve his objectives. In chapter 2, I presented a simple model of the strategic negotiating behavior based on this proposition. That model, however, can be made more concrete by identifying within the model specific paths of actions, or interaction patterns, which lead to one result or another. In this section, I will make explicit those various paths of action, stressing, however, the options available and the preferences that any actor has to have in order to choose one path of action rather than other.

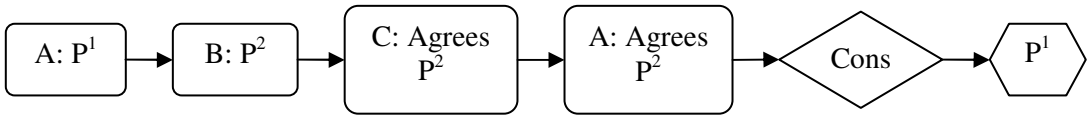
In the first place, a negotiation will conclude with adoption by consensus of a substantive proposal when there is agreement on the substance of a proposal. This substantive agreement may arise at the very beginning of the negotiation if there is harmony among all the actors (see Pattern 1.A). In the negotiations studied, there was harmony, for example, regarding the provisions on the deposit of the ratification instrument with the Secretary-General which were never discussed.

Pattern 1.A: Early substantive agreement



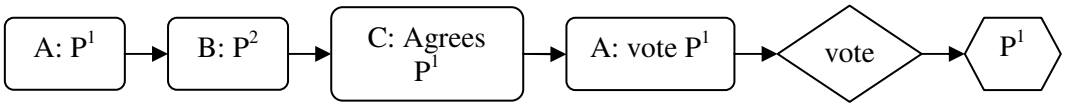
Substantive agreement, however, may also arise later in the negotiations, if a proposal that is acceptable to all participants in the negotiation is made in the course of the bargaining. This agreement requires that at least one of the actors abandon his opening position (see Pattern 1.B).

Pattern 1.B: Late substantive agreement



Alternatively, a delegation may call for a vote if its proposal enjoys enough support to ensure winning the vote (see Pattern 2.A).

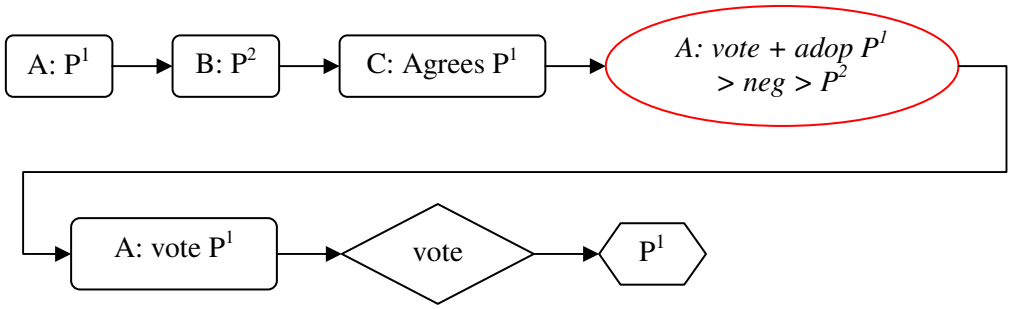
Pattern 2.A: vote by the majority



This requires, however, that the actor who calls for the vote is willing to pay the costs of resorting to the vote, including the adoption of a decision by less than the ideal

consensus, and gives greater value to such a decision than to any of the alternatives, including the continuation of the negotiations (see Pattern 2.A.bis). This pattern was followed in 1972 by the Non-Aligned Movement, when it asked and won a vote on the General Assembly resolution regarding international terrorism.[4]

Pattern 2.A.bis: Vote by the majority - preferences

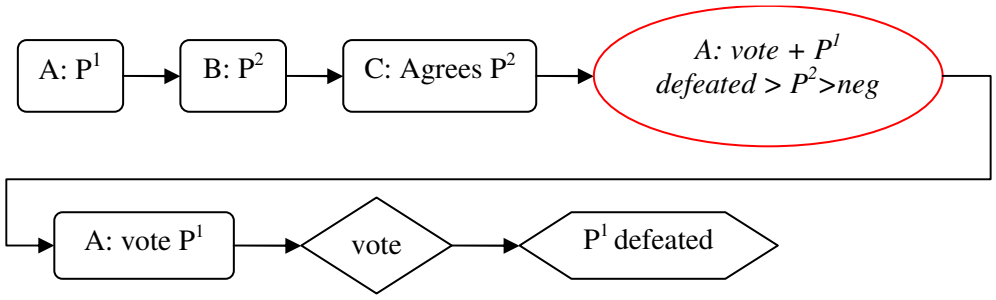


On the other hand, an actor may call a vote on his preferred proposal when it does not enjoy majority support if he is willing to accept a defeat either to demonstrate his commitment to a certain proposal or to express his rejection of the other proposals available (see Pattern 2.B.a). Cuba followed this pattern in 1971 when it call a vote on a section of the resolution mandating the negotiation of a new convention for the protection of diplomatic personnel, knowing that the text would be adopted. Only Cuba voted against of the proposed resolution, but its principled objections were clearly recorded.[5]

[4] See *supra:* Chapter 3.B.

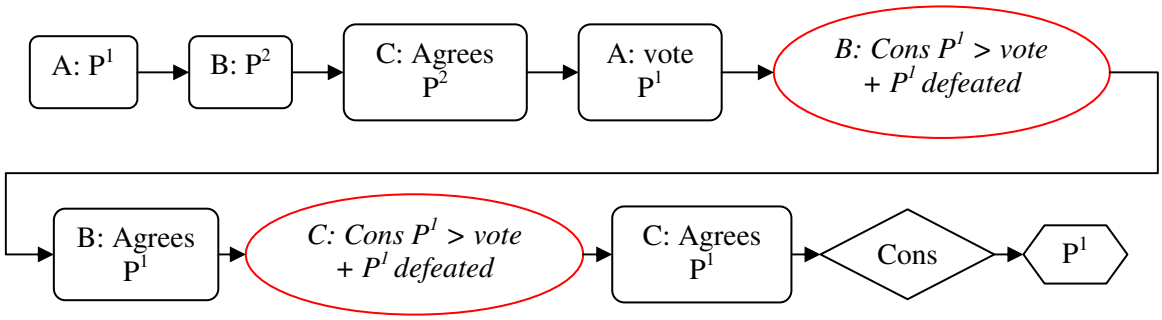
[5] See *supra:* Chapter 3.C.

Pattern 2.B.a: Vote called by the minority - defeated



It should be noted, though, that in this case, the other actors might prefer the adoption of a less than ideal proposal by consensus rather than going to a vote and facing the failure of the negotiations. Thus, they may change their original positions and accept the proposal of the minority (see Pattern 2.B.b).

Pattern 2.B.b: Vote called by the minority - consensus

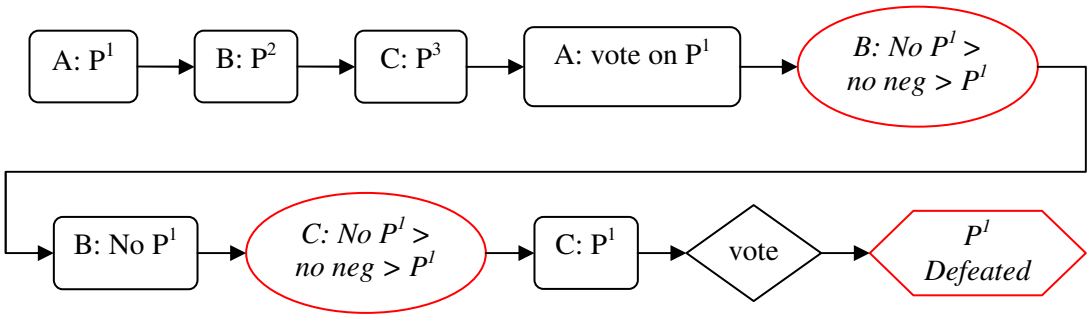


In this case, by calling for a vote, the minority might obtain concessions from the majority and avoid, in fact, a vote. In this sense, the willingness to call for a vote is a source of strength in the negotiation as it can be used to constrain the other actors to

change their positions. This might have occurred in late 1973, when an important number, but still a minority, of African and Asian countries was able extract an small concession regarding self-determination, in the context of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, by proposing an amendment at a late stage. That convention was adopted by consensus.[6]

Moreover, an actor may also choose to call a vote on his preferred policy option if there is no clear majority in favor of one proposal or another. In this case, the result depends on the preferences of the other actors. If the majority finds that the proposal put to the vote is unacceptable and prefers not to continue the negotiation that proposal will be defeated and the negotiations will conclude without a substantive result (see Pattern 2.C.a).

Pattern 2.C.a: Voting under uncertainty - defeat

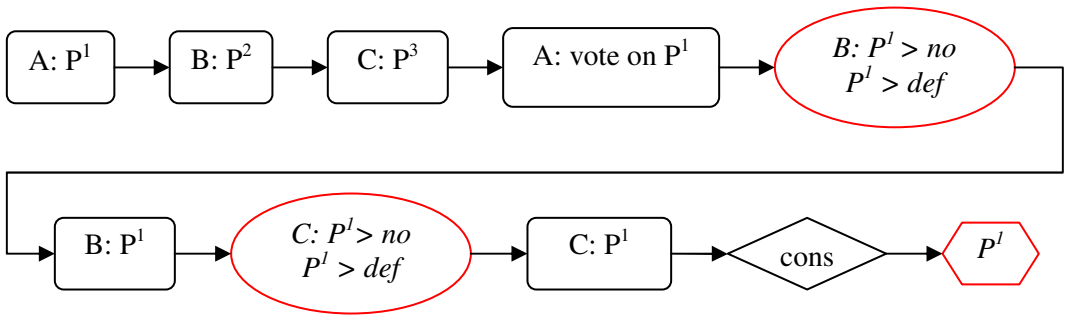


If all other actors prefer the adoption of the proposal rather than the failure of the negotiations or a deferral, they will change their positions and accept the adoption of that proposal by consensus (see Pattern 2.C.b). In this case, once again, an actor's

[6] See *supra:* Chapter 3.C.

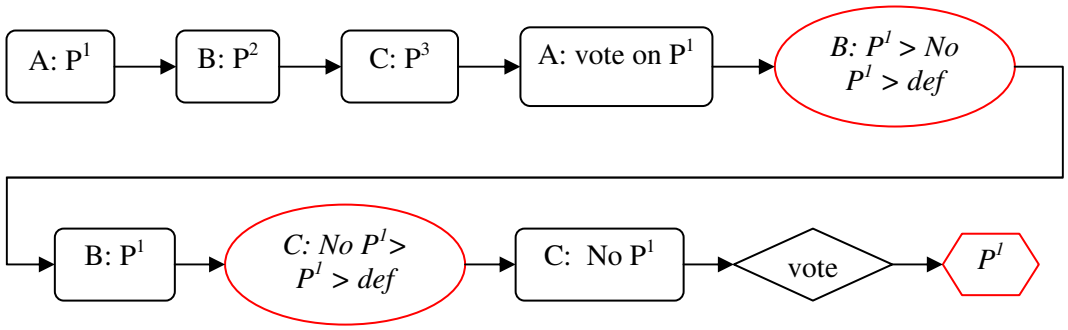
willingness to call for a vote is a source of strength in the negotiation that can be used to extract concessions.

Pattern 2.C.b: Voting under uncertainty - consensus



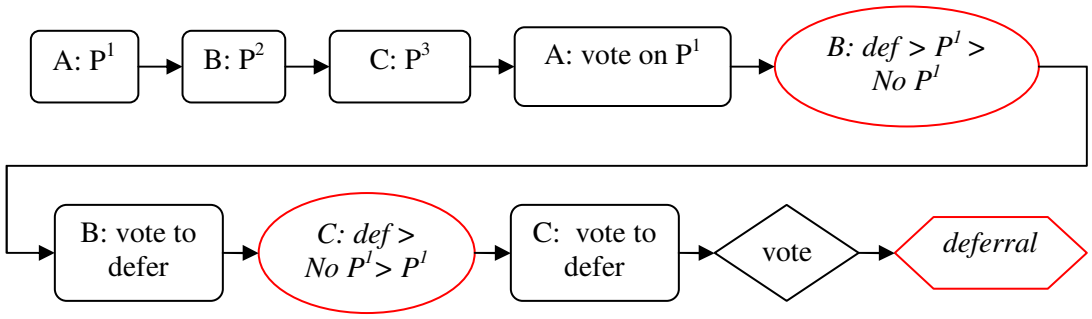
If some but not all of the other actors prefer the adoption of the proposal put to the vote rather than the failure of the negotiations or a deferral, they will change their positions and the proposal will be adopted by a vote (see Pattern 2.C.c).

Pattern 2.C.c: Voting under uncertainty – adoption by a majority



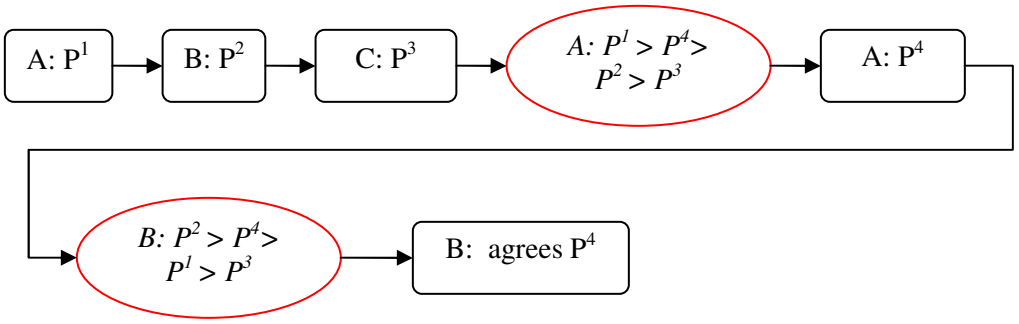
Finally, if the majority of actors prefer continuing the negotiations later rather than adopting the proposal put to the vote or to conclude the negotiations without a substantive result, they will support a motion of non-action to defer the negotiations (see Pattern 2.C.d).

Pattern 2.C.d: Voting under uncertainty – deferral



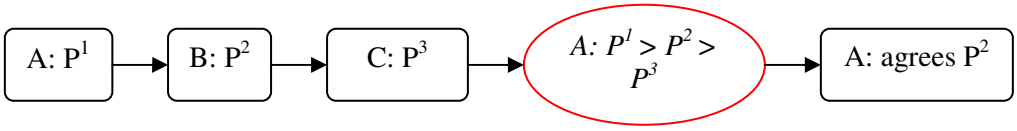
At certain points in the negotiations, actors may abandon their previous proposals either for a new proposal or to endorse a suggestion made by another actor. Concessions may be made to increase the possibility of obtaining a satisfactory substantive outcome, to avoid defeat, or to avoid a vote. It is possible to distinguish the various patterns depending on whether a vote is imminent or not and on what is being avoided. When a vote is not yet imminent, if an actor sees that its preferred proposal has little chance of being adopted, it can make a new proposal that brings him closer to the position of the other actors and that is more likely of being adopted (see Pattern 3.A.a).

Pattern 3.A.a: Concession – A makes a new proposal



Alternatively, that actor may set aside its original proposal and support some other proposal that is more likely of being adopted than his own initial suggestion (see Pattern 3.A.b).

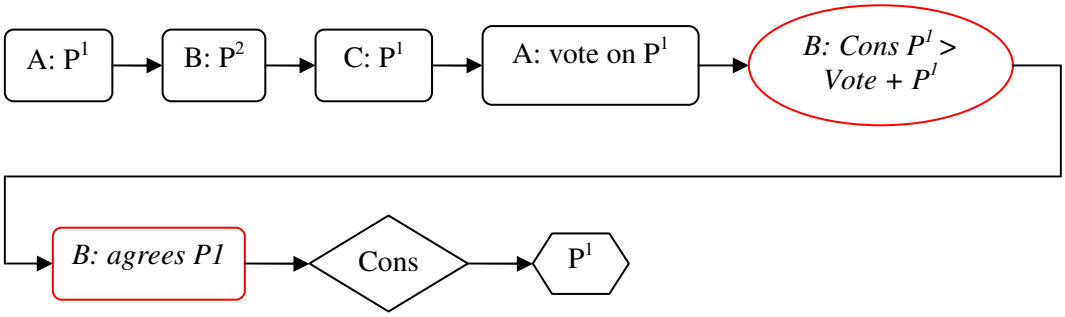
Pattern 3.A.b: Concession – A endorses a pre-existing proposal



When faced with likely defeat in an imminent vote, the minority might join the majority in order to avoid being publicly defeated in a vote (see Pattern 3.B). It seems that the Arab countries followed this pattern at the end of 1997, when they agreed to the adoption by consensus of the Bombings Convention rather than lose a vote against it.[7]

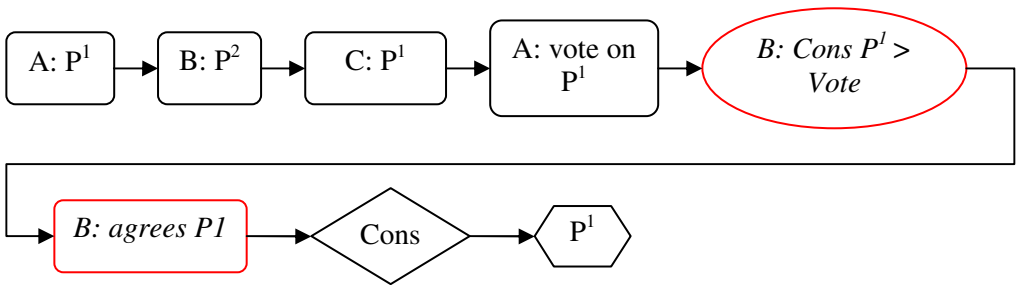
[7] See *supra*: Chapter 4.G.

Pattern 3.B: Concession – to avoid defeat



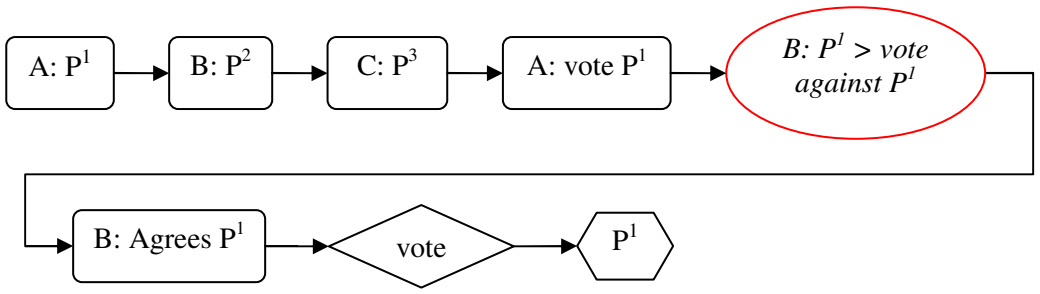
Moreover, if an actor has a strong preference against voting in general or against voting negatively on a certain proposal, he will change position when faced with an imminent vote either to avoid voting completely or not voting against the concrete proposal put forward for decision, even if that proposal is not his preferred substantive option (see Pattern 3.C.a and Pattern 3.C.b). In 1981, the Non-Aligned Movement followed pattern 3.C.a, when it made a concession to the Western countries in order to

Pattern 3.C.a: Concession - to avoid a vote in general



avoid a vote that it could have easily won. In fact, two years before, in 1979, it had won a vote on a text identical to the one that, in 1981, it chose to change.[8]

Pattern 3.C.b: Concession - to avoid voting against a certain proposal in particular

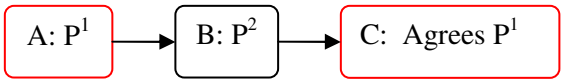


Because proposals require majority support to be adopted, each actor will seek the support of others for his own proposals. In this sense, the "consensus preferred-vote possible" decision-making rule encourages participants in the negotiation to form coalitions. These coalitions could arise either from substantive agreement on the opening positions (see Pattern 4.A) or through concessions that bring the positions of some actors closer (see Pattern 4.B). Thus, for example, in late 1997, at the end of the negotiation of the Bombings Convention, a broad coalition was formed, through mutual concessions, around the formula "inasmuch as," regarding the exemption of governmental armed forces from the scope of the new instrument.[9]

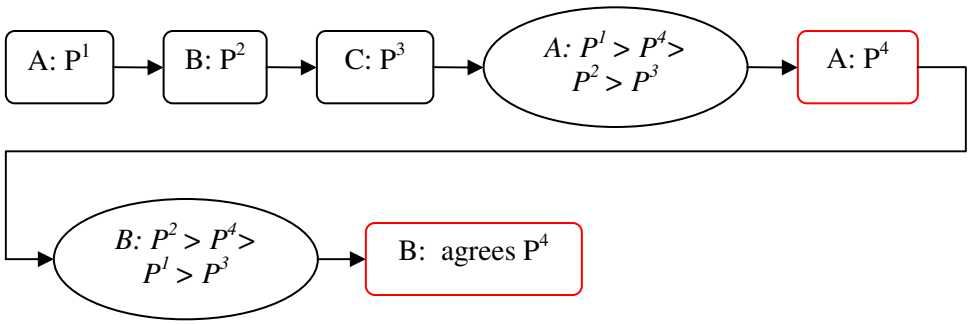
[8] See *supra*: Chapter 3.D.

[9] See *supra:* Chapter 4.G.

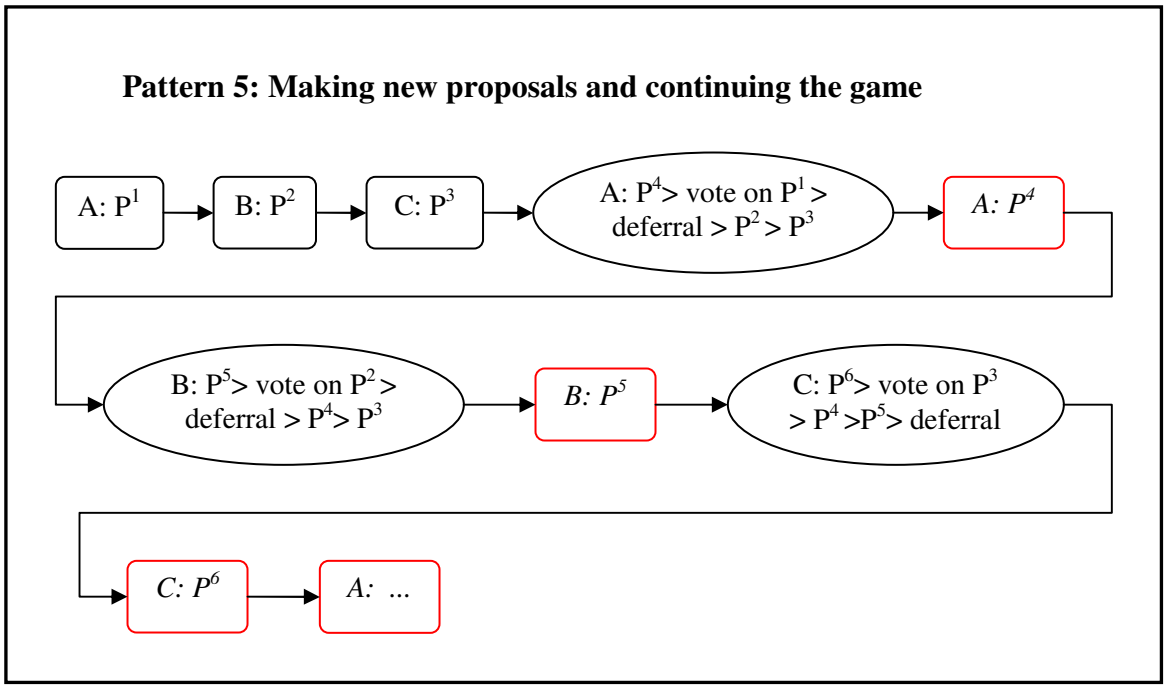
Pattern 4.A: Coalitions - Based on substantive agreement on the opening positions



Pattern 4.B: Coalitions - Based on mutual concessions



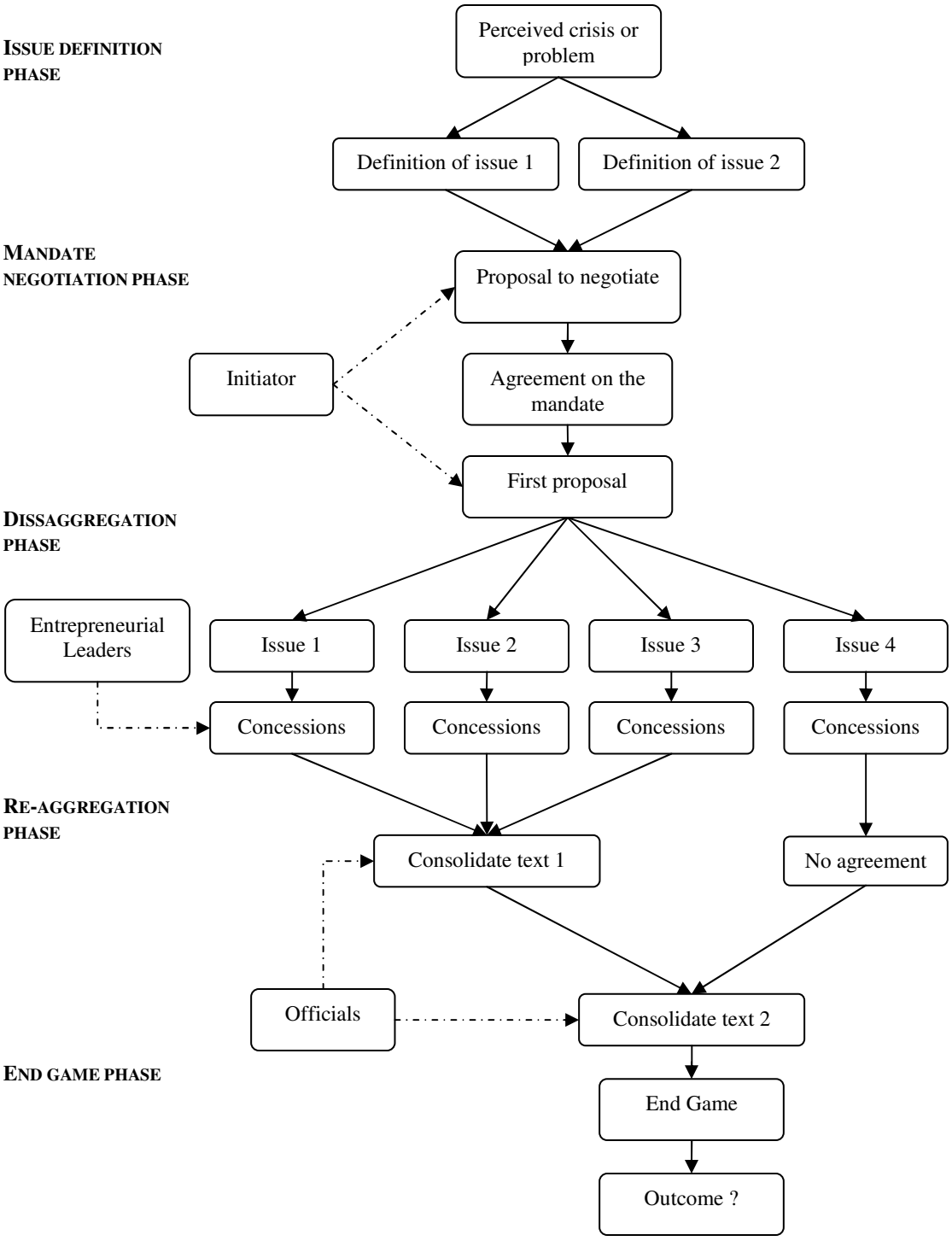
Finally, as long as no actor is willing to put to the vote either a substantive proposal or a motion to suspend the negotiations, and no substantive agreement is reached, actors will make new proposals and counter-proposals. In this case, the actors' preference will be marked by a preference to continue the negotiation rather than to conclude it through a vote or through a deferral (see Pattern 5).



