

**CASE CONCERNING
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

(UKRAINE V. RUSSIAN FEDERATION)

**VOLUME I OF THE ANNEXES
TO THE WRITTEN STATEMENT
OF OBSERVATIONS AND SUBMISSIONS
ON THE PRELIMINARY OBJECTIONS OF THE RUSSIAN FEDERATION
SUBMITTED BY UKRAINE**

14 JANUARY 2019

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Annex 1

*Sixth Committee of the General Assembly, 73rd Meeting, Continuation of the
Consideration of the Draft Convention on Genocide: Report of the Economic and
Social Council, U.N. Doc. No. A/C.6/SR.73 (1948)*

tion difficulty in connexion with the USSR amendment, the vote would be postponed until the following meeting.

The meeting rose at 6.10 p.m.

SEVENTY-THIRD MEETING

*Held at the Palais de Chaillot, Paris,
on Wednesday, 13 October 1948, at 3.15 p.m.*

Chairman: Mr. R. J. ALFARO (Panama).

17. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [A/633]

ARTICLE II (*continued*)

Mr. MOROZOV (Union of Soviet Socialist Republics) noted that the word which had been proposed by the USSR delegation [A/C.6/223] as a substitute for the word "deliberate" could not be accurately translated into English or French (72nd meeting); he suggested, therefore, the phrase "the following crimes" in place of "the following deliberate acts". That wording would clearly indicate that it was not merely a question of acts but of definite crimes.

Mr. CHAUMONT (France) found the new wording proposed by the Soviet Union highly satisfactory; in his opinion it was entirely unobjectionable and he hoped it would receive unanimous support in the Committee.

Mr. DIHIGO (Cuba) said that his delegation would vote against the deletion of the word "deliberate", on the ground that such deletion would be dangerous. Genocide could be committed by Governments or by individuals. In the first case, it was indisputable that there must always be premeditation; in the second case, however, that factor would not always be present. In the course of a political struggle between rival parties, for instance, individuals might come to desire the suppression of a particular group. If the USSR amendment were adopted, such a case would be regarded as genocide, with all the serious consequences which that entailed. The small nations might fear that they would be answerable before an international tribunal—should such an international tribunal be set up—for certain acts committed by groups or individuals whose objectives were well-defined and whose aim was to create disturbances.

The Cuban delegation was in favour of the inclusion of political groups among those which the convention sought to protect, as well as of the establishment of an international tribunal to take cognizance of acts of genocide. If it were decided that premeditation should not be included among the factors constituting the crime, the delegation of Cuba would be obliged to reserve its position on those two important questions.

Mr. PAREDES (Philippines) said that his delegation would vote against the amendment of the Soviet Union on the grounds that the convention clearly defined genocide as a crime and that repetition was therefore unnecessary.

soulevant une difficulté de traduction, le vote est reporté à la séance suivante.

La séance est levée à 18 h. 10.

SOIXANTE-TREIZIEME SEANCE

*Tenue au Palais de Chaillot, Paris,
le mercredi 13 octobre 1948, à 15 h. 15.*

Président: M. R. J. ALFARO (Panama).

17. Suite de l'examen du projet de convention sur le génocide [E/794]: rapport du Conseil économique et social [A/633]

ARTICLE II (*suite*)

M. MOROZOV (Union des Républiques socialistes soviétiques) déclare que, en raison du fait que le mot proposé par la délégation de l'URSS [A/C.6/223] en substitution du mot "prémédités" est impossible à traduire exactement en anglais et en français (72^{ème} séance), il suggère de dire: "des crimes ci-après" au lieu de: "des actes prémédités ci-après". Cette rédaction indiquerait clairement qu'il ne s'agit pas seulement d'actes, mais de véritables crimes.

M. CHAUMONT (France) se déclare fort satisfait de la nouvelle rédaction de l'amendement de l'Union soviétique qui, à son avis, ne saurait soulever aucune objection; il espère que cet amendement ralliera l'unanimité de la Commission.

M. DIHIGO (Cuba) annonce que sa délégation votera contre la suppression du mot "prémédités" parce qu'elle estime qu'il serait dangereux de le faire. Le génocide peut être commis par des Gouvernements ou par des individus. Dans le premier cas, il est contestable qu'il y aura toujours préméditation; mais dans le second cas, cet élément n'existera pas toujours. Il pourrait se faire qu'au cours d'une lutte politique entre partis rivaux, des individus soient entraînés à vouloir supprimer un groupe déterminé. Si l'on adoptait l'amendement de l'URSS, ce fait serait considéré comme génocide, avec toutes les graves conséquences qui en découlent. Les petites nations pourraient craindre d'avoir à répondre devant une juridiction internationale — si cette juridiction internationale était créée — de certains actes de groupements ou d'individus ayant des objectifs bien déterminés et cherchant à créer des troubles.

La délégation de Cuba envisage favorablement l'inclusion des groupes politiques parmi les groupes que la convention cherche à protéger, ainsi que la constitution d'une juridiction internationale pour connaître des actes de génocide. Si l'on décidait de ne pas faire figurer la préméditation parmi les éléments du crime, elle se verrait obligée de réserver sa position sur ces deux questions importantes.

M. PAREDES (Philippines) explique que sa délégation votera contre l'amendement de l'Union soviétique parce qu'elle estime que la convention précise de façon suffisamment claire que le génocide est un crime et que, par conséquent, il est inutile de le répéter.

It might at first sight appear that the idea of premeditation was included in that of intention. If, however, the law provided for premeditation in addition to intention and motive, it was because premeditation had a special meaning, distinct from that of intention. In his view, premeditation signified persistent thought devoted to the attainment of a goal which one had set for oneself.

The delegation of the Philippines would accordingly vote against the USSR amendment and for retention of the text submitted by the *Ad Hoc* Committee on Genocide.

The CHAIRMAN put to the vote the amendment proposed by the delegation of the Soviet Union to replace the words "deliberate acts" by the word "crimes".

The amendment was rejected by 28 votes to 14, with 1 abstention.

The Committee decided by 27 votes to 10, with 6 abstentions, to delete the word "deliberate" from the text drafted by the Ad Hoc Committee.

Mr. NORIEGA (Mexico) and Mr. MESSINA (Dominican Republic) explained that they had voted against the deletion of the word "deliberate" for the reasons given by the representative of Cuba.

Mr. MANINI Y RIOS (Uruguay) said that the arguments put forward by the representative of Cuba would have led the delegation of Uruguay to vote against the deletion of the word "deliberate" if that delegation had been in favour of the inclusion of political groups among the groups to be protected by the convention. The delegation of Uruguay, however, was opposed to such inclusion and for that reason had voted for the deletion of the word "deliberate".

The CHAIRMAN invited the Committee to take a decision on the phrase "committed with the intent to destroy a . . . group" and on the amendments proposed thereto.

Mr. ABDOH (Iran) feared that the adoption of the Belgian amendment [A/C.6/217], which introduced the idea of co-operation into the actual definition of the crime, might lead to the conclusion that genocide had of necessity to be committed by a number of individuals; whereas, in theory, it might equally well be committed by a single individual. The delegation of Iran would therefore oppose the Belgian amendment. That amendment should, however, be discussed when article IV of the convention came up for consideration.

Mr. KAECKENBEECK (Belgium) pointed out that, following the observations of the representative of Brazil (69th meeting), he would be prepared to replace the word "co-operate" by the word "participate".

He explained that the Belgian delegation had put forward its amendment on the ground that it was almost inconceivable that a crime aimed particularly at the destruction of a race or group could be the work of a single individual.

Mr. CHAUMONT (France) held that the crime of genocide existed as soon as an individual became the victim of acts of genocide. If a motive for the crime existed, genocide existed even if

Le représentant des Philippines fait observer qu'il peut sembler, à première vue, que la notion de préméditation soit comprise dans celle d'intention. Mais si la loi prévoit la préméditation à côté de l'intention et des mobiles du crime, c'est que ce mot a une signification spéciale, différente de celle de l'intention. A son avis, la préméditation signifie la pensée persistante d'atteindre le but que l'on s'est fixé.

En conséquence, la délégation des Philippines se prononcera pour le rejet de l'amendement de l'URSS et pour le maintien du texte soumis par le Comité spécial du génocide.

Le PRÉSIDENT met aux voix l'amendement proposé par la délégation de l'Union soviétique tendant à remplacer les mots "actes prémédités" par "crimes".

Par 28 voix contre 14, avec une abstention, l'amendement est rejeté.

Par 27 voix contre 10, avec 6 abstentions, la Commission décide de supprimer le mot "prémédités" du texte préparé par le Comité spécial.

M. NORIEGA (Mexique) et M. MESSINA (République Dominicaine) expliquent qu'ils ont voté contre la suppression du mot "prémédités" pour les raisons exposées par le représentant de Cuba.

M. MANINI Y RIOS (Uruguay) déclare que les arguments avancés par le représentant de Cuba auraient amené sa délégation à voter contre la suppression du mot "prémédités", si cette délégation était favorable à l'inclusion des groupes politiques parmi les groupes protégés par la convention. Mais la délégation de l'Uruguay est contre une telle inclusion et c'est la raison pour laquelle elle s'est prononcée pour la suppression du mot "prémédités".

Le PRÉSIDENT invite la Commission à se prononcer sur le membre de phrase suivant: "commis dans l'intention de détruire un groupe . . .", ainsi que sur les amendements proposés à ce texte.

M. ABDOH (Iran) craint que l'adoption de l'amendement belge [A/C.6/217], qui introduit la notion de coopération dans la définition même du crime, ne conduise à la conclusion que le génocide doit nécessairement être commis par plusieurs individus, alors que, théoriquement, il pourrait fort bien l'être par un seul. La délégation de l'Iran se prononcera donc contre l'amendement belge. Elle signale toutefois que cet amendement devrait être discuté à l'occasion de l'examen de l'article IV de la convention.

M. KAECKENBEECK (Belgique) rappelle qu'à la suite des observations du représentant du Brésil (69^{ème} séance) il est disposé à remplacer le mot "coopérer" par le mot "participer".

Il explique que la délégation belge a proposé son amendement parce qu'elle estime qu'il est presque inconcevable qu'un crime qui a spécialement pour but la destruction d'une race ou d'un groupe déterminé soit l'œuvre d'un seul individu.

M. CHAUMONT (France) est d'avis que le crime de génocide existe à partir du moment où un individu est atteint par des actes de génocide. Si le mobile du crime existe, il y a génocide

only a single individual were the victim. The French delegation had therefore proposed [A/C.6/224] to replace the words "acts committed with the intent to destroy a . . . group" by the words "an attack on life directed against a human group, or against an individual as a member of a human group . . ."

The group was an abstract concept; it was an aggregate of individuals; it had no independent life of its own; it was harmed when the individuals composing it were harmed.

The French amendment had a different object from the Belgian. It had the victims and not the perpetrators of the crime in mind. It also had the advantage of avoiding a technical difficulty likely to arise from the text of the *Ad Hoc* Committee, namely, that of deciding the minimum number of persons constituting a group.

Mr. Gross (United States of America) thought that the French amendment called for the following observations.

A number of delegations, including that of the United Kingdom, had maintained that, since homicide was a crime punishable under all civilized legislative systems, a convention defining genocide as a crime under international law was necessary only because States or members of Governments had encouraged or tolerated the destruction of certain human groups.

Other delegations considered that, although that might have been true in the past, it had nevertheless to be admitted that human groups could be exterminated by individuals as well as by States or government agencies.

The United States delegation thought that those two views were not incompatible and that although it was necessary, on the one hand, to accord international protection to human groups, it was equally necessary to leave to each State the duty to take all action within its power to protect those human groups.

Recalling the wording of General Assembly resolution 96 (I), the United States representative observed that genocide was the denial of the right to live of entire human groups, as homicide was the denial of an individual's right to live. The crime of genocide shocked the conscience of mankind, inflicted losses upon humanity and was contrary to moral law. The General Assembly had declared that the suppression of genocide was a matter of international concern, because the extermination of human groups endangered civilization itself.

The delegation of the United States held the view that the Committee would not be acting in accordance with resolution 96 (I) if it drafted a convention which did not afford protection to human groups against the acts of individuals. Nor would the Committee be acting in accordance with that resolution if it submitted to the General Assembly a draft convention which ignored or underestimated the duty of States themselves to protect the right of human groups to survival. The United States was not in favour of substituting international for national action, but was anxious to ensure that, where State responsibility had not been properly discharged, measures should be taken on an international level.

même si un seul individu est atteint. C'est pourquoi la délégation française a proposé [A/C.6/224] de remplacer les mots: "actes . . . commis dans l'intention de détruire un groupe" par la formule suivante: "atteinte à la vie qui vise un groupe humain ou un individu, en tant que membre d'un groupe humain".

Le groupe est une notion abstraite: le groupe est une somme d'individus; il n'a pas de vie propre; il est atteint quand les individus qui le composent le sont.

L'amendement français n'a pas le même objet que l'amendement belge: il vise, en effet, les victimes et non les auteurs du crime. Il offre, en outre, l'avantage d'éviter une difficulté technique qui résulterait du texte du Comité spécial; la détermination du nombre minimum d'individus qui constitue un groupe.

M. Gross (Etats-Unis d'Amérique) estime que l'amendement français appelle les observations suivantes.

Certaines délégations — dont celle du Royaume-Uni — ont soutenu que, du moment que l'homicide est un crime puni par tous les systèmes législatifs civilisés, une convention définissant le génocide comme un crime en droit international n'est nécessaire que parce que les États ou les gouvernants ont encouragé ou toléré la destruction de certains groupes humains.

D'autres délégations estiment que, s'il est vrai qu'il en a été ainsi dans le passé, il faut tout de même reconnaître que des groupes humains peuvent être exterminés aussi bien par des individus que par des États ou des organismes gouvernementaux.

La délégation des États-Unis est d'avis que ces deux thèses ne sont pas incompatibles et que si, d'une part, il est nécessaire d'accorder une protection internationale aux groupes humains, il convient, d'autre part, de laisser à chaque État le soin de prendre toutes les mesures en son pouvoir pour protéger lesdits groupes.

Rappelant les termes de la résolution 96 (I) de l'Assemblée générale, le représentant des États-Unis fait remarquer que le génocide est la négation du droit à l'existence de groupes humains entiers, de même que l'homicide est la négation du droit à l'existence d'un individu. Ce crime bouleverse la conscience humaine, inflige des pertes à l'humanité et est contraire à la loi morale. Mais si l'Assemblée générale a proclamé que la répression du génocide est d'intérêt international, c'est parce que l'extermination de groupes humains en tant que tels met en danger la civilisation elle-même.

La délégation des États-Unis estime que la Commission n'agirait pas conformément à la résolution 96 (I) si elle élaborait une convention qui ne protégerait pas les groupes humains contre les agissements d'individus. De même, la Commission ne se conformerait pas à cette résolution si elle soumettait à l'Assemblée générale un projet de convention qui ignorerait ou sous-estimerait le devoir pour les États de protéger le droit à l'existence des groupes humains. Les États-Unis ne cherchent pas à substituer l'action internationale à l'action nationale, mais ils veulent que, si les États ne s'acquittent pas de leurs obligations, des mesures soient prises sur le plan international.

The French delegation proposed that the concept of genocide should be extended to cover cases where a single individual was attacked as a member of a group. The United States delegation considered that the concept of genocide should not be broadened to that extent; nor should it be restricted only to those cases where criminal acts were committed with the connivance or the tolerance of members of Governments.

Mr. RAAFAT (Egypt) did not see any real difference between the text proposed by the *Ad Hoc* Committee and the amendment submitted by the USSR delegation [A/C.6/223], which proposed replacing the words "committed with intent to destroy" by the words "aimed at the . . . destruction". Both in fact retained the idea of criminal intent.

He recognized the quality of the motives which had inspired the French delegation to submit its amendment, but observed that the idea of genocide could hardly be reconciled with the idea of an attack on the life of a single individual. He felt that the aim of the French amendment would be met if the Committee adopted the Norwegian proposal [A/C.6/228] to insert the words "in whole or in part" after the words "with the intent to destroy".

With regard to the Belgian amendment, Mr. Raafat emphasized that it was possible to imagine cases where physical or biological genocide was committed without co-operation or participation and where the head of the State was alone responsible. Mr. Raafat agreed with the Iranian representative that the idea of participation in the crime could be considered when article IV of the convention came up for consideration.

The Egyptian delegation would cast its vote in favour of the text proposed by the *Ad Hoc* Committee.

Mr. FITZMAURICE (United Kingdom) supported the Egyptian representative's remarks.

In his opinion, the USSR amendment was merely a matter of drafting; personally, he preferred the text of the *Ad Hoc* Committee.

With regard to the French amendment, Mr. Fitzmaurice pointed out that when a single individual was affected, it was a case of homicide, whatever the intention of the perpetrator of the crime might be. In those circumstances, it was better to restrict the convention to cases of destruction of human groups and, if it was desired to ensure that cases of partial destruction should also be punished, the amendment proposed by the Norwegian delegation would have to be adopted.

In conclusion, the United Kingdom representative contended that the Belgian amendment, even in the new form suggested by the Belgian representative during the discussion, weakened the very concept of genocide.