C) Explaining the outcomes

The two preceding sections provide the necessary analytical tools to understand the negotiations. As we have seen, the negotiation process is dominated by two overlapping dynamics. At the level of the whole negotiation, the process is dominated by the desaggregating and re-aggregating of issues, gradually dividing the proposed instrument into smaller segments, which are then discussed in gradually smaller negotiating groups, and, once agreements being to coalesce, by a gradual process of recombination of the separate agreements into broader packages (see Figure 8.1).

Fig. 8.1: Stages of International, Multilateral, Legal Negotiation



At the level of each individual issue, the dynamics are different. Delegations

make proposals; if those proposals are not accepted by other delegations, the proponents assess the situation in light of their preferences and the options available. If a delegation prefers to continue the negotiations rather than going to a vote or concluding the negotiations, it will either make a new proposal or endorse a proposal made by some other delegation. Thus, the dominant behavior pattern at an early stage of the negotiations is interaction pattern 5, a long chain of proposals and counter-proposals. Agreements arise gradually. At some point, one delegation rather than putting forward a new proposal endorses a proposal made by another delegation (Patterns 3.A.b, 4.A, 4.B). Coalitions begin to appear. Majority and minority views develop. Thus, the delegations that form the minority begin to assess the possibilities of success of their proposals. They may choose to hold out, in the hope of extracting further concessions (Pattern 2.B.b), or they may join the majority in order to avoid defeat (Pattern 3.B). The punctured rhythm of the negotiation and the gradual formation of increasingly broader packages provide delegations with ample opportunity to make this assessment.

The narrative of the negotiation of the four counter-terrorism conventions gives ample evidence of these overlapping dynamics. In the four negotiations, there was a marked tendency to divide the proposed instruments into gradually smaller segments, discussing them first article by article, and then paragraph by paragraph, and, in some instances, even word by word. Moreover, there is ample evidence of the gradual reaggregation of issues into broader packages, first as whole articles and then in the various consolidated rolling texts prepared by the bureau and the Friends of the Chairman. The dynamics within each issue are also evident. At first there was an abundance of proposals, but gradually positions began to coalesce around a few proposals

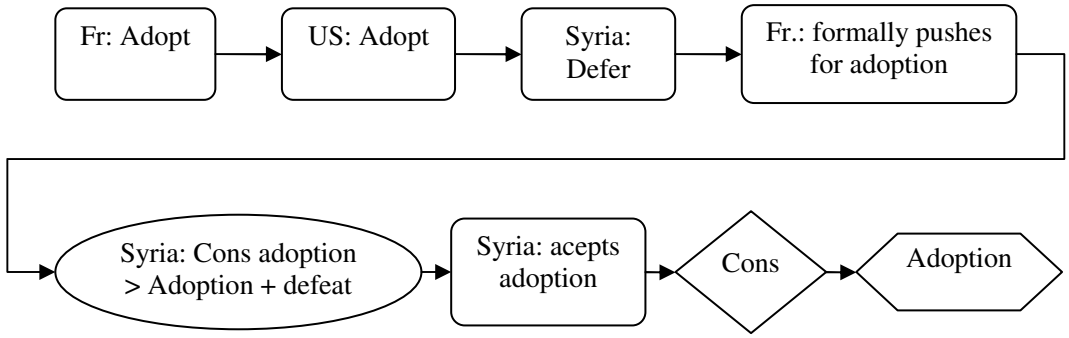
that gather majority support. Other proposals were abandoned. Occasionally, the minority may have extracted some concessions. In other cases, once the individual question was incorporated into a broader package deal, those objections were abandoned in light of the perceived value of the whole. This process was identical in all the cases studied.

What distinguishes the four negotiations, and explains their diverging outcomes, are their different end games. The negotiation of the Financing Convention presented the simplest end game.[10] By October 8, 1999, the Friend of the Chairman had produced a broadly agreed consolidated text. Only Cuba, Iraq, Lebanon, Libya, Pakistan, and Syria objected since that text did not define terrorism or condemn state terrorism. Nevertheless, the European Union, the Rio Group, Algeria, Japan, and the United States were very satisfied with the outcome. Led by France, which had initiated the negotiating process, they pushed for the adoption of the draft convention. Syria asked for a deferral, but this suggestion was rejected. In the end, the majority made a minor, face-saving concession in the preamble to the objecting delegations who accepted the adoption of the whole instrument by consensus. This situation can be summarized using interaction pattern 3.B, the objectors made a concession -- accepted the adoption of the instrument by consensus -- to avoid an embarrassing defeat (see figure 8.2). This interaction reveals the two key elements that determined the outcome. First was the willingness of the majority position to push for the adoption of the convention, even if there was not agreement. By demanding the adoption of the draft treaty, the majority forced the minority either to concede or to call for a vote. Second was the unwillingness of the

[10] See *supra*: Chapter 6.F.

minority to resort to a vote and lose it. The combination of these preferences produced a consensus outcome.

Fig. 8.2: Financing Convention – the end game



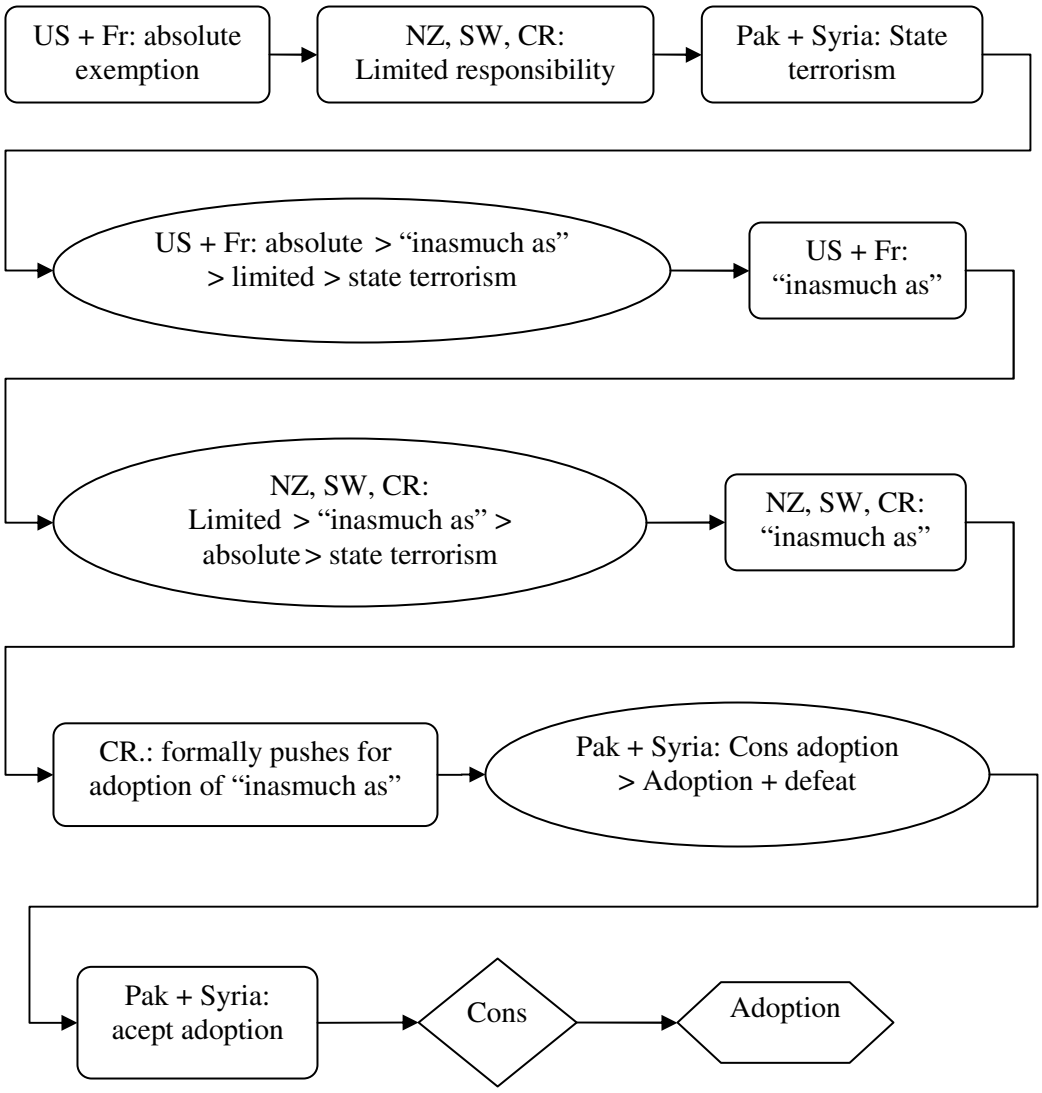
The end game of the negotiation of the Bombings convention was more complex.[11] By the end of the session of the Sixth Committee terrorism working group, there was agreement on the overall convention except the provision on governmental armed forces and self-determination. There were three distinctive positions. A first group of states, including the United States and France, sought a complete exception for governmental armed forces from the scope of the convention and no recognition of the right of self-determination. A second group of states, including New Zealand, Costa Rica, and Switzerland, sought to impose criminal responsibility on governmental armed forces for criminal acts they committed outside the framework of international humanitarian law, as well as a limited recognition of the right of self-determination. A third group of states, including Pakistan and Syria, sought to exemption from the scope of the convention acts performed in the exercise of the right of self-determination and

[11] See *supra:* Chapter 4.F and G.

criminalize as any acts committed by governmental state forces in violation of international humanitarian law. In a first stage, the two first groups of delegations reached made mutual concessions (pattern 4.B) and agreed to adopt the ambiguous "inasmuch as" formulation. However, the third group of delegations found this solution insufficient. Thus, the new coalition of states that formed around the "inasmuch as" formulation pushed for the adoption of the new convention. After a heated discussion that evidenced that the new coalition had a clear majority, the objecting delegations chose to disassociate themselves from the process and permitted the adoption of the new convention without a vote (see figure 8.3).

Several factors seem to have determined this result. First, the mutual concession between the United States and France, on the one hand, and New Zealand and Switzerland, on the other hand, seem to have arisen from their respective assessment that their original positions were untenable, since neither enjoyed sufficient support. However, arriving at these conclusions was difficult. New Zealand even threatened to call a vote. Second, both groups placed a high value on the adoption of the new convention. If they had valued more their principled positions than adopting a convention, they would not have made any concession. Third, once those two groups had reached an agreement, they were unwilling to make further concessions to accommodate the Arab states. Once there was a clear majority behind the new formulation, Costa Rica pushed for the formal adoption of the convention. Fourth, the minority was unwilling to resort to a vote and lose it and, therefore, conceded the adoption of the convention without a vote.

Fig. 8.3: Bombings Convention – the end game



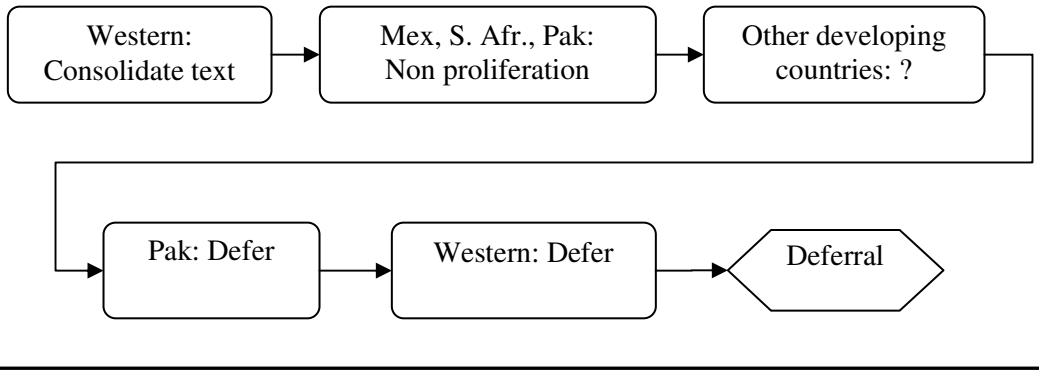
In the negotiation of the Nuclear Terrorism Convention there were two different end games, one in late 1998[12] and another one in early 2005.[13] In 1998, the positions were divided between Western delegations, that supported the consolidated text prepared

[12] See *supra:* Chapter 5.E.

[13] See *supra:* Chapter 5.G.

by the friend of the Chairman, which did not mention the question of the use and possession of nuclear weapons by states, and Mexico and some key Non-Aligned countries, such as South Africa and Pakistan, which sought to make clear that the adoption of the new convention would not recognize the legitimacy of the possession of nuclear weapons by nuclear states. The position of a third group of states was unclear. Some could have supported the NAM position while others could have supported the adoption of the convention. In fact, NAM was divided. In this case, there was no clear majority. Since the outcome of a potential vote was uncertain, no group was willing to take the risk of pushing for the adoption of the convention. In this context, a proposal by the NAM to defer the discussion to a later date was accepted (see figure 8.4).

Fig. 8.4: Nuclear Convention – the 1998 end game



By 2005, the situation had changed greatly. Thanks to a Mexican proposal, the question of whether the adoption of the nuclear convention would implicitly recognize the legitimacy of the use and possession of nuclear weapons by states had been solved. The Non-Aligned Movement then had left the negotiations. The great majority of delegations supported the adoption of the convention. However, five formal proposals

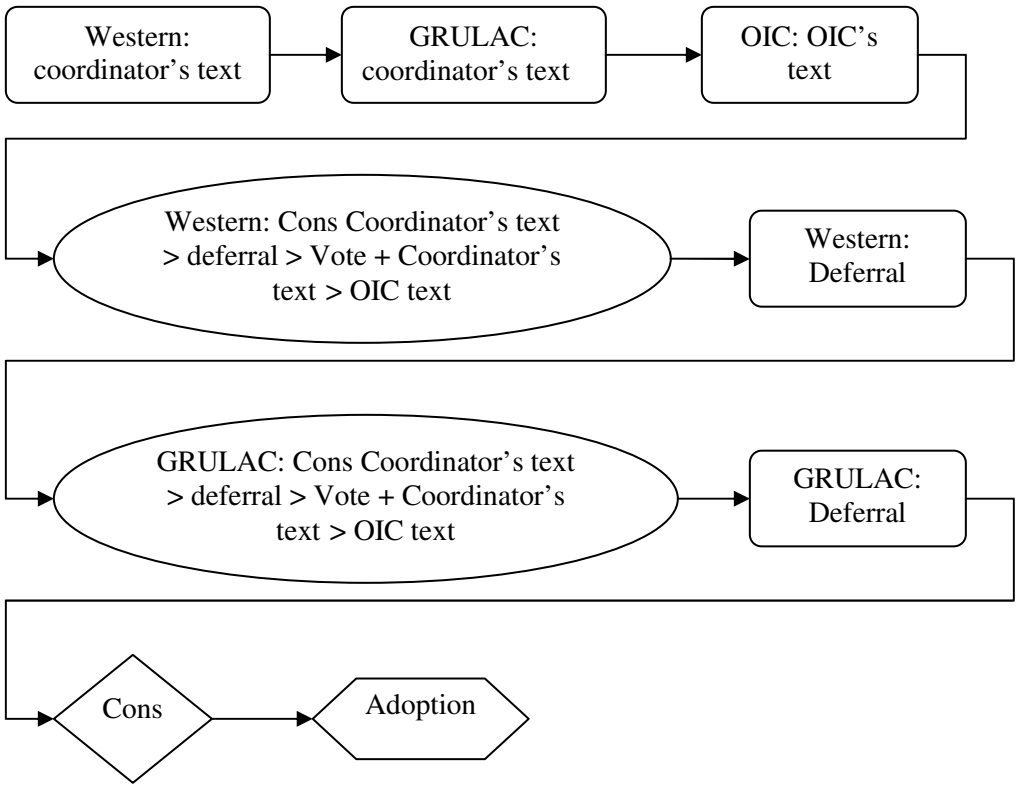
remained on the table: a proposal from Cuba to penalize any person in command of state armed forces that orders the use of nuclear devices; a proposal from Iran stressing that all states had a right to access nuclear technologies and materials for peaceful purposes; a proposal from the United States, underlining that the peaceful uses of nuclear energy should not be used as cover to acquire nuclear weapons; and, finally, a suggestion from Egypt stressing, in general terms, that the new convention should be compatible with international humanitarian law. None of these proposals enjoyed enough support as to be adopted if put to a vote since, by now, most delegations could accept the overall package and saw them as marginal in the context of the new counter terrorism instrument. However, those proposals incorporated important principled issues for their sponsors in the context of their overall foreign policy. Hence, they did not want to withdraw them without obtaining some concessions. The chairman linked them all together and convinced the sponsors to withdraw them simultaneously, making, in a sense, reciprocal concessions. In this sense, those delegations followed pattern 4.B, and all could claim some degree victory.

The negotiation of the draft Comprehensive Convention also presents two end games, one at the end of 2001 and another one in the second part of 2005. The controversial issue was, once more, the question of governmental armed forces and self-determination. By the end of 2001,[14] a broad coalition of mostly Western and Latin American states supported using the formula contained in the Bombings Convention and which had been put forward by the coordinator in his consolidated draft. However, members of the Organization of the Islamic Conference proposed recognizing the

[14] See *supra* Chapter 7.E.

criminal responsibility of state military forces for acts contrary to international humanitarian law and excluding freedom fighters from the scope of the convention. At

Fig. 8.5: Comprehensive Convention – 2001 end game



this point, the majority could have pushed for the adoption of the convention, forcing the OIC either to concede, accepting the adoption of the new instrument without a vote, or going to a vote and losing it. However, this coalition preferred a deferral rather than risking a vote. It seems that, immediately after September 11, Western and Latin American delegations placed a low value on a potential counter-terrorism that would have not enjoyed the support of the Islamic delegations. In this sense, it was preferable to continued negotiations, in an effort to bring the Islamic delegation on board, rather than

forcing a vote. Since consensus on the coordinator's text was impossible, the broad coalition supported the deferral of the negotiations to a later time (see figure 8.5).

By 2005, when the second end game took place,[15] the adoption of Security Council resolution 1373 made making concessions less attractive for some Western states. In essence, adopting the comprehensive convention had become less valuable since its basic provisions were already enacted by the Security Council. Moreover, Liechtenstein made a proposal that was attractive to the more moderate delegations but that was "too little" for the most staunch defender of self-determination and "too much" for the United States. At this point, the moderate majority could have called for a vote risking, however, leaving outside of the new legal regime both the United States and the Arab countries. Since such an outcome would not have created an effective legal regime against terrorism, it was preferred to defer the negotiations once more. As these conditions have remained unchanged, it is likely that these negotiations will continue to be deadlocked.

I believe that the preceding discussion confirms my initial assumption: that the success or failure of the negotiations, that is, whether a new legal instrument is adopted, is the direct result of the interaction among the negotiating parties in their intentional efforts to maximize their benefits, in light of their preferences and the options available. It highlights, however, an important aspect: procedural preferences are important. In general terms, actors unwilling to call a vote are likely to make concessions or to seek a deferral. Actors willing to call for a vote are more likely to extract concessions and even to obtain a consensus result. Thus, the rapid conclusion of the Bombings and Financing

[15] See *supra:* Chapter 7.I.

Conventions and the lack of progress in the negotiations of the Nuclear and Comprehensive Conventions has be attributed to their respective negotiation dynamics, in light of the particular combination of substantive and procedural preferences. While some delegations might have placed a higher value on the conclusion of some convention rather than another, and while some delegations might have been more committed to the questions of self-determination and non-proliferation in some negotiations rather than in others, it seems that the real difference among the cases studied was that, in the case of the Bombings and the Financing Conventions, there were some delegations willing to push for the adoption of the new treaty even to the point of risking a vote. It should be noted, however, that procedural and substantive preferences are intimately linked. Delegations were willing to risk a vote on a concrete drafts, containing precise provisions. If the text had been different, they might have been less supportive of their adoption.

To conclude, I must return to the broader theoretical question. In this work I have sought to present not only an exhaustive, historical narrative of the four most recent counter-terrorism, treaty-making negotiations held at the United Nations, but I have also developed a set of analytical tools to understand those negotiations. Those tools include: the model of strategic negotiating behavior, presented in chapter 2; the various interaction patterns, deduced from the same model and presented in the previous section; and the list of characteristic traits of international, multilateral, legal negotiations, presented at the beginning of this concluding chapter, and which was developed on the basis of the empirical evidence. I believe that these simple analytical tools could be useful to analyze

other multilateral negotiations. Testing further their worth, though, must be left to future research.

Annex: Letter from the Minister of Foreign Affairs of Costa Rica

El Ministro de Relaciones Exteriores y Culto

San José, August 13, 2007

Dear Sirs,

I have the honor to refer to the research that Mr. Carlos Fernando Díaz, a Foreign Service official of the Government of Costa Rica, has been doing as part of your distinguished Ph.D. Program in Political Science on the negotiations held at the United Nations General Assembly on four international conventions to fight terrorism.

The Government of Costa Rica, and myself personally, have always supported greater research in the areas of International Politics, International Law, and Foreign Relations. We believe that greater scientific knowledge in these areas will contribute to the peaceful and friendly relations among nations and promote the political, economic and cultural goals of our country.

In this context, my predecessors and I have authorized Mr. Díaz to use both the archives of Costa Rican Mission to the United Nations in New York and his own experience as a representative of Costa Rica in those negotiations, as the basis for his research. Opportunely, we have granted Mr. Díaz several leaves of absence to pursue his academic work. Now that his research is coming to a close, I have the pleasure to formally authorize that he publishes his findings, as part of his Ph.D. dissertation, in order to make better known the dynamics of the diplomatic process and international negotiation.

Yours Sincerely,

Bruno Stagno
Minister of Foreign Affairs of Costa Rica

Ministerio de Relaciones Exteriores
San José, Costa Rica

Political Science Department
Graduate Center
City University of New York

Bibliography

A) Books

Aggarwal, Vinod K. Institutional Designs for a Complex World : Bargaining, Linkages and Nesting. Ithaca and London: Cornell University Press, 1998.

Ashworth, Andrew. Principles of Criminal Law. 4th ed. Oxford: Oxford University Press, 2003.

Axelrod, Robert. Conflict of Interest: a Theory of Divergent Goals with Applications to Politics. Chicago, Il: Markham Publishing Company, 1970.

_____. The Evolution of Cooperation. New York: Basic Books, 1984.

_____, and Robert Keohane. "Achieving Cooperation under Anarchy: Strategies and Institutions," in: Kenneth Oye, ed. Cooperation under Anarchy. Princeton, NJ: Princeton University Press, 1986.

Bartos, Otomar J. Process and Outcome of Negotiations. New York and London: Columbia University Press, 1974.

_____, "Simple Model of Negotiation: a sociological point of view," in: I. William Zartman ed. The Negotiation Process: Theories and Applications. Berkeley and London: Sage Publications, 1978.

Bassiouni, M. Cherif. "A Policy-oriented Inquiry of 'International Terrorism'" in: M. Cherif Bassiouni, ed., Legal Responses to International Terrorism: U.S. procedural Aspects, Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988.

Bates, Robert H., Avner Greif, Margaret Levi, Jean-Laurent Rosenthal and Barry R. Weingast. Analytic Narratives. Princeton, NJ: Princeton University Press, 1998.

Bendahmane, Diane B. and John W. McDonald, eds. International Negotiation: art and science. Foreign Service Institute, U.S. Department of State, 1984.

Berton, Peter, "Japanese, Chinese and Soviet/Russian Negotiators: An Analytical Framework," in Peter Berton; Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values. London: Macmillan Press Ltd., 1999.

Best, Geoffrey. War and Law since 1945. Oxford: Clarendon Press, 1994.

BlueBook: A Uniform System of Citation. 18th ed., Compiled by the editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania

Law Review, and the Yale Law Review. Cambridge, Mass: Harvard Law Review Association, 2005.

Bolton, Gary E. and Kaylan Chatterjee, "Coalition Formation, Communication and Coordination: an Exploratory Experiment," in: Richard J. Zeckhauser; Ralph L. Keeney, and James K. Sebenius, eds. Wise Choices: Decisions, Games, and Negotiations. Boston, Mass: Harvard Business School Press, 1996.

Boyle, Alan, "Some reflections on the relationship of treaties and soft law" in Vera Gowlland-Debbas, ed., Multilateral Treaty-Making: The current status of challenges to and reforms needed in the international legislative process, The Hague, Boston and London: Martinus Nijhoff Publishers, 2000.

_____, and Christine Chinkin. The Making of International Law. Oxford: Oxford University Press, 2007.

Brams, Steven, Ann Doherty, and Matthew Weidner, "Game Theory: Focusing on the Players, Decisions and Agreements," in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco: Jossey-Bass, 1994.

_____. Negotiation Games. New York and London: Routledge, 1999.

Brierly, J. L. The Law of Nations: an introduction to the international law of peace. 6th ed. Oxford: Clarendon Press, 1963.

Briggs, Herbert W. The International Law Commission. Ithaca: Cornell University Press, 1965.

Brownlie, Ian. Principles of Public International Law. 4th ed., Oxford: Clarendon Press, 1990.

Cassese, Antonio. International Law in a Divided World. Oxford: Oxford University Press, 1986.

_____. International Criminal Law. Oxford: Oxford University Press, 2003.

Chasek, Pamela S. Earth Negotiations: Analyzing Thirty Years of Environmental Diplomacy. Tokio, New York, Paris: United Nations University Press, 2001.

Clark Arend, Anthony. "Towards an understanding of international legal rules" in Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt, eds. International Rules: approaches from international law and international relations. Oxford: Oxford University Press, 1996.

Coddington, Alan. Theories of the Bargaining Process. Chicago, IL: Aldine Publishing Co., 1968.

Crawford, James. "The rights of Peoples: 'Peoples' or 'Governments'," in James Crawford, ed., The Rights of Peoples, Oxford: Clarendon Press, 1988.

Crawford, Neta C. Argument and Change in World Politics: ethics, decolonization and humanitarian intervention. Cambridge: Cambridge University Press, 2002.

Cross, John G., "A Theory of the Bargaining Process," in: Oran R. Young, ed. Bargaining: Formal Theories of Negotiation. Champaign-Urbana, IL: University of Illinois Press, 1975.

_____, "Negotiation as a Learning Process," in: I. William Zartman, ed. The Negotiation Process: Theories and Applications. Berkeley and London: Sage Publications, 1978.

Cutcher-Gershenfeld, Joel E.; Richard E. Walton, and Robert B. McKersie. Strategic Negotiations, 2000.

Davis, George B., The Elements of International Law, 3rd ed. New York and London: Harper and Brothers Publishers, 1908.

De Feo, Michael, "The Political Offence Concept in Regional and International Conventions Relating to Terrorism," in: Guiseppe Nesi, ed., International Cooperation in Counter-terrorism: the united Nations and regional organizations in the fight against terrorism. Aldershort, UK, and Burlington, VT: Ashgate Publishing Co., 2005.

Doehring, Karl, "Self-Determination" in: Bruno Simma, ed., The Charter of the United Nations: a commentary. München: C.H.Beck Verlag, 1995.

Druckman, Daniel, "Boundary Role Conflict: Negotiation as Dual Responsiveness" in: I. William Zartman, ed. The Negotiation Process: Theories and Applications. Beverly Hills, CA, and London: Sage Publications, 1978.

Dupont, Christophe, and Guy-Olivier Faure, "The Negotiation Process," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____, "Coalition Theory: Using Power to Build Cooperation," in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco: Jossey-Bass, 1994.

Epps, Valerie, "Abolishing the Political Offence Exception" in: M. Cherif Bassiouni, ed., Legal Responses to International Terrorism: U.S. procedural Aspects, Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988, 181 -202.

Evans, Peter; Harold Jacobson, and Robert Putnam, eds. Double Edged Diplomacy: International Bargaining and Domestic Politics. Berkeley, Los Angeles and London: University of California, 1993.

Falk, Richard A. "The right of self-determination under international law: the coherence of doctrine versus the incoherence of experience." in: Wolfganf Danspeckgruber and Arthur Watts, eds. Self-Determination and Self-Administration. Boulder and London: Lynne Rienner Publishers, 1997.

Faure, Guy Oliver, "Cultural Aspects of International Negotiations," in: Peter Berton; Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values. London: Macmillan Press Ltd., 1999.

Finkelstein, Lawrence, "The politics of value allocation in the UN System," in: Lawrence Finkelstein, ed. Politics in the United Nations System. Durham and London: Duke University Press, 1988.

_____, "The Political Role of the Director-General of UNESCO," in: Lawrence Finkelstein, ed. Politics in the United Nations System. Durham and London: Duke University Press, 1988.

Fisher, Roger, Elizabeth Kopelman and Andrea Kupper Schneider. Beyond Machiavelli: Tools for Coping with Conflict. New York and London: Penguin Books, 1994.

Fleischhauer, Carl-August, "article 13" in Bruno Simma, ed., The Charter of the United Nations: a commentary. München: C.H.Beck Verlag, 1995.

Fletcher, George F., Basic Concepts of Criminal Law, Oxford: Oxford University Press, 1998.

Friedheim, Robert L., "The Third United Nations Conference on the Law of the Sea: North-South Bargaining on Ocean Issues," in: I. William Zartman, Positive Sum, Improving North-South Negotiations. New Brunswick and Oxford: Transaction Books, 1987.

_____, "Value Allocation and North-South Conflict in the Third United Nations Law of the Sea Conference," in: Lawrence Finkelstein, ed. Politics in the United Nations System. Durham and London: Duke University Press, 1988.

_____. Negotiating the New Ocean Regime. Columbia, SC: University of South Carolina Press, 1993.

_____, "Explaining Japan's Failure in the International Whaling Negotiations," in: Peter Berton, Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values. London: Macmillan Press Ltd., 1999.

Garrett, Geoffrey, "International Cooperation and Institutional Choice: The European Community's Internal Market," in: John Gerard Ruggie, ed. Multilateralism Matters: The Theory and Praxis of an Institutional Form. New York: Columbia University Press, 1993.

George, Alexander L., "Case Studies and Theory Development: the Method of Structured, Focused Comparison," in: Paul Gordon Lauren, ed. Diplomacy: New Approaches in History, Theory and Policy. New York: The Free Press, 1979.

Goodwin-Gill, Guy S. The Refugee in International Law. Oxford: Clarendon Press, 1983.

Graham, John L., "International Commercial Negotiations: A Focus on Japan," in: Peter Berton, Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values. London: Macmillan Press Ltd., 1999.

Green, Donald P. and Ian Shapiro. Pathologies of Rational Choice: A critique of applications in political science. New Haven and London: Yale University Press, 1994.

Greenwood, Christopher. Command and the Laws of Armed Conflict. Camberley, UK: Staff College Strategic and Combat Studies Institute, 1993.

Gulliver, P.H. Disputes and Negotiations: A Cross-cultural Perspective. New York, London, Toronto, Sydney and San Francisco: Academic Press, 1979.

Haas, Ernst B. When Knowledge is Power: Three Models of Change in International Organizations. Berkeley, Los Angeles, and Oxford: University of California Press, 1990.

Haas, Peter M., "Epistemic Communities and the Dynamics of International Environmental Co-operation," in: Volker Rittberger, ed. Regime Theory and International Relations. Oxford: Oxford University Press, 1993.

Habeeb, William Mark. Power and Tactics in International Negotiation: How Weak Nations Bargaining with Strong Nations. Baltimore and London: John Hopkins Press, 1988.

Hafner, Gerhard, "The definition of the crime of terrorism," in: Guiseppe Nesi, ed., International Cooperation in Counter-terrorism: the united Nations and regional organizations in the fight against terrorism. Aldershort, UK, and Burlington, VT: Ashgate Publishing Co., 2005.

Hampson, Fen Osler and Hart Michael. Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment. Baltimore and London: Johns Hopkins, 1995.

Hannay, William, H. "The Legislative Approach to the Political Offence Exception" in: M. Cherif Bassiouni, ed., Legal Responses to International Terrorism: U.S. procedural Aspects, Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988, 115 -127.

Henrikson, Alan K. Negotiating World Order: The Artisanship and Architecture of Global Diplomacy. Wilmington, Delaware: Scholarly Resources Inc., 1986.

Hilf, Meinhard. "article 22" in Bruno Simma, ed., The Charter of the United Nations: a commentary. München: C.H.Beck Verlag, 1995.

Hopmann, Terrence. Negotiation Process and the Resolution of International Conflicts. Columbia, SC.: University of South Carolina, 1996.

Hopkins, Raymond, "The Wheat Negotiations: Loss or Gain in North-South Relations?," in: I. William Zartman. Positive Sum, Improving North-South Negotiations New Brunswick and Oxford: Transaction Books, 1987.

Humphrey, John P. "Political and related rights" in: Theodor Meron, Human Rights in International Law: Legal and policy issues. Oxford: Clarendon Press, 1984.

Iklé, Fred Charles. How Nations Negotiate. New York, Evanston, and London: Harper Row Publishers, 1964.

Jönsson, Christer and Staffan Bolin, "The role of the International Atomic Energy Agency in the Politics of Atomic Energy," in: Lawrence Finkelstein, ed. Politics in the United Nations System. Durham and London: Duke University Press, 1988.

_____, "Cognitive Theory," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____, "Cognitive Factors in Explaining Regime Dynamics," in: Volker Rittberger, ed. Regime Theory and International Relations. Oxford: Oxford University Press, 1993.

Kahn, Robert L., "Organizational Theory," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

Krasner, Stephen D., "Sovereignty, Regimes and Human Rights," in: Volker Rittberger, ed. Regime Theory and International Relations. Oxford: Oxford University Press, 1993.

Kaufmann, Johan. Conference Diplomacy: An Introductory Analysis. Leyden: Sijthoff, 1968.

Keohane, Robert O. "The demand for International Regimes," in: Stephen D. Krasner, ed. International Regimes. Ithaca and London: Cornell University Press, 1983.

_____. After Hegemony: Cooperation and Discord in the World Political Economy. Princeton: Princeton University Press, 1984.

_____, and Joseph S. Nye. Power and Interdependence. 2nd ed. New York: Harper Collins Publishers, 1989.

Knoops, Geert-Jan. An Introduction to the Law of the International Criminal Tribunals: a comparative study, (Ardsley, New York: Transnational Publishers, 2003.)

Kramer, Roderick M. and David M. Messick, eds. Negotiation as a Social Process. Thousand Oaks, Ca., London and New Delhi: Sage Publications, 1995.

Krasner, Stephen D., ed., International Regimes. Ithaca and London: Cornell University Press, 1983.

_____, "Structural causes and regime consequences: regimes as intervening variables" in Stephen D., Krasner ed., International Regimes. Ithaca and London: Cornell University Press, 1983.

Krauss, Sarit. Strategic Negotiations in Multiagent Environments. Cambridge, Mass., and London: MIT Press, 2001.

Kremenyuk, Victor A., "The emerging system of International Negotiation," in Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____, ed. International Negotiation, Analysis, Approaches, Issues. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____ and Windfried Lang, "The political, diplomatic, and legal background" in Gunnar Sjöstedt, ed., International Environmental Negotiation. Newbury Park, London, New Delhi: Sage Publications: 1993.

Kolb, Deborah and Guy-Olivier Fauvre, "Organizational Theory: The Interface of Structure, Culture, Procedures, and Negotiation Processes," in: William Zartman I. ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco, Ca.: Jossey-Bass, 1994.

Lall, Arthur. Modern International Negotiation: Principles and Practice. New York and London: Columbia University Press, 1966.

Lauren, Paul Gordon, "Theories of Bargaining with Threats of Force: Deterrence and Coercive Diplomacy," in: Paul Gordon Lauren. ed. Diplomacy: New Approaches in History, Theory and Policy. New York: The Free Press, 1979.

Lax, David A. and James K. Sebenius, "Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing," in: Peyton Young, ed. Negotiation Analysis. Ann Arbor, Mich.: University of Michigan, 1991.

Lillich, Richard B. "Civil Rights" in: Theodor Meron, Human Rights in International Law: Legal and policy issues. Oxford: Clarendon Press, 1984.

Lindell, Ulf. Modern Multilateral Negotiation. Lund, Sweden: Studentlitteratur, 1988.

Lewin, André, "Article 18: vote" in Jean-Pierre Cot and Alain Pellet, La Charte des Nations Unies: commentaire article par article, 2 ed., Paris: Economica, 1991.

Midgaard, Knut and Arild Underdal, "Multiparty Conferences" in Daniel Druckman Negotiations: social-psycological perspectives. Beverly Hills and London: Sage Publications, 1977.

Milner, Helen. Interests, Institutions and Information. Princeton, NJ: Princeton University Press, 1997.

Mitchell, C.R. The Structure of International Conflict. London: Macmillan Press Ltd., 1981.

Morley, Ian and Geoffry Stephenson. The Social Psychology of Bargaining. London: George Allen & Unwin Ltd., 1977.

Neale, Margaret A. and Max H. Bazerman. Cognition and Rationality in Negotiation. New York: The Free Press, 1991.

Oye, Kenneth, "Explaining Cooperation under Anarchy: Hypotheses and Strategies," in: Kenneth Oye ed. Cooperation under Anarchy. Princeton, NJ: Princeton University Press, 1986.

Perera, Amrith Rohan, International Terrorism. Delhi: Vikas Publishing House, 1997.

Peterson, M. J. "Using the General Assembly," in Jane Boulden & Thomas G. Weiss, eds Terrorism and the UN, before and after September 11, Bloomington: Indiana University Press, 2004.

Pfetsch, Frank R., "Institutions Matter: Negotiating the European Unions," in: Peter Berton; Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values. London: Macmillan Press Ltd., 1999.

Pruitt, Dean G., "Strategy in Negotiation," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

Putnam, Robert, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," in: Peter Evans; Harold Jacobson, and Robert Putnam, eds. Double Edged Diplomacy: International Bargaining and Domestic Politics. Berkeley, Los Angeles and London: University of California, 1993.

Pyle, Christopher H. "The Political Offence Exception" in: M. Cherif Bassiouni, ed., Legal Responses to International Terrorism: U.S. procedural Aspects, Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988, 181 -202.

Raiffa, Howard. The Art and Science of Negotiation. Cambridge, Ma., and London: Harvard University Press, 1982.

Rangarajan, L.N. The Limitation of Conflict: A Theory of Bargaining and Negotiation. New York: St. Martin's Press, 1985.

Reisman, Michael and Chris T. Antoniou, eds., The Laws of War: a comprehensive collection of primary documents on international laws governing armed conflict. New York: Vintage Books, 1991.

Riker, William H. The Theory of Political Coalitions. New Haven and London: Yale University Press, 1962.

Rittberger, Volker, ed. Regime Theory and International Relations. Oxford: Oxford University Press, 1993.

Robert, Maryse. Negotiating NAFTA, Explaining the Outcomes in Culture, Textile, Autos and Pharmaceuticals. Toronto, Buffalo and London: University of Toronto Press, 2000.

Roberts, Adam and Richard Guelff, eds., Documents on the Laws of War, 2nd ed., Oxford: Oxford University Press, 1989.

Rothstein, Robert L. Global Bargaining at UNCTAD and the Quest for a New International Economic Order. Princeton, New Jersey: Princeton University Press, 1979.

_____, "Commodity Bargaining: The Political Economy of Regime Creation," in: I. William Zartman. Positive Sum, Improving North-South Negotiations. New Brunswick and Oxford: Transaction Books, 1987.

Rubin, Jeffrey Z. and Bert R. Brown. The Social Psychology of Bargaining and Negotiation. NewYork, San Francisco and London: Academic Press, 1975.

_____,. "Psychological Approach," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____, and Walter Swap, "Forming Consensus Trough Group Processes," in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco: Jossey-Bass, 1994.

Sabel, Robbie. Procedures at International Conferences, 2nd ed. Cambridge: Cambridge University Press, 2006.

Saul, Ben. Defining Terrorism in International Law. Oxford: Oxford University Press, 2006.

Schaefer, Michael, "article 21" in Bruno Simma, ed., The Charter of the United Nations: a commentary. München: C.H.Beck Verlag, 1995.

Schechter, Michael G., "The Political Roles of Recent World Bank Presidents," in: Lawrence Finkelstein, ed. Politics in the United Nations System. Durham and London: Duke University Press, 1988.

_____. United Nations-Sponsored World Conferences: focus on impact and follow-up. Tokyo: United Nations University Press, 2001.

Schelling, Thomas, "An Essay on Bargaining," in: Oran R. Young, ed. Bargaining: Formal Theories of Negotiation. Champaign-Urbana, Il., Chicago and London: University of Illinois Press, 1975.

Schröeder, Heike. Negotiating the Kyoto Protocol: an Analysis of Negotiations Dynamics in International Negotiations. Münster, Hamburg and London: Lit Verlag, 2001.

Sebenius, James K. Negotiating the Law of the Sea: Lessons in the Art and Science of Reaching Agreement. Cambridge and London: Harvard University Press, 1984.

_____, "Negotiation Analysis," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers. 1991.

_____, "Sequencing to Build Coalitions: With Whom Should I Talk First?," in: Richard J Zeckhauser; Ralph L. Keeney, and James K. Sebenius, eds. Wise Choices: Decisions, Games, and Negotiations. Boston, Ma: Harvard Business School Press, 1996.

Siebe, Wilfried, "Game Theory," in: Victor A. Kremenyuk ed. International Negotiation, Analysis, Approaches, Issues 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

Nagendra Singh, "The UN and the Development of International Law" in Adam Roberts and Benedict Kingsbury, eds. United Nations, Divided World: the UN's roles in international relations. 2nd ed. (Oxford: Clarendon Press, 1993).

Sjöstedt, Gunnar "Leadership in Multilateral Negotiations: Crisis or Transition?" In: Peter Berton; Hiroshi Kimura, and I. William Zartman, eds. International Negotiation: Actors, Structure/Process, Values London: Macmillan Press Ltd. 1999

Snidal, Duncan, "The Game *Theory* of International Politics," in: Kenneth Oye, ed. Cooperation under Anarchy. Princeton, NJ: Princeton University Press, 1986.

Snyder, Glenn H. and Paul Diesing. Conflict among Nations, Bargaining, Decision Making and System Structure in International Crises. Princeton, NJ: Princeton University Press, 1977.

Spector, Bertram I., "Negotiation as a Psychological Process," in: I. William Zartman, ed. The Negotiation Process: Theories and Applications. Beverly Hills, CA, and London: Sage Publications, 1978.

_____, "Decision Theory: Diagnosing Strategic Alternatives and Outcome Trade-offs," in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity San Francisco: Jossey-Bass, 1994.

Starke, J. G., An Introduction to International Law, 5th ed. London: Butterworths, 1963.

Starkey, Brigit, Mark A. Boyer and Jonathan Wilkenfeld. Negotiating a Complex World: An Introduction to International Negotiation. Lanham, Boulder, New York, and Oxford: Rowman and Littlefield Publishers, 1999.

Stein, Arthur A., "Coordination and collaboration: regimes in an anarchic world," in: Stephen D. Krasner ed. International Regimes. Ithaca and London: Cornell University Press, 1983.

Strange, Susan, "Cave! Hic Dragones: a Critique of Regime Analysis," in: Stephen D. Krasner, ed. International Regimes. Ithaca and London: Cornell University Press, 1983.

Susskind, Lawrence E. Environmental Diplomacy: Negotiating more effective global agreements. Oxford: Oxford University Press, 1993.

Swaan, Abram de. Coalition theories and Cabinet Formation: A Study of the Formal Theories of Coalition Formation Applied to Nine European Parliaments after 1918. San Francisco and Washington: Jossey-Bass Elsevier, 1973.

Tracy, Brian H. and Haus Rissen, "Bargaining as Trial and Error: The case of the Spanish Base Negotiations 1963–1970," in: I. William Zartman, ed. The Negotiation Process: Theories and Applications. Beverly Hills, CA, and London: Sage Publications, 1978.

Tsebelis, George. Nested Games: Rational Choice in Comparative Politics. Berkeley, Los Angeles, and London: California University Press, 1990.

Turabian, Kate L. A Manual for Writers of Term Papers, Theses, and Dissertations. 6th ed. Chicago: Chicago University Press, 1996.

Underdal, Arild, "The Outcomes of Negotiation," in: Victor A. Kremenyuk, ed. International Negotiation, Analysis, Approaches, Issues. 1st ed. San Francisco and Oxford: Jossey-Bass Elsevier Publishers, 1991.

_____, "Leadership Theory: Rediscovering the Arts of Management," in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco: Jossey-Bass, 1994.

_____, "Modeling International Negotiations: the Case of Global Climate Change," Paper prepared for the Third Pan-European Conference on International Relations, held at Vienna on 16 - 19 September 1998, available in www.fredsanterre.com/pro/papers/sw99.underdal1.pdf 1998.

United Nations, 1971 United Nations Year Book. New York, 1972.

_____, 1972 United Nations Year Book. New York, 1973.

_____, 1973 United Nations Year Book. New York, 1974.

_____, 1974 United Nations Year Book. New York, 1975.

_____, 1975 United Nations Year Book. New York, 1976.

_____, 1976 United Nations Year Book. New York, 1977.

_____, 1977 United Nations Year Book. New York, 1978.

_____, 1978 United Nations Year Book. New York, 1979.

_____, 1979 United Nations Year Book. New York, 1980.

_____, 1981 United Nations Year Book. New York, 1982.

_____, 1983 United Nations Year Book. New York, 1984.

_____, 1985 United Nations Year Book. New York, 1986.

_____, 1987 United Nations Year Book. New York, 1988.

_____, 1989 United Nations Year Book. New York, 1990.

_____, 1991 United Nations Year Book. New York, 1992.

_____, La Comisión de Derecho Internacional y su obra. 5th ed., New York: United Nations, 1996.

United States' State Department, Patterns of Global Terrorism 1985, Washington D.C., 1986.

_____, Office of the Coordinator for Counter-terrorism, 1996 Patterns of Global Terrorism Report, Washington D.C., April, 1997, available from *http://www.state.gov/www/global/terrorism/1996Report/middle.html*.

Walker, Ronald A. Multilateral Conferences: purposeful international negotiation. Houndmills and New York: Palgrave Macmillan, 2004.

Wall, James A. Negotiation: Theory and Practice. Glenview, IL, and London: Scott, Foresman and Co., 1985.

Walton, Richard E., Joel E. Cutcher-Gershenfeld and Robert B. Mckersie. Strategic Negotiations: A Theory of Change in Labor-Management Relations. Ithaca and London: Cornell University Press, 2000.

Waltz, Kenneth N. Theory of International Politics. New York: McGraw Hill, 1979.

Wilson, Woodrow, "Fourteen Points" in: Margaret MacMillan, Paris 1919: Six moths that changed the world, Annex. New York: Random House, 2003.

Winham, Gilbert R. "Complexity in international negotiation" in Daniel Druckman Negotiations: social-psycological perspectives. Beverly Hills and London: Sage Publications, 1977.

Wolfrum, Rüdiger. "Article 18" in Bruno Simma, ed., The Charter of the United Nations: a commentary. München: C.H.Beck Verlag, 1995.

Young Peyton, E. Negotiation Analysis. Ann Arbor, Mich.: University of Michigan, 1991.

Young, Oran R. ed. Bargaining: Formal Theories of Negotiation. Champaign-Urbana, IL, Chicago and London: University of Illinois Press, 1975.

_____, and Gail Osherenko, "Testing Theories of Regime Formation: Findings from a Large Collaborative Research Project," in: Volker Rittberger, ed. Regime Theory and International Relations. Oxford: Oxford University Press, 1993.

Zacher, Mark W., "Multilateral Organizations and the Institution of Multilateralism: the Development of Regimes for Nonterrestrial Spaces," in: John Gerard Ruggie, ed. Multilateralism Matters: The Theory and Praxis of an Institutional Form. New York: Columbia University Press, 1993.

_____, and Brent A. Sutton. Governing global networks: International regimes for transportation and communications. Cambridge: Cambridge University Press, 1996.

Zagaris, Bruce and David Simonetti, "Judicial Assistance under U.S. Bilateral Treaties" in: M. Cherif Bassiouni, ed., Legal Responses to International Terrorism: U.S. procedural Asspects, Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988, 219 -228.

Zartman, I. William, "Negotiation as a Joint Decision-Making Process," in: I. William Zartman, ed. The Negotiation Process: Theories and Applications. Beverly Hills, CA, and London: Sage Publications, 1978.

_____, and Maureen Berman. The Practical Negotiator New Haven and London: Yale University Press, 1982.

_____, Positive Sum, Improving North-South Negotiations. New Brunswick and Oxford: Transaction Books, 1987.

_____, "Two's Company and More's a Crowd: The Complexities of Multilateral Negotiation" in: I. William Zartman, ed. International Multilateral Negotiation: Approaches to the Management of Complexity. San Francisco, CA: Jossey-Bass, 1994.

B) Articles

Abbott, Kenneth W. and Duncal Snidal, "Hard and soft law in international governance," in 54 Int. Org. 2000.

Haas, Peter M., "Introduction: epistemic communities and international policy coordination," 46 Int. Org. 1 (winter 1992).

Halberstam, Malvina, "The evolution of the United Nations position on terrorism: from exempting national liberation movements to criminalizing terrorism wherever and by whomever committed," 41 Colum. J. Transnat'l L. 573 (2003)

Morris, Virginia and M. Christiane Bourloyannis-Vrailas, "Current Developments: The Work of the Sixth Committee at the Forty-Eight Session of the UN General Assembly," 88 AM.J.INT'L.L 343 - 348 (1994).

_____, and M. Christiane Bourloyannis-Vrailas, "Current Developments: The Work of the Sixth Committee at the Forty-Ninth Session of the UN General Assembly," 89 AM.J.INT'L.L 607 - 612 (1995).

_____, and Arnold Pronto, "Current Developments: The Work of the Sixth Committee at the Fifty-Fourth Session of the UN General Assembly," 94 AM.J.INT'L.L 582 - 585 (2000).

Peterson, M.J., "Whalers, cetologists, environmentalists and the international management of whaling," 46 Int. Org. 1 (winter 1992).

Rosand, Eric, "The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?," 28 Fordham Int'l L.J. 542 (2005).

Rostow, Nicholas, "Before and After: The Changed UN Response to Terrorism since September 11th," 35 Cornell Int'l L.J. 475 - 482 (2002).

Szasz, Paul C., "The Security Council Starts Legislating," 96 AM.J.INT'L.L 901 (2002).

Sebenius, James K., "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities," 46 Int. Org. 1 winter 1992.

Witten, Samuel M., "The International Convention for the Suppression of Terrorist Bombings" 94 AM.J.INT'L.L 774 – 781 (1988).

C) Treaties

1937

League of Nations Convention for the Prevention and Punishment of Terrorism, *opened for signature* Nov. 16, 1937, reprinted: in U.N. Secretariat, *Study prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1927*, annex I, U.N. Doc. A/C.6/418 (Nov. 2, 1972).

1945

Charter of the United Nations, *adopted on* 26 June, 1945.

1949

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 31 - 83.

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 85 - 133.

Geneva Convention Relative to the Treatment of Prisoners of War, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 135-285.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *adopted on* Aug. 12, 1949, 75 U.N.T.S. 287 - 417.

1950

European Convention for the Protection on Human Rights and Fundamental Freedoms, *adopted on* Nov. 4, 1950, ETS No. 5.

1951

Convention relating to the Status of Refugees, *adopted on* July 28, 1951, U.N. Doc. A/CONF.2/108.

1954

Organization of American States' Convention on Territorial Asylum, *adopted on* March 28, 1954.

1961

Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95.

1963

Convention on Civil Liability for Nuclear Damage, *adopted on* 1963, 1063 U.N.T.S. No. 16197.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, *adopted in* Sept. 14, 1963, 704 U.N.T.S.

1966

International Covenant on Civil and Political Rights, *adopted on* Dec. 16, 1966, 999 UNTS 171.

International Covenant on Economic, Social and Cultural Rights, *adopted on* Dec. 16, 1966, 999 UNTS 3.

1969

American Convention on Human Rights, *adopted on* Nov 22, 1969, 1144 UNTS 123.

Vienna Convention on the Law of Treaties, *done on* May 23, 1969, 1155 UNTS 331, 8 ILM 679 (1969).