Mr. WIKBORG (Norway) stressed that his delegation's amendment was similar to the one put forward by the Soviet Union delegation in connexion with the second part of article II. He felt, however, that the words "in whole or in part" would be better placed in the first sentence of the article.

He further pointed out that his amendment did not go as far as the one submitted by the French delegation and he therefore requested

La délégation de la France propose d'étendre la notion de génocide au cas où un seul individu est atteint en tant que membre d'un groupe humain. La délégation des Etats-Unis est d'avis qu'il faut éviter d'élargir à ce point la notion de génocide, comme il faut également éviter de la limiter au seul cas où les actes criminels sont commis avec la complicité ou la tolérance des gouvernants.

M. RAAFAT (Egypte) ne voit pas de différence réelle entre le texte préparé par le Comité spécial et l'amendement proposé par la délégation de l'URSS [A/C.6/223] qui désire remplacer les mots: "commis dans l'intention de détruire" par: "tendant à la destruction". Tous deux retiennent en effet la notion d'intention criminelle.

Il reconnaît la valeur des motifs qui ont poussé la délégation française à proposer son amendement, mais il fait remarquer que la notion de génocide s'accorde mal avec celle de l'atteinte à la vie d'un seul individu. Il estime que le but de l'amendement français serait atteint si l'on adoptait la proposition de la Norvège [A/C.6/228] d'insérer les mots "en totalité ou en partie" après les mots "dans l'intention de détruire".

En ce qui concerne l'amendement belge, M. Raafat souligne que l'on peut envisager des cas de génocide physique ou biologique dans lesquels il n'y aurait aucune coopération ou participation et où seul le chef de l'Etat serait responsable. Comme le représentant de l'Iran, M. Raafat est d'avis que l'on pourrait examiner la notion de la participation au crime lors de l'examen de l'article IV de la convention.

La délégation de l'Egypte se prononcera en faveur du texte préparé par le Comité spécial.

M. FITZMAURICE (Royaume-Uni) appuie les observations du représentant de l'Egypte.

A son avis, l'amendement de l'URSS est d'ordre purement rédactionnel et, pour sa part, il préfère le texte du Comité spécial.

En ce qui concerne l'amendement français, M. Fitzmaurice fait remarquer que, lorsqu'un seul individu est atteint, il s'agit d'un cas d'homicide, quelle que soit l'intention de l'auteur du crime. Dans ces conditions, il vaut mieux limiter la convention au cas de destruction d'un groupe humain et, si l'on veut s'assurer que les cas de destruction partielle du groupe soient également punis, il faudrait adopter l'amendement proposé par la délégation de la Norvège.

Le représentant du Royaume-Uni estime enfin que l'amendement belge, même sous la nouvelle forme proposée par le représentant de la Belgique au cours de la discussion, affaiblit la notion même de génocide.

M. WIKBORG (Norvège) souligne que l'amendement de sa délégation est similaire à celui que la délégation de l'Union soviétique propose à la seconde partie de l'article II. Il estime cependant que les mots: "en totalité ou en partie" trouvent mieux leur place dans la première phrase de cet article.

Il signale, en outre, que son amendement ne va pas aussi loin que celui de la délégation française et il demande, en conséquence, qu'il

that it should be put to the vote in conjunction with the *Ad Hoc* Committee's text.

Mr. CHAUMONT (France) agreed with the views expressed by the representatives of Egypt, the United Kingdom and the United States of America, and stated that, in a conciliatory spirit, he would withdraw his amendment in favour of the Norwegian amendment.

Mr. SPIROPOULOS (Greece) supported the remarks of the Egyptian and United Kingdom representatives.

Mr. ABDON (Iran) felt that the modification proposed by the Belgian representative did not alter the sense of the amendment; both the word "participate" and the word "co-operate" implied the idea of an understanding and of connivance. But genocide could be committed, at least in theory, by a single individual.

The representative of Iran would be unable to support the amendment submitted by Belgium but would vote in favour of the Norwegian amendment.

In reply to a question by Mr. GROSS (United States of America), Mr. WIKBORG (Norway) explained that his amendment was not intended to modify the sense of the second part of article II. The Norwegian delegation simply wanted to point out, with regard to the first of the acts enumerated, that it was not necessary to kill all the members of a group in order to commit genocide.

Mr. BARTOS (Yugoslavia) thought that the main characteristic of genocide lay in the intent to attack a group. That particular characteristic should be brought out, as in it lay the difference between an ordinary crime and genocide.

Of the four texts submitted to the Committee, the Yugoslav delegation considered that two of them were more exact: the draft of the *Ad Hoc* Committee and that of the USSR. The texts were almost identical in that they both attempted to define the intent behind the crime of genocide. Mr. Bartos recognized the worth of the idea behind the French amendment. In view, however, of the fact that each individual was in fact a member of a group, it would be difficult to establish whether or not the murder of an individual was genocide. He was against the Belgian amendment which required the establishment of a cause-and-effect relationship between a movement, in which there would be participation or contribution, and the act itself.

The Yugoslav representative considered that the intent should be described as such. He would therefore support the text of the *Ad Hoc* Committee or, preferably, that submitted by the USSR.

Mr. NORIEGA (Mexico) thought that the Belgian amendment took into consideration an important idea which would appear more appropriately in article IV of the convention. Co-operation, indeed, entailed the idea of complicity and responsibility of those who took part, directly or indirectly, in the crime of genocide. The word "participate" was not exact enough to be used in article II; in fact, the use of that word might be dangerous because it lacked precision.

Mr. Noriega's opinion was that the Belgian

soit mis aux voix en liaison avec le texte préparé par le Comité spécial.

M. CHAUMONT (France) se range à l'avis exprimé par les représentants de l'Égypte, du Royaume-Uni et des États-Unis d'Amérique, et déclare que, dans un esprit de conciliation, il retire son amendement au bénéfice de l'amendement norvégien.

M. SPIROPOULOS (Grèce) appuie les observations des représentants de l'Égypte et du Royaume-Uni.

M. ABDON (Iran) estime que la modification proposée par le représentant de la Belgique ne change pas le sens de cet amendement; en effet, tant dans le mot "participer" que dans le mot "coopérer", on retrouve la notion d'entente et de complicité. Or, tout au moins en théorie, le génocide peut être commis par un seul individu.

Le représentant de l'Iran ne pourra pas appuyer l'amendement présenté par la Belgique. Par contre, il se prononcera en faveur de l'amendement de la Norvège.

En réponse à une question de M. GROSS (États-Unis d'Amérique), M. WIKBORG (Norvège) précise que son amendement ne tend pas à modifier le sens de la deuxième partie de l'article II; notamment, en ce qui concerne le premier des actes énumérés, la délégation de la Norvège tient simplement à préciser qu'il n'est pas nécessaire de tuer tous les membres d'un groupe pour qu'il y ait génocide.

M. BARTOS (Yougoslavie) pense que la caractéristique principale du génocide réside dans l'intention de s'attaquer à un groupe; il faut s'attacher à mettre en évidence ce caractère particulier qui constitue la différence entre un crime ordinaire et le génocide.

Quatre textes sont présentés à la Commission; la délégation yougoslave pense que deux d'entre eux sont plus précis: le projet du Comité spécial et le projet de l'URSS; ils sont d'ailleurs presque identiques, en ce sens qu'ils cherchent à définir l'intention qui préside au crime de génocide. M. Bartos reconnaît la valeur de l'idée qui a inspiré l'amendement français. Toutefois, vu que chaque individu est bien membre d'un groupe, il serait difficile d'établir si le meurtre d'un individu constitue, oui ou non, le crime de génocide. Il se prononce contre l'amendement de la Belgique qui oblige à établir une relation de cause à effet entre un mouvement, auquel on doit participer ou contribuer, et l'acte.

Le représentant de la Yougoslavie estime qu'il faut préciser l'intention comme telle; en conséquence, il donnera son appui au texte du Comité spécial ou, de préférence, au texte de l'URSS.

M. NORIEGA (Mexique) pense que l'amendement de la Belgique tient compte d'une notion importante qu'il serait plus opportun de faire figurer à l'article IV de la convention; en effet, la coopération implique l'idée de complicité et de responsabilité de ceux qui prennent part, directement ou indirectement, au crime de génocide. Le mot "participer" n'est pas assez précis pour être employé dans l'article II; il est même dangereux par son manque de précision.

Le représentant du Mexique est d'avis que

delegation should propose another word or withdraw its amendment.

Mr. MANINI Y RÍOS (Uruguay) did not quite understand the purpose of the amendment submitted by Norway. The intent to destroy a group was implicit in all acts of genocide; it was clear that a whole group could not be destroyed in a single operation. On the other hand, there was an important difference, in connexion with the enumeration of the acts constituting genocide, between the English and French texts of the draft prepared by the *Ad Hoc* Committee. The French text on the first point merely said *meurtre*, while the English text said "killing members of the group". The words "members of the group" were to be found throughout the enumeration in the English text, while they never appeared in the enumeration of the French text. The English text was, therefore, perfectly clear: genocide was committed when a member of a group was attacked. The representative of Uruguay considered therefore that the wording of the English text should be followed, thus doing away with the necessity for the Norwegian amendment.

Mr. REID (New Zealand) supported the Norwegian amendment but for different reasons from those which had been expressed by the Norwegian representative himself. Mr. Reid considered that the adoption of the words "in whole or in part" might give rise to the idea that genocide had been committed even where there had been no intention of destroying a whole group.

Mr. Reid did not share the point of view of the representative of Yugoslavia. The latter had emphasized that it was especially important to define the intent; he had also stated that he would support the USSR amendment which proposed the use of the expression "aimed at the physical destruction", but history gave examples of genocide where there had been no intent of physical destruction of the groups concerned. Thus, the older members of a group had been killed and the younger ones converted by divers means to an ideology different from their own. The group, as such, had ceased to exist, but its members survived. Such acts would not constitute genocide according to the terms of the Soviet Union amendment.

Mr. KAECKENBEECK (Belgium) observed that several representatives had expressed themselves against the Belgian amendment because they considered that the word "participate" or "co-operate" complicated the idea of intent. The purpose of the Belgian delegation was to emphasize the collective character of genocide, but as that characteristic could undoubtedly be emphasized in another article of the convention, his delegation would not insist on its amendment to article II; it might, however, bring it up again in connexion with one of the other articles.

Mr. Kaeckenbeek was doubtful as to the expediency of the Norwegian amendment. The representative of Norway had explained that a whole group was not necessarily destroyed even when the crime of genocide was committed. The main problem, in the view of the Belgian delegation, was to decide against whom the intention of genocide was directed; it was clear that it was aimed at the destruction of a whole group, even if that result was achieved only in part, by stages.

la délégation belge devrait proposer un autre terme, ou bien retirer son amendement.

M. MANINI Y RÍOS (Uruguay) ne comprend pas exactement le but de l'amendement présenté par la Norvège. L'intention de détruire un groupe existe dans tous les actes qui constituent le génocide; il est évident que l'on ne peut pas détruire un groupe entier en une seule opération. D'autre part, il existe une différence importante entre le texte anglais et le texte français du projet du Comité spécial dans l'énumération des actes constituant le génocide; le texte français au premier point dit simplement "meurtre", alors que le texte anglais dit *killing members of the group*; les mots "membres du groupe" se retrouvent dans toute l'énumération du texte anglais, alors qu'ils ne figurent jamais dans l'énumération du texte français. Le texte anglais est donc parfaitement clair: il y a génocide dès qu'un membre du groupe est attaqué. En conséquence, le représentant de l'Uruguay estime que l'on devrait adopter la formule du texte anglais, ce qui dispenserait de prendre en considération l'amendement de la Norvège.

M. REID (Nouvelle-Zélande) appuie l'amendement de la Norvège, mais pour des raisons différentes de celles qui ont été exposées par l'auteur de cet amendement. M. Reid estime que l'adoption des mots: "en totalité ou en partie" permettrait de considérer qu'il y a génocide même si l'on n'a pas l'intention de détruire le groupe entier.

M. Reid ne partage pas le point de vue du représentant de la Yougoslavie. Ce dernier a souligné qu'il était particulièrement important de définir l'intention; il a également déclaré qu'il appuyait l'amendement de l'URSS, qui propose l'expression: "tendant à la destruction physique". Or, l'histoire donne des exemples de génocide où l'on n'a pas eu l'intention de détruire physiquement les groupes visés: c'est ainsi que l'on a tué les membres âgés d'un groupe mais converti, par des mesures quelconques, les jeunes membres du groupe à une idéologie différente de la leur; le groupe a cessé d'exister, en tant que tel, mais ses membres survivent. Ces actes ne constitueraient pas le génocide aux termes de l'amendement de l'Union soviétique.

M. KAECKENBEECK (Belgique) constate que plusieurs représentants se sont prononcés contre l'amendement de la Belgique parce qu'ils estiment que le mot "participer", ou "coopérer", complique la notion de l'intention. Le but de la délégation belge était de souligner le caractère collectif du génocide. Il est sans doute possible de souligner ce caractère dans un autre article de la convention; aussi la délégation de la Belgique n'insistera-t-elle pas pour le maintien de son amendement à l'article II, quitte à le reprendre à l'occasion d'un des autres articles.

M. Kaeckenbeek a des doutes sur l'opportunité de l'amendement présenté par la Norvège. Le représentant de la Norvège a expliqué qu'il n'y a pas toujours destruction d'un groupe entier, bien qu'il y ait quand même crime de génocide. La délégation belge estime que la question importante est de savoir à qui s'applique l'intention de génocide; il est évident qu'elle vise à la destruction du groupe entier, même si elle n'arrive à ce résultat que par destruction partielle, par étapes.

The Belgian delegation thought it preferable to adopt the text prepared by the *Ad Hoc* Committee, as it would be illogical to introduce into the description of the requisite intention the idea of partial destruction, genocide being characterized by the intention to destroy a group.

Replying to Mr. MOROZOV (Union of Soviet Socialist Republics), Mr. CHAUMONT (France) explained that the French delegation had withdrawn only that part of its amendment which was under discussion, namely, the phrase "or against an individual as a member of a human group". That part of the amendment had been withdrawn in favour of the Norwegian amendment, which expressed the same fundamental idea.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the purpose of the USSR amendment was to replace the expression "committed with the intent to destroy" by "aimed at the physical destruction". That was not a mere drafting change. The Soviet Union amendment introduced a new factor: article II was concerned with biological genocide; the idea of "physical destruction" should therefore be specified in the text of the definition so as to establish very clearly the difference between such acts and those covered by article III. Physical genocide was one of the most obvious forms of genocide; a clear, exact and unassailable definition was therefore necessary.

The USSR representative thought it was premature to use, in the first part of article II, the expression "with the intent to destroy". The intent was revealed in the statement of the motives of the crime, which was embodied in the following part of the sentence. Mr. Morozov thought it would be more logical first to define the acts constituting genocide, and then indicate the motives thereof; the acts which constituted genocide were those which were directed towards the destruction of the groups enumerated. The representative of the Soviet Union thought that the text proposed by his delegation was most consistent with the requirements of logic and exactitude.

The USSR delegation supported the Norwegian amendment, on the grounds that it expressed an idea corresponding to historical reality.

Mr. CHAUMONT (France) said that it was clear from the wording of the Soviet Union amendment that its author shared the preoccupation of the French delegation regarding the enumeration of the groups protected by the convention. The French delegation had been struck by the number of repetitions which appeared in the text drafted by the *Ad Hoc* Committee; the superabundance of expressions contained therein was unsatisfactory in a legal text.

Mr. Chaumont thought the expression "aimed at the . . . destruction" was preferable to "with the intent to destroy", used by the *Ad Hoc* Committee. Moreover, the term "physical destruction" corresponded exactly to the text of article II, which dealt solely with biological genocide. The French representative therefore approved that wording.

In conclusion, France would vote for the

La délégation de la Belgique pense qu'il est préférable d'adopter le texte établi par le Comité spécial, car ce serait un manque de logique que de vouloir introduire, dans la description de l'intention requise, la notion de destruction partielle, alors que le génocide se caractérise par l'intention de détruire un groupe.

En réponse à M. MOROZOV (Union des Républiques socialistes soviétiques), M. CHAUMONT (France) précise que la délégation française n'a retiré que la partie de son amendement qui était en discussion, à savoir l'expression "ou un individu, en tant que membre d'un groupe humain". Cette partie de l'amendement a été retirée au bénéfice de l'amendement de la Norvège, qui expose la même idée fondamentale.

M. MOROZOV (Union des Républiques socialistes soviétiques) rappelle que le but de l'amendement de l'URSS est de remplacer l'expression "commis dans l'intention de détruire" par les mots "tendant à la destruction physique". Il précise que ce n'est pas là une simple modification de rédaction. La proposition de l'Union soviétique introduit un élément nouveau: l'article II est consacré au génocide biologique, la notion de "destruction physique" doit donc apparaître explicitement dans le texte de la définition, afin d'établir nettement la différence avec les actes qui feront l'objet de l'article III. Le génocide physique est un des aspects les plus manifestes du génocide, il faut donc en donner une définition claire et précise, ne donnant lieu à aucune objection.