1970

Convention for the Suppression of Unlawful Seizure of Aircraft, *adopted on* Dec. 16, 1970, 22 U.S.T. 1641, 869 U.N.T.S. 105.

Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, IAEA Doc. INFCIRC/140 (22 April 1970).

1971

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, *adopted on* Sept. 23, 1971, 974 U.N.T.S.

Organization of American States' Convention to prevent and punish acts of terrorism taking the form of crimes against persons and related extortion that are of international significance, *concluded on* Feb. 2, 1971, OAS Official records OEA/Ser.A/17, O.A.S.T.S. No. No.37, 1438 U.N.T.S.

1973

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *adopted on* Dec. 14, 1973, G.A. Res. 3166(XXVIII) Annex, 1035 U.N.T.S.

1977

European Convention on the Suppression of Terrorism, *adopted on* January 27, 1977, 1137 U.N.T.S., No. 17828, ETS No. 90.

Protocol Additional to the Geneva Conventions of 12 August 1943, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted on* June 8, 1977, 1125 U.N.T.S. 3-608.

1979

Convention on the Physical Protection of Nuclear Material, *adopted on* Oct. 26, 1979, 1456 U.N.T.S.

International Convention against the Taking of Hostages, *adopted on* Dec. 17, 1979, G.A. Res. 34/146, Annex, U.N. Doc. A/Res/34/146/Annex (Dec. 17, 1979), 1316 U.N.T.S.

1981

African Charter on Human and Peoples' Rights, art. 4, *adopted on* June 26, 1981, 21 I.L.M. 59.

1987

South Asian Association for Regional Cooperation's Regional Convention on Suppression of Terrorism, *adopted on* Nov. 4, 1987.

1988

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, *adopted on* March 10, 1988, IMO Doc. SU/CONF/15/Rev.1.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Self, *adopted on* March 10, 1988, IMO Doc. SU/CONF/16/Rev.2.

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, *adopted on* Feb. 24, 1988, ICAO Doc. 9518.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *adopted on* Dec. 19, 1988.

1990

United Nations Model Treaty on Extradition, G.A. Res. 46/116, Annex, U.N. Doc. A/RES/46/116, Annex (Dec. 14, 1990).

1991

Convention on the Marking of Plastic Explosives for the Purpose of Detection, *signed at* Montreal on March 1, 1991, U.N. Doc. S/22393, 30 ILM 726.

1994

Convention on the Safety of United Nations and Associated Personnel, G.A. Res. 49/59 annex, U.N. Doc. A/RES/49/59, annex (Dec. 9, 1994).

1996

Comprehensive Nuclear Test Ban Treaty, *adopted on* Sept. 10, 1996, by G.A Res. 50/245, annex, U.N. Doc. A/50/245/annex (Sept. 24, 1996).

Treaty on European Union, relating to extradition between the Member States of the European Union, *adopted on* Sept. 23, 1996, E.U. Official Journal C 313.

1997

Convention on the assistance in the case of a nuclear accident or radiological emergency, *adopted on* Sept. 26, 1986, IAEA Doc. INFCIRC/336 (Sept. 22, 1997).

International Convention for the Suppression of Terrorist Bombings, *adopted* on Dec. 15, 1997, G.A. Res. 52/164 Annex, U.N. Doc. A/RES/52/152 Annex (Dec. 15, 1997).

Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management, adopted on Sept. 5, 1997, IAEA Doc. GOV/INF/821-GC(41)/INF/12 (Sept.22, 1997).

1998

Rome Statute of the International Criminal Court, *done in* Rome, July 17th, 1998.

1999

Convention of the Organization of the Islamic Conference on Combating International Terrorism, *adopted on* July 1, 1999, *reprinted in* U.N. Doc. A/54/637-S/1999/1204 Annex.

International Convention for the Suppression of the Financing of Terrorism, *adopted on* Dec. 9, 1999, G.A. Res. 54/109 (1999) Annex, U.N. Doc. A/54/109/Annex (Dec. 9, 1999).

2005

International Convention for the Suppression of Acts of Nuclear Terrorism, *adopted on* April 13, 2005, G.A. Res. 59/290 (2005) Annex, U.N. Doc. A/59/290/Annex (April 13, 2005).

D) Law Cases

Legality of the threat or use of nuclear weapons, Advisory Opinion, 1996 I.C.J. (July 8).

Military and Paramilitary Activities (Nicar. v. U.S.) 1986 I.C.J.

R. v. Mafart and Prieur, [1985] N.Z.H.C., Auckland Registry, (Davison C.J.) *reprinted in* 74 I.L.R 241, 249 – 251.

Rainbow Warrior Arb. Award (N.Z. v. Fr.) (U.N. Secretary-General, July 6, 1986) *reprinted in* 74 I.L.R 241.

E) Declarations

1948 Universal Declaration of Human Rights, G.A. Res. 217A (III) (Dec. 10, 1948).

1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), annex (Oct. 24, 1970).

1994 Declaration on Measures to Eliminate International Terrorism, G.A. Res. 49/60, Annex, U.N. Doc. A/Res/49/60/Annex (Dec. 9, 1994).

1995 Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, G.A. Res. 50/6, annex, U.N. Doc. A/RES/50/6 annex (Oct. 24, 1995).

1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, G.A. Res. 51/210, annex, U.N. Doc. A/RES/51/210, annex (Dec. 17, 1996).

1996 Group of Seven Major Industrialized Countries, Lyon Summit, June 27–29, 1996, *Declaration on Terrorism*, (June 27, 1996) in http://www.g8.utoronto.ca/summit/1996lyon/terrorism.html (last visited Ma. 15, 2006).

F) Resolutions and Decisions

1) General Assembly Decisions

G.A. decision 48/411 (Dec. 9, 1993).

2) General Assembly Resolutions

G.A. Res. 2621 (XXV), (Oct. 12, 1970).

G.A. Res. 2780 (XXVI), U.N. Doc. A/8536 (Dec. 3, 1971).

G.A. Res. 2927 (XXVII) (Nov. 28, 1972).

G.A. Res. 3034 (XXVII) (Dec. 18, 1972).

G.A. Res. 31/102, U.N. Doc. A/RES/31/102 (Dec. 15, 1976).

G.A. Res. 31/103, U.N. Doc. A/RES/31/103 (Nov. 28, 1976).

G.A. Res. 32/147, U.N. Doc. A/RES/32/147 (Dec. 16, 1977).

G.A. Res. 32/148, U.N. Doc. A/RES/32/103 (Dec 16, 1977).

G.A. Res. 33/19, U.N. Doc. A/RES/33/19 (Nov. 29, 1978).

G.A. Res. 34/145, U.N. Doc. A/RES/34/145 (Dec. 17, 1979).

G.A. Res. 36/109, U.N. Doc. A/RES/36/109 (Dec. 10, 1981).

G.A. Res. 38/130, U.N. Doc. A/RES/38/130 (Dec. 19, 1983).

G.A. Res. 39/159, U.N. Res. A/RES/39/159 (Dec. 17, 1984).

G.A. Res. 40/61, U.N. Doc. A/RES/4061 (Dec. 9, 1985).

G.A. Res. 42/159, U.N. Doc. A/RES/42/159 (Dec. 7, 1987).

G.A. Res. 44/29, U.N. Doc. A/RES/44/29 (Dec. 4, 1989).

G.A. Res. 46/51, U.N. Doc. A/RES/46/51 (Dec. 9, 1991).

G.A. Res. 49/60, U.N. Doc. A/RES/49/60 (Dec. 9, 1994).

G.A. Res. 49/75 K, U.N. Doc. A/RES/49/75K, (Dec. 15, 1994).

G.A. Res. 50/6, U.N. Doc. A/RES/50/6, (Oct. 24, 1995).

G.A. Res. 50/45, U.N. Doc. A/RES/50/45 (Dec. 11, 1995).

G.A. Res. 50/53, U.N. Doc. A/RES/50/53 (Dec. 11, 1995).

G.A. Res. 51/210, U.N. Doc. A/RES/51/210 (Dec. 17, 1996).

G.A. Res. 52/164, U.N. Doc. A/RES/52/164 (Dec. 15, 1997).

G.A. Res. 52/165, U.N. Doc. A/RES/52/165 (Dec. 15, 1997).

G.A. Res. 53/108, U.N. Doc. A/RES/53/108 (Dec. 8, 1998).

G.A. Res. 54/109, U.N. Doc. A/54/109 (Dec. 9, 1999).

G.A. Res. 54/110, U.N. Doc. A/RES/54/110 (Dec. 9, 1999).

G.A. Res. 55/158, U.N. Doc. A/RES/55/158 (Dec. 12, 2000).

G.A. Res. 56/1, U.N. Doc. A/RES/56/1 (Sept. 12, 2001).

G.A. Res. 56/88, U.N. Doc. A/RES/56/88 (Dec. 12, 2001).

G.A. Res. 57/27, U.N. Doc. A/RES/57/27 (Nov. 19, 2002).

G.A. Res. 58/81, U.N. Doc. A/RES/58/81 (Dec. 9, 2003).

G.A. Res. 59/46, U.N. Doc. A/RES/59/46 (Dec. 2, 2004).

G.A. Res. 59/290, U.N. Doc. A/59/290 (April 13, 2005).

G.A. Res. 60/1, U.N. Doc. A/60/1 (Sept. 16, 2005).

G.A. Res. 60/43, U.N. Doc. A/60/43 (Dec. 8, 2005).

3) Security Council Presidential Statements

S.C. Presidential “Statement,” S/PRST/1994/40 (July 29, 1994).

4) Security Council Resolutions

S.C. Res. 579 (1985), U.N. Doc. S/RES/508 (Dec. 18, 1985).

S.C. Res. 1171 (1998), U.N. Doc. S/RES/1172 (June 6, 1998).

S.C. Res. 1368 (2001), U.N. Doc. S/RES/1368 (Sept. 12, 2001).

S.C. Res. 1373 (2001), U.N. Doc. S/RES/1373 (Sept. 28, 2001).

S.C. Res. 1540 (2004), U.N. Doc. S/RES/1540 (April 28, 2004).

S.C. Res. 1566 (2004), U.N. Doc. S/RES/1566 (Oct. 8, 2004).

G) Reports

1970

U.N. Int'L. Comm., *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm.

1971

U.N. Int'L. Comm., *Report to the General Assembly*, U.N. Doc. A/8410/Rev.1 (1971), U.N. GAOR 26th Sess. Supp. No. 10.

U.N.G.A. Sixth Comm., *Report*, U.N. Doc. A/8537, (Nov. 29, 1971), U.N. GAOR 26th Sess. Annex No. 88.

1972

U.N.G.A. Sixth Comm., *Report,* U.N. Doc. A/8969 (Dec. 16, 1972) *reprinted in* U.N. GAOR 27th Sess. Annex No. 92.

U.N. Secretariat, *Study prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1972*, U.N. Doc. A/C.6/418 (Nov. 2, 1972).

U.N.G.A., *Observations of Member States on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law*, U.N. Doc. A/CN.4/253, & Add. 1 – 5, in 1972 2. Y.B. Int'L. Comm. 329, at 342.

1973

U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. No. 28, U.N. Doc. A/9028 (Aug. 11, 1973).

U.N.G.A. Sixth Comm., *Report*, U.N. Doc. A/9407, (Dec. 10, 1973) in U.N. GAOR 28th Sess. Annexes No. 90.

1977

U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 32nd Sess. Supp. (No. 37), U.N. Doc. A/32/37 (Mar. 25, 1977).

U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39,

1979

U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. (No. 37.)

U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, U.N. Doc. A/34/39, U.N. GAOR 34st Sess. Supp. No. 39

1985

U.N.G.A. Sixth Comm., *Report*, U.N. Doc. A/40/1003, U.N. GAOR 40th Sess. Annexes, No. 129.

1987

U.N.G.A. Sixth Comm., *Report*, U.N. Doc. A/42/832 (Dec. 3, 1987) in U.N. GAOR 40th Sess. Annexes No. 126.

1989

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, U.N. Doc. A/44/456 (Aug. 25, 1989).

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, *Addendum 1,* U.N. Doc. A/44/456/Add.1 (Oct. 10, 1989).

U.N.G.A. Sixth Comm., *Report*, U.N. Doc. A/44/762 (Dec. 1, 1989).

1991

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 2*, U.N. Doc. A/46/346/Add.2 (Oct. 8, 1991).

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, U.N. Doc. A/46/346 (Aug. 30, 1991).

1993

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, U.N. Doc. A/48/267 (Aug. 5, 1993).

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly, Addendum 1*, U.N. Doc. A/48/267/Add.1 (Sept. 21, 1993).

U.N.G.A. Sixth Comm., *Report, Measures to Eliminate International Terrorism*, U.N. Doc. A/48/609 (Dec. 1993).

1994

U.N. Secretary-General, *Report on Measures to Eliminate International Terrorism*, U.N. Doc. A/49/257 (July 25, 1994).

U.N. Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 1*, U.N. Doc. A/49/257/Add.1 (July 25, 1994).

U.N. Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 2,* U.N. Doc. A/49/257/Add.2 (Oct. 4, 1994).

U.N. Secretary-General, *Report on Measures to Eliminate International Terrorism, Addendum 3*, U.N. Doc. A/49/257/Add.3 (Oct. 19, 1994).

1995

U.N. Int'L. Comm., *Report to the General Assembly*, 50 U.N. GAOR Supp. No. 10, at 58, n. 45, U.N. Doc. A/50/10 (1995).

U.N. Secretary-General, *Report on Measures to prevent international terrorism, Addendum*, U.N. Doc. A/50/372/Add.1 (Sept. 26, 1995).

U.N. Secretary-General, *Report on Measures to prevent international terrorism*, U.N. Doc. A/50/372 (Aug. 24, 1995).

1996

U.N. Int'L. Comm., *Report to the General Assembly*, 51 U.N. GAOR Supp. No. 10, ¶¶ 45-46, U.N. Doc. A/51/10 (1996).

U.N. Secretary-General, *Report on Measures to Prevent International Terrorism, submitted to the General Assembly*, U.N. Doc. A/51/336 (Sept. 6, 1996).

1997

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997)

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

1998

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

1999

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* U.N. GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

2000

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fourth session, Feb 14-18, 2000), *Report,* U.N. GAOR 55th Sess. Supp. No. 37, U.N. Doc. A/55/37 (2000).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/55/L.2 (Oct. 19, 2000).

2001

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

2002

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report,* U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/57/L.9 (Oct. 16, 2002).

2003

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, ¶ 3, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003).

2004

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/59/L.10 (Oct. 8, 2004).

U.N. High-level Panel on Threats, Challenges and Change, *Report: A More Secure World: our shared responsibility,* U.N. Doc. A/59/565 (Dec. 2, 2004).

2005

U.N. Secretary-General, *In Larger Freedom: towards development, security and human rights for all,* U.N. Doc. A/59/2005 (March 21, 2005).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, U.N. Doc. A/C.6/60/L.6 (Oct. 14, 2005).

U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005).

2006

U.N. Secretary-General, *"Uniting against terrorism: recommendations for a global counter-terrorism strategy,"* U.N. Doc. A/60/825 (April 26, 2006).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Tenth session, Feb. 27-March 3, 2006), *Report,* U.N. GAOR 61st Sess. Supp. No. 37, U.N. Doc. A/61/37 (2006).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Oral report by the Chairman of the Working Group, in: U.N. GAOR 61st Sess. Sixth Comm. 21st mtg., ¶¶ 38 – 42, U.N. Doc. A/C.6/61/SR.21 (Nov. 9, 2006).

2007

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eleventh session, Feb. 5, 6, and 15, 2007), *Report,* U.N. GAOR 62nd Sess. Supp. No. 37, U.N. Doc. A/62/37 (2007).

H) Verbatim and summary records of UN meetings

U.N. GAOR 25th Sess. Sixth Comm. 1192nd mtg., U.N. Doc. A/C.6/SR.1192 (Oct. 7, 1970).

U.N. GAOR 25th Sess. Sixth Comm. 1193rd mtg., U.N. Doc. A/C.6/SR.1193 (Oct. 8, 1970).

U.N. GAOR 26th Sess. Sixth Comm. 1255th mtg., U.N. Doc. A/C.6/SR.1255 (Oct. 8, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1258th mtg. U.N. Doc. A/C.6/SR.1258 (Oct. 13, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1259th mtg., U.N. Doc. A/C.6/SR.1259 (Oct. 15, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1260th mtg., U.N. Doc. A/C.6/SR.1260 (Oct. 15, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1261st mtg. U.N. Doc. A/C.6/SR.1261 (Oct. 19, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1262nd mtg., U.N. Doc. A/C.6/SR.1262 (Oct. 19, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1263rd mtg. U.N. Doc. A/C.6/SR.1263 (Oct. 19, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1264th mtg., U.N. Doc. A/C.6/SR.1255 (Oct. 20, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1265th mtg., U.N. Doc. A/C.6/SR.1265 (Oct. 21, 1971).

U.N. GAOR 26th Sess. Sixth Comm. 1280th mtg., U.N. Doc. A/C.6/SR.1280 (Nov. 12, 1971).

U.N. GAOR 27th Sess. 2037 plen. mtg. U.N. Doc. A/PV.2037 (Sept. 23, 1972).

U.N. GAOR 28th Sess. Sixth Comm. 1439th mtg., U.N. Doc. A/C.6/SR.1439 (Nov. 15, 1973).

U.N. GAOR 28th Sess. Sixth Comm. 1450th mtg., U.N. Doc. A/C.6/SR.1450 (Nov. 29, 1973).

U.N. GAOR 28th Sess. Sixth Comm. 1457th mtg., U.N. Doc. A/C.6/SR.1457 (Dec. 6, 1973).

U.N. GAOR 31st Sess. Sixth Comm. 55th mtg., U.N. Doc. A/C.6/31/SR.55 (Nov. 26, 1976).

U.N. GAOR 31st Sess. Sixth Comm. 55th mtg., U.N. Doc. A/C.6/31/SR.55 (Nov. 26, 1976).

U.N. GAOR 31st Sess. Sixth Comm. 57th mtg., U.N. Doc. A/C.6/31/SR.57 (Nov. 29, 1976).

U.N. GAOR 31st Sess. Sixth Comm. 58th mtg., U.N. Doc. A/C.6/31/SR.58 (Nov. 30, 1976).

U.N. GAOR 31st Sess. Sixth Comm. 59th mtg., U.N. Doc. A/C.6/31/SR.59 (Dec. 1, 1976).

U.N. GAOR 31st Sess. Sixth Comm. 70th mtg., U.N. Doc. A/C.6/31/SR.70 (Dec. 10, 1976).

U.N. GAOR 34th Sess. Sixth Comm. 62nd mtg., U.N. Doc. A/C.6/31/SR.62 (Dec. 7, 1979).

U.N. GAOR 40th Sess. 108th plen. mtg., U.N. Doc. A/40/PV.108 (Dec. 9, 1985).

U.N. GAOR 40th Sess. Sixth Comm. 55th mtg., U.N. Doc. A/C.6/40/SR.55 (Dec. 6, 1985).

U.N. GAOR 42nd Sess. 94th plen. mtg., U.N. Doc. A/42/PV.94 (Dec. 7, 1987).

U.N. GAOR 46th Sess. Sixth Comm. 12th mtg. U.N. Doc. A/C.6/46/SR.12 (Oct. 10, 1991);

U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 14th mtg. U.N. Doc. A/C.6/46/SR.14 (Oct. 15, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 16th mtg., U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 17th mtg., U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 23rd mtg., U.N. Doc. A/C.6/46/SR.23 (Oct. 23, 1991).

U.N. GAOR 46th Sess. Sixth Comm. 26th mtg., U.N. Doc. A/C.6/46/SR.26 (Oct. 31, 1991).

U.N. GAOR 48th Sess. Sixth Comm. 12th mtg., U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

U.N. GAOR 48th Sess. Sixth Comm. 12th mtg., U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

U.N. GAOR 48th Sess. Sixth Comm. 13th mtg., U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993).

U.N. GAOR 48th Sess. Sixth Comm. 14th mtg., U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

U.N. GAOR 49th Sess. 84th Plen. mtg., U.N. Doc. A/49/PV.84 (Dec. 9, 1994).

U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994).

U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. U.N. Doc. A/C.6/48/SR.15 (Oct. 21, 1994).

U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

U.N. GAOR 49th Sess. Sixth Comm. 39th mtg., U.N. Doc. A/C.6/49/SR.39 (Nov. 23, 1994).

U.N. GAOR 50th Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 12th mtg., U.N. Doc. A/C.6/50/SR.12 (Oct.1 2, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 13h mtg., U.N. Doc. A/C.6/50/SR.13 (Oct. 13, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 15th mtg., U.N. Doc. A/C.6/50/SR.15 (Oct. 16, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 16th mtg., U.N. Doc. A/C.6/50/SR.16 (Oct. 17, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 17th mtg., U.N. Doc. A/C.6/50/SR.17 (Oct. 17, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 46th mtg., U.N. Doc. A/C.6/50/SR.46 (Oct. 29, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 6th mtg., U.N. Doc. A/C.6/50/SR.6 (Oct. 2, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 7th mtg., U.N. Doc. A/C.6/50/SR.7 (Oct. 3, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 8th mtg., U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

U.N. GAOR 50th Sess. Sixth Comm. 9th mtg., U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996).

U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

U.N. GAOR 52nd Sess. 72nd plen. mtg., U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 27th mtg., U.N. Doc. A/C.6/52/SR.27 (Nov. 13, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 28th mtg., U.N. Doc. A/C.6/52/SR.28 (Nov. 13, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 29th mtg., U.N. Doc. A/C.6/52/SR.29 (Nov. 14, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 30th mtg., U.N. Doc. A/C.6/52/SR.30 (Nov. 14, 1996).

U.N. GAOR 52nd Sess. Sixth Comm. 32nd mtg., U.N. Doc. A/C.6/52/SR.32 (Nov. 19, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

U.N. GAOR 52nd Sess. Sixth Comm. 34th mtg., U.N. Doc. A/C.6/52/SR.34 (Nov. 21, 1997).

U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

U.N. GAOR 53rd Sess. Sixth Comm. 26th mtg., U.N. Doc. A/C.6/53/SR.26 (Nov. 11, 1998).

U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

U.N. GAOR 54th Sess. Sixth Comm. 33rd mtg., U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999).

U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999).

U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000)

U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

U.N. GAOR 56th Sess. 12th plen. mtg., U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

U.N. GAOR 56th Sess. 13th plen. mtg., U.N. Doc. A/56/PV.13 (Oct. 1, 2001).

U.N. GAOR 56th Sess. 14th plen. mtg., U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

U.N. GAOR 56th Sess. 15th plen. mtg., U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

U.N. GAOR 56th Sess. 16th plen. mtg., U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

U.N. GAOR 56th Sess. 17th plen. mtg., U.N. Doc. A/56/PV.17 (Oct. 3, 2001).

U.N. GAOR 56th Sess. 18th plen. mtg., U.N. Doc. A/56/PV.18 (Oct. 4, 2001).

U.N. GAOR 56th Sess. 19th plen. mtg., U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

U.N. GAOR 56th Sess. 20th plen. mtg., U.N. Doc. A/56/PV.20 (Oct. 4, 2001).

U.N. GAOR 56th Sess. 21st plen. mtg., U.N. Doc. A/56/PV.21 (Oct. 5, 2001).

U.N. GAOR 56th Sess. 22st plen. mtg., U.N. Doc. A/56/PV.22 (Oct. 5, 2001).

U.N. GAOR 57th Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/57/SR.10 (Oct. 4, 2002).

U.N. GAOR 57th Sess. Sixth Comm. 7th mtg., U.N. Doc. A/C.6/57/SR.7 (Oct. 2, 2002).

U.N. GAOR 57th Sess. Sixth Comm. 8th mtg., U.N. Doc. A/C.6/57/SR.8 (Oct. 2, 2002).

U.N. GAOR 57th Sess. Sixth Comm. 9th mtg., U.N. Doc. A/C.6/57/SR.9 (Oct. 3, 2002).

U.N. GAOR 58th Sess. Sixth Comm. 6th mtg., U.N. Doc. A/C.6/58/SR.6 (Oct. 15, 2003).

U.N. GAOR 58th Sess. Sixth Comm. 7th mtg., U.N. Doc. A/C.6/58/SR.7 (Oct. 17, 2003).

U.N. GAOR 58th Sess. Sixth Comm. 8th mtg., U.N. Doc. A/C.6/58/SR.8 (Oct. 17, 2003).

U.N. GAOR 59th Sess. Sixth Comm. 10th mtg., U.N. Doc. A/C.6/59/SR.10 (Oct. 20, 2004).

U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004).

U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004).

U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

U.N. GAOR 60th Sess. Sixth Comm. 23rd mtg., U.N. Doc. A/C.6/61/SR.23 (Nov. 29, 2006).

U.N. GAOR 61st Sess. Sixth Comm. 2nd mtg., U.N. Doc. A/C.6/61/SR.2 (Oct. 11, 2006).

U.N. GAOR 61st Sess. Sixth Comm. 3nd mtg. U.N. Doc. A/C.6/61/SR.3 (Oct. 12, 2006).

U.N. GAOR 61st Sess. Sixth Comm. 4th mtg. U.N. Doc. A/C.6/61/SR.4 (Oct. 13, 2006).

U.N. GAOR 61st Sess. Sixth Comm. 5th mtg., U.N. Doc. A/C.6/61/SR.5 (Oct. 16, 2006).

U.N. Int'L. Comm. 23rd Sess. Summary records, (Apr. 26 – July 30, 1971), 1971 1. Y.B. Int'L. Comm.

I) Statements

Albania, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 28, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

Algeria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 16-17, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

Algeria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 39th mtg. ¶ 9, U.N. Doc. A/C.6/48/SR.39 (Dec. 3, 1993).

Algeria, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 36, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

Algeria, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 11 - 14, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

Argentina, "Statement," (Ms. Fernandez de Gurmendi, facilitator on the draft resolution) U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 14, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

Argentina, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 18 – 19, U.N. Doc. A/56/PV.13 (Oct. 1, 2001).

Australia, "Statement," (Amb. Rowe) U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶ 69, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

Australia, "Statement," (Amb. Rowe, coordinator on the draft comprehensive convention) U.N. GAOR 56th Sess. Sixth Comm. 28th mtg., ¶ 8, U.N. Doc. A/C.6/56/SR.28 (Nov. 21, 2001).

Australia, "Statement," (Ms. Steains, coordinator for the draft nuclear convention) U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 4, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

Australia, "Statement," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

Australia, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶ 19, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

Australia, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 29 - 32, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Austria, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 43, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

Bangladesh "Statement," U.N. GAOR 61st Sess. Sixth Comm. 2nd mtg. ¶ 33, U.N. Doc. A/C.6/61/SR.2 (Oct. 11, 2006).

Bangladesh, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

Belgium, "Statement on behalf of the European Community, Portugal and Spain," U.N. GAOR 40th Sess. Sixth Comm. 20th mtg., at 12-13, U.N. Doc. A/C.6/40/SR.20 (Oct. 24, 1985).

Belgium, "Statement on behalf of the European Union," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 9 – 11, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

Belgium, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 45, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

Brazil, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 53, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

Brazil, "Statement," U.N. SCOR 59th year, 5053rd mtg, at 7, U.N. Doc. S/PV.5053 (Oct. 8, 2004).

Burkina Faso, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 19 – 20, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

Byelorussia, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 20th mtg., U.N. Doc. A/C.6/44/SR.20 (Oct. 17, 1989).

Byelorussia, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 20th mtg., ¶ 9-10, U.N. Doc. A/C.6/44/SR.20 (Oct. 17, 1989).

Canada, "Statement, on behalf also of Australia," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 11, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

Canada, "Statement," (Phillippe Kirsh) U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 6, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

Canada, "Statement," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

Canada, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 12, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

Canada, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 46, U.N. Doc. A/C.6/54/SR.34 (Nov. 15, 1999).

Cape Verde, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 19 – 21, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

Colombia, "Statement on behalf of the Rio Group," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 14 - 18, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

Costa Rica, "Statement, in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 31, 2005," p. 2, (TD, photocopy) (on file with the author).

Costa Rica, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶¶ 59 - 61, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004).

Côte d'Ivoire, "Statement," U.N. GAOR 56th Sess. 18th plen. mtg., pp. 7 – 9, U.N. Doc. A/56/PV.18 (Oct. 4, 2001).

Croatia, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 5, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

Cuba "Statement," U.N. GAOR 40th Sess. Sixth Comm. 22th mtg., ¶ 40, at 9, U.N. Doc. A/C.6/40/SR.22 (Oct. 25, 1985).

Cuba, "Statement, in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Feb. 23, 2005," p. 2, (TD, photocopy) (on file with the author)

Cuba, "Statement," U.N. GAOR 26th Sess. Sixth Comm. 1280th mtg., ¶ 6, U.N. Doc. A/C.6/SR.1280 (Oct. Nov. 12, 1971).

Cuba, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 54, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

Cuba, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 57, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

Cuba, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 29, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

Cuba, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 14 – 18, at 16, U.N. Doc. A/56/PV.13 (Oct. 1, 2001)..

Cyprus, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 11, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

Czech Republic, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶¶ 43 - 45, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Demark, "Statement on behalf of 12 members of the European Community," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 2, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

Democratic Republic of Congo, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg., ¶¶ 56-57, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

Democratic Republic of Congo, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 50, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Democratic Republic of Congo, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., at 6, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

Democratic Yemen, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 185 - 193, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Egypt, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 21, 2005" (TD, photocopy) (on file with the author).

Egypt, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg., ¶ 342, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Egypt, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 37, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

Egypt, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 45, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

Ethiopia, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 107-108, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

Ethiopia, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg., ¶ 15, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

Federal Republic of Germany, "Statement," U.N. SCOR 31st year, 1941st mtg, at 6, U.N. Doc. S/PV.1941 (July 12, 1976).

Finland, "Statement on behalf of Denmark, Finland, Iceland, Norway and Sweden," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 6, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

Finland, "Statement on behalf of the European Union," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 15 - 18, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

Finland, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 10 – 12, at 11, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

France, "Statement on behalf of the EU," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶¶ 9 - 10, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

France, "Statement," (H. Védrine)U.N. GAOR 53rd Sess. 11th plen. mtg., p. 18, U.N. Doc. A/53/PV.11 (Sept. 23, 1998).

France, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 13th mtg. ¶ 35, U.N. Doc. A/C.6/50/SR.13 (Oct. 13, 1995).

France, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶¶ 20 - 22, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

Germany, "Statement on behalf of the European Union and Austria," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶¶ 57-58, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

Germany, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., pp. 9 - 11, at 8, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

Germany, "Statement," U.N. SCOR 59th year, 4956th mtg, at 10, U.N. Doc. S/PV.4956 (April 28, 2004).

Germany, "Statement," U.N. SCOR 59th year, 5053rd mtg, at 6, U.N. Doc. S/PV.5053 (Oct. 8, 2004).

India, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 49, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

India, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 13, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

India, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 47, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

India, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 30th mtg., ¶¶ 31-34, U.N. Doc. A/C.6/51/SR.30 (Nov. 1, 1996).

India, "Statement," U.N. GAOR 52nd Sess. Sixth Comm. 34th mtg., ¶ 30, U.N. Doc. A/C.6/52/SR.34 (Nov. 21, 1997).

India, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 4, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

India, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 24 – 27, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

India, "Statement at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" (TD, photocopy) (on file with the author).

Indonesia, "Statement at the informal meeting of the Plenary to exchange views on the President's draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005 (A/59/HLPM/CRP.1), June 30, 2005," (TD, photocopy) (on file with the author).

International Committee of the Red Cross, "Replies given on 22 March 1999 to the questions asked by the delegations of Belgium and Mexico regarding the implications of art.2.1.b," U.N. Doc. A/AC.252/1999/INF/2 (March 26, 1999).

International Committee of the Red Cross, "Statement of March 19, 1999," in U.N. Doc. A/AC.252/1999/INF/2, Annex (March 26, 1999).

International Committee of the Red Cross, "Statement," U.N. Doc. A/C.6/53/WG.1/INF/1 (Oct. 9, 1998).

Iran, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶¶ 49-50, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

Iran, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 11th mtg., ¶ 84, U.N. Doc. A/C.6/51/SR.11 (Oct. 4, 1996).

Iran, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg. ¶ 44, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

Iran, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 17 - 18, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Iraq, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 55th mtg., at 6, U.N. Doc. A/C.6/40/SR.55 (Dec. 6, 1985).

Iraq, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 32nd mtg., ¶ 11, U.N. Doc. A/C.6/54/SR.32 (Nov. 15, 1999).

Iraq, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 40, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

Israel, "Statement at the Ad Hoc Comm. established by G.A. Res. 51/210, March 31, 2003," (TD, March 31, 2003) (on file with the author).

Israel, "Statement, in the informal consultations on the Report of the High-Level Panel on Threats, Challenges and Change, Feb. 24, 2005," (TD, photocopy) (on file with the author).

Israel, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 16th mtg. ¶ 31, U.N. Doc. A/C.6/46/SR.16 (Oct. 18, 1991).

Israel, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 10, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Israel, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., pp. 19 - 22, U.N. Doc. A/56/PV.19 (Oct. 4, 2001)

Israel, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 8th mtg., ¶ 41, U.N. Doc. A/C.6/59/SR.8 (Oct. 19, 2004).

Japan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 57, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

Japan, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 22, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

Japan, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 34, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

Japan, "Statement, June 21, 2005" (TD, photocopy, delivered at the informal meeting of the Plenary to exchange views on the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005) (on file with the author).

Jordan, "Statement at the Ad Hoc Comm. established by G.A. Res. 51/210, June 28, 2004," (TD, photocopy, June 28, 2004) (on file with the author).

Jordan, "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 289 - 292, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Jordan, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 46 - 48, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

Kuwait, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., pp. 5 - 7, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

Kuwait, "Statement" U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 305 - 313, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Lebanon, "Explanation of vote," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶ 64, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

Lebanon, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 61, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

Lebanon, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 18, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

Lebanon, "Statement" U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 8, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

Lesotho, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., p. 7 – 9, at 8, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

Libya, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 14-15, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

Libya, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 18 - 23, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

Liechtenstein, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 61, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

Liechtenstein, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 19, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

Luxembourg, "Statement, on behalf of the European Union in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," p. 2, (TD, photocopy) (on file with the author).

Lybia, "Statement on behalf of the Arab Group," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 19 - 23, at 19, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

Lybia, "Statement" U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 7-8, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

Malawi, "Statement on behalf of the African Group, at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

Malawi, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 61, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

Malawi, "Statement," U.N. GAOR 56th Sess. 20th plen. mtg., 17 -19, U.N. Doc. A/56/PV.20 (Oct. 4, 2001).

Malaysia, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 10 - 12, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

Malaysia, Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

Mali, "Aide-memoire" (Nov. 7, 2001) (TD, containing the statement by Mali on behalf of the Organization of the Islamic Conference at the Ambassadorial Level

consultations with the Secretary-General on art. 18 of the draft comprehensive convention) (on file with the author).

Mali, "Statement," U.N. GAOR 28th Sess. Sixth Comm. 1439th mtg., at 223, ¶9, U.N. Doc. A/C.6/SR.1439 (Nov. 15, 1973).

Mexico, "Statement on behalf of the Rio Group," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg. ¶ 10, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

Mexico, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg., ¶ 10, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

Mexico, "Statement," U.N. GAOR 58th Sess. Sixth Comm. 9th mtg., ¶ 24, U.N. Doc. A/C.6/58/SR.9 (Oct. 20, 2003).

Mexico, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 9, 12, 19, 28, 34, 43, 48, 54, 66, 68, 71, 75, 77, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

Mongolia, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 9th mtg., ¶¶ 53 -54, U.N. Doc. A/C.6/59/SR.9 (Oct. 20, 2004).

Morocco, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 13th mtg. ¶ 41, U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993).

Morocco, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 4 - 6, U.N. Doc. A/56/PV.13 (Oct. 1, 2001).

Mozambique, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 15th mtg. ¶ 36, U.N. Doc. A/C.6/46/SR.15 (Oct. 16, 1991).

Netherlands, "Statement on behalf of the 12 states members of the European Community," U.N. GAOR 46th Sess. Sixth Comm. 12th mtg. ¶ 7, U.N. Doc. A/C.6/46/SR.12 (Oct. 10, 1991).

Netherlands, "Statement on behalf of the European Union at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" (TD, photocopy) (on file with the author).

Netherlands, "Statement," U.N. GAOR 25th Sess. Sixth Comm. 1187th mtg. at 56, U.N. Doc. A/C.6/SR.1187 (Oct. 1, 1970).

New Zealand, "Statement," (Amb. Michel Powles), U.N.G.A. Sixth Comm. Working Group established pursuant to General Assembly Resolution 52/210 of 17 December 1996, (Oct. 3, 1997) (TD, photocopy, on file with the author).

New Zealand, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 8, U.N. Doc. A/C.6/40/SR.21 (Oct. 25, 1985).

New Zealand, "Statement," U.N. GAOR 52nd Sess. 72nd plen. mtg., at 20, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

New Zealand, "Statement," U.N. GAOR 52nd Sess. Sixth Comm. 33rd mtg., at 7, U.N. Doc. A/C.6/52/SR.33 (Nov. 19, 1997).

New Zealand, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 30th mtg., ¶ 3, U.N. Doc. A/C.6/55/SR.30 (Nov. 15, 2000).

New Zealand, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., pp. 20 - 21, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

Norway, "Statement on behalf of the Nordic Countries," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 36, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

Norway, "Statement, at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author).

Pakistan, "Statement in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Feb. 23, 2005" (TD, photocopy) (on file with the author).

Pakistan, "Statement in the Sixth Comm. on agenda item 155: Draft International Convention for the Suppression of Acts of Nuclear Terrorism" (TD, Nov. 11, 1998) (on file with the author).

Pakistan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 13th mtg. ¶ 77, U.N. Doc. A/C.6/48/SR.13 (Oct. 19, 1993).

Pakistan, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 24, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

Pakistan, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 10th mtg. ¶ 9, U.N. Doc. A/C.6/50/SR.10 (Oct. 9, 1995).

Pakistan, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 33, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

Pakistan, "Statement," U.N. SCOR 57th year, 4453rd mtg, 29 - 32, U.N. Doc. S/PV.4453 (Jan. 18, 2002).

Pakistan, "Statement," U.N. SCOR 59th year, 4956th mtg, at 2-5, U.N. Doc. S/PV.4956 (April 28, 2004).

Pakistan, "Statement" U.N. GAOR 52nd Sess. 72nd plen. mtg., at 13-14, U.N. Doc. A/52/PV.72 (Dec. 15, 1997).

Pakistan, "Statement at the 4th informal meeting of the G.A. on the recommendations contained in the report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," (TD, photocopy) (on file with the author).

Pakistan, "Statement in the informal meeting of the Plenary to exchange views on the President's draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005 (A/59/HLPM/CRP.1), June 21, 2005" (TD, photocopy) (on file with the author).

Papua New Guinea, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 7-12, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

Peru "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., pp. 14 – 16, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

Peru, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 14th mtg. ¶ 15, U.N. Doc. A/C.6/48/SR.14 (Oct. 19, 1993).

Philippines, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 28th mtg., ¶ 42, U.N. Doc. A/C.6/55/SR.28 (Nov. 14, 2000).

Qatar, "Statement, on behalf of the Organization of the Islamic Conference" U.N. SCOR 57th year, 4453rd mtg. resumption 1, at 18 - 19, U.N. Doc. S/PV.4453 (Resumption 1) (Jan. 18, 2002).

Qatar, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 42, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

Republic of Korea, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 21 – 22, 2005" (TD, photocopy) (on file with the author).

Russian Federation, "Statement on behalf of the members of the Commonwealth of Independent States," U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶ 12, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994).

Russian Federation, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 13th mtg. ¶ 12, U.N. Doc. A/C.6/49/SR.13 (Oct. 19, 1994).

Russian Federation, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 10, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

Russian Federation, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg., ¶ 10, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

Russian Federation, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 48, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

Russian Federation, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 31st mtg., ¶ 42, U.N. Doc. A/C.6/54/SR.31 (Nov. 12, 1999).

Russian Federation, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 27th mtg., ¶ 14, U.N. Doc. A/C.6/59/SR.27 (Nov. 19, 2004).

Russian Federation, "Statement in the informal meeting of the Plenary to exchange views on the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005, June 21, 2005" (TD, photocopy) (on file with the author).

Saudi Arabia "Statement," U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 136 – 138, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

Saudi Arabia, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 61st mtg. ¶¶ 1 - 6, U.N. Doc. A/C.6/31/SR.61 (Dec. 2, 1976).

Saudi Arabia, "Statement," U.N. GAOR 56th Sess. 15th plen. mtg., at 21 - 24, U.N. Doc. A/56/PV.15 (Oct. 2, 2001).

Sierra Leone, "Statement," U.N. GAOR 56th Sess. 21st plen. mtg., pp. 14 - 16, U.N. Doc. A/56/PV.21 (Oct. 5, 2001).

Singapore, "Statement at the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 27, 2005," p. 2, (TD, photocopy) (on file with the author).

Sixth Comm. Chairman, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 8th mtg. ¶ 66, U.N. Doc. A/C.6/50/SR.8 (Oct. 6, 1995).

South Africa, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 17, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998)

South Africa, "Statement," U.N. GAOR 58th Sess. Sixth Comm. 7th mtg., ¶ 70, U.N. Doc. A/C.6/58/SR.7 (Oct. 17, 2003).

Sri Lanka, "Statement," (Amb. Perera, Chairman of the Working Group) U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶¶ 64 - 68, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

Sri Lanka, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶ 26, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

Sudan, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 9, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

Sudan, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 5, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

Sudan, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 34th mtg. ¶ 16, U.N. Doc. A/C.6/54/SR.34 (Nov. 16, 1999).

Sudan, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., pp. 5 - 6, at 5, U.N. Doc. A/56/PV.14 (Oct. 2, 2001.

Sweden, "Statement on behalf of the Nordic Countries," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 63, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

Sweden, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 35th mtg., ¶ 23, U.N. Doc. A/C.6/53/SR.35 (Nov. 24, 1998).

Switzerland, "Statement," U.N. GAOR 59th Sess. Sixth Comm. 7th mtg., ¶¶ 48 – 52, U.N. Doc. A/C.6/59/SR.7 (Oct. 18, 2004).

Syria, 'Statement," U.N. GAOR 61st Sess. Sixth Comm. 5th mtg. ¶ 32, Doc. A/C.6/61/SR.5 (Oct. 16, 2006).

Syria, "Explanation of vote," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶ 61, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

Syria, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 21st mtg., at 18, U.N. Doc. A/C.6/40/SR.20 (Oct. 24, 1985).

Syria, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 11th mtg. ¶ 60, U.N. Doc. A/C.6/48/SR.11 (Oct. 14, 1993).

Syria, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 14th mtg. ¶ 18, U.N. Doc. A/C.6/49/SR.14 (Oct. 20, 1994).

Syria, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 9th mtg. ¶¶ 49-52, U.N. Doc. A/C.6/50/SR.9 (Oct. 6, 1995).

Syria, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 28th mtg., ¶ 31, U.N. Doc. A/C.6/53/SR.28 (Nov. 12, 1998).

Syria, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 33nd mtg. ¶ 42, U.N. Doc. A/C.6/54/SR.33 (Nov. 15, 1999).

Syria, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 29th mtg., ¶ 54, U.N. Doc. A/C.6/55/SR.29 (Nov. 15, 2000).

Syria, "Statement," U.N. GAOR 56th Sess. 16th plen. mtg., 17 – 19, at 18, U.N. Doc. A/56/PV.16 (Oct. 3, 2001).

Syria, "Statement" U.N. SCOR 57th year, 4453rd mtg, at 7 – 9, U.N. Doc. S/PV.4453 (Jan. 18, 2002).

Tanzania, "Statement on behalf of SADC," U.N. GAOR 55th Sess. Sixth Comm. 27th mtg., ¶ 26, U.N. Doc. A/C.6/55/SR.27 (Nov. 13, 2000).

Turkey, "Statement," U.N. GAOR 56th Sess. 13th plen. mtg., pp. 8 - 9, U.N. Doc. A/56/PV.13 (Oct. 1, 2001).

Turkey, "Statement on behalf of the Member States of the Organization of the Islamic Conference at the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (March 28, 2005)" (TD, photocopy) (on file with the author).

U.N. Legal Counsel, "Statement" U.N. GAOR 56th Sess. Sixth Comm. 27th mtg., ¶ 74, U.N. Doc. A/C.6/56/SR.27 (Nov. 19, 2001).

U.N. Legal Counsel, "Talking Points at a meeting with representatives of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Mali, Malaysia, Pakistan, Russian Federation, Sri Lanka, and the United States, on a comprehensive convention against terrorism. Oct. 31, 2001. (TD, on file with the author).

U.N. Secretary-General, "A Global Strategy for Fighting Terrorism" (Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security, Madrid, March 10, 2005) available on line from http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html#transcripcion, accessed on March 24, 2005.

U.N. Secretary-General, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., pp. 2 - 4, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

U.N. Secretary-General, *Statement at the 199th Meeting of the General Comm., on 20 September 1972,* U.N. Doc. A/8791/ADD.1 (Sept. 20, 1972) in U.N. GAOR 27th Sess. Annex No. 92, at 2.

U.N. Special Advisor to the Secretary-General (Stephen Stedman), "Briefing on the hearing on the United Nations and the Fight Against Terrorism, March 17, 2005" United States House of Representatives, Comm. on International Relations, Subcommittee on International Terrorism and Non-proliferation, available in line from: http://wwwa.house.gov/international_relations/109/sted031705.htm, accessed on March 25, 2005.

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Chairman (Philippe Kirsh), "Closing remarks by the Chairman of the Ad Hoc Committee," ¶¶, 5-8, U.N. Doc. A/AC.252/1998/INF/3 (Feb. 27, 1998).

U.N.H.C.R., "Comments by the Office of the United Nations High Commissioner of Refugees on the draft comprehensive convention on international terrorism," (Oct. 16, 2001) *circulated as:* U.N. Doc. A/C.6/56/WG.1/INF/1 (Oct. 18, 2001).

United Arab Emirates, "Statement," U.N. GAOR 56th Sess. 19th plen. mtg., at 12 - 13, U.N. Doc. A/56/PV.19 (Oct. 4, 2001).

United Kingdom, "Statement," U.N. GAOR 56th Sess. 12th plen. mtg., at 17 - 19, U.N. Doc. A/56/PV.12 (Oct. 1, 2001).

United Kingdom, "Statement," U.N. SCOR 59th year, 4956th mtg, at 7, U.N. Doc. S/PV.4956 (April 28, 2004).

United States, "Statement, in the informal meeting of the G.A. on the Report of the High-Level Panel on Threats, Challenges and Change, Jan. 31, 2005," p. 2, (TD, photocopy) (on file with the author).

United States, "Statement," (George Bush, Sr.) U.N. GAOR 27th Sess. 2037 plen. mtg. ¶¶ 286 - 288, U.N. Doc. A/PV.2037 (Sept. 23, 1972).

United States, "Statement," (George W. Bush), U.N. GAOR 58th Sess. 7th plen. mtg., p. 11, U.N. Doc. A/58/PV.7 (Sept. 23, 2003).

United States, "Statement," (William J. Clinton), U.N. GAOR 51st Sess. 6th plen. mtg., at 4, U.N. Doc. A/51/PV.6 (Sept. 24, 1996).

United States, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 70th mtg., ¶ 22, U.N. Doc. A/C.6/31/SR.70 (Dec. 10, 1976).

United States, "Statement," U.N. GAOR 40th Sess. Sixth Comm. 19th mtg., at 9, U.N. Doc. A/C.6/40/SR.19 (Oct. 35, 1985).

United States, "Statement," U.N. GAOR 44th Sess. Sixth Comm. 48th mtg., at 3, U.N. Doc. A/C.6/44/SR.48 (Dec. 1, 1989).

United States, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 17th mtg. ¶ 55, U.N. Doc. A/C.6/46/SR.17 (Oct. 21, 1991).

United States, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 66, U.N. Doc. A/C.6/48/SR.12 (Oct. 19, 1993).

United States, "Statement," U.N. GAOR 49th Sess. Sixth Comm. 15th mtg. ¶ 29, U.N. Doc. A/C.6/49/SR.15 (Oct. 21, 1994).

United States, "Statement," U.N. GAOR 50th Sess. Sixth Comm. 7th mtg., ¶ 1, U.N. Doc. A/C.6/50/SR.7 (Oct. 3, 1995).

United States, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg. ¶ 1, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

United States, "Statement," U.N. GAOR 51st Sess. Sixth Comm. 10th mtg., ¶ 3, U.N. Doc. A/C.6/51/SR.10 (Oct. 3, 1996).

United States, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 27th mtg ¶ 30, U.N. Doc. A/C.6/53/SR.27 (Nov. 12, 1998).

United States, "Statement," U.N. GAOR 54th Sess. Sixth Comm. 35th mtg. ¶¶ 9 - 11, U.N. Doc. A/C.6/54/SR.35 (Nov. 18, 1999).

United States, "Statement," U.N. GAOR 55th Sess. Sixth Comm. 36th mtg., ¶ 15, U.N. Doc. A/C.6/55/SR.36 (Nov. 22, 2000).

USSR, "Statement," U.N. GAOR 46th Sess. Sixth Comm. 13th mtg. ¶ 22, U.N. Doc. A/C.6/46/SR.13 (Oct. 11, 1991).

USSR, "Statement," U.N. GAOR 48th Sess. Sixth Comm. 12th mtg. ¶ 27, U.N. Doc. A/C.6/48/SR.12 (Oct. 14, 1993).

Venezuela, "Statement at the informal thematic consultations of the G.A. on the S.G. report 'In Larger Freedom,' cluster II: Freedom from Fear, April 22, 2005" (TD, photocopy) (on file with the author)

Yemen, "Statement," U.N. GAOR 53rd Sess. Sixth Comm. 25th mtg., ¶ 42, U.N. Doc. A/C.6/53/SR.25 (Nov. 11, 1998).

Yemen, "Statement," U.N. GAOR 56th Sess. 14th plen. mtg., at 2 - 4, U.N. Doc. A/56/PV.14 (Oct. 2, 2001).

Yugoslavia, "Statement," U.N. GAOR 42nd Sess. Sixth Comm. 60th mtg., at 4, U.N. Doc. A/C.6/40/SR.60 (Dec. 1, 1985).

Zaire, "Statement," U.N. GAOR 31st Sess. Sixth Comm. 69th mtg. ¶¶ 16 - 18, U.N. Doc. A/C.6/31/SR.69 (Dec. 9, 1976).

Zimbabwe, "Statement in the Sixth Comm. on agenda item 155: Draft International Convention for the Suppression of Acts of Nuclear Terrorism" (TD, Nov. 11, 1998) (on file with the author).

J) Negotiating texts

1) Single, consolidate, negotiating texts

March 3, 1997 Ad Hoc Comm. bureau, "Revised texts of articles 1 to 12 ter, proposed on the basis of the discussions in the working group," (March 3, 1997) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, Annex I.B, at 15–24, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

March 7, 1997 Ad Hoc Comm. bureau, "Revised texts of articles 1 to 12 ter proposed on the basis of the discussion in the informal consultations, reproduced together with the preamble and articles 13 to 17 of document A/AC.252/L.2," (March 7, 1997) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, Annex I.A, at 5 – 15, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Sept. 29, 1997 Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 2, 3, 5 & 6, art. 2 and art. 2 bis," U.N. Doc. A/C.6/52/WG.1/CRP.31 (Sept. 26, 1997) & U.N. Doc. A/C.6/52/WG.1/CRP.31/Add.1, (Sept. 29, 1997), *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 32-38, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Sept. 30 1997 Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 1, 2, 3, 5 & 6 and arts. 2 and 2 bis and 13 to 17," U.N. Doc. A/C.6/52/WG.1/CRP.45 (Sept. 30, 1997), *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 42-47, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Oct. 1, 1997 Friends of the Chairman, "Preamble and revised texts of arts. 1, ¶¶ 1, 2, 3, 5 & 6, and arts. 2 and 2 bis and 13 to 17," U.N. Doc. A/C.6/52/WG.1/CRP.45/Rev.1 (Oct. 1, 1997), *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 48 - 52, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Oct. 2, 1997 Friends of the Chairman, "Revised texts of the preamble and arts. 1-17," U.N. Doc. A/C.6/52/WG.1/CRP.45/Rev.2* (Oct. 2, 1997), *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 53 - 57, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Oct. 3, 1997 U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, "Revised texts of the preamble and articles 1 to 2, and 4 to 17 recommended by the Working Group established by General Assembly resolution 51/210 of 17 December 1996 to the Sixth Comm. for consideration" in U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex I, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Sept. 24, 1998 The Friends of the Chairman, "Discussion paper" U.N. Doc. A/C.6/53/WG.1/CRP.1 (Sept. 24, 1998) U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 18 – 22, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Oct. 6, 1998 The Friends of the Chairman, "Discussion paper" U.N. Doc. A/C.6/53/WG.1/CRP.1/Rev.1 (Oct. 6, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 23 – 25, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Oct. 9, 1998 Friends of the Chairman, "Revised Text, Draft International Convention for the Suppression of Acts of Nuclear Terrorism," art. 2, U.N. Doc. A/C.6/53/WG.1/CRP.35/Add.1 (Oct. 9, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 4 – 15, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

March 26, 1999 Bureau, "Discussion papers on articles 3 to 25," *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex I.A, at 5-12, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Sept 30, 1999 Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, & 17" U.N. Doc. A/C.6/54/WG.1/CRP.15 (Sept. 30, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 22 - 25, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 1, 1999 Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, & 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.1 (Oct. 1, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 25 - 28, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 4, 1999 Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, & 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.2 (Oct. 4, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 28 - 31, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 5, 1999 Friends of the Chairman, "Revised texts of arts. 5, 7, 8, 12, & 17" U.N. Doc. A/C.6/54/WG.1/CRP.15/Rev.3 (Oct. 5, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 32 - 35, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 7, 1999 Friends of the Chairman, "Revised text," U.N. Doc. A/C.6/54/WG.1/CRP.35 (Oct. 7, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 42 - 48, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 8, 1999 Friends of the Chairman, "Revised text," U.N. Doc. A/C.6/54/WG.1/CRP.35/Rev.1, (Oct. 8, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International

Terrorism, *Report*, Annex I, at 4-15, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Oct. 19, 2001 Friends of the Chairman, "Revised texts of arts. 3 – 17, 17 bis, 20, and 22" U.N. Doc. A/C.6/56/WG.1/CRP.3 (Oct. 19, 2001) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, 22 – 28, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

Oct. 25, 2001 Friends of the Chairman, "Revised texts of arts. 3 – 17 bis and 20 to 27," U.N. Doc. A/C.6/56/WG.1/CRP.5/Add.1 (Oct. 25, 2001) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex I.A, 7 - 15, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

June 28, 2004 Bureau, "Consolidated text, draft International Convention for the Suppression of Acts of Nuclear Terrorism," U.N. Doc. A/AC.252/L.13 (June 28, 2004) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* Annex III, at 15-27, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

August 3, 2005 Coordinator, "Draft comprehensive convention against international terrorism, Consolidated text prepared by the coordinator for discussion" in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Appendix II, U.N. Doc. A/59/894 Appendix II (Aug. 12, 2005).