Le représentant de l'URSS pense qu'il est prématuré d'employer, dans cette première partie de l'article II, l'expression "dans l'intention de détruire"; en effet, l'intention se révèle dans l'exposé des mobiles du crime, exposé qui fait l'objet du membre de phrase suivant. M. Morozov estime qu'il serait plus logique de définir tout d'abord les actes qui constituent le génocide et d'indiquer ensuite quels en sont les motifs; les actes qui constituent le génocide sont ceux qui tendent à la destruction des groupes énumérés. Le représentant de l'Union soviétique pense que la formule proposée par sa délégation est la plus conforme aux exigences de la logique et de la précision.

La délégation de l'URSS donne son appui à l'amendement de la Norvège car il exprime une notion conforme à la réalité historique.

M. CHAUMONT (France) déclare que l'amendement de l'Union soviétique révèle, chez son auteur, un souci analogue à celui de la délégation française à l'égard de l'énumération des groupes protégés par la convention. La délégation française a été frappée par les répétitions qui apparaissent dans le texte du Comité spécial: il y a une surabondance d'expressions qui n'est pas satisfaisante du point de vue de la rédaction juridique.

M. Chaumont estime que l'expression: "tendant à la destruction" est préférable à celle que propose le Comité spécial, à savoir: "dans l'intention de détruire". En outre, l'expression: "destruction physique" correspond parfaitement au texte de l'article II qui traite uniquement du génocide biologique; le représentant de la France approuve donc ces termes.

En conclusion, la France votera en faveur de

USSR amendment, supplemented by the Norwegian amendment.

Mr. MAÚRTUA (Peru) supported the amendment of the Soviet Union, but preferred the words "with the intent".

Mr. MOROZOV (Union of Soviet Socialist Republics) wished to draw attention to another very important factor which must be taken into account when considering his delegation's amendment. If the words "committed with the intent to . . ." were retained, there would be a risk of ambiguity. The perpetrators of acts of genocide would in certain cases be able to claim that they were not in fact guilty of genocide, having had no intent to destroy a given group, either wholly or partially; they might likewise assert that they had simply carried out superior orders and that they had been unable to do otherwise. In Mr. Morozov's opinion it was essential, in a general definition, to eliminate everything relating to the concept of responsibility. The general definition should on no account be susceptible of two different interpretations. Rather, therefore, than stipulate the intent to destroy, the article should define acts of genocide as acts "resulting in" destruction.

The USSR representative explained that he had made no mention of the groups to be protected because he did not wish to stray from the subject under discussion; but it was evident that article II should mention those groups. Genocide was a crime aimed at the physical destruction, in whole or in part, of definite groups distinguished from other groups by certain well-established criteria. The text of article II should indicate both the motives and the groups, as it was impossible to exclude one and not the other.

Mr. GROSS (United States of America) thought that the very lucid explanation of the representative of the Soviet Union had made the meaning of the phrase "aimed at the physical destruction" quite clear; it meant "which result in such destruction". If that were so, then the USSR amendment introduced a fundamental modification to the definition of genocide. It was, indeed, the intent to destroy a group which differentiated the crime of genocide from the crime of simple homicide.

For that reason the United States delegation would vote against the amendment of the Soviet Union.

Mr. KAECKENBEECK (Belgium) agreed with that view. He pointed out that, if the Committee were to accept the objective criterion proposed by the USSR, which ruled out the idea of special intent, and it added thereto the Norwegian amendment, which ruled out the idea of the destruction of a whole group, it would arrive at a definition which would make it impossible to draw a distinction between genocide and ordinary murder.

Mr. CHAUMONT (France) thought that when the Committee began to discuss the succeeding paragraphs, in particular those dealing with the acts constituting the crime and with the principle of the responsibility of members of governments, the fears just expressed would be shown to be somewhat excessive. Article I, moreover, stated that genocide was a crime; and any crime necessarily included an element of intent.

l'amendement de l'URSS, complété par l'amendement de la Norvège.

M. MAÚRTUA (Pérou) appuie l'amendement de l'Union soviétique mais préférerait les mots "ayant comme but".

M. MOROZOV (Union des Républiques socialistes soviétiques) tient à exposer un autre élément très important dont il faut tenir compte en examinant l'amendement de sa délégation. Si l'on conserve les mots: "commis dans l'intention de", on risque de créer une ambiguïté. En effet, dans certains cas, les auteurs d'actes de génocide pourraient prétendre qu'ils ne sont pas effectivement coupables de génocide, car ils n'avaient pas l'intention de détruire en totalité ou en partie un certain groupe; ils pourraient dire également qu'ils ont simplement exécuté des ordres supérieurs, car ils n'avaient pas la possibilité de faire autrement. M. Morozov juge indispensable d'éliminer, dans une définition générale, tous les éléments qui peuvent avoir trait à la notion de responsabilité. Il faut éviter que cette définition générale ne puisse donner lieu à deux interprétations différentes. En conséquence, il ne faut pas mentionner l'intention de détruire, mais définir les actes de génocide comme "ayant pour effet" la destruction.

Le représentant de l'URSS précise qu'il n'a pas fait allusion aux groupes que l'on doit protéger pour ne pas sortir du cadre de la discussion, mais il est évident que l'article II doit mentionner ces groupes. Le génocide est un crime tendant à la destruction physique, en totalité ou en partie, de groupes concrets qui se distinguent des autres groupes par des critères bien établis. Il faut indiquer, dans le texte de l'article II, les motifs et les groupes, car on ne saurait exclure l'un des deux éléments et pas l'autre.

M. GROSS (Etats-Unis d'Amérique) estime qu'après la très nette explication du représentant de l'Union soviétique, le sens des mots "tendant à la destruction physique" devient clair; ils signifient "qui ont pour effet cette destruction". S'il en est ainsi, l'amendement de l'URSS sur ce point apporte une modification de fond à la définition du génocide. Car c'est tout particulièrement l'intention de détruire un groupe qui caractérise le crime de génocide en tant que crime se distinguant de l'homicide simple.

C'est pourquoi la délégation des Etats-Unis votera contre l'amendement de l'Union soviétique.

M. KAECKENBEECK (Belgique) partage cette opinion et fait observer que si l'on acceptait le critère objectif proposé par l'URSS qui exclut l'intention spéciale, et si l'on y ajoutait l'amendement norvégien, qui abandonne l'idée de la destruction du groupe entier, on aboutirait à une définition qui ne permettrait pas de distinguer le génocide d'un meurtre ordinaire.

M. CHAUMONT (France) pense que les scrupules qui viennent d'être exprimés apparaîtront excessifs lorsqu'on aura abordé la discussion des paragraphes suivants, et notamment des actes constitutifs du crime et du principe de la responsabilité des gouvernants. D'ailleurs, l'article premier dispose que le génocide est un crime. Or, tout crime comporte nécessairement un élément intentionnel.

The idea of the USSR was apparently to guard against the possibility that the presence in the definition of the word "intent" might be used as a pretext, in the future, for pleading not guilty on the grounds of absence of intent. In the circumstances, the objective concept seemed to be more effective than the subjective concept.

The French delegation would therefore vote in favour of the amendment of the Soviet Union.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought the objections of the United States and Belgian representatives unfounded, in that they failed to take account of the rest of the USSR amendment. The proposed definition as a whole clearly indicated that genocide was a crime *sui generis*, comprising two elements: acts aimed at the physical destruction of certain groups and the motives for those acts, which must be committed on grounds of race, nationality or religion.

Mr. Morozov stated that there was in fact little divergence in principle between the draft of the *Ad Hoc* Committee, and the Soviet Union amendment. Both definitions described the acts constituting genocide, and indicated the motives; without these two factors, genocide could not be defined as a crime *sui generis*.

The USSR intention, as the French representative had well understood, was to make the definition of genocide more precise, in order to avoid ambiguity of interpretation.

The CHAIRMAN reminded the meeting that the French and Belgian amendments had been withdrawn. The Committee had, therefore, to take a decision first on the USSR amendment [A/C.6/223] which proposed that the phrase "committed with the intent to destroy" in the draft convention should be replaced by the phrase "aimed at the physical destruction"; and then on the Norwegian amendment [A/C.6/228].

The USSR amendment was rejected by 36 votes to 11, with 4 abstentions.

The Norwegian amendment was adopted by 41 votes to 8, with 2 abstentions.

The CHAIRMAN announced that the next question which should be discussed was that of the enumeration of groups, which appeared in the first paragraph of article II.

Whereas there were no amendments concerning the inclusion of national, racial or religious groups, there were four dealing with political groups.

Mr. PETREN (Sweden) wanted a definition of the meaning of the term "national group". If it meant a group enjoying civic rights in a given State, then the convention would not extend protection to such groups if the State ceased to exist or if it were only in the process of formation. It could be argued, of course, that such groups would be entitled to protection as racial or religious groups; it seemed, however, that other factors than those should be taken into consideration. In Switzerland, for instance, the whole of the traditions of a group, with its cultural and historical heritage, had to be taken into account. In other cases, the constituent factor of a group would be its language. It could be

L'idée de l'URSS semble avoir été évitée, qu'il ne soit pris prétexte de la présence du mot "intention" dans la définition pour plaider, dans l'avenir, la non-culpabilité en invoquant l'absence d'intention. La notion objective apparaît ici plus efficace que la notion subjective.

La délégation française votera donc en faveur de l'amendement de l'Union soviétique.

M. MOROZOV (Union des Républiques socialistes soviétiques) considère que les objections des représentants des Etats-Unis et de la Belgique ne sont pas fondées, car elles ne tiennent pas compte de la suite de l'amendement de l'URSS. L'ensemble de la définition proposée indique clairement que le génocide est un crime *sui generis* constitué par deux éléments: les actes tendant à la destruction physique de certains groupes et les mobiles de ces actes qui doivent être commis pour des motifs de race, de nationalité, de religion.

M. Morozov constate qu'en somme, il n'existe pas de grande divergence de principe entre le projet du Comité spécial et l'amendement de l'Union soviétique. L'une et l'autre définitions décrivent les actes constitutifs et indiquent leurs mobiles: sans ces deux éléments, le génocide ne peut être défini en tant que crime d'une nature spéciale.

L'intention de l'URSS, comme l'a très bien compris le représentant de la France, est de donner une plus grande précision à la définition du génocide, afin d'éviter toute ambiguïté dans son interprétation.

Le PRÉSIDENT rappelle que les amendements français et belges ont été retirés. La Commission doit donc se prononcer sur l'amendement de l'URSS [A/C.6/223], qui propose de remplacer dans le texte du projet de convention les mots "commis dans l'intention de détruire" par les mots "tendant à la destruction physique" et ensuite sur l'amendement de la Norvège [A/C.6/228].

Par 36 voix contre 11, avec 4 abstentions, l'amendement de l'URSS est rejeté.

Par 41 voix contre 8, avec 2 abstentions, l'amendement norvégien est adopté.

Le PRÉSIDENT indique que la question qui vient ensuite en discussion est l'énumération des groupes figurant dans le premier paragraphe de l'article II.

Aucun amendement ne vise l'inclusion des groupes nationaux, raciaux ou religieux. En revanche, quatre amendements ont été proposés concernant le groupe politique.

M. PETREN (Suède) voudrait que fût précisé le sens de l'expression "groupe national". S'il faut entendre par là un groupe jouissant des droits civiques dans un Etat donné, la convention ne protégera pas ce groupe lorsque l'Etat aura cessé d'exister ou s'il est seulement en voie de formation. Sans doute pourrait-on dire que ce groupe sera protégé sous le couvert de l'élément racial ou religieux. Mais il semble que d'autres éléments que ceux-là doivent être considérés. Dans le cas de la Suisse, par exemple, c'est l'ensemble des traditions et l'héritage culturel et historique tout entier du groupe qui doivent être envisagés. Dans d'autres cas, c'est la langue qui sera l'élément constitutif du groupe. Evidemment,

contended, of course, that the mere desire to form a group constituted a political factor, and that all such groups would be covered by the concept of a political group.

Since there was strong opposition, however, to the inclusion of political groups among the groups to be afforded protection, the Swedish representative proposed that the word "ethnical" should be inserted after the word "national" in the list of groups given in the draft of the *Ad Hoc* Committee.

The CHAIRMAN asked the delegations how they thought amendments should be filed, in order best to help the Secretariat and accelerate the work of the Committee.

After a discussion in which the representatives of Syria, Sweden, France, Argentina, the United Kingdom, the Union of Soviet Socialist Republics, Chile, Australia and Turkey took part, the Chairman earnestly requested all the delegations to file any amendments relative to article II not later than 14 October. Any amendments resulting from a compromise reached in the course of the discussion, as well as amendments consisting simply in drafting changes might always be submitted, subject to the agreement of the Committee in each case.

Furthermore, the Chairman would appreciate it if the members of the Committee were to file amendments relating to other provisions of the draft convention before 16 October.

The meeting rose at 6.10 p.m.

SEVENTY-FOURTH MEETING

*Held at the Palais de Chaillot, Paris,
on Thursday, 14 October 1948, at 3.25 p.m.*

Chairman: Mr. R. J. ALFARO (Panama).

18. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [A/633]

ARTICLE II (*continued*)

Mr. PETREN (Sweden) said that the sole purpose of his amendment [A/C.6/230] was to add the word "ethnical" after the word "national". His delegation reserved its position with regard to the inclusion of political groups and with regard to the end of the first paragraph of article II. He asked for the correction of a gross error which had slipped into the document.¹

Mr. MEDEIROS (Bolivia) was in favour of retaining mention of political groups in article II.

From the theoretical point of view, genocide meant the physical destruction of a group which was held together by a common origin or a common ideology. There was no valid reason for restricting the concept of genocide by excluding political groups. Moreover, no convincing arguments had been produced in favour of that exclusion. The definition might even be broadened

¹ See document A/C.6/230/Corr.1.

l'on pourrait voir dans la seule volonté de former un groupe un élément politique qui rattacherait tous ces cas à la notion de groupe politique.

Mais comme une forte opposition se dessine contre l'inclusion du groupe politique au nombre des groupes protégés, le représentant de la Suède propose que le mot "ethnique" soit ajouté à la suite du mot "national" dans l'énumération des groupes telle qu'elle figure dans le projet du Comité spécial.

Le PRÉSIDENT demande aux délégations de faire connaître leur opinion sur la procédure à suivre pour le dépôt des amendements afin de faciliter la tâche du Secrétariat et de hâter les travaux de la Commission.

Après un échange de vues auquel prennent part les représentants des pays suivants: Syrie, Suède, France, Argentine, Royaume-Uni, Union des Républiques socialistes soviétiques, Chili, Australie et Turquie, le Président recommande instamment à toutes les délégations de déposer le 14 octobre au plus tard tous les amendements relatifs à l'article II, étant entendu que les amendements résultant d'un compromis réalisé au cours de la discussion, ainsi que les amendements consistant en un simple remaniement rédactionnel, seront toujours recevables, sous réserve de l'accord de la Commission dans chaque cas particulier.

En outre, le Président serait reconnaissant aux membres de la Commission s'ils pouvaient déposer, avant le 16 octobre, les amendements relatifs aux autres dispositions du projet de convention.

La séance est levée à 18 h. 10.

SOIXANTE-QUATORZIÈME SEANCE

*Tenue au Palais de Chaillot, Paris,
le jeudi 14 octobre 1948, à 15 h. 25.*

Président: M. R. J. ALFARO (Panama).

18. Suite de l'examen du projet de convention sur le génocide [E/794]: rapport du Conseil économique et social [A/633]

ARTICLE II (*suite*)

M. PETREN (Suède) signale que son amendement [A/C.6/230] tend uniquement à ajouter le mot "ethnique" après le mot "national". Sa délégation réserve son attitude en ce qui concerne l'inclusion du groupe politique et la fin du premier alinéa de l'article II. Il demande la rectification d'une erreur matérielle qui s'est glissée dans le document¹.

M. MEDEIROS (Bolivie) se prononce en faveur du maintien du groupe politique dans le texte de l'article II.

Du point de vue théorique, en effet, le génocide implique la destruction physique d'un groupe dont l'élément constitutif est, soit une origine commune, soit une idéologie commune. Il n'y a aucune raison valable pour restreindre le concept du génocide en écartant les groupes politiques; d'ailleurs, aucun argument convaincant n'a été produit à cet égard. On pourrait même élargir

¹ Voir le document A/C.6/230/Corr.1.

Annex 2

*OSCE, Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM):
Shelling in Olenivka (28 April 2016)*

Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka

KYIV 28 April 2016

This report is for media and the general public.

Summary

Four civilians were killed close to a “DPR” checkpoint near Olenivka when shelling occurred in the early hours of 27 April.

Detail

At 10:01 on 27 April, the SMM arrived on Lenina Street on the southern edge on “DPR”-controlled Olenivka (23km south-west of Donetsk), 650m north of a “DPR” checkpoint, and approximately 4km east of the contact line.

The SMM observed a cordoned-off 50m² incident scene, with two craters and three damaged cars.