2) Formal Proposals

1971

Canada, Central African Republic, Cyprus, Egypt, Finland, Greece, India, Iran, Japan, Poland, Thailand, Tunisia, Turkey, United States, Upper Volta, & Uruguay, "Draft resolution" U.N. Doc. A/C.6/826, 1971 U.N.Y.B. 594.

Uruguay, "Draft resolution," U.N. Doc. A/C.6/L.825, in U.N.G.A. Sixth Comm. *Report*, U.N. Doc. A/8537, ¶ 6 (Nov. 29, 1971), U.N. GAOR 26th Sess. Annex No. 88.

1972

Italy *et al*., "Draft resolution," U.N. Doc. A/C.6/L.879/Rev.1 orally amended (Dec. 11, 1972) in .N.G.A. Sixth Comm. *Report,* ¶ 9, U.N. Doc. A/8969 (Dec. 16, 1972) *reprinted in* U.N. GAOR 27th Sess. Annex No. 92, ¶¶ 10, 12.

U.N. Secretary-General, *Request for the inclusion of an additional item in the agenda of the Twenty-Seventh Session*, U.N. Doc. A/8791 (Sept. 8, 1972) in U.N. GAOR 27th Sess. Annex No. 92, at 1.

United States, "Draft resolution," U.N. Doc. A/C.6/L.851 (Dec. 8, 1972) in U.N.G.A. Sixth Comm. *Report,* ¶ 9, U.N. Doc. A/8969 (Dec. 16, 1972) *reprinted in* U.N. GAOR 27th Sess. Annex No. 92, at 2 – 9.

Zambia *et al*., "Draft resolution," U.N. Doc. A/C.6/L.880 in U.N.G.A. Sixth Comm. *Report,* ¶ 9, U.N. Doc. A/8969 (Dec. 16, 1972) *reprinted in* U.N. GAOR 27th Sess. Annex No. 92, ¶ 11.

1973

Algeria, "Suggestion," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 23 - 25, U.N. Doc. A/9028 (Aug. 11, 1973).

France, "Draft proposal," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 21, U.N. Doc. A/9028 (Aug. 11, 1973).

Iran, "Draft proposal," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 22 - 238, U.N. Doc. A/9028 (Aug. 11, 1973).

Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire. & Zambia), "Draft proposal on the definition of international terrorism," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 21, U.N. Doc. A/9028 (Aug. 11, 1973).

Non-Aligned Group in the Ad Hoc Comm. (Algeria, Congo, Democratic Yemen, Guinea, India, Mauritania, Nigeria, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Yemen, Yugoslavia, Zaire, & Zambia), "Draft proposal on measures for the prevention on international terrorism," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 26, U.N. Doc. A/9028 (Aug. 11, 1973).

United Kingdom, "Draft proposal," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 28, U.N. Doc. A/9028 (Aug. 11, 1973).

United States, "Working paper: Draft Convention for the Prevention and Punishment of Certain Acts on International Terrorism," U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, U.N. GAOR 28th Sess. Supp. (no. 28) at 29, U.N. Doc. A/9028 (Aug. 11, 1973).

1977

Federal Republic of Germany, "Working paper," in U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, Annex II.A, at 106–107, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39.

France, "Working paper," in U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, at 5–6, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39.

Lesotho & the United Republic of Tanzania, later joined by Algeria, Egypt, Guinea, the Libyan Arab Jamahiriya & Nigeria, "Working paper," U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, Annex II.C. at 111, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39.

Libyan Arab Jahamiriya, "Working paper," in U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, Annex II.G, at 112, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39.

Mexico, "Working paper," in U.N.G.A. Ad Hoc Comm. on the Drafting of an International Convention against the Taking of Hostages, *Report*, Annex II.D, at 111, U.N. Doc. A/32/39, *reprinted in* U.N. GAOR 32st Sess. Supp. No. 39.

1979

Afghanistan, Algeria, Benin, Guinea, India, Libya, Morocco, Mozambique, Niger, Tanzania, Tunisia, Uganda, Venezuela, Yugoslavia, Zaire and Zambia, "Draft resolution," U.N. Doc. A/C.6/34/L.20, later adopted as G.A. Res 34/145, U.N. Doc. A/RES/34/145 (Dec. 17, 1979).

Algeria, Barbados, India, Iran, Nigeria, Panama, Syria, Tunisia, Venezuela, Yugoslavia, Zaire, & Zambia, "Working paper on the underlying causes of international terrorism," U.N. Doc. A/AC.160/WG/R.1, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 20–21, U.N. Doc. A/34/37, U.N. GAOR 34st Sess. Supp. No. 37.

India, "Draft resolution," U.N. Doc. A/AC.160/WG/R.6, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 31, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. No. 37.

Sweden, "Proposed recommendation for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.4, U.N. Doc. A/AC.160/WG/R.3, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 29, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. No. 37.

United Kingdom, "Elements for possible recommendations for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.2, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 26–27, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. No. 37.

United States, "Recommendation for co-operation to combat international terrorism," U.N. Doc. A/AC.160/WG/R.3, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 28, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. No. 37.

Uruguay, "Working paper," U.N. Doc. A/AC.160/WG/R.5, in U.N.G.A. Ad Hoc Comm. on International Terrorism, *Report*, at 29 - 30, U.N. Doc. A/34/37, (1979) U.N. GAOR 34st Sess. Supp. No. 37.

1981

Cuba, Egypt, Libya, Niger, Togo, Yugoslavia, Zaire, Zambia & Zimbabwe, "Draft resolution," U.N. Doc. A/C.6/36/L.30/Rev.1, later adopted as G.A. Res. 36/109, U.N. Doc. A/RES/36/109 (Dec. 10, 1981).

1985

Angola, Bolivia, Burkina Faso, Colombia, Congo, Cuba, Equatorial Guinea, Nicaragua, & Peru, "Draft resolution," U.N. Doc. A/C.6/40/L.2/Rev.1, (1985) in U.N.G.A. Sixth Comm., *Report*, at 4, U.N. Doc. A/40/1003, U.N. GAOR 40th Sess. Annexes, No. 129.

Australia, Austria, Belgium, Canada, Denmark, Finland, the Federal Republic of Germany, Italy, Japan, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, the United Kingdom, & the United States, "Draft resolution," U.N. Doc. A/C.6/40/L.3, *reproduced in*: U.N.G.A. Sixth Comm., *Report*, at 3, U.N. Doc. A/40/1003, U.N. GAOR 40th Sess. Annexes, No. 129.

Cuba, Czechoslovakia, Malta and Yugoslavia, "Draft resolution," U.N. Doc. A/C.6/42/L.24, in U.N.G.A. Sixth Comm., *Report*, at 5 - 6, U.N. Doc. A/42/832 (Dec. 3, 1987) in U.N. GAOR 40th Sess. Annexes, No. 126.

Sixth Comm. Chairman, "Draft resolution," U.N. Doc. A/C.6/40/L.31 in U.N.G.A. Sixth Comm., *Report*, at 4-5, U.N. Doc. A/40/1003, U.N. GAOR 40th Sess. Annexes, No. 129.

Zimbabwe, "Draft resolution," U.N. Doc. A/C.6/42/L.7/Rev.1 in U.N.G.A. Sixth Comm., *Report*, at 5, U.N. Doc. A/42/832 (Dec. 3, 1987) in U.N. GAOR 40th Sess. Annexes, No. 126.

1987

Australia, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Turkey, & the United Kingdom, "Draft resolution," U.N. Doc. A/C.6/42/L.2 in U.N.G.A. Sixth Comm., *Report*, at 3, U.N. Doc. A/42/832 (Dec. 3, 1987) in U.N. GAOR 42th Sess. Annexes, No. 126.

1989

Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Turkey & the United Kingdom, "Draft resolution," U.N. Doc. A/C.6/44/L.2 in U.N.G.A. Sixth Comm., *Report*, at 2-6 U.N. Doc. A/44/762 (Dec. 1, 1989).

Bulgaria, German Democratic Republic, Hungary, Poland, & the Union of Soviet Socialist Republics, "Draft resolution," U.N. Doc. A/C.6/44/L.4 in U.N.G.A. Sixth Comm., *Report*, at 6 - 7, U.N. Doc. A/44/762 (Dec. 1, 1989).

Sixth Comm. Chairman, "Draft resolution," U.N. Doc. A/C.6/44/L.22, in U.N.G.A. Sixth Comm., *Report*, at 12, U.N. Doc. A/44/762 (Dec. 1, 1989).

Yugoslavia (on behalf of the member states of the Non-Aligned Movement), "Draft resolution," 15, U.N. Doc. A/C.6/44/L.4 in U.N.G.A. Sixth Comm., *Report*, at 7 – 11, U.N. Doc. A/44/762 (Dec. 1, 1989).

1991

Sixth Comm. Chairman, "Draft resolution," U.N. Doc. A/C.6/46/L.4 (1991).

1996

India, "Draft international convention on the suppression of terrorism," U.N. Doc. A/C.6/51/6 Annex (Nov. 1, 1996).

1997

Australia, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.50 (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 58, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Austria, "Proposal on art. 9" U.N. Doc. A/C.6/52/WG.1/CRP.20 (Sept. 24, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 28, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Belgium, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.39 (Sept. 30, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 40, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Botswana, "Proposal new 2.4" U.N. Doc. A/C.6/52/WG.1/CRP.26 (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 31, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Canada, "Proposal on art. 2.4" U.N. Doc. A/C.6/52/WG.1/CRP.42, (Sept. 30, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 41, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

China, "Proposal on art. 1," U.N. Doc. A/C.6/52/WG.1/CRP.33 (Sept. 26, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 37, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

China, "Proposed amendments to art. 2.1," U.N. Doc. A/C.6/52/WG.1/CRP.6 (Sept 23, 1997), *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 20, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Colombia, "Amendments to WP.10, WP.12, CRP.1 & CRP.2," U.N. Doc. A/AC.252/1997/WP.20 *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 39 - 40*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Costa Rica, "Draft resolution, International Convention for the Suppression of Terrorist Bombings," U.N. Doc. A/C.6/52/L.13* (Nov. 13, 1997).

Costa Rica, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.55 (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 59, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Egypt, "Proposal on art. 12.ter," U.N. Doc. A/C.6/52/WG.1/CRP.28 (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 37, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Finland, "Proposal on art. 2.3," U.N. Doc. A/C.6/52/WG.1/CRP.12 (Sept. 23, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 24, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Finland, "Proposals on art. 8.6 and new art. 9.bis," U.N. Doc. A/C.6/52/WG.1/CRP.24 (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 37, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

France, "Proposal on art. 2," U.N. Doc. A/AC.252/1997/WP.1 (Feb. 24, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 29*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

France, "Proposal on art. 8.5 & new 8.6," U.N. Doc. A/AC.252/1997/WP.5 (Feb. 26, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 30*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

France, "Proposal on art. 8.7," U.N. Doc. A/AC.252/1997/WP.21 (March 5, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 40 - 41*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

France, on behalf of the Group of Seven major industrialized countries and the Russian Federation, "Preliminary working document: International Convention for the Suppression of Terrorist Bombings," U.N. Doc. A/AC.252/L.2, (Feb. 11, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report,* Annex II, at 20–28, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Germany, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.51 (Oct. 3rd, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 58, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Germany, "Proposals on art. 2.1," U.N. Doc. A/C.6/52/WG.1/CRP.5 (Sept. 23, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 19 - 20, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Greece, "Proposal on art. 1," U.N. Doc. A/AC.252/1997/WP.14. (March 3, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 26*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Article 1, ¶¶ 1, 2, 3, 5, & 6," U.N. Doc. A/AC.252/1997/WP.10 (Feb. 27ht, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 32 – 33, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Group of Seven major industrialized countries and the Russian Federation, "Revised proposal of Articles 1.4, 2 & 3," U.N. Doc. A/AC.252/1997/WP.12 (Feb. 28, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 33 – 34, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Guatemala, "Proposal in connection with art.1.1," U.N. Doc. A/AC.252/1997/WP.24 (March 6, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 42*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Holy See, "proposal on art. 1," U.N. Doc. A/AC.252/1997/WP.19 (March 4, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 39, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Holy See, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.53 (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 59, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Iran, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.52, (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 59, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Italy, "Proposal on new art. 2.3," U.N. Doc. A/AC.252/1997/WP.18 (March 4, 1997).

Mexico, "Proposal on art. 8 & 8.bis," U.N. Doc. A/AC.252/1997/WP.31 (March 5, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Netherlands and the United States, "Proposal," U.N. Doc. A/AC.252/1997/WP.32 (March 7, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 44-45, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Netherlands, "Proposal for a new preambular para." U.N. Doc. A/C.6/52/WG.1/CRP.43 (Sept. 30, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 41, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Netherlands, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.15 (Sept. 24, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 26, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Netherlands, "Proposal on arts. 1.3 & 2.1" U.N. Doc. A/AC.252/1997/WP.27 (March 6, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 43, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Netherlands, "Proposal," art. 1.1, U.N. Doc. A/C.6/54/WG.1/CRP.2 (Sept. 27, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 18, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Netherlands, "Proposals on arts. 2.2, 3.1 & 9.bis," U.N. Doc. A/AC.252/1997/WP.9 (Feb. 27, 1997), *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 31-32, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

New Zealand, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.56 (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 60, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

New Zealand, "Proposal on art. 3" U.N. Doc. A/C.6/52/WG.1/CRP.3 (Sept. 22, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 18, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Pakistan "Amendments to the draft resolution proposed by Costa Rica (A/C.6/52/L.13)" U.N. Doc. A/C.6/52/L.19 (Nov. 18, 1997).

Pakistan, "Proposals," at ¶ 11, U.N. Doc. A/AC.252/1997/WP.16 (March 3, 1997), *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 43, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Republic of Korea, "Amendments to arts. 1-8 & 10," U.N. Doc. A/AC.252/1997/WP.13 (Feb. 28, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 34-35, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Republic of Korea, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.54, (Oct. 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 59, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Republic of Korea, "Proposals on arts. 2, 5, 6, 7, 8, 10, 10.bis, 12, 12.bis," U.N. Doc. A/C.6/52/WG.1/CRP.14 (Sept. 24, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 25 - 26, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Russian Federation, "Draft text of the convention on the suppression of acts of nuclear terrorism," U.N. Doc. A/AC.252/L.3 (Jan. 9, 1997), A/AC.252/L.3/Corr.1, & A/AC.252/L.3/Corr.2, *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* annex I, pp. 6-14, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Russian Federation, "Proposal on art. 1," U.N. Doc. A/AC.252/1997/WP.23, (March 6, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 41, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Russian Federation, "Proposal on art. 2," U.N. Doc. A/C.6/52/WG.1/CRP.44, *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 42, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Russian Federation, "Proposal on Article 1.1," U.N. Doc. A/AC.252/1997/WP.2 (Feb. 25, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 29*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Sixth Comm. Chairman, "Draft resolution, International Convention for the Suppression of Terrorist Bombings" U.N. Doc. A/C.6/52/L.13 (Nov. 13, 1997) & U.N. Doc. A/C.6/52/L.13/Corr.1. (Nov. 14, 1997) (later withdrawn).

South Africa and Switzerland, "Proposal on art. 3," U.N. Doc. A/C.6/52/WG.1/CRP.27, (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 31, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

South Africa, "Proposal on art. 8.6.bis" U.N. Doc. A/C.6/52/WG.1/CRP.17 (Sept. 24, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 26, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Sweden, "Proposal on art. 8.7 and new art. 14.bis," U.N. Doc. A/C.6/52/WG.1/CRP.23 (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 29 - 30, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Switzerland, "Proposal on art. 2.3.b.bis" U.N. Doc. A/C.6/52/WG.1/CRP.46 (Oct. 1, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 24, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Switzerland, "Proposal on art. 3," U.N. Doc. A/AC.252/1997/WP.30, (March 6, 1997) *reprinted in* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report*, at 43*,* U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

Syria "Proposal on new art. to follow art. 12.ter," U.N. Doc A/C.6/52/WG.1/CRP.25 (Sept. 25, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 30, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Syria, "Proposals for the preamble," U.N. Doc A/C.6/52/WG.1/CRP.9 (Sept. 23, 1997), *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 21 - 22, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Syria, "Proposals to arts. 1 & 3 (A/52/37, annex 1.A)," U.N. Doc. A/C.6/52/WG.1/CRP.4 (Sept. 23, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 18, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Syria, "Proposals," U.N. Doc. A/AC.252/1998/WP.25 (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 26 - 27, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

United States "Proposal on art. 3" U.N. Doc. A/C.6/52/WG.1/CRP.49 (October 3, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 58, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

United States, "Proposal on a new art. 2.4" U.N. Doc. A/AC.252/1997/WP.17 (March 3, 1997).

United States, "Proposal on art. 2 of A/52/37," U.N. Doc. A/C.6/52/WG.1/CRP.5 (Sept. 22, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 18, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

United States, "Proposal, Revisions to definitions in article 1," U.N. Doc. A/C.6/52/WG.1/ CRP.1 (Sept. 22, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 17, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

1998

Australia "Revised text prepared by the Coordinator as a result of informal consultations," A/C.6/53/WG.1/CRP.31 (Oct. 7, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 41 – 42, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Australia, "Proposal" U.N. Doc. A/AC.252/1998/WP.3 (Feb. 19, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 16, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Austria, "Proposal," A/C.6/53/WG.1/CRP.21 (Oct. 5, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 35 – 36, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Belgium & France, "Proposal," U.N. Doc. A/AC.252/1998/WP.1/Rev.2, *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 14 - 15, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Belgium and France, "Proposal," art. 1.bis, U.N. Doc. A/AC.252/1998/WP.1 (Feb. 21, 1998).

Belgium, "Proposal," A/C.6/53/WG.1/CRP.4 (Sept. 29 [?], 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 27 – 28, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Belgium, "Proposal," A/C.6/53/WG.1/CRP.4/Add.1 (Oct. 7, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 28, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Belgium, "Proposal," U.N. Doc. A/AC.252/1998/WP.23 (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 24, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Belgium, "Proposal," U.N. Doc. A/AC.252/1998/WP.6 (Feb. 20, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 18, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Belgium, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.9 (Sept. 30, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 30, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

China, "Proposal" A/C.6/53/WG.1/CRP.19 (Oct. 2, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 35, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Finland, "Revised text prepared by the Coordinator as a result of informal consultations," U.N. Doc. A/C.6/53/WG.1/CRP.27, (Oct. 5, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 39 – 40, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

France, "Draft international convention for the suppression of terrorist financing," U.N. Doc. A/C.6/53/9 Annex (Nov. 4, 1998).

France, "Proposal," A/C.6/53/WG.1/CRP.13 (Oct. 1, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 33, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

France, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.5/Rev.1, (Oct. 1, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 28, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

France, Germany, and Italy, "Proposal," A/C.6/53/WG.1/CRP.29 (Oct. 7, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 40, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Germany, "Proposal," A/C.6/53/WG.1/CRP.24 (Oct. 5, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 37 – 38, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Germany, "Proposal," U.N. Doc. A/AC.252/1998/WP.20/Rev.1, (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 23, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Germany, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.3, (Sept. 29, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 27, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Germany, "Proposals on art. 1 & 1.bis," U.N. Doc. A/AC.252/1998/WP.13 (Feb. 23, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 20, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

International Atomic Energy Agency, *Comments of the Secretariat,* U.N. Doc. A/AC.252/1998/L.5 (Feb. 27, 1998).

Iran, "Proposal," U.N. Doc. A/AC.252/1998/WP.38 (Feb. 26, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 35, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Italy, "Proposal," U.N. Doc. A/AC.252/1998/WP.19 (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 23, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Japan, "Proposal," A/C.6/53/WG.1/CRP.16 (Oct. 1, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 34, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Lebanon, "Proposal," U.N. Doc. A/AC.252/1998/WP.12 (Feb. 23, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 19, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Lebanon, Syria, Nigeria, Libya, & Sudan, "Proposal," A/C.6/53/WG.1/CRP.33 (Oct. 8, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 42, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Libyan Arab Jamahiriya, "Proposal," U.N. Doc. A/AC.252/1998/WP.32/Rev.1 (Feb. 25, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of

17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 31 - 32, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Mexico, Switzerland, & Ukraine, "Proposal," A/C.6/53/WG.1/CRP.30 (Oct. 7, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 41, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Netherlands, "Proposal," U.N. Doc. A/AC.252/1998/WP.5 (Feb. 20, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* annex I, p. 17, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Pakistan, "Proposal," A/C.6/53/WG.1/CRP.22 (Oct. 5, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 36, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Republic of Korea, "Proposal," U.N. Doc. A/AC.252/1998/WP.16 (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 22, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Republic of Korea, "Proposal," U.N. Doc. A/AC.252/1998/WP.2 (Feb. 19, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 16, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Republic of Korea, "Proposal," U.N. Doc. A/AC.252/1998/WP.38 (Feb. 26, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 18, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Russian Federation, "Explanatory note to the draft convention on the suppression of acts of nuclear terrorism," ¶¶ 3-6, U.N. Doc. A/AC.252/L.3/Add.1, (Jan. 14, 1998).

Russian Federation, "Proposal concerning art. 1.bis," U.N. Doc. A/C.6/53/WG.1/CRP.2 (Sept. 28, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 26, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Russian Federation, "Proposal," A/C.6/53/WG.1/CRP.13 (Oct. 1, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 32, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Russian Federation, "Proposal," U.N. Doc. A/C.6/53/WG.1/CRP.7 (Sept. 29, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 29 – 30, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

Slovakia, "Proposal," U.N. Doc. A/AC.252/1998/WP.14 (Feb. 23, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* annex I, p. 21, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

Syria, "Proposals on the preamble," U.N. Doc. A/AC.252/1998/WP.24 (Feb. 24, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 24 - 25, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

United Kingdom, "Revised text prepared by the Coordinator as a result of informal consultations," U.N. Doc. A/C.6/53/WG.1/CRP.26, (Oct. 5, 1998) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 39, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

United States, "Proposal," U.N. Doc. A/AC.252/1998/WP.36 (Feb. 25, 1998) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* p. 33 - 34, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

1999

Australia, "Proposal," U.N. Doc. A/AC.252/1999/WP.25, (March 17, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 37, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Australia, "Proposal," U.N. Doc. A/AC.252/1999/WP.38, (March 19, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 44 – 45, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Australia, "Proposal," U.N. Doc. A/AC.252/1999/WP.9, (March 15, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex II, p. 27, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Austria, "Proposal," U.N. Doc. A/AC.252/1999/WP.11, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 28 – 30, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Austria, "Proposal," U.N. Doc. A/AC.252/1999/WP.12, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 31 – 32, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Austria, "Proposal," U.N. Doc. A/AC.252/1999/WP.6, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 27, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Austria, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.12 (Sept. 29, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 21, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Austria, Belgium, Japan, Sweden, and Switzerland, "Proposal," U.N. Doc. A/AC.252/1999/WP.49, (March 23, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 51 – 52, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Bahrain, "Proposal," U.N. Doc. A/AC.252/1999/WP.32, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 42. GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Belgium and Japan, "Proposal," U.N. Doc. A/AC.252/1999/WP.40, (March 19, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 46, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Belgium, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.3 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 18, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Belgium, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.4 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 57, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Belgium, "Proposals on arts. 1.4, 3, 5, 2.bis, 10.bis & 12.ter," U.N. Doc. A/C.6/52/WG.1/CRP.11 (Sept. 23, 1997) *reprinted in* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, at 23 - 24, U.N. Doc. A/C.6/52/L.3 (Oct. 3, 1997).

Bolivia, Colombia, Chile, Ecuador, Mexico, and Peru, "Proposal," U.N. Doc. A/AC.252/1999/WP.44, (March 22, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 47, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Brazil, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.25 (Oct. 1, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 38, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Colombia, Costa Rica, and Mexico, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.27 (Oct. 4, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 38, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Costa Rica and Mexico, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.14 (Sept. 29, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 22, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Ecuador and South Africa, "Proposal," U.N. Doc. A/AC.252/1999/WP.35, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 43, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

France, "Proposal," A/C.6/54/WG.1/CRP.22 (Sept. 30, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 37, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

France, "Proposal," art. 1.1, U.N. Doc. A/C.6/54/WG.1/CRP.9 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 20, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

France, "Revised text of art. 17," U.N. Doc. A/AC.252/1999/WP.47, (March 22, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 50 - 51 GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

France, "Revised texts of arts. 2, 5, 8, & 12 and additional provisions," U.N. Doc. A/AC.252/1999/WP.45, (March 22, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 47 – 49, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

France, "Working document: Why an international convention against the financing of terrorism?" *later reproduced as:* U.N. Doc. A/AC.252/L.7/Add.1 (March 11, 1999).

France, "Working paper on arts. 1-2," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex I.B, p. 12-13, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

France, "Working paper: Draft International convention for the suppression of terrorism," U.N. Doc. A/AC.252/L.7* (March 11, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex II, pp. 14-23, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Germany, "Proposal," A/AC.252/1999/WP.27, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 39 – 40, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Germany, "Proposal," U.N. Doc. A/AC.252/1999/WP.26 (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 26, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Guatemala, "Proposal," U.N. Doc. A/AC.252/1999/WP.16, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 33, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Guatemala, "Proposal," U.N. Doc. A/AC.252/1999/WP.8, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 28, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

India, "Proposal," U.N. Doc. A/AC.252/1999/WP.48, (March 23, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 51, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

India, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.33 (Oct. 6, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 42, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Iran, "Proposal," U.N. Doc. A/AC.252/1999/WP.30, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 41, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Japan, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.8 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 20, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Kuwait, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.36 (Oct. 8, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 48 - 51, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Lebanon, "Proposal," U.N. Doc. A/AC.252/1999/WP.33, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 42, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Mexico, "Proposal," A/C.6/54/WG.1/CRP.10 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 20 – 21, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Mexico, "Proposal," A/C.6/54/WG.1/CRP.13 (Sept. 29, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 21 - 22, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Netherlands, "Proposal," U.N. Doc. A/AC.252/1999/WP.28, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 40, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Netherlands, "Proposal," U.N. Doc. A/AC.252/1999/WP.39, (March 19, 1999) U.N. Doc. A/C.6/55/WG.1/CRP.7 U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 45, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Pakistan and Syria, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.34 (Oct. 6, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 42, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Papua New Guinea, "Proposal," U.N. Doc. A/AC.252/1999/WP.36, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 43, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Republic of Korea, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.7 (Sept. 28, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 19, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

Switzerland, "Proposal," U.N. Doc. A/AC.252/1999/WP.1, (March 15, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 26, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Switzerland, "Proposal," U.N. Doc. A/AC.252/1999/WP.2, (March 15, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 26, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Switzerland, "Proposal," U.N. Doc. A/AC.252/1999/WP.5, (March 16, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* p. 27, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

Syria, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.23 (Oct 1, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 37, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

United Kingdom, "Proposal," U.N. Doc. A/AC.252/1999/WP.20, (March 17, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 34 – 35, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

United Kingdom, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.11 (Sept. 29, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 21, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

United Kingdom, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.16 (Sept. 30, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 35, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

United Kingdom, "Proposal," U.N. Doc. A/C.6/54/WG.1/CRP.18 (Sept. 30, 1999) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 36, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

United States, "Proposal," U.N. Doc. A/AC.252/1999/WP.31, (March 18, 1999) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* pp. 41 – 42, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

2000

Australia and Belgium, "Proposal, art. 2.1," U.N. Doc. A/C.6/55/WG.1/CRP.5 (Sep. 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 5, A/C.6/55/L.2 (Oct. 19, 2000).

Austria, Belgium, and Switzerland, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.11 (Sept. 30, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 11, A/C.6/55/L.2 (Oct. 19, 2000).

Austria, "Proposal, art. 2.1," U.N. Doc. A/C.6/55/WG.1/CRP.32 (Oct. 4, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 32, A/C.6/55/L.2 (Oct. 19, 2000).

Bolivia, Chile, Costa Rica, Ecuador and Peru, "Proposal," (Sept. 2000), U.N. Doc. A/C.6/55/WG.1/CRP.15, *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 15, A/C.6/55/L.2 (Oct. 19, 2000).

Colombia, "Proposal, art. 2.1" U.N. Doc. A/C.6/55/WG.1/CRP.4/Rev.1 (Sept. 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 4, A/C.6/55/L.2 (Oct. 19, 2000).

Côte d'Ivoire, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.26 (Oct. 3, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 26, A/C.6/55/L.2 (Oct. 19, 2000).

Guatemala, "Additional Art. Provisionally numbered 22.a," U.N. Doc. A/C.6/55/WG.1/CRP. 1 (Sept. 25, 2000).

Guatemala, "Additional Art. Provisionally numbered 22.a," U.N. Doc. A/C.6/55/WG.1/CRP. 1/Rev.1 (Oct. 2, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 1, A/C.6/55/L.2 (Oct. 19, 2000).

India, "Working document on the draft comprehensive convention on international terrorism," U.N. Doc. A/C.6/55/1 (2000) *reprinted in*: U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, pp. 9 – 24, U.N. Doc. A/C.6/55/L.2, Annex II (Oct. 19, 2000).

India, "Revised text of art. 2," U.N. Doc. A/C.6/55/WG.1/CRP.35, (Oct. 4, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 35, A/C.6/55/L.2 (Oct. 19, 2000).

India, "Informal revised text of art. 2" U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex I.B, pp 7 - 8, A/C.6/55/L.2 (Oct. 19, 2000).

Lebanon, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.13 (Sept. 29, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 13, A/C.6/55/L.2 (Oct. 19, 2000).

Lebanon and Syria, "Proposal on new preambular para.," U.N. Doc. A/C.6/55/WG.1/CRP.37 (Oct. 5, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 37, A/C.6/55/L.2 (Oct. 19, 2000).

Lebanon and Syria, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.38 (Oct. 5, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 38, A/C.6/55/L.2 (Oct. 19, 2000).

Malaysia, on behalf of the OIC group, "Additional para. to arts. 1 and 2 of doc. A/C.6/55/1," U.N. Doc. A/C.6/55/WG.1/CRP.30 (Oct. 3, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 30, A/C.6/55/L.2 (Oct. 19, 2000).

Netherlands, "Proposal, new para. 4 to art. 2" U.N. Doc. A/C.6/55/WG.1/CRP.7 (Sept. 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to

Eliminate International Terrorism, *Report*, Annex III, ¶ 7, A/C.6/55/L.2 (Oct. 19, 2000).

New Zealand and Switzerland, "Proposal on art. 18.2," U.N. Doc. A/C.6/55/WG.1/CRP.28 (Oct. 3, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 28, A/C.6/55/L.2 (Oct. 19, 2000).

Nigeria, "Amendment to art. 2.1" U.N. Doc. A/C.6/55/WG.1/CRP.33 (Oct. 4, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 30, A/C.6/55/L.2 (Oct. 19, 2000).

Qatar, "Proposal on art. 18" U.N. Doc. A/C.6/55/WG.1/CRP.36 (Oct. 5, 2000), *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 36, A/C.6/55/L.2 (Oct. 19, 2000),

Switzerland, "Proposal, Amendment to art. 2.1," U.N. Doc. A/C.6/55/WG.1/CRP.31 (Oct. 4, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 31, A/C.6/55/L.2 (Oct. 19, 2000).

United Kingdom, "Proposal," U.N. Doc. A/C.6/55/WG.1/CRP.16 (Oct. 2, 2000) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, ¶ 16, A/C.6/55/L.2 (Oct. 19, 2000).

2001

Australia (Richard Rowe), "Informal text of art. 2 and 2 bis, prepared by the Coordinator" U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex I.B, p. 16, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

Colombia, "Proposal concerning a new pre. para. 1" U.N. Doc. A/C.6/56/WG.1/CRP.4. (Oct. 19, 2001) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II, ¶ 4, p. 28, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

Côte d'Ivoire, "Proposal, Revised Text of doc. A/C.6/55/WG.1/CRP.26," U.N. Doc. A/AC.252/2001/WP.1/Rev.1, *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* Annex III, ¶ 1, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

Guatemala, "Additional article (provisionally numbered 22A)," U.N. Doc. A/C.6/56/WG.1/CRP.1 and Corr.1, *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II, ¶ 1, p. 17, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

Hungary, "Proposal concerning the relationship between the present draft convention and other conventions on terrorism," U.N. Doc. A/C.6/56/WG.1/CRP.2, (Oct. 16, 2001) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II, ¶ 2, p. 21, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

India, "Text of arts. 4, 5, 9, 10, 12, and 13 prepared by India for reference," U.N. Doc. A/AC.252/2001/CRP.4, *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* Annex II, at 4 – 5, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

Mexico, "Proposal," U.N. Doc. A/C.6/56/WG.1/CRP.9 (Oct. 25, 2001) *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, p. 29, U.N. Doc. A/C.6/56/L.9 (Oct. 29, 2001).

Nepal, "Proposal concerning arts. 2 and 18" U.N. Doc. A/C.6/56/WG.1/CRP.7 (Oct. 22, 2001) (later withdrawn).

Pakistan, "Proposal on a new art. on relationship," U.N. Doc. A/AC.252/2001/WP.7 *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* Annex III, ¶ 7, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

South Africa, "Proposal on art. 2.1," U.N. Doc. A/AC.252/2001/WP.5 *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* Annex III, ¶ 5, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

2002

Organization of the Islamic Conference, "Text proposed by the Member States of the OIC" *in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report,* Annex IV, at 17, U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002).

2003

Guatemala, "Proposal on additional art. 2 ter," U.N. Doc. A/C.6/58/WG.2/CRP.1, *reprinted in:* U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex I.A, at 6 – 7, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003).

2004

Syria, "proposal," U.N. Doc. A/AC.252/2004/WP.1, *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28

– July 2, 2004), *Report,* 27, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

2005

Cuba, "Proposal: new art. 2.4.d," U.N. Doc. A/AC.252/2005/WP.2 (March 9, 2005) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex III. A and B., pp. 30 - 31, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

Egypt, "Proposal: new pr. para. after the 13th pr. para.," U.N. Doc. A/AC.252/2005/WP.3 (March 24, 2005) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex III.B., p. 31, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

Friends of the Chairman, "Proposal to facilitate discussion, addition to article 18 of the draft comprehensive convention on international terrorism," U.N. Doc. A/C.6/60/INF/1 (Oct. 20, 2005).

Friends of the Chairman, "Proposal to facilitate discussion, proposed preambular para. of the draft comprehensive convention on international terrorism," U.N. Doc. A/C.6/60/INF/2 (Oct. 20, 2005).

Iran, "Proposal," U.N. Doc. A/AC.252/2005/WP.5 (March, 2005) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex III.B., p. 31, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

Pakistan, "Proposal," U.N. Doc. A/AC.252/2005/WP.1 (Jan. 18, 2005) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex III.B., p. 30, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

U.N.G.A. President, "Draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," U.N. Doc. A/59/HLPM/CRP.1 (June 8, 2005).

U.N.G.A. President, "Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," U.N. Doc. A/59/HLPM/CRP.1/Rev.1 (July 22, 2005).

U.N.G.A. President, "Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005," U.N. Doc. A/59/HLPM/CRP.1/Rev.2 (Aug. 10, 2005).

United States, "Proposal," U.N. Doc. A/AC.252/2005/WP.4 (March, 2005) *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996

(Ninth session, March 28-April 1, 2005), *Report,* Annex III.B., p. 31, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

3) Informal proposals and negotiating "non-papers"

1994

Algeria, "Draft Declaration on Measures to Eliminate International Terrorism" (TD, non-paper, Oct. 13, 1994, on file with the author).

Syria, "Proposal, new operative paragraph" (TD, non-paper, Oct. 17, 1994, on file with the author).

1996

France, "Measures to Eliminate International Terrorism" (TD, Draft resolution, Sept. 19, 1996, on file with the author).

Russian Federation, "Amendments proposed by the Russian Federation, Draft resolution on Measures to eliminate international terrorism" (TD , Sept. 1996, on file with the author).

1997

Canada and the Russian Federation, "Art. 3" (TD, photocopy, non-paper, Sept. 295, 1997, on file with the author).

Costa Rica, "First draft, Terrorist Bombing Convention, art. 3, Nov. 1997" (TD, Nov, 1997, on file with the author).

Costa Rica, "Non paper by Costa Rica, fourth draft, November 12th, 1997." (TD, Nov. 12, 1997, on file with the author).

Costa Rica, "Second draft, Terrorist Bombing Convention, art. 3, Nov. 1997" (TD, Nov, 1997, on file with the author).

Costa Rica, "Third draft, Terrorist Bombing Convention, art. 3, Nov. 7 1997" (TD, Nov. 7, 1997, on file with the author).

Denmark, "D" (TD, photocopy, Non-paper on armed forces, Nov, 1997, on file with the author).

Denmark, "Non-paper, Nov. 3, 1997" (TD, photocopy, Oct., 31, 1997, on file with the author).

Finland, "Art. 9.bis & 9.ter 29 Sept. 1997 pm (1st version)" (TD, non-paper, Sept. 29, 1997, on file with the author).

Finland, "Art. 9.bis & 9.ter 29 Sept. 1997 pm (2nd version)" (TD, non-paper, Sept. 29, 1997, on file with the author).

Germany, (non-paper on art. 1.4) (TD, photocopy, Sept., 1997, on file with the author).

Netherlands, "proposal on art. 3" (TD, photocopy, non-paper, Sept., 30, 1997, on file with the author)

New Zealand, "Non-paper, Oct. 31, 1997" (TD, photocopy, Oct., 31, 1997, on file with the author).

Switzerland, "Art. 3" (TD, photocopy, late Oct., 1997, on file with the author).

United States, (Non-paper art. 3) (TD, photocopy, Sept., 30, 1997, on file with the author).

United States, "Proposal on art. 3, 1st draft, Sept. 30, 1997" (TD, photocopy, Sept., 30, 1997, on file with the author).

United States, "Proposal on art. 3, 2nd draft, Sept. 30, 1997" (TD, photocopy, Sept., 30, 1997) (on file with the author).

United States, "UN Convention on terrorist bombing" (TD, photocopy, *Aide memoire* for demarches in capitals, Oct., 1997, on file with the author).

1998

Australia, "Article 10 – Informals' rolling text – 5 October 1998," (TD, Oct. 5, 1998) (on file with the author).

International Committee of the Red Cross, "Suggested Chairman's statement" (TD, non-paper, Sept. 29, 1998 [?]) (on file with the author);

Switzerland, "Draft International Convention for the Suppression of Acts of Nuclear Terrorism, art. 4" (TD, photocopy, Oct. 17, 1998) (on file with the author).

United States, "Nuclear Terrorism Convention: U.S. overview," (TD, speaking notes for the United States delegations, Feb. 18, 1998 [?]) (on file with the author).

1999

Argentina, "Discussion paper proposed by the coordinator, art. 2, Oct. 7, 1999," art. 2.1. (TD, non-paper on art. 2. circulated to delegations, Oct. 7, 1999) (on file with the author).

Argentina, "Revised discussion paper prepared by the coordinator, art. 2, Oct. 5, 1999" (TD, non-paper on art. 2.1.b, circulated to delegations, Oct. 5, 1999) (on file with the author).

Argentina, "Revised discussion paper prepared by the coordinator, art. 2, Oct. 5, 1999" (TD, non-paper on art. 2.1.b, circulated to delegations, Oct. 5, 1999) (on file with the author).

Australia, "Non-paper, outcome of informal consultations on art. 17" (TD, non-paper prepared by Australia, Oct. 1, 1999) (on file with the author).

Belgium, "Proposal art. 1 & 19.bis," (TD, non-paper on the question of international humanitarian law, circulated in informal consultations, Oct. 4, 1999) (on file with the author).

United Nations Codification Division, "Explanatory note to the discussion paper submitted by the bureau on arts. 3 -25 of the draft international convention for the suppression of the financing of terrorism (Doc. A/54/37, annex I.A,)" (TD, speaking notes prepared for the chairman of the working group, Sept. 27, 1999, 11:00 a.m.) (on file with the author).

United Nations High Commissioner for Refugees, Liaison Office at the United Nations Headquarters, "Comments on the draft convention for the suppression of the financing of terrorism," (TD, *aide memoire* circulated to delegations, Oct. 6, 1999) (on file with the author).

2001

Australia (Richard Rowe), "Coordinator's Non-paper on the definition of terrorist offence," (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author).

Australia (Richard Rowe), "Coordinator's Non-paper on Exclusion from the Scope of the Convention, Oct. 23, 2001" (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author).

Australia (Richard Rowe), "Coordinator's Non-paper on Exclusion from the Scope of the Convention, Oct. 24, 2001" (TD, non-paper circulated to delegations, Oct. 24, 2001) (on file with the author).

Australia (Richard Rowe), "Text proposed by the Coordinator concerning the relationship between the draft Convention and other treaties dealing with specific category of terrorist offence" (TD, non-paper circulated to delegations, Oct. 23, 2001) (on file with the author).

Australia (Richard Rowe), "Proposal (Oct. 24, 2001, 8:30 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations, Oct. 24, 2001) (on file with the author).

Australia (Richard Rowe), "Proposal (Oct. 24, 2001, 9:00 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations, Oct. 24, 2001) (on file with the author).

Australia (Richard Rowe), "Proposed compromise text (Oct. 26, 2001, 3:30 p.m.)" (TD, non-paper on the question of armed forces, circulated to some delegations on Oct. 26, 2001) (on file with the author) *reproduced in*: U.N. Legal Counsel (Hans Corell), "Talking Points at a meeting with representatives of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Mali, Malaysia, Pakistan, Russian Federation, Sri Lanka, and the United States, on a comprehensive convention against terrorism, Oct. 31, 2001, annex I, p. 6, (TD, on file with the author).

.Belgium, on behalf of the European Union, "New Preambular Para. PP.5" (TD, non-paper circulated to delegations, Oct. 24, 2001) (on file with the author).

Colombia, "Non-paper, new art. on relationship issue," (TD, non-paper prepared by Colombia, Oct. 22, 2001) (on file with the author).

Human Rights Watch, "Commentary 2 on the Draft Comprehensive Convention on Terrorism: Articles 2 and 18." (TD, observations circulated to delegations, Oct. 22, 2001) (on file with the author)

Hungary, "Relationship, art. 2.bis," (Autograph doc. by Hungary, photocopy, Oct. 23, 2001) (on file with the author).

2004

Cuba, "art. 2.d" (TD, non-paper proposing the addition of a new paragraph to art. 2 on the responsibility of those in command of state armed forces, June 30, 2004) (on file with the author).

2005

Costa Rica, "Coordinator's text, 3rd Revision, July 29th, 2005, New P.P." (proposed by the coordinator on the question of self-determination, July 29, 2005) *reproduced in:* U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005).

Costa Rica, "New P.P." (proposed by the coordinator on the question of self-determination, July 27, 2005) *reproduced in:* U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the

President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005).

Costa Rica, "New Preambular Paragraph" (proposed by the coordinator on the question of self-determination, July 26, 2005) *reproduced in:* U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005).

International Committee of the Red Cross, "Non-paper" (TD, photocopy, containing two formulations for a clause separating the legal regime created by the draft comprehensive convention on international terrorism and international humanitarian law, Oct. 13, 2005) (on file with the author).

Jordan, "Proposal" (non-paper on armed forces, July 26, 2005) *reproduced in:* U.N.G.A. Sixth Comm., *Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005,* in: U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), Annex, U.N. Doc. A/59/894 Annex (Aug. 12, 2005). (on file with the author).

Pakistan, "18(2)," (informal suggestion on the question of self-determination and armed forces on the draft comprehensive convention on international terrorism, Oct. 20, 2005) (on file with the author).

United States, "Art. 2, ¶1, Proposed Combined Text," (TD, non-paper proposing merging 2.1.b and 2.1.c, March 30, 2005) (on file with the author).

United States, "Proposals on additional preambular language," (TD, non-paper, July 25, 2005) (on file with the author).

K) Summaries of the Negotiations

1) Published, informal summaries

1997

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Rapporteur, "Informal summary of the discussion in the plenary and in the working group," *in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (First session, Feb. 24 – March 7, 1997), *Report,* Annex IV, U.N. GAOR 52nd Sess. Supp. No. 37, U.N. Doc. A/52/37 (1997).

1998

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Rapporteur, "Informal summary of the discussions the working group," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Second session, Feb. 17-27, 1998), *Report,* Annex III, U.N. GAOR 53rd Sess. Supp. No. 37, U.N. Doc. A/53/37 (1998).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the discussions in the working group," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, U.N. Doc. A/C.6/53/L.4 (Oct. 22, 1998).

1999

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Rapporteur, "Informal summary of the discussions the working group, First reading of arts. 1-8, 12.3, 12.4 & 17 on the basis of doc. A/AC.252/L.7" *reprinted in:* U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex IV.A, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Rapporteur, "Informal summary of the discussions the working group, Second reading of arts. 1-8, 12, & 17 on the basis of doc. A/AC.252/WP.45, 47, & 51," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Third session, March 15-26, 1999), *Report,* Annex IV.B, GAOR 54rd Sess. Supp. No. 37, U.N. Doc. A/54/37 (1999).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the discussions in the working group," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex III, U.N. Doc. A/C.6/54/L.2 (Oct. 26, 1999).

2000

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the general discussion in the working group," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Annex IV, *Report*, U.N. Doc. A/C.6/55/L.2 (Oct. 19, 2000).

2001

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of Dec. 17, 1996, Chairman, "Informal summary of the general exchange of views," U.N.G.A. Ad Hoc Comm.

established by G.A. Res. 51/210 of 17 Dec. 1996 (Fifth session, Feb. 12-23, 2001), *Report,* Annex V, U.N. GAOR 56th Sess. Supp. No. 37, U.N. Doc. A/56/37 (2001).

2002

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator, "Report on the results of the informal consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Sixth session, Jan. 28 – Feb. 1, 2002), *Report,* Annex VI,U.N. GAOR 57th Sess. Supp. No. 37, U.N. Doc. A/57/37 (2002).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator, "Report on the results of the informal consultations," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II, U.N. Doc. A/C.6/57/L.9 (Oct. 16, 2002).

2003

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal bilateral consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* Annex II.B, U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention, "Report of the results of the informal bilateral consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* Annex II.A, U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary of the general discussion at the plenary meeting held on March 31, 2003" U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Seventh session, March 31 – April 2, 2003), *Report,* Annex I, U.N. GAOR 58th Sess. Supp. No. 37, U.N. Doc. A/58/37 (2003).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II.B, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," U.N.G.A. Sixth

Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex II.A, U.N. Doc. A/C.6/58/L.10 (Oct. 10, 2003).

2004

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* Annex II.B, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary of the general discussion at the plenary meeting held on June 28, 2004," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* Annex I., at 5 - 9, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eight session, June 28 – July 2, 2004), *Report,* Annex II.A, at 10 – 13, U.N. GAOR 59th Sess. Supp. No. 37, U.N. Doc. A/59/37 (2004).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex B, pp. 5-7, U.N. Doc. A/C.6/59/L.10 (Oct. 8, 2004).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Coordinator on the draft comprehensive convention on international terrorism, "Report of the results of the informal consultations," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex A, pp. 4-5, U.N. Doc. A/C.6/59/L.10 (Oct. 8, 2004).

2005

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft international convention for the suppression of acts of nuclear terrorism, "Report of the results of the informal consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex II.A., U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Coordinator on the draft comprehensive convention on international terrorism, "Report of the

results of the informal consultations," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex II.B., U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary of the general discussion at the plenary meeting held on March 28, 2005," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Ninth session, March 28-April 1, 2005), *Report,* Annex I, U.N. GAOR 60th Sess. Supp. No. 37, U.N. Doc. A/60/37* (2005).

U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, Chairman, "Informal summary of the results of the informal consultations on the draft comprehensive convention," U.N.G.A. Sixth Comm. Working Group on Measures to Eliminate International Terrorism, *Report*, Annex A, U.N. Doc. A/C.6/60/L.6 (Oct. 14, 2005).

2007

U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Chairman, "Informal summary on the exchange of views in plenary meeting and on the results of the informal consultations and informal contacts on the draft comprehensive convention on international terrorism," U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996 (Eleventh session, Feb. 5, 6, and 15, 2007), *Report*, Annex B, U.N. GAOR 62nd Sess. Supp. No. 37, U.N. Doc. A/62/37 (2007).

2) Private summaries

1997

Díaz, Carlos F., Autograph notes on the negotiation of the Bombings Convention, taken down as a delegate of Costa Rica in those negotiations, Sept. – Nov., 1997, on file with the author.

U.N. Codification Division, "14:00, March 5, 1997," (TD, summary of oral proposals, prepared for the use of the bureau, March 5, 1997, on file with the author).

U.N. Codification Division, "Art. 3, 24/9/97 19:50," (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

U.N. Codification Division, "Art. 4, 29/9/97 17:00," at 11, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 29, 1997, on file with the author).

U.N. Codification Division, “Art. 8.6-8.7, 25/9/97 15:00,” at 3-4, (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 25, 1997, on file with the author).

U.N. Codification Division, “Art. 9, 24/9/97 21:10” (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

U.N. Codification Division, “Article 1, paragraph 2, 19:15, 3 March, 1997,” (TD, summary of oral proposals, prepared for the use of the bureau, March 3, 1997, on file with the author).

U.N. Codification Division, “Article 1. 24/9/97, 19:40” (TD, summary of oral proposals prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

U.N. Codification Division, “Article 1. 30/9/97, 16:30” (TD, summary of oral proposals prepared for the use of the Friends of the Chairman, Sept. 30, 1997, on file with the author).

U.N. Codification Division, “Article 2. 23/9/97, 22:40” (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 23, 1997, on file with the author).

U.N. Codification Division, “Article 7, 21:00, 26 Feb, 1997,” at 7, (TD, summary of oral proposals, prepared for the use of the bureau, Feb. 26, 1997, on file with the author).

U.N. Codification Division, “Article 9, 21:00, 26 Feb, 1997” (TD, summary of oral proposals, prepared for the use of the bureau, Feb. 26, 1997, on file with the author).

U.N. Codification Division, “Document WP. 10, 9:45, 3 March, 1997” (TD, summary of the oral proposals made during the second reading, prepared for the use of the bureau, March 3, 1997) (on file with the author).

U.N. Codification Division, “New art. (24/9/97 21:35)” (TD, summary of oral proposals, prepared for the use of the Friends of the Chairman, Sept. 24, 1997, on file with the author).

U.N. Codification Division, “Oral proposals regarding CRP. 3” (TD, summary of oral proposal made at the third reading, prepared for the use of the bureau, March 1997, on file with the author).

U.N. Codification Division, “Working group of the whole, 21:25, 24 Feb. 1997” (TD, summary of oral proposals made during the first reading, prepared for the use of the bureau, Feb. 24, 1997, on file with the author).

U.N. Codification Division, Autograph notes on the negotiation of the bombings convention, for the use of the bureau, (photocopy, Feb. 23 – March 4, 1997, on file with the author).

1998

Costa Rica, Permanent Mission to the United Nations, Autograph notes on the negotiation of the Nuclear Convention, Nov., 1998, (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Nuclear Convention, taken down as a delegate of Costa Rica in those negotiations, Oct. – Nov., 1998 (on file with the author).

U.N. Codification Division, "26 February 1998, 3:00 p.m.", (TD, summary of the oral proposals on the draft Nuclear Convention made in close meetings of the Ad Hoc Comm.'s working group and in informal consultations, for the use of the bureau, Feb. 26, 1998) (on file with the author).