Laid out beside one of the cars – which was an upside-down, split-in-two burnt-out wreck facing north-east – were two bodies, one identified as male. A deceased male with severe head trauma was in the driver’s seat of the second car, 10m from the first one and facing south. The rear windshield of the vehicle had been blown out, and there was shrapnel damage to the front and interior of the vehicle, and crush damage to the driver’s side of the car consistent with a shock wave. A deceased woman – evidently struck in the face by shrapnel – was in the rear passenger seat of the third car, which was approximately 20m from the second vehicle. The vehicle’s hood, windshield, roof and interior had suffered impact damage, with the metal siding of the vehicle torn and bent towards the back of the car, indicating that the blast damage had been caused by an explosion in front of the vehicle.

Fencing and the roof of an adjacent building – 8-10m south-east of the first impact and 11-12m east of the second impact – were visibly impacted, with grape-fruit sized holes caused by shrapnel. Its window panes were shattered. Downed power lines lay across the first vehicle.

The SMM conducted analysis on the two craters – and on two others in nearby residential areas. Based on that, the SMM assessed that the direction of fire was west-south-west, and that the type of weapon used in the attack was likely 122mm artillery.

Further north on Moskovskaya Street, the SMM observed some slightly damaged residences and demolished outhouses. Having conducted analysis on three craters there, the SMM assessed that the direction of fire was likely west-south-west and that the caliber of weapon used was not less than 120mm.

Both an armed "DPR" member and two residents told the SMM that the shelling had occurred at 02:45 that morning.

The head of a morgue in Donetsk city told the SMM that they had received four bodies from Olenivka that day, three men and one woman. A hospital in the city reported that one man had been admitted with shrapnel injuries.

Annex 3

*OSCE, Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on
Information Received as of 19:30 hrs (29 April 2016)*

Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 29 April 2016

KYIV 30 April 2016

This report is for media and the general public.

The SMM recorded a lower number of ceasefire violations in Donetsk and Luhansk regions compared with the previous day. It conducted further crater analysis related to the shelling in Olenivka. The Mission observed presence of weapons in violation of the respective withdrawal lines. It facilitated and monitored adherence to the ceasefire to enable repair works. The SMM observed long queues at checkpoints near the contact line. It observed a protest in Odessa.

The SMM recorded a lower number of **ceasefire violations** in Donetsk region compared with the previous day.[1] In the evening hours of 28 April, whilst in "DPR"-controlled Donetsk city centre, the SMM heard eight undetermined explosions 7-10km north-west of its position. Positioned at Donetsk central railway station ("DPR"-controlled, 6km north-west of Donetsk), the SMM heard 52 undetermined explosions, and 32 explosions assessed as caused by automatic-grenade-launcher fire, 29 bursts of heavy-machine-gun fire and 123 **single** shots of small-arms fire at locations ranging from 1-7km and from west to north of its position.

In the evening hours of 28 April, whilst in government-controlled Svitlodarsk (57km north-east of Donetsk) the SMM heard at least 15 explosions (five outgoing and ten incoming) assessed as caused by 73mm cannon (BMP-1), recoilless-gun (SPG-9) and rocket-propelled grenade-launcher (RPG-7) fire, 41 explosions (20 outgoing and 21 incoming) of automatic-grenade-launcher fire, and at least 38 bursts of heavy-machine-gun fire and intermittent shots of small-arms fire 2-6km south-south-east of its position.

In Luhansk region, the SMM observed a low number of ceasefire violations. In the evening hours of 28 April, whilst in "LPR"-controlled Stakhanov (50km west of Luhansk), the SMM heard 50-60 single shots of small-arms fire, 1.5-2km west of its position. On 29 April, whilst near Vrubiskyi ("LPR"-controlled, 22km south-west of Luhansk) the SMM heard and saw around 32 explosions, assessed as mortar rounds outgoing at a location 3km south west of its position, and subsequently heard and saw 32 explosions assessed as rounds impacting at a training area in "LPR"-controlled Myrne, (31km south-west of Luhansk), outside the security zone.

The SMM conducted further **crater analysis following the fatal shelling incident** in "DPR"-controlled Olenivka (23km south-west of Donetsk) on 27 April (see [SMM Spot Report 28 April 2016](#)). The SMM further analysed five craters in proximity to the clinic. The SMM determined the origin of the shelling (south-west and west-south-west) for the five craters, four of which were assessed as caused by 122mm artillery and the fifth by 152mm artillery. The closest crater to the clinic was 50m east of its entrance. The SMM observed some damage to the eastern walls of the clinic building caused by shrapnel, and minor damages to its roof caused by a blast wave. The SMM observed a storage building

100m south of the clinic which had been completely destroyed by a direct impact. Apart from a security guard, the clinic was empty at the time of the shelling, according to the deputy chief [doctor](#). Whilst in Olenivka, the SMM observed at least two small arms firing positions, less than 500m from the clinic and less than 400m from where four civilians were killed by the shelling on 27 April. Also less than 500m from the clinic and 200m from the place of the incident, the SMM observed several residential houses, blocked by ammunition boxes (marked 120mm mortar) and other materials, such as sandbags, assessed as quarters of armed "DPR" members. The SMM observed four heavily armed "DPR" members guarding one of the buildings.

The SMM followed up on alleged shelling on 26 April near the Stanytsia Luhanska bridge (16km north-east of Luhansk). In the vicinity of the "LPR"-controlled checkpoint at the bridge, the SMM observed that a tree on the south-western side of the bridge had been hit. The impact was fresh and SMM assessed that it had been caused by fire from a north-westerly direction. The SMM observed impacts and remnants, as well as a mortar tail section stuck in the north-facing side of a hill nearby.

In relation to **the implementation of the Addendum to the Package of Measures**, the SMM revisited Ukrainian Armed Forces permanent storage sites whose locations corresponded with the withdrawal lines and observed that three anti-tank guns (D-44, 85mm) were missing, as they have been since 29 December 2015.

In violation of the respective withdrawal lines the SMM observed seven tanks (T-72) in "LPR"-controlled Luhansk city.

Beyond the respective withdrawal lines but outside storage sites, the SMM observed 12 tanks at a [training](#) ground in "LPR"-controlled Uspenka (23km south-west of Luhansk).

The SMM continued to monitor the **withdrawal of heavy weapons** foreseen in the Minsk Package of Measures. The SMM has yet to receive the full information requested in the 16 October 2015 notification.

In violation of the respective withdrawal lines, the SMM observed: seven MLRS (BM-21 *Grad*, 122mm), seven self-propelled howitzers (2S1 *Gvozdika*, 122mm), and ten towed howitzers (five 2A65 *Msta-B*, 152mm, and five D-30 *Lyagushka*, 122mm) in "LPR"-controlled Luhansk city.

The SMM revisited locations known to the SMM as heavy weapons holding areas, even though they do not comply with the specific criteria set out for permanent storage sites in the 16 October 2015 notification.

In government-controlled areas beyond the respective withdrawal lines, the SMM revisited such locations and observed ten MLRS (BM-27 *Uragan*), 12 anti-tank guns (2A29/MT *Rapira*, 100mm) and four Addendum-regulated mortars (2B9 *Vasilek*, 82mm).

Beyond the respective withdrawal lines but outside storage sites, the SMM observed: a stationary anti-aircraft system (SA-8) near government-controlled Novovasylivka (59km north-west of Donetsk); five self-propelled howitzers (2S1 *Gvozdika*, 122mm) and five towed howitzers (D-30 *Lyagushka*, 122mm) in "LPR"-controlled Uspenka.

The SMM continued to observe **the marking of mined areas and presence of mines and unexploded ordnance (UXO)**. The SMM observed six billboards providing

information on mines (three on each side of the road), within approximately 2km, between two government-controlled checkpoints near government-controlled Marinka (23km south-west of Donetsk). The SMM observed an improvised 20 by 40cm mine hazard sign written in black letters on a wooden stick 1km north-west of government-controlled Nadezhdynka (63km north-west of Donetsk).

The SMM continued to **facilitate and monitor adherence to the ceasefire to enable repairs to essential infrastructure**. Positioned both in “LPR”-controlled Krasnyi Lyman (30km north-west of Luhansk) and in government-controlled Trokhizbenka (33km north-west of Luhansk) between 09:10 and 12:55, the SMM observed the adherence to the ceasefire and the repair works of three **bank** filtration wells, whereby the pipelines, transformer and valves of the wells were replaced.

The SMM continued to monitor **long queues at entry-exit checkpoints near the contact line**. At a checkpoint in government-controlled Marinka the SMM observed several angry civilians who said that they had been waiting in queue all day. Some of them **started** to hit and kick the SMM vehicles, causing light scratches to one vehicle. At a checkpoint in “DPR”-controlled Oktiabr (29km north-east of Mariupol), a group of 16 civilians (aged 35-40, males and females) said they had been waiting for six hours. They feared that the slow crossing procedures would prevent them from returning to their homes or join their families in time for the forthcoming holidays.

The SMM **monitored border areas in government- and non-government-controlled areas**. At the government-controlled Milove (107km north of Luhansk) border crossing point, the SMM observed a queue of around 50 civilian vehicles waiting to cross into the Russian Federation, as well as around 15-20 pedestrians. At the border crossing point in Marynivka (“DPR”-controlled, 78km east of Donetsk) the SMM observed 33 civilian vehicles, five commercial trucks (one loaded with coal) and two passenger buses waiting to cross into the Russian Federation (mostly with Ukrainian license plates except for three cars with Russian licence plates). At the border crossing point in Uspenka (“DPR”-controlled, 73km south-east of Donetsk) the SMM observed 42 cars waiting to cross into the Russian Federation (all with Ukrainian license plates except for four with Russian licence plates). During one hour, the SMM also observed some 15 pedestrians crossing from the Russian Federation into Ukraine.

The SMM met with the head of the state penitentiary service department for Donetsk region who confirmed that **20 prisoners** (18 males and two females) were **transferred from facilities in non-government controlled areas to Mariupol** on 20 April, where they will serve the remainder of their sentences. He stated that a total of 112 prisoners, all convicted by Ukrainian courts prior to or during the initial stages of the conflict, had been transferred from areas not under government control, following requests made by their relatives to the Ukrainian Ombudsman.

In Odessa, the SMM monitored the **17th consecutive day of a protest** aimed at demanding the resignation of the mayor. The SMM observed 10 people (aged 30-70, three females) at the campsite in front of the city hall. Three protestors at the camp informed the SMM about an airsoft grenade thrown 65m away from the campsite in the early morning hours. The SMM visited the site, but saw no traces of an explosion. A spokesperson of the **police** regional headquarters informed the SMM that at 02:00 the police found an unexploded airsoft grenade near the city hall. The spokesperson added that no investigation was opened in connection with the incident.

The SMM continued to monitor the situation in Kherson, Lviv, Ivano-Frankivsk, Kharkiv, Chernivtsi, Dnepropetrovsk and Kyiv.

****Restrictions to SMM's freedom of movement or other impediments to the fulfilment of its mandate***

The SMM's monitoring is restrained by security hazards and threats, including risks posed by mines and unexploded ordnance, and by restrictions of its freedom of movement and other impediments – which vary from day to day. The SMM's mandate provides for safe and secure access throughout Ukraine. All signatories of the Package of Measures have agreed on the need for this safe and secure access, that restriction of the SMM's freedom of movement constitutes a violation, and on the need for rapid response to these violations.

Besides to the abovementioned general restrictions, the SMM was not subject to any specific restriction to its freedom of movement.

[1] Please see the [annexed table](#) for a complete breakdown of the ceasefire violations, as well as map of the Donetsk and Luhansk regions marked with locations featured in this [report](#).

Annex 4

Council of Europe Committee of Experts on Terrorism, *Profiles on Counter-Terrorist Capacity: Denmark (2007)*

DENMARK

April 2007

www.coe.int/gmt

NATIONAL POLICY

International terrorism is a threat to global peace and security and can strike any country and any population – including Denmark and the Danes. The threat of terrorism is complex and unpredictable, and it is important to make use of a variety of tools at the national as well as international level in the fight against terrorism. Thus, a broad action against terrorism is one of the most important priorities of the Danish Government.

Denmark finds it absolutely vital to combat the immediate threat of terrorism by contributing actively to enhanced international co-operation. Furthermore, Denmark finds it important to eradicate the causes of terrorism through targeted development assistance in regions exposed to fundamentalism and radicalism. Denmark is therefore fully committed to the international co-operation in combating terrorism.

In Denmark, the adoption of a first "anti-terrorism package" in 2002 and a second "anti-terrorism package" in 2006, along with a number of legislative amendments, has provided the necessary legislative basis for effective prevention, investigation and prosecution of terrorist activities.

LEGAL FRAMEWORK

Penal law

A large number of the offences typically designated as terrorist acts are punishable under specific provisions of the Danish Criminal Code. Thus, for example, homicide is punishable under Section 237 of the Criminal Code, regardless of the offender's motive for the act.

On 31 May 2002 the Danish Parliament passed the first "anti-terrorism package" implementing Security Council Resolution 1373 (2001), the International Convention for the Suppression of the Financing of Terrorism and EU Framework Decision 2002/475/RIA on combating terrorism. This "anti-terrorism package" led to the insertion of a special section on terrorism defining the concept of terrorism in the Criminal Code.

On 2 June 2006 the first "anti-terrorism package" was followed by a second "anti-terrorism package", implementing the Council of Europe Convention on the Prevention of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism.

An act of terrorism is defined in Section 114 of the Criminal Code. To label a criminal act as terrorism, it must be committed with: *"the intent seriously to intimidate a population or unlawfully to compel Danish or foreign public authorities or an international organisation to do or to abstain from doing any act or to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, provided that the offence may inflict serious harm on a country or an international organisation by virtue of its nature or the context in which it is committed."*

A person is liable to imprisonment for a term of up to life imprisonment if he/she commits one or more of a number of serious offences listed in Section 114 (homicide, assault, deprivation of liberty, etc.) with the intent as referred to above.

The same penalty applies to any person who transports weapons or explosives or threatens to commit homicide or assault with the intent described above.

Section 114a contains a list of offences which do not fall within the scope of Section 114 of the Criminal Code, but which are defined as acts of terrorism pursuant to the Convention on the Prevention of Terrorism. If one of the offences listed in section 114a is committed, the sentence may exceed the maximum penalty prescribed for the relevant offence by up to 50 per cent.

Financing of terrorism

If the financing of terrorism is related to a specific crime, it is criminalised as complicity to terrorism.

If the financing of terrorism is not linked to a specific criminal act, it falls within the scope of Section 114b of the Danish Criminal Code.

Pursuant to Section 114b, a person is liable to imprisonment for a term not exceeding ten years if he/she directly or indirectly grants financial support

to, directly or indirectly provides or collects funds for, or directly or indirectly makes money, other financial assets or financial or other similar services available to a person, a group of persons or an association that commits or intends to commit acts falling within the scope of Section 114 or 114a.

Section 114b of the Criminal Code covers the financing of terrorism in the form of financial support and the collection or transfer of funds, etc.

Section 114b(i) is aimed at individual contributors who provide financial support, out of their own means, to a group which commits or intends to commit acts of terrorism as mentioned in Section 114 and 114a, whereas Section 114b(ii) is aimed at intermediaries or promoting organisations that, e.g., collect money from individual contributors or raise loans from financial institutions, etc. Section 114b(iii) is aimed at financial institutions or individuals, etc., who grant loans commercially or otherwise, or provide another financial service or arrange these grants for terrorists, etc., with a view to obtaining profits, when this is done knowing or suspecting that the means or the grants will be used to encourage or perform acts of terrorism.

Even though the money, etc., is not intended to be used specifically for the procurement of weapons or explosives, Section 114b may be applied merely if the organisation is known by the contributor to be connected with the commission of acts of terrorism. In this connection, it is of no importance whether the actual subscription has an alleged humanitarian purpose if the organisation is known to commit acts of terrorism. Thus, the sole requirement is the intention of the group if terrorist activities form part of its activities or purpose.

There is no requirement of the money or services being transferred directly or placed at the disposal of a group of terrorists as indicated by the words "*directly or indirectly*". The only requirement is that the group of terrorists will ultimately benefit by the money or the service. If it cannot be proved that the money has actually reached the group of terrorists, the attempt may be punishable if the accused had intended this.

Recruitment for terrorism

Section 114c prohibits recruitment for terrorism. A person is liable to imprisonment for up to ten years if he/she recruits persons to commit or further acts falling within the scope of Section 114 or 114a or to join a group or an association for the purpose of furthering the commission of acts of such nature by the group or association. In particularly aggravating circumstances, the penalty may be increased to imprisonment for up to 16 years. Particularly

aggravating circumstances typically include cases of systematic or organised violations.

Section 114c(2) prohibits recruitment of persons to finance terrorism, whereas section 114c(3) extends the field of criminal liability to include any person who allows him/herself to be recruited for terrorism.

Training, instruction and teaching etc.

Section 114d(1) of the Danish Criminal Code criminalises the training, instruction or otherwise teaching of a person to commit or instigate the acts covered by the provisions on terrorism.¹ A person violating this section is liable to imprisonment for up to ten years. In particularly aggravating circumstances, the penalty may be increased to imprisonment for up to 16 years. Particularly aggravating circumstances typically include cases of systematic or organised violations.

Section 114d(2) criminalises the training, instruction or otherwise teaching of a person to provide financial support, etc., to any person, group or association which intends to commit an act covered by the provisions on terrorism.

According to the explanatory notes to section 114d, this provision will apply to, e.g., instruction in the use of weapons, detonation of bombs and also the making of bombs even though the person receiving instruction is not supposed to be the one actually carrying out the terrorist attack.

As in section 114c(3), the field of criminal liability in section 114d is extended to include the trainee.²

Aiding and abetting

Section 114e covers acts intended to instigate or contribute to advancing the criminal activity or the common purpose of a person, a group or an association that commits one or more acts falling within the scope of sections 114 to 114d. Violation of this section is punishable by imprisonment for up to six years.

Non-proliferation

The first "anti-terrorism package" also included tightened provisions on the proliferation of weapons of mass destruction, and the maximum penalty has been raised to up to six years' imprisonment (against two years previously).

Other relevant legislation

The introduction of the first "anti-terrorism package" was accompanied by several amendments to the Danish Administration of Justice Act aimed generally

¹ Sections 114 to 114a of the Criminal Code.

² Cf. section 114d(3).

at strengthening the investigative possibilities available to the police. The amended provisions, which facilitate the investigations carried out by the Danish Security Intelligence Service, include data interception,³ which allows the use of so-called sniffer programmes; repeated covert searches under one warrant,⁴ and access to discovery of documents without any prior court order.⁵

A number of additional changes aimed at alleviating a variety of practical problems related to the implementation of interceptions of communications were introduced. Thus, a duty was imposed on telecommunications companies and internet service providers to log traffic data of relevance to police interception of communication, etc. The companies are obliged to register and store the data for one year. The relevant provision will enter into force on 15 September 2007.

Furthermore, special provisions were laid down in section 45a of the Aliens Act regarding the exchange of information between immigration authorities and the intelligence services.

Finally, the first "anti-terrorism package" included a range of other measures of importance to the activities of the Security Intelligence Service, for example amendments to the Danish Money Laundering Act and the Danish Customs Act concerned with the freezing and restraint of funds in connection with suspected acts of terrorism or other crimes.

The introduction of the second "anti-terrorism package" was accompanied by other amendments to the Administration of Justice Act aimed at strengthening the exchange of information between administrative authorities. The act introduced a new provision⁶ into the Administration of Justice Act, which allows a less restricted access to exchange of information between the Security Intelligence Service and the Danish Defence Intelligence Service. In continuation thereof, the access of the Security Intelligence Service to information held by other administrative authorities has also been widened when the information has significance for the prevention and investigation of offences related to terrorism.

The second "anti-terrorism package" also gives the Security Intelligence Service a more prompt and effective access to standard information about airline passengers in connection with the investigation and prevention of violations of Parts 12 and 13 of the Criminal Code (offences against the independence

and safety of the State, offences against the Constitution and the supreme authorities of the State, terrorism, etc.) by allowing the retrieval of such information without a warrant.⁷ This section obliges the airline companies to register and store information about crew and passengers for one year. The section has not yet entered into force.

Furthermore, the introduction of the second "anti-terrorism package" was accompanied by further amendments to the Administration of Justice Act aimed at strengthening the investigative possibilities available to the police.

In preparation for the prevention of impending acts of terrorism (or other serious criminal offences), section 791c was introduced into the Administration of Justice Act. This section allows the police (including the Security Intelligence Service) (on the basis of a warrant) to jam or cut off radio communications or telecommunications in order to prevent violations of, *inter alia*, Parts 12 and 13 of the Criminal Code.

Surveillance

An important part of all investigations carried out by the police, including the Security Intelligence Service, is the surveillance of individuals, carried out using the human eye or optical instruments. An observation can be retained by photography or film or video recording. The observation of individuals by the police is regulated by section 791a of the Administration of Justice Act.

Under this provision the police may take photographs or carry out observation, by means of binoculars or other devices, of persons who are in a not freely accessible place, provided that such interference is assumed to be of material importance to the investigation of an offence punishable under the law with imprisonment, as set out in section 791a(1) of the Administration of Justice Act.

Surveillance by means of a remotely controlled or automatic camera, TV camera or similar equipment may only take place, however, if the investigation concerns an offence punishable under the law with imprisonment for one year and six months or longer, as set out in section 791a(2) of the Administration of Justice Act.

Pursuant to section 791a(3) of the Administration of Justice Act, surveillance of individuals in a home or other premises by means of a remotely controlled or automatic camera, TV camera or similar equipment or by means of a device used in the home or the premises may only take place if:

³ Section 791b of the Administration of Justice Act.

⁴ Section 799(3) of the Administration of Justice Act.

⁵ Section 806(3) of the Administration of Justice Act.

⁶ Section 116 of the Administration of Justice Act.

⁷ Cf. section 148a of the Air Navigation Act.

- (1) there are grounds for assuming that evidence for the case can be obtained by such measure of interference;
- (2) the interference is assumed to be of decisive importance for the investigation;
- (3) the investigation concerns an offence that is punishable under the law with imprisonment for six years or longer or, e.g., intentional contravention of Parts 12 or 13 of the Criminal Code, etc.; and
- (4) the investigation concerns an offence that has caused or may cause danger to human life and welfare or community property of substantial value.

The requirement set out in section 791a(1) of the Administration of Justice Act for the investigation of an offence which is punishable with imprisonment as well as the requirement for imprisonment for one year and six months set out in subsection (2) will, in principle, always be satisfied in the case of investigations carried out by the Security Intelligence Service of crimes which fall within Parts 12 and 13 of the Criminal Code (offences against the independence and safety of the State, offences against the Constitution and the supreme authorities of the State, terrorism, etc.).

Interception of communications

The interception of communications by the police – including the Security Intelligence Service – is regulated by Part 71 of the Administration of Justice Act.

Section 780 of the Administration of Justice Act covers the following types of interception of communications: Telephone tapping, other interception (bugging), traffic data, extended telecommunications records (such as transmission mast data) and the opening and stopping of letters.

The specific conditions for interception of communications are set out in section 781 of the Administration of Justice Act.

Firstly, there must be certain grounds for assuming that messages to or from a suspect are conveyed by the communication in question (section 781(1)(i) of the Administration of Justice Act).

It should be noted in this connection that bugging and the collection of extended telecommunications records may only be carried out where the suspicion concerns an offence that has caused or may cause danger to human life and welfare or community property of substantial value.⁸

The second condition for the interception of communications is that the interference is assumed to be of decisive importance to the investigation.⁹

The third and last condition for the interception of communications is a requirement as to the nature of the crime, particularly that the investigation concerns an offence with a maximum penalty exceeding six years or contravention of Parts 12 and 13 of the Criminal Code.¹⁰

Section 782 of the Administration of Justice Act implies a rule of proportionality, according to which the interference may not take place if, in view of the purpose of the interference, the importance of the case and the outrage and inconvenience that the measure is assumed to cause to the person(s) affected by it, it will constitute a disproportionate intrusion.

Pursuant to section 783(1) of the Administration of Justice Act any interception of communications must take place on the basis of a warrant, and the warrant must indicate, for example, the telephone number that is the target of interception. It has been accepted in practice, however, that the telephone to be tapped may be identified by other numeric codes than the telephone number, for example the IMEI¹¹ or IMSI¹² number of a mobile phone.

If the purpose would be defeated by awaiting prior permission from the court, the police may decide to carry through a measure of interference.¹³ However, the matter must be put before the court as soon as possible and not later than 24 hours after implementation of the measure, whereupon the court will decide whether the interference can be approved and may be continued, if required.

The second "anti-terrorism package" amended section 783 of the Administration of Justice Act, allowing the police (including the Security Intelligence Service) to obtain an interception warrant relating to a person rather than to the particular means of communication. As a result, the police only needs to obtain a single warrant in order to tap the telephone(s) of a suspect. As soon as possible after such interference, the police must notify the court of the telephone numbers subjected to the interference but not stated in the warrant. It should be noted that the specific conditions for interception of communications, as set out in sections 781 and 782, remain unaltered. The amendment, moreover, only applies in cases concerning violation of Parts 12 and 13 of the

⁸ Section 781(5) of the Administration of Justice Act.

⁹ Section 781(1)(ii) of the Administration of Justice Act.

¹⁰ Section 781(1)(iii) of the Administration of Justice Act.

¹¹ Its frame number.

¹² The number identifying its SIM card.

¹³ Section 783(3) of the Administration of Justice Act.

Criminal Code (offences against the independence and safety of the State, offences against the Constitution and the supreme authorities of the State, terrorism, etc.).

Searches

Under section 794 of the Administration of Justice Act, the police, including the Security Intelligence Service, may carry out searches of rooms, other premises or objects that are available to a suspect, provided that:

- (1) the person concerned is suspected on reasonable grounds of having committed an offence that is subject to public prosecution; and
- (2) the search is assumed to be of material importance to the investigation.

The decision to conduct a search will be made by the court by the issue of a warrant.¹⁴ If the purpose would be defeated by awaiting prior permission from the court, the police may make the decision to implement the measure.¹⁵ As soon as possible and not later than 24 hours after the implementation of the search, however, the matter must then be put before the court for a decision on whether it can be approved.

Where the suspect is not present during the search, two housemates or other witnesses should, as far as possible, be called in to attend the search. When the search has been conducted, the police will inform the person who has the room(s) or object at his/her disposal about the search.

If it is decisive for an investigation to conduct a search without informing the suspect or other persons about it in a case dealing with intentional violation of Parts 12 and 13 of the Criminal Code, the court may issue a warrant for such search specifying that no witnesses should attend the search.¹⁶

Discovery of documents

Under section 804(1) of the Administration of Justice Act, a person who is not a suspect can be ordered to present or surrender objects if there is reason to assume that the object may serve as evidence or should be confiscated or if, as a consequence of a criminal offence, someone has been defrauded thereof and can claim it back.

Another consequence of section 804(2) of the Administration of Justice Act is that, if an object has been surrendered to the police under the provisions on disclosure of information, the provisions on seizure from non-suspects under section 803(1) of the Administration of Justice Act will apply. This implies among other things that, under section 189

of the Administration of Justice Act, a duty of confidentiality can be imposed on a person who has been ordered to disclose documents, if the interests of foreign countries, national security or the clarification of serious crime make it appropriate.

Disclosure of documents cannot be imposed on anyone if any information disclosed would prevent or exempt the person in question from making a statement as a witness under sections 169 to 172 of the Administration of Justice Act.¹⁷

Under section 806(1) of the Administration of Justice Act, decisions ordering the disclosure of documents must be made by the court at the request of the police.

If the purpose of such an intervention would be defeated by having to await a warrant, the police can make a decision about the disclosure of documents.¹⁸ Another consequence of subsection (3) is that the police must present the case to the court as soon as possible and within 24 hours with a view to obtaining approval of the steps if the person against whom the steps are directed has so requested.

The Aliens Act

The first "anti-terrorism package" also amended some of the provisions of the Danish Aliens Act, which among other things led to wider and more intensive collaboration between the Danish immigration authorities and the Security Intelligence and the Defence Intelligence Services.

As a consequence of the amendment – the provision set out in section 45a(1) of the Aliens Act – the immigration authorities are permitted to transmit information to the two intelligence services relating to cases with security or intelligence implications for their activities. The Security Intelligence Service could therefore in 2002 initiate significantly closer collaboration with the immigration authorities. For that purpose, the Service has provided the immigration authorities with a detailed definition of cases that may have implications for its work and, co-operating with the Defence Intelligence Service, has briefed the staff of the Danish Immigration Service and the regional state administrations about the criteria for transmitting information and the work carried out by the two intelligence services in general. The criteria defining when to transmit information are adjusted to the current threat assessments at any time.

The primary goal for closer co-operation on cases involving foreign nationals is to ensure that

¹⁴ Section 796(2) of the Administration of Justice Act.

¹⁵ Section 796(3) of the Administration of Justice Act.

¹⁶ Section 799 of the Administration of Justice Act.

¹⁷ Cf. section 804(4) of the Administration of Justice Act.

¹⁸ Cf. section 806(3) of the Administration of Justice Act.

individuals who may be assumed to pose a risk to national security are not granted a Danish residence permit.

The Security Intelligence Service is responsible for assessing, on the basis of information received from the Immigration Service, whether an individual may be considered to be a national security risk in the sense of the Aliens Act. If so, the Security Intelligence Service will inform the Minister of Justice, and, based on the information received, the Minister will issue a recommendation to the Minister of Refugee, Immigration and Integration Affairs in conformity with the provisions of section 45b of the Aliens Act. Ultimately, the Minister of Refugee, Immigration and Integration Affairs is responsible for the assessment that will be relied upon when the immigration authorities have to decide whether the person concerned has to be refused permission to stay in Denmark. It is not possible to appeal an assessment that considers a foreign national to be a national security risk to any other administrative authority.

The Minister of Refugee, Immigration and Integration Affairs may also decide (on the basis of a recommendation of the Minister of Justice) that the information relied upon in assessing that a foreign national may be considered a national security risk may not be disclosed to the foreign national concerned, his or her representative or the immigration authority that has to make the final decision in the case. Thus, there is no requirement to specify the grounds.

In addition, the collaboration is aimed at ensuring that the Security Intelligence Service will receive information about persons who may be of intelligence interest in other respects, for example persons whose stay in Denmark should be known to the Security Intelligence Service as the authority responsible for national security at any time. Such persons may be experts on explosives, individuals who have relations with terrorist organisations or sympathise with them, persons associated with the intelligence services of foreign states, etc.

The Security Intelligence Service also makes assessments of the existence of any basis for notifying the Special International Crimes Office, particularly in cases where a foreign national can be linked with war crimes, etc.

Preventive measures

In addition to the direct surveillance and investigation of activities potentially related to terrorism, it is a vital focus area of the Security Intelligence Service to enhance its external coordinating role so as to strengthen the aggregate power of resistance of society to terrorism.

Therefore, for the purpose of structured co-operation, the Security Intelligence Service has set up, and will attempt to set up in future, partnerships with authorities, institutions, companies and organisations that, directly or indirectly, handle tasks or possess competencies and knowledge of relevance to the combined efforts in the field of terrorism.

Accordingly, the Security Intelligence Service has established several counter-terrorism contact groups consisting of a wide range of Danish authorities, institutions, companies and organisations. The aim of this co-operation is to ensure the purpose and a well-founded basis for the risk assessments of the Security Intelligence Service, to streamline its products so that they accommodate the actual needs of these partners and to assist with the propagation of these assessments.

Through a so-called awareness programme, the Security Intelligence Service has carried out a targeted effort towards universities and institutions of higher education with many visits to these institutions. The purpose of these visits is to provide the educational institutions with information and guidance, particularly within the area of non-proliferation, but other areas of a security-related nature have also been dealt with, including a general briefing on issues concerning extremist and fundamentalist networks within student environments.

Furthermore, 2003 saw the establishment of a dialogue-based forum with representatives of the various ethnic minorities in Denmark, and in the spring of 2004 the Security Intelligence Service established a similar forum with a number of imams and representatives of the Muslim communities in Denmark. The aim of these initiatives is to build up trust and establish some form of co-operation between the Security Intelligence Service and the ethnic minorities and to exchange viewpoints concerning matters and problem areas of mutual interest. The Security Intelligence Service is planning to initiate co-operation between the two forums on a project which is to focus on radicalisation among young people with an alternative ethnic background.

In 2005, the Security Intelligence Service launched a project called "Police against Terrorism", which is intended to involve the national police further in its targeted efforts to prevent terrorist acts. The aim is to expand police competencies in the area of terrorism with regard to the performance of the day-to-day police work in order to strengthen the total Danish police force, thus increasingly enabling it to spot terror-related indications or activities.

INSTITUTIONAL FRAMEWORK

In its capacity as the national security and intelligence service of Denmark, the Security Intelligence Service must prevent, investigate and counter operations and activities that pose or may pose a threat to the preservation of Denmark as a free, democratic and safe society. The main objective of the Service is therefore to counter and fight threats to national security and the safety of the population.

To preserve national security is, however, not the only task of an intelligence service. Efficient and permanent preservation of national security and order requires persistent, wide-ranging and coordinated efforts by a large number of authorities. As the national security authority, the Security Intelligence Service obviously plays a central part in this connection in the efforts to ensure the direction and substance of the contributions from the individual bodies and authorities.

As part of its intelligence activities, the main task of the Service is to prevent and investigate actions or undertakings that may jeopardise the independence, safety and legal order of the State and to prevent such actions or undertakings from developing or being implemented.

The actions falling within the area of responsibility of the Security Intelligence Service in that connection are above all the actions which have been criminalised by Parts 12 and 13 of the Criminal Code. Such actions include attacks on the Constitution, terrorism, the proliferation of weapons of mass destruction, extremism and espionage. Through its activities, the Security Intelligence Service must provide the basis for handling such threats as early and as appropriately as possible. Lately, the Security Intelligence Service has also been entrusted with the responsibility of analysing the most serious organised crime, meaning gang and network criminality, which is characterised by its international, trans-border and professional nature and is committed through the use of violence, threats and weapons in environments of difficult access and with a high security level.