U.N. Codification Division, "8 October 1998," (TD, summary of debate in the working group, for the use of the Friends of the Chairman, Oct. 8, 1998) (on file with the author).

U.N. Codification Division, "Article 1.bis, 30 September 1998, 1:00 p.m.," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Sept. 30, 1998) (on file with the author).

U.N. Codification Division, "Article 10, 26 February, 3:00 p.m.," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the bureau, Feb. 26, 1998) (on file with the author).

U.N. Codification Division, "Article 10, CRP.31, 8 October 1998, 18:00," (TD, summary of proposals made in the working group, for the use of the Friends of the Chairman, Oct. 8, 1998) (on file with the author).

U.N. Codification Division, "Article 10, Oct. 2 1998, 17:00," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 2, 1998) (on file with the author).

U.N. Codification Division, "Article 2, Feb. 26, 1998, 3:00 p.m." (TD, summary of the oral proposals made in the working group of the Ad Hoc Comm., for the use of the bureau, Feb. 26, 1998).

U.N. Codification Division, "Article 2, Scope of application, Oct. 6, 1998, 13:30 p.m." (TD, summary of the oral proposals made in the working group, for the use of the Friends of the Chairman, Oct. 6, 1998) (on file with the author).

U.N. Codification Division, "CRP.1/Rev.1, Comments by delegations, Oct. 7, 1998, 18:30," (TD, summary of the oral proposals made in close meetings of the working group, for the use of the bureau, Oct. 7, 1998) (on file with the author).

U.N. Codification Division, "Introductory note to the discussion of CRP.1/Rev.1" (TD, talking notes prepared for the use of the Chairman, Oct. 6, 1998 [?]) (on file with the author).

U.N. Codification Division, "Various proposals made by delegations for reaching compromise on the draft international convention for the suppression of nuclear terrorism, Nov. 23, 1998, 2nd draft," (TD, summary of proposal, for the use of the coordinator, Nov. 23, 1998) (on file with the author).

1999

Díaz, Carlos F., Autograph notes on the negotiation of the Financing Convention, taken down as a delegate of Costa Rica in those negotiations, Sept. - Oct., 1999, on file with the author.

U.N. Codification Division, "Art. 1, para. 1-3, 17 March 1999, 7:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 17, 1999) (on file with the author).

U.N. Codification Division, "Art. 17, (CRP.15) Sept. 30, 1999, 20:30," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 30, 1999) (on file with the author).

U.N. Codification Division, "Art. 17, Sept. 29, 1999, 17:30," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 29, 1999) (on file with the author).

U.N. Codification Division, "Art. 17.1, March 19, 1999, 12:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 19, 1999) (on file with the author).

U.N. Codification Division, "Art. 2, 17 March 1999, 2:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 17, 1999) (on file with the author).

U.N. Codification Division, "Art. 8, (CRP.15) Sept. 30, 21:28," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 30, 1999) (on file with the author).

U.N. Codification Division, "Art. 8, March 19, 1999, 5:15 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 19, 1999) (on file with the author).

U.N. Codification Division, "Art. 8, Sept. 29, 15:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Sept. 29, 1999) (on file with the author).

U.N. Codification Division, "Oct. 4, 1:00," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 4, 1999) (on file with the author).

U.N. Codification Division, "Oct. 5, 1999, 17:45," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 5, 1999) (on file with the author).

U.N. Codification Division, "Oct. 5, 1999, 17:45," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 5, 1999) (on file with the author).

U.N. Codification Division, "October 6th meeting" (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the Friends of the Chairman, Oct. 6, 1999) (on file with the author).

U.N. Codification Division, "Revised Art. 17, March 23, 1999, 10:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 23, 1999) (on file with the author).

U.N. Codification Division, "Revised art. 2, 22 March 1999, 7:45 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in close meetings of the Ad Hoc Comm., for the use of the bureau, March. 22, 1999) (on file with the author).

U.N. Codification Division, "Revised art. 8, March 23, 1999, 8:00 p.m.," (TD, summary of the oral proposals on the draft Financing Convention, made in closed meetings of the *Ad Hoc* Comm., for the use of the bureau, March 23, 1999) (on file with the author).

2000

Díaz, Carlos F., Autograph notes on the negotiation of the draft Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations, Sept. 25 – Oct. 6, 2000 (on file with the author).

2001

Díaz, Carlos F., Autograph notes on the negotiation of the draft Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations, Oct 15 – Nov 7, 2001 (on file with the author).

U.N. Codification Division, "Informal consultations on 19 Oct. (morning and afternoon) article 2 / article 18," (Oct. 19, 2001, 19:00) (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 19, 2001) (on file with the author).

U.N. Codification Division, "Informal consultations on 22 Oct. (morning and afternoon) Relationship issue, (23/10/2001 9:54:36 a.m.)" (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 23, 2001) (on file with the author).

U.N. Codification Division, "Informals on 16 Oct. (morning and afternoon) articles 6, 7, 14 to 17, 19 to 22," (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 16, 2001) (on file with the author).

U.N. Codification Division, "Informals on 17 Oct. (afternoon) articles 3, 4, 5, 8, 9, 11, 12, and 13," (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 17, 2001) (on file with the author).

U.N. Codification Division, "Informals on 18 Oct. (morning and afternoon) article 2," (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 18, 2001) (on file with the author).

U.N. Codification Division, "Informals on 23 and 24 Oct. (afternoons) article 2," (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 25, 2001) (on file with the author).

U.N. Codification Division, "Working group, Feb. 13, 2001" (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the bureau, Feb. 13, 2001) (on file with the author).

2002

Díaz, Carlos F., Autograph notes on the negotiation of the Nuclear Convention, taken down as an delegate of Costa Rica in those negotiations, Jan. 2002 (on file with the author).

U.N. Codification Division, "Informal consultations, 29 Jan. 2002, morning and afternoon, Preamble," (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the bureau, Jan. 29, 2002) (on file with the author).

U.N. Codification Division, "Informal consultations on 28 Jan. 2002, Article 18," (TD, summary of oral proposals made in close meetings of the Ad Hoc Comm. for the use of the bureau, Jan. 29, 2002) (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations, Jan. – Feb. 2002 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations, Oct. 15 – 16, 2002 (on file with the author).

2003

Díaz, Carlos F., Vice-chairman of the Ad Hoc Comm., email to Ms. Shiro Sgopallawa, legal officer at the Ministry of Foreign Affairs of Sri Lanka, advisor to Amb. Rohan Perera, Chariman of the Ad Hoc Comm., March 25, 2003, (TD, detailing the outcome of bilateral consultations on the method of work of the 2003 session) (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations and as coordinator for the pending issues, March 31 – April 2, 2003 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations and as coordinator for the pending issues, Oct. 6 - 10, 2003 (on file with the author).

U.N. Codification Division, "Draft International Convention for the Suppression of Acts of Nuclear Terrorism, Informal consultations, Oct. 7, 2003," (TD, summary of oral proposals made in close meetings of the working group, for the use of the Friends of the Chairman, Oct. 7, 2003) (on file with the author).

2004

Díaz, Carlos F., Autograph notes on the negotiation of the Nuclear Convention, taken down as a delegate of Costa Rica in those negotiations, June 17 – June 30, 2004 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, June – July, 2004 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Nuclear Convention, taken down as a delegate of Costa Rica in those negotiations, Oct., 2004 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as a delegate of Costa Rica in those negotiations and as coordinator for the pending issues, Oct. 5, 2004 (on file with the author).

2005

Díaz, Carlos F., Autograph notes on the negotiation of the Nuclear Convention, taken down as a delegate of Costa Rica in those negotiations, March, 2005 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations and as coordinator for the pending issues, March 28 – April 1, 2005 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations and as "Friend of the Chairman," October, 2005 (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the 2005 High-level Summit Outcome Doc. taken as an delegate of Costa Rica in those negotiations, Sept. 1 – 3, 2005 (on file with the author).

U.N. Secretariat, "Terrorism, Discussion in the Core Group meeting" (TD, informal summary of the comments on the section on terrorism of the draft outcome document of the High-Level Plenary Meeting of the G.A. of September 2005, Sept. 1 – 3, 2005) (on file with the author).

Díaz, Carlos F., Autograph notes on the negotiation of the Comprehensive Convention, taken down as an delegate of Costa Rica in those negotiations and as coordinator for the pending issues, June – July, 2005 (on file with the author).

L) Diplomatic Correspondence

Australia, Letter from the Permanent Representative of Australia to the United Nations, Amb. John Dauth, to the Permanent Representative of Costa Rica, Amb. Bernd Niehaus, on the organization of consultations regarding the draft comprehensive convention against terrorism, file # 151/7, (Nov. 9, 2001) (on file with the author).

Federal Republic of Germany, Letter from the Vice-Chancellor and Minister of Foreign Affairs to the President of the General Assembly requesting the inclusion of a new item in the agenda, U.N. Doc. A/31/242 (Sept 28, 1973).

France, *Communiqué by the Prime Minister* (Sept 22, 1985) *reprinted in* 74 I.L.R 241, 261.

France, Letter from Amb. Alain Dejammet, Permanent Representative of France to the United Nations, to the Secretary-General of the United Nations dated Nov. 4, 1998, enclosing a "Draft international convention for the suppression of terrorist financing," U.N. Doc. A/C.6/53/9 (Nov. 4, 1998).

France, *Memorandum to the U.N, Secretary-General*, in Rainbow Warrior Arb. Award (N.Z. v. Fr.) (U.N. Secretary-General, July 6, 1986) *reprinted in* 74 I.L.R 241, 268-269.

India, Letter from the Permanent Representative of India to the United Nations to the Secretary-General enclosing a "Draft international convention on the suppression of terrorism," U.N. Doc. A/C.6/51/6 (Nov. 1, 1996).

International Law Commission, Chairman (T. O. Elias), Letter to the President of the Security Council (June 12, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 274.

Kuwait, Letter to the Secretary-General, on behalf of the Group of Arab States, in support of the request contained in document A/42/193, (Sept 2, 1987) U.N. GAOR 40th Sess. Annexes, No. 126, at 2.

Netherlands, letter from Amb. R. Fack, Permanent Representative of the Netherlands to the United Nations, to Amb. Jacques Kosciusko-Morizet, President of the Security Council (May 5, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 273.

New Zealand, *Memorandum to the U.N, Secretary-General*, in Rainbow Warrior Arb. Award (N.Z. v. Fr.) (U.N. Secretary-General, July 6, 1986) *reprinted in* 74 I.L.R 241, 260-261.

Pakistan, *Note verbale* from Permanent Mission of Pakistan to the United Nations, to the Secretariat of the Sixth Comm. of the United Nations, March 23, 2005, (on file with the author).

Russian Federation, *Note verbale* from the Permanent Mission of the Russian Federation to the United Nations, to all Permanent Missions and Observer Missions to the United Nations, August 21, 2002, (TD, containing a description of Russia's positions and goals for the 57th General Assembly) (on file with the author).

Security Council, President (Jacques Kosciusko-Morizet), Letter to Mr. T. O. Elias, Chairman of the International Law Commission, (May 14, 1970), in U.N. Int'L. Comm. *Report to the General Assembly*, U.N. Doc. A/8010 (1970) *reprinted in* 1970 2. Y.B. Int'L. Comm. at 273.

Syria, Letter to the Secretary-General, request for the inclusion of a supplementary sub-item in the provisional agenda of the forty-second session, U.N. Doc. A/42/193 (Aug. 14, 1987), U.N. GAOR 40th Sess. Annexes, No. 126, at 1-2.

U.N. Legal Counsel (Hans Corell), Letter to the legal advisors of the permanent missions of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, Mali, Pakistan, Russian Federation, Sri Lanka, and the United States, Oct. 30, 2001 (TD, convening a meeting at the expert level to prepare an ambassadorial level meeting with the Secretary-General on Nov. 5, 2001) (on file with the author).

U.N. Secretary-General (Kofi Annan), Letter to the Permanent Representatives of Australia, Belgium, Costa Rica, Ecuador, Egypt, India, Iran, Jordan, Malaysia, Mali, Pakistan, Russian Federation, Sri Lanka, and the United States, Oct. 30, 2001 (TD, convening a meeting on the draft comprehensive convention against terrorism) (on file with the author).

U.N.G.A. Sixth Comm. Chairman (Mohamed Bennouna), Letter to the President of the General Assembly (Aug. 3, 2005), U.N. Doc. A/59/894 (Aug. 12, 2005).

U.N.G.A. President, Letter to all Permanent Representatives to the United Nations on the follow up to the 2005 High-level summit, (Nov. 3, 2005) (on file with the author).

United States (Amb. Richard C. Brown), Letter to Amb. Bernd Niehaus, Permanent Representative of Costa Rica to the United Nations, on the meeting convened by the U.N. Secretary-General on the draft comprehensive convention, Nov. 5, 2001. (TD, photocopy) (on file with the author).

United States (Condolezza Rice), Letter from the US Secretary of State to the Foreign Minister of Sri Lanka on the then forthcoming meeting of the U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, dated Feb. 24, 2006 (TD, photocopy) (on file with the author).

Yemen, Letter for the Permanent Representative of Yemen, in his capacity as chairman of the Organization of the Islamic Conference, to the Chairman of the Sixth Comm. on the informal consultation on the draft comprehensive convention on international terrorism, Oct. 5, 2005, U.N. Doc. A/C.6/60/3 (Oct. 5, 2005).

Zimbabwe, *Note verbale* from the Permanent Mission of Zimbabwe to the United Nations to the Permanent Mission of South Africa in its capacity as Chair of the Non-Aligned Movement, (June 29, 1999), (TD, note enclosing 2 non-papers on issues related to the Nuclear Terrorism Convention) (on file with the author).

M) Other parliamentary documentation

Financial Action Task Force on Money Laundering, "Forty Recommendations," FATF Doc. FATF VI-7, Annex 1 (June 28, 1996).

Fourth International Conference for the Unification of Penal Law, Paris, Dec. 27 – 30, 1931, "Articles on terrorism," in U.N. Secretariat, *Study prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1927*, U.N. Doc. A/C.6/418 (Nov. 2, 1972).

Group of Seven Major Industrialized Countries, Ministerial Conference on Terrorism, Paris, France, July 30, 1996, *Agreement on 25 Measures,* U.N. Doc. A/51/261.

Group of the Eight Major Industrialized Nations, *G-8 Statement on Counter-Terrorism,* G-8 Summit 2005, Gleneagels, Scotland, July 8, 2005, available at: http://216.71.84.120/e/p/tp-20050711-35.html accessed on July 13, 2005.

International Atomic Energy Agency, "Recommendations on Physical Protection," IAEA Doc. INFCIRC/225/Rev.3.

Japan, Aide Memoire on the draft comprehensive convention on international terrorism, July 2005 (TD, photocopy, used for demarches in capitals) (on the file with the author).

Non-Aligned Movement, 13th Ministerial Meeting (Cartagena, Colombia, Apr. 8-9, 2000), "Final document," in: Colombia, letter from the Permanent Representative of Colombia to the Secretary-General of the United Nations (June 6, 2000), U.N. Doc. A/54/917, Annex.

Non-Aligned Movement, *Comments of the Non-Aligned Movement on the observations and recommendation contained in the Report of the High-Level Panel on Threats, Challenges and Change*, (position paper conveyed to the Secretary-General, Feb. 28, 2005) available on line: www.un.int/malaysia/NAM/Positionpaper280205.doc accessed Ago. 29, 2007.

Organization of the Islamic Conference, "Final communiqué of the Ninth Extraordinary Session of the Organization of the Islamic Conference of Foreign Ministers, held at Doha, Qatar, on 10 October 2001," *reproduced in:* Qatar, Letter from the Permanent Representative of Qatar to the United Nations to the Secretary-General (Oct. 11, 2001), annex II, U.N. Doc. A/56/462 - S/2001/962 (Oct. 12, 2001).

Organization of the Islamic Conference, "Kuala Lumpur Declaration on International Terrorism," adopted at the extraordinary session of the Islamic Conference of Foreign Ministers on Terrorism (April 3, 2002) available on line: http://www.oic-oci.org/english/conf/fm/11_extraordinary/declaration.htm accessed on Aug. 12, 2007.

Sixth International Conference for the Unification of Penal Law, Copenhagen, Aug. 31 – Sept. 3, 1935, "Terrorism," in 1972 Secretariat Study, in U.N. Secretariat, *Study*

prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1927, U.N. Doc. A/C.6/418 (Nov. 2, 1972).

Third International Conference for the Unification of Penal Law, Brussels, June 26 – 30, 1930, "Articles on terrorism," in U.N. Secretariat, *Study prepared in accordance with the decision taken by the Sixth Comm. at its 1314th meeting on 27 September 1927*, U.N. Doc. A/C.6/418 (Nov. 2, 1972).

U.N. Codification Division, "Introductory note to the revised text of the draft Convention for the Suppression of Nuclear Terrorism," (TD, speaking notes for the Chairman, Oct. 9, 1998) (on file with the author).

United Kingdom, Talking Points on the draft comprehensive convention on international terrorism, July 2005 (TD, photocopy, used for demarches in capitals) (on the file with the author).

United States, "Comprehensive convention on International Terrorism," (TD, photocopy, Aide Memoire used for demarches in capitals, July 2005) (on the file with the author).

N) Interviews

Interview with Carolyn Wilson, Legal Advisor, Permanent Mission of the United States to the United Nations, in New York, NY, (December 11, 2005).

O) Press releases and public information

"Arab ministers warn of risks posed by Israeli nuclear reactor," *Arabic News*, Nov. 30, 1998.

"Arabs appeal for international help on Dimona Reactor," *Deutsche Presse-Agentur,* April 9, 1996, 15:49 CEuT.

"Israel denies pollution from nuclear waste site" *Agence France Pressse,* March 28, 1996.

"Israel nuclear contamination jitters hit Egypt," *Deutsche Presse-Agentur,* May 27, 1996, 14:39 CEuT.

"Israeli nuclear activity under discussion at Arab League," *Arabic News*, July 7, 1998.

Canada, Department of Justice, *"G8 Justice and Interior Ministers' Virtual Meeting on Organized Crime and Terrorist Funding, December 15, 1998"* (press release for background, December 15, 1998) http://www.g8.utoronto.ca/terrorism/terror98.htm, accessed on July 25, 2006.

D'vora Ben Shaul, "Where will radioactive waste be dumped? A nuclear energy push," *The Jerusalem Post,* May 13, 1991.

Financial Action Task Force on Money Laundering, *"About the FATF,"* available from *http://www.fatf-gafi.org*, accessed Aug. 10, 2006;

Financial Action Task Force on Money Laundering, *"FATF Documents on the Forty Reccomendations,"* available from *http://www.fatf-gafi.org*, accessed Aug. 10, 2006.

Hassan Tahsin, "Frankly speaking: Israeli reactor pollutes the Mediterranean," *Saudi Gazette,* March 14, 1997.

MIPT Terrorism Knowledge Base, *"Aliança Libertadora Nacional (ALN) and Revolutionary Movement of the 8th (MR-8) attacked diplomatic target (Sept. 4, 1969, Brazil),"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=308*, accessed on Mar. 13, 2006.

MIPT Terrorism Knowledge Base, "*Ansar Allah attacked other target (July 18, 1994, Argentina)"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=6022*, accessed on June 1, 2006.

MIPT Terrorism Knowledge Base, *"Baader-Meinhof Group attacked diplomatic target (Apr. 24, 1975, Sweden)"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=1457* accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Black September attacked other targets (Sept. 5, 1972, Federal Republic of Germany),"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=939*, accessed Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Contras,"* database on line available from *http://www.tkb.org/Category.jsp?catID=8574*, searched on Apr. 26, 2006.

MIPT Terrorism Knowledge Base, *"Hamas and Palestinian Resistance attacked Diplomatic target (July 26, 1994, United Kingdom)"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=7432* accessed on June 1, 2006.

MIPT Terrorism Knowledge Base, "*Hezbollah attacked Airports & Airlines target (Sept. 19, 1989, Chad)"* database on line available from *http://www.tkb.org/Indicent.jsp?incID=6022* accessed on June 1, 2006.

MIPT Terrorism Knowledge Base, *"Hezbollah attacked Airports and Airlines target (June. 7, 1985, Greece)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=4209, accessed on Apr. 26, 2006.

MIPT Terrorism Knowledge Base, *"Incident Analysis Wizard,"* database on line available from www.tkb.org/ChartModule.jsp, searched on Mar. 10. 2006.

MIPT Terrorism Knowledge Base, "*Incident profile: Hezbollah and Islamic Movement for Change attacked Military target (June 25, 1996, Saudi Arabia),"* database on line available from http://www.tkb.org/Indicent.jsp?incID=8027, last visited May. 15, 2006.

MIPT Terrorism Knowledge Base, *"Japanese Red Army (JRA) and Popular Front for the Liberation of Palestine (PFLP) attacked airports & airlines target (May 31, 1972, Israel)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=430, accessed Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Other Group and Popular Front for the Liberation of Palestine (PFLP) attacked Airports and Airlines Target (June 27, 1976, Greece")* database on line available from http://www.tkb.org/Indicent.jsp?incID=1761, accessed on Mar. 13, 2006; 1976.

MIPT Terrorism Knowledge Base, "*Other Group attacked Airports & Airlines target (Dec. 21, 1988, United Kingdom)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=5728, accessed on June 1, 2006.

MIPT Terrorism Knowledge Base, *"Other group attacked other target (July 10, 1985, New Zealand)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=4256, accessed on Apr. 26, 2006.

MIPT Terrorism Knowledge Base, "*Palestinian Liberation Front attacked maritime target (Oct. 7, 1985)*" database on line available from http://www.tkb.org/Indicent.jsp?incID=4402, accessed on Apr. 26, 2006).

MIPT Terrorism Knowledge Base, *"Popular Front for the Liberation of Palestine (PFLP) attacked diplomatic target (Sept. 8, 1969, Netherlands),"* database on line available from http://www.tkb.org/Indicent.jsp?incID=310, accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Riyad us-Saliheyn Martyrs' Brigade attacked Educational Institutions target (Sept. 1, 2004, Russia)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=19321 (last visited on July 21, 2006).

MIPT Terrorism Knowledge Base, *"Tupamaros attacked diplomatic target (July 31, 1970, Uruguay)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=528, accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Tupamaros attacked diplomatic target (July 31, 1970, Uruguay)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=526, accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Tupamaros attacked diplomatic target (Jan. 8, 1971, Uruguay)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=619, accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Unknown group attacked diplomatic target (Apr. 6, 1971, Uruguay)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=672, accessed on Mar. 10, 2006.

MIPT Terrorism Knowledge Base, *"Riyad us-Saliheyn Martyrs' Brigade attacked Educational Institutions target (Sept. 1, 2004, Russia)"* database on line available from http://www.tkb.org/Indicent.jsp?incID=19321 accessed on Ago. 29, 2007.

Russian Federation, Ministry of Foreign Affairs, Information and Press Department, *"Russian Minister of Foreign Affairs Speaks to US Secretary of State Condoleeza Rice by Telephone"* (press release 490-15-03-2005) March 15, 2005 (on file with the author).

United Nations, *"Action needed on two draft conventions this year, Ad Hoc Committee on terrorism told, as it begins current session,"* (press release L/3081) March 28, 2005.

United Nations, *"Secretary-General disappointed no agreement reached in legal committee on comprehensive terrorism convention,"* (press statement SG/SM/10242, GA/L/3293) Dec. 1, 2005, available on line http://www.un.org/News/Press/docs/2005/sgsm10242/doc/htm accessed on Dec. 1, 2005.

United Nations, *"Ad Hoc Committee begins considering draft convention to suppress nuclear terrorism acts,"* (press release L/2854) Feb. 17, 1998.

United Nations, *"Ad Hoc Committee on instruments to combat international terrorism begins third session,"* (press release L/2915) March 15, 1999.

United Nations, *"Ad Hoc Committee on instruments to combat international terrorism begins third session,"* (press release L/2915) March 15, 1999.

United Nations, *"Ad Hoc Committee on Terrorism approves introductory segment of draft report,"* (press release L/2945) Feb. 18, 2000.

United Nations, *"Ad Hoc Committee on terrorism concludes two-week headquarters session; continues consideration of draft comprehensive convention,"* (press release L/2974) Feb. 23, 2001.

United Nations, *"Press briefing on Secretary-General's report 'In larger Freedom',"* (by Mr. M. Malloch-Brown, and Mr. R. Orr) available on line from: http://www.un.org/News/briefings/docs/2005/Malloch_Brown_Orr_050320.doc.htm accessed on March 24, 2005.

United Nations, *"Ad Hoc Committee on Terrorism hears report on consultations on draft Convention on Suppression of Acts of Nuclear Terrorism,"* (press release L/2944) Feb. 17, 2000.

United Nations, *"Ad Hoc Committee to prepare anit-terrorism instruments concludes third session at headquarters, 15-26 March,"* (press release L/2918) March 26, 1999.

United Nations, *"Committee on terrorism takes up draft comprehensive anti-terrorism convention,"* (press release L/2971) Feb. 12, 2001.

United Nations, *"General Assembly's Ad Hoc Committee discusses possible high-level conference,"* (press release L/2942) Feb. 15, 2000.

United Nations, *"General Assembly's Ad Hoc Committee on Terrorism begins general debate,"* (press release L/2941) Feb. 14, 2000.

United Nations, *"General Assembly's Ad Hoc Committee on Terrorism continues debate on proposed high-level conference,"* (press release L/2943) Feb. 16, 2000.

United Nations, *"Treaty event during United Nations Summit receives record number of treaty actions,"* (press release L/T/4391) Sept. 21, 2005.

United States Senate, Permanent investigations subcommittee on global proliferation of weapons of mass destruction and illicit trafficking of nuclear materials, 1996 Congressional Hearings, Testimony of Mr. John Deutch, Director of the Central Intelligence Agency, March 20, 1996, Annex: "Chronology of Nuclear Smuggling Incidents," available on line from http://www.fas.org/irp/congress/1996_hr/s960320c.htm, (last visited Jan. 5, 2006).

United States, United States' Embassy of the in Islamabad, Pakistan, *"Embassy News: Remarks by Secretary of State Condoleezza Rice and Pakistani Foreign Minister Khursheed Mahmood Kasuri at Ministry of Foreign Affairs, Islamabad, Pakistan, March 17, 2005"* (press release March 17, 2005) in: http://islamabad.usembassy.gov/pakistan/secstate_rice_mfa_05_03_17.html, (accessed on July 21, 2005).

United States, White House, Office of the Press Secretary, *"Joint Statement by President Bush and President Putin on Nuclear Security Cooperation,"* (press release of Feb. 24, 2005) in http://www.whitehouse.gov/news/releases/2005/02/20050224-8.html (last visited on July 21, 2006).