The Security Intelligence Service is part of the Danish police force. Organisationally, the Service is a unit of the National Police, but due to the special assignments of the Service, the Director General of the Service reports directly to the Minister of Justice.

Unlike the rest of the police and the prosecution service, the Security Intelligence Service does not have the power to prefer criminal charges. If the investigation of the Service gives rise to criminal proceedings proper, the case is surrendered to the

ordinary police or the prosecution service. In that event, the actual indictment in cases comprised by the provisions of Parts 12 and 13 of the Criminal Code must, however, be issued by the Minister of Justice, cf. the special provisions of the Criminal Code in this respect. In such case, the Minister of Justice will make his or her decision on the basis of a recommendation from the Director of Public Prosecutions.

Particularly with regard to the preparation of consolidated threat assessments in the field of terrorism, the Security Intelligence Service has set up a Terrorism Analysis Centre which is to produce threat assessments and analyses related to the terrorist threat against Denmark as a collaboration project between representatives from the Security Intelligence Service, the Defence Intelligence Service, the Danish Ministry of Foreign Affairs and the Danish Emergency Management Agency.

The Security Intelligence Service also has a number of assignments not directly linked to the collection of intelligence and investigation against groups and persons suspected of posing a potential threat to national security.

The Security Intelligence Service is thus responsible for the personal protection of the royal family and visitors to the royal family, members of Government, certain politicians and others and must assess and determine a suitable security level relative to these persons and their institutions.

The Security Intelligence Service is also included in the performance of various other preventive security assignments in connection with state visits or other events estimated to require special security, and in that connection the task of the Service is to coordinate security efforts relative to the local police and make recommendations for concrete security measures.

Upon specific request, the Security Intelligence Service assists the police in connection with special police actions, including the resolution of hostage situations, particularly dangerous arrests or other special assignments linked with the investigation and the clearing up of serious crime (the Task Force), and the Service also has a negotiator group and a witness protection programme that the police districts can make use of.

Finally, the Service is in charge of comprehensive preventive efforts, particularly in the field of terrorism, and the Service must generally contribute to providing society with the best possible defence against terrorist attacks, either alone or through partnerships with relevant public authorities and private actors, including dialogue forums, contact

forums, etc., and through broadly targeted information measures.

As the national security authority, the Security Intelligence Service is responsible for the exercise of control and coordination relative to security protection of classified documents, including in relation to the places and persons that handle the information. The Service thus provides relevant security advice on staff measures as well as physical and procedural measures to public authorities, and the Service will also provide the same assistance to private individuals or companies in case of protectable interests relevant to the public, such as the critical infrastructure in Denmark.

The Security Intelligence Service co-operates intensely with a large number of national and international partners, including central national authorities whose activities have an impact on the security field, such as the police, the Defence Intelligence Service, the Ministry of Foreign Affairs, the immigration authorities and the Emergency Management Agency, as well as bilaterally and multilaterally with foreign security and intelligence services and international organisations and collaboration forums.

INTERNATIONAL CO-OPERATION

United Nations

Denmark is fully committed to co-operating with the United Nations, its Member States and particularly

with the Counter-Terrorism Committee established pursuant to Security Council Resolution 1373 to combat international terrorism. Denmark stands fully behind the global efforts to implement Resolution 1373 and all other relevant legal instruments against international terrorism. Denmark has signed and ratified the 12 major UN conventions on terrorism and fully implemented UN Security Council Resolution 1373. Furthermore, Denmark has signed the International Convention for the Suppression of Acts of Nuclear Terrorism on 14 September 2005.

European Union

The Danish membership of the European Union is a key element of Danish foreign policy. Therefore, the Danish Government contributes actively to the implementation and application of EU initiatives by all Member States, including measures mentioned in the Council Framework Decision on the European arrest warrant which was implemented in Denmark in 2004, the Council Framework Decision on joint investigation teams and the Council Framework Decision on combating terrorism, both implemented in Denmark in 2002.

Financial Action Task Force against Money Laundering (FATF)

Denmark is a member of the Financial Action Task Force against Money Laundering (the FATF). Denmark fully endorses the standards in the recommendations of the FATF, and the nine special recommendations of the FATF on terrorist financing have been implemented in Danish legislation.

| Relevant Council of Europe conventions – Denmark | Signed | Ratified |
|---|------------|------------|
| European Convention on the Suppression of Terrorism (ETS 90) | 27/1/1977 | 27/6/1978 |
| Amending Protocol (ETS 190) | 15/5/2003 | 14/4/2004 |
| European Convention on Extradition (ETS 24) | 13/12/1957 | 13/9/1962 |
| First Additional Protocol (ETS 86) | 27/9/1976 | 13/9/1978 |
| Second Additional Protocol (ETS 98) | 25/10/1982 | 7/3/1983 |
| European Convention on Mutual Assistance in Criminal Matters (ETS 30) | 20/4/1959 | 13/9/1962 |
| First Additional Protocol (ETS 99) | 25/10/1982 | 7/3/1983 |
| Second Additional Protocol (ETS 182) | 8/11/2001 | 15/1/2003 |
| European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73) | 15/5/1972 | 13/11/1975 |
| European Convention on the Compensation of Victims of Violent Crimes (ETS 116) | 24/11/1983 | 9/10/1987 |
| Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) | 8/11/1990 | 19/11/1996 |
| Convention on Cybercrime (ETS 185) | 22/4/2003 | 21/6/2005 |
| Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189) | 11/2/2004 | 21/6/2005 |
| Council of Europe Convention on the Prevention of Terrorism (ETS 196) | 16/5/2005 | |
| Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198) | | |

Annex 5

Financial Action Task Force, POLITICALLY EXPOSED PERSONS (RECOMMENDATIONS 12 AND 22) (June 2013)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

FATF



FATF GUIDANCE

POLITICALLY EXPOSED PERSONS (RECOMMENDATIONS 12 AND 22)

June 2013



FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

For more information about the FATF, please visit the website:

www.fatf-gafi.org

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(fax: +33 1 44 30 61 37 or e-mail: contact@fatf-gafi.org).

I. INTRODUCTION

1. A politically exposed person (PEP) is defined by the Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing (TF). This has been confirmed by analysis and case studies. The potential risks associated with PEPs justify the application of additional anti-money laundering / counter-terrorist financing (AML/CFT) preventive measures with respect to business relationships with PEPs. To address these risks, FATF Recommendations 12 and 22 require countries to ensure that financial institutions and designated non-financial businesses and professions (DNFBPs) implement measures to prevent the misuse of the financial system and non-financial businesses and professions by PEPs, and to detect such potential abuse if and when it occurs.

2. These requirements are preventive (not criminal) in nature, and should not be interpreted as stigmatising PEPs as such being involved in criminal activity. Refusing a business relationship with a PEP simply based on the determination that the client is a PEP is contrary to the letter and spirit of Recommendation 12.

3. The FATF first issued mandatory requirements covering foreign PEPs, their family members and close associates¹ in June 2003.² In February 2012, the FATF expanded the mandatory requirements to domestic PEPs and PEPs of international organisations, in line with Article 52 of the *United Nations Convention against Corruption* (UNCAC).³ Article 52 of the UNCAC defines PEPs as “individuals who are, or have been, entrusted with prominent public functions and their family members and close associates”, and includes both domestic and foreign PEPs. The main aim of the obligations in Article 52 of UNCAC is to fight corruption, which the FATF endorses. However, it is important to note that the aim of the 2012 FATF requirements extends more broadly to the fight against ML and its predicate offences (designated categories of offences), including corruption, and TF.

4. Consistent with this objective, Recommendation 12 requires countries to implement measures requiring financial institutions to have appropriate risk management systems in place to determine whether customers or beneficial owners are foreign PEPs, or related or connected to a foreign PEP, and, if so, to take additional measures beyond performing normal customer due diligence (CDD) (as defined in Recommendation 10) to determine if and when they are doing business with them.

5. For domestic PEPs and international organisation PEPs, financial institutions must take reasonable measures to determine whether a customer or beneficial owner is a

¹ See the *2003 FATF 40 Recommendations*: Recommendation 6 (for financial institutions) and Recommendation 12 (for DNFBPs).

² The 2003 FATF Recommendations encouraged countries to extend the requirements to domestic PEPs.

³ The UNCAC is also referred to as the *Mérida Convention*, after the Mexican city where the high level signing Conference was held. The UNCAC was adopted by the United Nations General Assembly in October 2003, and subsequently entered into force in December 2005.

domestic/international organisation PEP, and then assess the risk of the business relationship. For higher risk business relationships with domestic PEPs and international organisation PEPs, financial institutions should take additional measures consistent with those applicable to foreign PEPs.

6. Recommendation 12 applies to financial institutions, and Recommendation 22 requires countries to apply these requirements to DNFBPs.

7. Effective implementation of the PEPs requirements has proven to be challenging for competent authorities, financial institutions and DNFBPs worldwide. This is evident from the results of the assessments of compliance with the *2003 FATF 40 Recommendations*, undertaken by the FATF, FATF-style regional bodies, International Monetary Fund and World Bank.⁴ Implementation challenges have also been identified through publicly available supervisory reports and regulatory actions, and high profile cases of (former) government leaders and their relatives who appeared to have significant assets available abroad which were inconsistent with their official or licit income.

8. It is also important to note that the effective implementation of Recommendations 10, 12 and 22 have to be part of a full and effective implementation of the FATF Recommendations as a whole. See the *Reference Guide and Information Note on the Use of the FATF Recommendations to Support the Fight Against Corruption*.

9. This guidance paper is *non-binding* and should be read in conjunction with FATF Recommendations 12 and 22, and their Interpretive Notes. It is a guidance tool that is based on the experiences of countries, international organisations, the private sector and non-governmental organisations, and which may assist competent authorities and financial institutions and DNFBPs to effectively implement those Recommendations.

II. DEFINITIONS

10. For the purpose of this guidance paper, the definitions set out in the Glossary to the FATF Recommendations apply.⁵ The FATF Glossary definition of *politically exposed person* is meant to have the same meaning as the term *persons with prominent public functions* (as used in UNCAC Article 52).

11. In particular, the following definitions, which do not cover middle ranking or more junior individuals, apply to this guidance paper:

- *Foreign PEPs*: individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

⁴ All FATF Mutual Evaluations are published on the website of the FATF, www.fatf-gafi.org, which also holds links to the websites of the FATF-style regional bodies, the IMF and World Bank. See the assessment of Recommendations 6 and 12 of the *2003 FATF 40 Recommendations* in each of these reports.

⁵ See in particular, the Glossary definitions of: *beneficial owner, competent authorities, country, criminal activity, financial institutions, designated non-financial businesses and professions, international organisations, politically exposed person, reasonable measures, risk, satisfied, should, and supervisors*.

Annex 6

Financial Action Task Force, EMERGING TERRORIST FINANCING RISKS (October 2015)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.



FATF REPORT

Emerging Terrorist Financing Risks

October 2015





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

For more information about the FATF, please visit www.fatf-gafi.org

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Citing reference:

FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris
www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html

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I. INTRODUCTION

PURPOSE, SCOPE AND OBJECTIVES

Combatting the financing of terrorism (CFT) continues to be a priority for the FATF, given the threats posed by terrorist organisations. This threat includes small terrorist cells or individual terrorists capable of committing attacks and significantly harming society. It is therefore important to identify and dismantle the financial networks of all types of terrorist groups. In February 2015, FATF members decided to conduct further research on TF methods and trends. This research is intended to complement FATF's ongoing work to enhance countries' effective and risk-based implementation of the FATF standards on TF.

The main objective of this report is to analyse recently identified TF methods and phenomena, referred to as emerging TF risks. The report will also provide an overview of traditional methods, techniques and tools in which funds are raised, moved and stored by terrorists and terrorist organisations to assess their current significance.

This report analyses the financing activities of a range of terrorist organisations from individual terrorists or small terrorist cells to well-established international networks such as Islamic State of Iraq and Levant (ISIL), Boko Haram and Al-Qaeda and its associates and affiliates. The organisations considered in this report have either been designated by the United Nations (UN) or under national listing regimes.

The report organises the work into distinct sections:

1. financial management of terrorist organisations,
2. overview of traditional TF methods and techniques, and
3. emerging TF risks.

The FATF has coordinated with similar multilateral initiatives, to identify and understand TF risk. Such efforts include working groups recently set up by Counter-ISIL Coalition members that include the Counter-ISIL Finance Group (CIFG) and Foreign Terrorist Fighters Group (FTFG). The Egmont Group of FIUs is, through a multilateral information sharing project, studying financing related to FTFs and the operational abilities of FIUs to effectively share information. In addition, recent work on FTFs has also been done by the UN.

METHODOLOGY, PARTICIPANTS AND DATA UTILISED

This report has been prepared under the co-lead of France and the United States (US) and incorporates input from a wide variety of other delegations within FATF's global network.¹ This paper builds on the FATF report on the *Financing of the Terrorist Organisation Islamic State in Iraq*

¹ Australia, Belgium, Canada, France, Germany, India, Italy, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Turkey, the United Kingdom, the United States, APG (Thailand), ESAAMLG (Kenya), GAFILAT (Peru), GIABA, MENAFATF (Egypt, Jordan, Qatar, Saudi Arabia), MONEYVAL (Israel, Ukraine), the World Bank and the United Nations contributed to this project.

III. TRADITIONAL TERRORIST FINANCING METHODS AND TECHNIQUES

This section outlines the areas of research undertaken by the FATF (and members of its Global Network) on TF methods and risks. While FATF has conducted research on the money laundering risks associated with new payment products and services (NPPS), to include virtual currency, this research has not yet fully addressed TF risks. Therefore, NPPS are addressed in Section IV.C of this report. The key piece of FATF research on TF is the Terrorist Financing Typologies Report published in 2008. Since then, FATF has continued to develop valuable insights on areas of TF concern including abuse of the non-profit sector (NPO)¹¹ and the financing strategies employed by terrorist organisations such as Al-Qaeda and the Taliban,¹² ISIL¹³ and Boko Haram¹⁴. TF risk has also been identified as part of wider studies such as FATF's 2011 report on organised maritime piracy and related kidnapping for ransom.

In general, previous research has shown that terrorist organisations rely on numerous sources of income and that they use a range of methods to move funds, often internationally, to their end point without being detected. Previous reports make it clear that terrorist organisations raise funds through inherently criminal means (for example, drug trafficking) and through legitimate activities (for example, collection of donations). This section is broken down into two main categories on generating revenue and moving funds. The topics within these categories are not organised according to risk and are intended to only provide a general overview.

A. GENERATING REVENUE

PRIVATE DONATIONS

Donations to terrorist organisations can come from a wide-variety of sources. An analysis of TF-related law enforcement cases and prosecutions in the United States since 2001 found that approximately 33% of these cases involved direct financial support from individuals to terrorist networks.¹⁵ There is also a movement for newer terrorist organisations to look for different small-scale sources and Section IV of this report addresses fundraising through social media.

Wealthy private donors can be an important source of income for some terrorist groups. For example, the FATF ISIL report acknowledges that ISIL has received some funding from wealthy private donors in the region. Previous FATF reports have also recognised the important role that sponsors play in sustaining some terrorist organisations.

¹¹ FATF (2014a).

¹² FATF (2013b).

¹³ FATF (2015).

¹⁴ FATF (2013c).

¹⁵ US Department of Treasury (2015), p. 44.

ABUSE AND MISUSE OF NON-PROFIT ORGANISATIONS

Terrorist entities target some non-profit organisations (NPOs) to access materials and funds from these NPOs and to exploit their networks, thus intentionally abusing the NPO. A 2014 FATF study¹⁶ found that the abuse of NPOs, or the risk of unintentional misuse, manifests in five different ways:

- diversion of donations through affiliated individuals to terrorist organisations;
- exploitation of some NPO authorities for the sake of a terrorist organisation;
- abuse of programming/program delivery to support the terrorist organisation;
- support for recruitment into terrorist organisations and
- the creation of ‘false representation and sham NPOs’ through misrepresentation/fraud.

The report found that traditional transnational terrorist organisations, which mainly attempt to exploit some legitimate NPOs or create ‘sham’ NPOs, comprise a large number of the cases demonstrating the threat to the NPO sector.¹⁷

Importantly, the study also found that the NPOs at most risk of terrorist abuse are those engaged in ‘service’ activities which are operating in close proximity to an active terrorist threat.¹⁸ NPOs that send funds to counterpart or ‘correspondent’ NPOs located in or close to where terrorists operate are vulnerable to exploitation. Unless proper due diligence is done on the counterpart NPO with sound auditing of how donated money is used, control over the use of donations can be weak and at risk of diversion to terrorist organisations.

The 2014 FATF NPO Typology report identified ongoing terrorist abuse in the global NPO sector. However, a few jurisdictions noted an increase in the misuse of some NPOs providing humanitarian assistance, either to raise funds, or to move funds to countries neighbouring a crisis zone. While no definitive conclusions can be drawn by these limited examples, according to Australia, charities and NPOs which operate in crises and war zones are at increased risk of being infiltrated and exploited by terrorist groups in these areas. Australia has also advised that funds sent to Syria and neighbouring countries for humanitarian aid are at increased risk of being used for financing terrorism if they are sent through less-established or start-up charities and NPOs that do not have proper due diligence measures/controls in place, according to the cases identified by Australia.¹⁹

¹⁶ FATF (2014a).

¹⁷ FATF (2014a), p. 76.

¹⁸ FATF (2014a), p. 74.

¹⁹ AUSTRAC (2014).

Case study 2: **Diversion of funds collected by a charity**

A client was receiving donations/small amounts of money from different people located in Germany in his account in Switzerland. He informed the bank that he could not open an account for his charity in Germany due to legal restrictions and so he was using his private Swiss banking account for collecting donations. The donations were meant to be withdrawn in cash and brought personally to Tanzania to build a fountain. According to the bank statements different reasons were declared by the donators: “Donation Africa Fountain”, “Donation Streetwork”, “Tansania Orphanage”, “Mosque Building”, “Koran School” etc.

Media reported that the NPO “Africa Fountain” was close to extremists related to terrorism.

Source: Switzerland

Case study 3: **Possible links between FTFs and a charitable foundation**

Netherlands noticed that some *stichtingen* (foundations) and NGO’s, working in the field of e.g., charity and religion, could be linked to FTFs. As of yet there is no hard evidence of TF, but involvement of FTFs in the periphery of these legal entities has been established, and people associated with the foundations have been found to travel to Syria with large amounts of cash.

Donations were received from foreign countries, and then transferred through bank accounts of foundations that did not share similar goals or activities but were chaired by or related to the same individual. Money was eventually withdrawn from bank accounts, which made it hard to trace its end-use.

Source: The Netherlands

PROCEEDS OF CRIMINAL ACTIVITY

Previous FATF reports indicated that terrorist organisations will engage in a variety of illegal activities to generate funds. For example, terrorist organisations engaged in identity theft to raise funds via credit card fraud. Insurance and loan fraud has also featured as a means to raise funds (see insurance fraud case study from Spain below).

Smuggling of goods, including cigarettes, and associated tax fraud have also been identified as fundraising tools for terrorist organisations. Smuggling of cigarettes is an increasing TF threat in some regions such as West Africa. The FATF published a report on the illicit tobacco trade²⁰ which referenced a number of TF threats associated with smuggling. The smuggling and selling of antiquities and cultural artefacts were mentioned in the FATF ISIL report and continues to be of concern in areas where terrorist groups operate and have easy access to antiquities.

Bank robberies have also been identified as a viable option for terrorist organisations to access large sums of money. In addition to the references in the FATF ISIL report, bank robbery was a source of funds for the terrorist organisation Jemaah Islamiah (JI) including in the financing of one of the suspects involved in the 2002 attack in Bali Indonesia. Recently, a Dutch returnee from Syria

²⁰ FATF (2012).

was arrested in possession of firearms. The investigation showed that he was preparing an armed robbery, and he was suspected of planning to use the proceeds to finance terrorism.²¹

An FATF study on the opiate trade in Afghanistan²² found that the multi-million dollar profits of drug trafficking networks have leaked into the funds of terrorist organisations. According to the United Nations Al-Qaeda & Taliban Sanctions Monitoring Team's assessments, out of the total 2011/2012 budget of the Taliban of USD 400 million - one third was raised from the poppy trade.²³ There have also been indications of links between drug trafficking and TF in West Africa, and involving groups, such as FARC and Hezbollah.²⁴ Terrorist organisations can receive revenue from drug trafficking, often permitting or facilitating this activity in areas where the terrorist organisation operates.

There are recent examples of TF involving tax crimes. The FATF ISIL report contains two case studies involving the use of tax refunds to fund FTFs. In other cases this may involve the failure to disclose actual sales made by a business to the tax authorities. These profits were then channelled to fund the terrorist group's activities. In Finland, four Finnish citizens were arrested in October on suspicion of having committed offences including tax fraud in order to finance extremist activities in Syria and Finland.²⁵

A number of delegations increasingly see fundraising through criminal activity. See Section IV on for further examples involving criminal activity involving FTFs. Below are more detailed case studies involving criminal activity through extortion, and kidnapping for ransom.

Case study 4: **Insurance fraud simulating traffic accidents**

Since 2007, members of this plot committed several sporadic frauds to obtain benefits without raising suspicion, such as faking traffic accidents and hiring bogus policies. Compensations provided by insurance companies were quickly withdrawn in cash.

An increase in the number of frauds was observed in 2012, and a chronological overlap was established between the most obvious cases of fraud (involving members of a terrorist cell) and terrorists sent to join terrorist organisations like Movement for Unity and Jihad in West Africa (MUJWA or MUJAO) and ISIL.

It was clear that the individuals needed to obtain funds quickly, because they disregarded the need to keep their operations secret by faking numerous and rough traffic accidents which exposed them to detection.

Source : Spain

²¹ Europol (2015), p.10.

²² FATF (2013b).

²³ United Nations Security Council (2012).

²⁴ FATF (2013c); US Department of Treasury (2015), p.29.

²⁵ Europol (2015), p. 10.

Case study 5: Use of counterfeit currencies for TF

Indian authorities investigated a large criminal conspiracy involving nine persons, including a US citizen and a Canadian citizen who cooperated with members of *Lashkar-E-Taiba* (LeT) and *Harkat-Ul Jihadi Islami* (HUJI), both designated as terrorist organisations by Indian authorities.

On multiple occasions and over a number of years, the defendants would receive legitimate cash (e.g., Euro, US dollars) as well as counterfeit Indian/Pakistan currency from sympathisers of the terrorist organisation. For example, on one occasion the defendant received USD 25 000 to establish an immigration office in Mumbai, which was in fact a cover for his travel and maintenance while carrying out the reconnaissance of potential targets for attacks by LeT. This individual also received sufficient high quality fake Indian counterfeit currency notes for use in India.

The funds were also used to conduct reconnaissance of vital installations in India and Denmark to carry out terrorist attacks on behalf of terrorist organisations LeT and Huji. In addition, funds collected were used to make videos to support future attacks by LeT and Huji.

Source : India

EXTORTING LOCAL AND DIASPORA POPULATIONS AND BUSINESSES

FATF reports have recognised that terrorist organisations extort local populations as a way to sustain their activities. The 2014 report on the Afghan opiates trade suggests that the Taliban uses funds collected from local populations to sustain local operations, whereas donations go to the Taliban Financial Commission that reports to the senior leadership of the Taliban.²⁶ In the same vein, the Kurdistan Workers' Party (PKK) is known to collect funds from extortion and businesses. PKK revenue streams include the so-called taxing of illegal drugs during shipment to Turkey prior to reaching the European markets, protection and arbitration taxes, human trafficking and cigarette smuggling.²⁷ Similarly, ISIL extorts the income of all inhabitants in areas where it operates. The 2014 FATF report noted that Iraqi government employees remaining in ISIL territory travel to Kirkuk and elsewhere to withdraw their salaries in cash, and return to ISIL-held territory where their salaries are then "taxed" by ISIL at rates of up to 50%.²⁸ Furthermore, ISIL has reportedly imposed specific "taxes" on the movement of goods in parts of Iraq where it operates and extorts money from the local population (including "taxes" on customer withdrawals from private banks, fuel and vehicle taxes and school fees for children) or so-called "charitable giving" (soliciting involuntary "donations" to purchase momentary safety or temporary continuity of business). In the past, the Liberation Tigers of Tamil Eelam (LTTE) used extortion on members of the Tamil diaspora who resisted making donations to the organisation – in Canada, average extortion rates for targeted individuals and families were between CAD 2 500 and CAD 5 000, and were often more for business owners.²⁹

²⁶ FATF (2013b).

²⁷ Europol TE-SAT reports (Europol, 2015, 2014, 2013).

²⁸ FATF (2015).

²⁹ Human Rights Watch (2006).

KIDNAPPING FOR RANSOM

Kidnapping for ransom (KFR) is a growing source of revenue for terrorist groups, including ISIL.³⁰ Paid ransoms to terrorist groups are reported to range from EUR 600 000 to EUR 8 million per ransom³¹, with each ransom potentially producing between 5 – 50% of a terrorists group's total annual funding, depending on factors such as the size of the group and the local economic conditions in the geographic region of operations. The US government estimates that, between 2008 and 2014, terrorists including al-Qa'ida, ISIL, and both groups' affiliates and allies, generated at least USD 222 million in ransom payments.

A Counter-ISIL Finance Group Kidnapping for Ransom Communiqué was issued on 13 May 2015 based on United Nations Security Council resolutions 2133 (2014), 2161 (2014) and most recently 2199 (2015).³² In addition to all cooperative efforts to prevent kidnappings, the Communiqué calls on jurisdictions to deny kidnappers the benefits of their crimes, and bring them to justice. These messages are also highlighted by the Global Counterterrorism Forum (GCTF) in the Algiers Memorandum on Good Practices on Preventing and Denying the Benefits of Kidnapping for Ransom by Terrorists.³³

While there is no standard template for KFR, specific groups which have been listed by the UN and other entities have engaged in KFR. This includes but is not limited to: The Organisation of Al-Qaida in the Islamic Maghreb (AQIM), Abu Sayyaf Group (ASG), Al Qaeda in the Arabian Peninsula (AQAP), ISIL³⁴, Harakat-Ul-Ansar (HUA), as well as several terrorist groups in Pakistan.³⁵

Cash often plays a significant role in KFR. Following the delivery of a ransom payment in physical cash, cash couriers move the cash to the terrorist group.³⁶ Ransom payments can also be paid through financial institutions, such as banks, exchange houses, insurance companies, lawyers, or alternative remittance systems such as hawalas.³⁷ Following the trail of funds is further complicated by the fact that a kidnapping can occur in one jurisdiction and the ransom payment be made in another.³⁸ There have also been examples of funds which have been raised by relatives (on behalf of the victim), through the sale of assets and loans, and through the use of trusts to store the donation for a ransom payment.

³⁰ FATF (2011), p 26.

³¹ FATF (2011), p 28 and 31.

³² US Department of State (2015).

³³ CGTF (nd).

³⁴ FATF (2015a).

³⁵ FATF (2011).

³⁶ FATF (2011), p 33.

³⁷ FATF (2011), p 26.

³⁸ FATF (2011), p 26.

Self-funding

Previous FATF reports have recognised that the amounts of money needed to fund small attacks can be raised by individual terrorists and their support networks using savings, access to credit or the proceeds of businesses under their control. The FATF's ISIL report provides a description of different self-funding techniques used primarily by foreign terrorist fighters (FTFs). See Section IV for further information on self-funding by FTFs.

LEGITIMATE COMMERCIAL ENTERPRISE

Several law enforcement investigations and prosecutions have found a nexus between a commercial enterprise, including used car dealerships and restaurant franchises, and terrorist organisations, where revenue from the commercial enterprise was being routed to support a terrorist organisation. One case involved the shipment of used cars to Western Africa. The shipment of cars to the Middle East is considered as another fund raising scheme for a particular terrorist organisation. According to an Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) member, used car dealerships imported cars from countries such as the United Kingdom, Japan and Singapore and generated revenue from the sale of these cars as part of a complex money laundering scheme, which was then funnelled to terrorist groups. The owners of those car dealerships were from areas with a high risk of terrorism.

Case study 6: Trade based financing of terrorism

Following the designation of company A as an unauthorised association in Israel, the company was not able to import goods through Israeli ports. Despite these restrictions, company B, a local company that imports and markets basic food products, cooperated with company A to circumvent these limitations. Company B first imported goods into Israel and then an accomplice, company C, released the goods from the port and stored them. Later, company B transferred the goods to company A in a high-risk territory for TF. As part of the settling of accounts, company A transferred funds from its accounts to company B. The value of the goods and transfers was estimated at several million in Israeli new shekel (NIS).

Source: Israel

Case study 7: Terrorist funds sent through a front telecommunication enterprise

In a few months, the bank account of a company A, a telecommunications enterprise, collected more than EUR 600 000 in cash. This company received large amounts of transfers, with no economic purpose, from different legitimate French companies from various economic sectors, but whose managers were originally from the same foreign country X. Some of them were suspected to have links with a terrorist organisation. EUR 500 000 was sent by the company A to a parent company B in the country X.

Source: France

STATE SPONSORSHIP OF TERRORISM

A variety of publicly-available sources and national governments have claimed that certain terrorist groups have been, and continue to be, financially supported by a number of national governments. While the FATF has not developed a typology specific to state sponsored terrorism, the funding of terrorism, or the resourcing of a terrorist entity, by any state, is incompatible with adherence to FATF standards and principles, as well as the International Convention for the Suppression of the Financing of Terrorism, and paragraphs 1(a) and 2(a) of United Nations Security Council Resolution 1373 (2001). The possibility that states may choose to provide financial support to terrorist organisations is a longstanding terrorist financing threat to international peace and security, as well as to the stability of regional financial and political systems, and fundamentally undermines the effectiveness of FATF activities that are intended to support governments in adopting best practices to detect, deter, and otherwise disrupt terrorist financing.

B. MOVEMENT OF FUNDS

The following is a short summary of the key mechanisms used to move terrorist assets. All financial institutions used to move funds are potentially vulnerable to TF by facilitating illicit fund transfers.³⁹ Previous FATF studies have shown linkages between local extremist groups and international terrorist organisations, with the international groups providing support to the local groups and therefore requiring the movement of funds internationally.⁴⁰ For the time being, ISIL appears to be an exception as it generates most of its funding within the territory where it operates and receives a relatively small amount of its revenue from external sources.

FUNDS TRANSFERS THROUGH BANKS

The banking sector continues to be the most reliable and efficient way to move funds internationally, and remains vulnerable to TF. The 2014 Afghan drugs trafficking report noted that the Taliban are believed to have used the regulated banking system (as well as money service businesses) to move the proceeds from drug trafficking. Several FATF reports have referred specially to the use of the bank accounts of NPOs to move funds to terrorist organisations.⁴¹

³⁹ The FATF Recommendations do not predetermine any sector as higher risk. The standards identify sectors that may be vulnerable to ML/TF however the overall risk should be determined through an assessment of the sector. Different entities within a sector will pose higher or lower risk depending on a variety of risk including products, services, customers, and geography.

⁴⁰ FATF (2013c).

⁴¹ FATF (2013c), p 33; FATF (2014a).

Annex 7

*Aeroport Belbek LLC and Mr. Igor Valerievich Kolomoisky v. The Russian Federation,
PCA Case No. 2015-07, Press Release of 6 January 2016*



PCA PRESS RELEASE

ARBITRATION BETWEEN AEROPORT BELBEK LLC AND MR. IGOR VALERIEVICH KOLOMOISKY AS CLAIMANTS AND THE RUSSIAN FEDERATION

THE HAGUE, 6 JANUARY 2016

UNCITRAL Arbitration Commenced under the Ukraine-Russia Bilateral Investment Treaty; Russian Federation Raises Objection and Fails to Submit a Statement of Defense; Tribunal Decides to Proceed and Bifurcate

On 9 January 2015, arbitral proceedings were commenced by Aeroport Belbek LLC and Mr. Igor Valerievich Kolomoisky against the Russian Federation pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments, dated 27 November 1998 ("Ukraine-Russia BIT"), under the UNCITRAL Arbitration Rules 1976 ("UNCITRAL Rules").

In the Notice of Arbitration, the Claimants claim that the Russian Federation breached its obligations under the Ukraine-Russia BIT by taking measures, as of February 2014 that deprived the Claimants of their property, contractual and other rights to operate a passenger terminal for commercial flights at the Belbek International Airport in Crimea.

The Tribunal was constituted on 15 April 2015. It is comprised of Professor Pierre Marie-Dupuy (Presiding Arbitrator), Sir Daniel Bethlehem, KCMG, QC (appointed by the Claimants), and Dr. Václav Mikulka (appointed by the former appointing authority, Judge Bruno Simma, on behalf of the Respondent).

Following consultation with the Parties, on 20 May 2015, the Tribunal issued a first Procedural Order in which the Permanent Court of Arbitration ("PCA") was appointed as registry. On the same date, the Tribunal issued Rules of Procedure in which, *inter alia*, the procedural timetable was fixed.

The Russian Federation has not appointed any representatives. By letters dated 16 June 2015 and 1 July 2015 (received by the PCA on 2 July 2015), the Russian Federation indicated, *inter alia*, that the "[Ukraine-Russia BIT] cannot serve as a basis for composing an arbitral tribunal to settle [the Claimants' claims]" and that it "does not recognize the jurisdiction of an international arbitral tribunal at the [PCA] in settlement of the [Claimants' claims]." It also stated that nothing in its correspondence "should be considered as consent of the Russian Federation to constitution of an arbitral tribunal, participation in arbitral proceedings, or as procedural actions taken in the framework of the proceedings."

On 6 July 2015, the Tribunal informed the Parties that it considered the content of the Respondent's correspondence to constitute an objection to the jurisdiction of the Tribunal and the admissibility of the Claimants' claims under Article 21 of the UNCITRAL Rules.

On 30 June 2015, the Claimants filed their Statement of Claim. The Respondent failed to submit a Statement of Defense by 30 September 2015, the deadline fixed in the Rules of Procedure. On 30 October 2015, the Tribunal ordered, pursuant to Article 28(1) of the UNCITRAL Rules, that these proceedings would continue notwithstanding the Respondent's failure to communicate a Statement of Defense.

Having afforded the Parties an opportunity to be heard, on November 30, 2015, the Tribunal decided to proceed on the basis of a bifurcated proceeding that would address issues of jurisdiction and admissibility in a preliminary procedure.

A modified procedural timetable has been notified to the Parties. As foreseen in the timetable, the Tribunal posed questions to the Parties on 18 December 2015. Answers to the Tribunal's questions are due by 29 February 2016. Hearing dates for the preliminary procedure have yet to be fixed.

Under the instructions of the Tribunal, the PCA will issue press releases from time to time containing information on the procedural steps taken by the Tribunal. Basic information about the proceedings is available on the PCA Case Repository <http://www.pcacases.com>.

* * *

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org

Annex 8

International Civil Aviation Organization, Minutes, International Conference on Air Law, Montreal, September 1971, Fourth Meeting of the Commission of the Whole, contained in Vol. 1 Doc 9081-LC/170-1 (1971)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Doc 9081-LC/170-1

INTERNATIONAL CIVIL AVIATION ORGANIZATION
"Document"]

**INTERNATIONAL CONFERENCE
ON AIR LAW**

Montreal, September 1971

**Volume I
MINUTES**

1973

MONTREAL

CANADA

FOURTH MEETING OF THE COMMISSION OF THE WHOLE

(Friday, 10 September 1971 at 1430 hours)

President: Dr. W. Guldemann

AGENDA ITEM 9: CONSIDERATION OF THE DRAFT CONVENTION

Article 1, paragraph (6) (Continuation of discussion)

1. In response to a query by the Delegate of Canada, the President confirmed that he understood the phrase "likely to" to have exactly the same meaning as "of such a nature as to".
2. The Delegate of Japan proposed that paragraph (6) be amended to make it clear that "intentionally" qualified not only the placing of the device or substance on board, but also the causing of destruction or serious damage.
3. The Delegate of Jamaica wondered whether there was a conflict between this paragraph and Article 35 of the Chicago Convention, which sought to regulate certain types of instrument that might be carried aboard an aircraft over the territory of another State. It was well known that certain types of aircraft were allowed to carry explosive devices which by their very nature were likely to cause damage, and all national legislations specified under what circumstances such devices fell within the purview of Article 35. His Delegation would not oppose inclusion of paragraph (6), however, because it was intended to lend further emphasis to the type of offence which this convention was meant to combat.
4. Replying to a question by the Delegate of Israel, as to whether the expression "places in an aircraft" covered also causing someone else to place the device or substance in question, the President believed that this was a matter for decision by the Conference; it could, he suggested, be taken up later. If it was decided that aspect should be covered, he foresaw no difficulty in developing appropriate wording.
5. The Delegate of the Union of Soviet Socialist Republics supported inclusion of paragraph (6), which might, however, require some redrafting to take account of the points raised by previous speakers. He could not agree with the Delegate of France that the paragraph was superfluous, the issue being covered by paragraphs (2) and (3). The latter paragraphs were concerned directly with the damage or destruction of the aircraft, whereas paragraph (6) was related to the actual placing on board the aircraft of some device or substance capable of damaging or destroying it. That act alone, which automatically had an influence on the safety of the flight, should constitute an offence.

25. The Delegate of France shared the view of the Delegate of Spain (which had been underlined in the comments of the Secretary) that no hasty decision should be taken on this complex question. There certainly seemed to be an extension of the scope of the convention involved in the various proposals, and he personally would be reluctant to express an opinion on the question without further clarification of the intentions of the different sponsors.

26. The President agreed it would be wiser to delay any decision until the whole issue had been examined in greater depth. He wondered whether it would be possible for the Working Group on Article 1 to give the matter the necessary detailed study. Commenting on a suggestion by the Delegate of the Socialist Federal Republic of Yugoslavia that a special working group be set up to deal with this question, the President pointed out that while that would have the advantage that the group could devote its full time to the one aspect, it would mean a certain amount of duplication of effort in the two bodies. It could also result in divergent recommendations. He confirmed, in answer to a query by the Delegate of France, that in any case there was as yet no commitment on the part of the Commission to include a paragraph of this nature.

27. The Delegate of Spain tended to the view that it would be better to have only one group dealing with the different aspects of Article 1, believing that the fate of the proposals now under discussion would have certain implications for the rest of the Article. The President suggested that the answer might be to invite the Working Group on Article 1, when established, to set up a sub-group to study this particular issue.

28. After a brief exchange between the Chairman and the Secretary on administrative details concerning the holding of meetings of two bodies over the weekend, the Commission agreed to refer to the Working Group on Article 1 the USSR proposal in CUI Doc No. 25 (with the reference to interruption of service deleted), together with the complementary proposals of the United Kingdom, United States of America and Belgium, and the ITF submission in CUI Doc No. 21.

Other Proposals for Additions to Article 1

29. In the absence of support for a suggestion by the Delegate of Israel that Article 1 should encompass also a) attacks against passengers and crew in an airport on their way to and from an international flight, and b) cases of armed attacks against officers of international airlines, the suggestion was not pressed.

30. The International Federation of Airline Pilots Associations (IFALPA) Observer referred to his Federation's proposal in CUI Doc No. 19 that the carriage of a deadly or dangerous weapon on board an aircraft, without the express consent of the carrier or his representative, should be included as an offence under Article 1. That question had been discussed at great length during the Legal Committee's 18th Session, and when voted upon had been lost by a tie vote. IFALPA was raising the matter again in the hope that some of the Delegates who had supported inclusion of such a paragraph at that Session would succeed this time in having their view carried.

31. The Delegates of the Kingdom of the Netherlands and Israel seconded the IFALPA proposal, while the Delegate of France expressed his Delegation's fundamental opposition to inclusion of such a clause.

32. The Commission rejected the IFALPA proposal by a vote of 4 for, 18 against with 16 abstentions.

Article 1, paragraph (7)

33. The Delegates of Jamaica and Ceylon recalled the doubts they had expressed at the previous meeting about the implications for paragraph (7) of the Commission's actions on paragraph (4). Because he was still convinced that the intention to cause damage or to endanger the safety of an aircraft in flight should in itself constitute an offence, the Delegate of Ceylon proposed a) that the word "other" be deleted from the first line of paragraph (7), and b) that the following additional clause be inserted either before or after that paragraph:

"intentionally commits any other act or omission which endangers the safety of aircraft in flight, whatever his intention may be; or".

34. The President believed that it would be within the terms of reference of the Working Group on Article 1 to examine this question, to draw to the Commission's attention any doubts or contradictions that might exist, and to propose remedies for them. Delegates should, however, remember that the Commission had not yet adopted the principle embodied in paragraph (7). The Secretary suggested that it would be more appropriate for the Commission, rather than a Working Group, to pronounce on the fundamental legal question whether a mere intention should itself be punishable as a serious crime, quite apart from the fact that an illegal act or omission may or may not be committed.

35. The Delegate of France recognized that the Delegate of Ceylon's proposal represented an improvement on the Legal Committee's draft, in that it made the convention applicable to everything that anyone could imagine should be covered - acts or intentions. Unfortunately, his Delegation believed that the paragraph (either as drafted by the Legal Committee or as amended by the Delegate of Ceylon) was too vague to be included in the convention. In his opinion it would be extremely difficult to translate such a paragraph into national legislation, in order not only to define the offences to be punished and the penalties to be applied, but more important to apply the quasi-universal jurisdiction envisaged in Article 4. He would accordingly propose deletion of paragraph (7).

36. The Delegates of the United States of America and Austria seconded this proposal, the latter recalling that it was an essential principle in Continental European Law that a penal law must be so worded as to leave no doubt whatsoever as to what acts are punishable and which are not. He did not believe that a law enacted within the framework of paragraph (7) could meet this criterion.

37. The proposal to delete paragraph (7) was adopted by a vote of 26 in favour, 7 against with 13 abstentions.

38. The Delegate of the Czechoslovak Socialist Republic suggested that, before it proceeded to discuss paragraphs (8) and (9), the Commission should decide the scope of the convention as regards the persons committing the offence defined in Article 1. The acts or omissions listed might be perpetrated by an employee of a State or airport authority or, for example, by someone entrusted with the regulation of air navigation safety. In such a case, his Delegation believed that the convention should provide that the authority concerned must also bear responsibility for the act or omission in question. The Secretary indicated that the Secretariat had intended to draw to the attention of the Drafting Committee the difficulty of interpreting the term "or omissions" in this Article, and to suggest that the terminology "an act or a failure to perform a legal duty" might better express what was intended. The President felt that while the proposed rewording would meet one element of the question raised by the Czechoslovak Delegate it would still leave unanswered the situation of a person falling within the ambit of a State authority. That point might perhaps be covered by means of an exclusion in Article 4.

39. There was no proposal for amendment advanced, and the matter was not pursued further.

Article 1, paragraph (8)

40. The Delegate of Indonesia referred the Commission to his Delegation's submission in CUI Doc No. 30. While his Government believed that attempts and conspiracies should be punishable by severe penalties, it felt that a different degree of gravity should attach to such offences. He was not in a position to propose precise wording to cover this thought, but would welcome the views of other Delegations on the question.

41. The Delegate of Ceylon proposed, seconded by the Delegates of Israel and Italy, that paragraph (8) be extended to include the concept of instigation. The Delegate of Ceylon indicated that he could not agree with the Secretary's view that one who instigated another to commit a crime would come within the definition of an accomplice. A distinction between the two was recognized in various legal systems.

42. The Commission rejected the proposal of the Delegate of Ceylon by a vote of 5 for, 11 against, with 22 abstentions.

43. The Delegate of Japan proposed the deletion from paragraph (8) of the concept of conspiracy. The Delegates of Italy, France, Austria and Belgium all supported that proposal, principally on the grounds that under their national legislations simple conspiracy to commit a crime did not constitute a punishable offence. It would be extremely difficult for those States to accept a convention that would have the effect of obliging them to change their national penal codes. The Delegate of France added that the remaining elements in paragraphs (8) and (9) - namely, attempts and complicity - should be covered, but that no attempt should be made to define them. These were matters of national law, and national laws varied so much as to make achievement of acceptable definitions most unlikely. The Delegate of Austria reiterated the opinion of his Delegation that the draft convention should be aligned as closely as possible to the Hague Convention. This was a perfect opportunity to do so, and he would formally propose that the corresponding text of the Hague Convention (possibly with very minor drafting amendments) be substituted for paragraph (8) in CUI Doc No. 4.

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44. The Delegate of the United States of America emphasized that the crime of conspiracy was an important element of his country's juridical tradition. He believed this was true also of a significant number of States who would become parties to the convention now under discussion. According to United States law, a conspiracy - i.e., the agreement of two or more persons to commit a criminal act, which was followed by the commission of an overt act in furtherance of that conspiracy by at least one of the co-conspirators - was as grave a crime as was the actual commission of the overt act. He believed it was particularly appropriate to include such an offence in this convention, because in the experience of his Government acts of sabotage, of serious and extensive interference with international civil aviation, were frequently if not generally born of a conspiracy or an agreement to commit those acts. Recognizing, however, that the United States views and juridical traditions were not shared by a number of States, his Delegation would offer alternative proposals which it hoped would overcome the problems that had been raised. He called attention to the last sentence of paragraph 3 of the Swiss submission in CUI Doc No. 8, relating to conspiracy, where reference was made to the possibility of finding a solution through Article 36, Section 2 of the Narcotics Convention of 30 March 1961. If the Commission for good and sufficient reasons found itself unable to accept, even as a working hypothesis inclusion of the concept of conspiracy in Article 1, his Delegation would propose as a first alternative that the term "preparatory acts" appearing in Article 36 be substituted for the reference to conspiracy. While the resulting language would not be as precise for purposes of United States law, it would nevertheless cover for those purposes the basic elements of the concept of conspiracy. A second alternative would be to insert in paragraph (8) an introductory phrase such as that appearing in Article 36 - "subject to the constitutional limitations of a Party, its legal system and domestic law". Again, acceptance of that proposal would permit the crime of conspiracy to be included in the offences covered by the convention, at least in the case of those States party to the convention whose domestic law recognized conspiracy as a crime.

45. The Delegates of the Union of Soviet Socialist Republics and of Spain supported retention in Article 1 of the concept of conspiracy, and both welcomed the alternatives proposed by the United States as a possible means of reaching a compromise. The latter indicated that under Spanish law simple conspiracy to commit a crime was punishable in the same way as were attempts. He appreciated the difficulty facing some States if conspiracy were included as an offence. He would emphasize, however, that States which did consider conspiracy a crime would face equal difficulties if the concept were omitted.

46. The Delegate of France argued that inclusion of conspiracy in the convention would imply that all signatory States would be obliged to repress conspiracy, to establish their jurisdiction to deal with it, and to apply the other convention provisions (prosecution, extradition, etc.) in cases of conspiracy. For those like France, where conspiracy was not a punishable offence, this would be a significant innovation. On the other hand, if the concept were excluded nothing would prevent those signatory States that did consider conspiracy a crime from applying their legislation to punish conspiracy as they understood it. In other words, the so-called compromise was no compromise at all and his Delegation must press strongly for deletion of the words "or conspires" from paragraph (8).

47. The Delegate of the United Kingdom believed that the concept of conspiracy should be maintained in the convention, at least for those States that had that concept in their national laws, because it should be made possible to apply the jurisdiction and extradition provisions of the convention to such crimes in cases where both States concerned had the necessary legislation. However, his Delegation could not accept the first alternative suggested by the United States of America, believing that the term "preparatory acts" could involve some acts which were too remote, too preparatory, to come under the convention.

48. The Delegate of the United States of America assured the Delegate of France that the alternative proposals put forward by his Delegation would not require any State party to the prospective convention to create in its own law a crime of conspiracy where none existed at present. Their sole purpose was to permit those States which did have that concept to regard crimes of conspiracy as crimes covered by the convention - thus permitting them to apply subsequent articles involving prosecution, extradition, etc.

49. The proposal to delete "or conspires" from paragraph (8) was rejected by a vote of 14 for, 26 against, with 9 abstentions.

50. The President having indicated his intention to call for a vote on the question whether the concept of conspiracy could be replaced by an approach borrowed from the 1961 Narcotics Convention, the Delegate of the United States of America argued on a point of order that the Commission did not in fact have before it a proposal to that effect. A lengthy procedural discussion followed, in which the Delegates of the Kingdom of the Netherlands, Switzerland, Denmark, Jamaica and Brazil participated. It culminated in a decision by the Commission to leave the question open until the afternoon of 13 September, a small working group (composed of members of the Delegations of France, Jamaica, Switzerland and the United States of America) being asked to prepare a text along the lines of the precedent established in the Narcotics Convention.

Article 1, paragraph (9)

51. The Delegate of Indonesia called attention once again to CUI Doc No. 30, in paragraph 3 of which was to be found a proposal regarding paragraph (9). The President felt that the proposal was one of drafting rather than of substance, and that the Drafting Committee could be asked to examine it.

52. It was so agreed.

53. The Delegate of Ceylon referred to the Secretary's earlier suggestion (para. 41 above) that an instigator would fall under the definition of an accomplice. As he understood it, where two or more persons played an equally important role and shared the same intention in committing an act, they were accomplices. Where, however, one individual incited another, usually subordinate to him or under his influence, to commit an offence, the former was considered the instigator of that offence. He wondered whether the Legal Committee had given any thought to this in developing paragraph (9).

54. The Delegate of Jamaica called attention to the fact that, with the earlier decision to delete paragraph (7), the only previous reference in Article 1 to omissions had disappeared. It was true that the Legal Committee at its 18th Session had taken a deliberate decision to include the reference to omissions, on the basis that some acts of omission could not be construed as acts as such. As Article 1 was now framed, however, the only reference to omissions was to be found in this paragraph (9) relating to accomplices. It would, he suggested, be necessary for the Drafting Committee to bear this point in mind in preparing the final text of the Article.

Other Proposals Regarding Article 1

55. The Delegate of Kenya, noting that there was no provision in the Hague Convention dealing with the case of a person conspiring unlawfully to seize an aircraft, wondered whether it would not be possible to include that offence under the present convention. The President having suggested that Article 1(b) of the Hague Convention actually covered the point, the Delegate of Kenya pointed out that that paragraph referred to an accomplice on board the aircraft in flight. He had been thinking rather of persons who might be conspiring to seize an aircraft at a later date. The Secretary recalled that the Legal Committee, in preparing the draft of what eventually became the Hague Convention, took a deliberate decision not to include within the scope of that Convention a person who was not on board the hijacked aircraft but who was an accomplice within the normal interpretation of that term. In so deciding it had taken into account views expressed in the United Nations General Assembly. In the light of this explanation, the matter was not pressed.

Appointment of Working Group on Article 1

56. The Commission having authorized the President to do so, he appointed a Working Group on Article 1 composed of the following Delegations:

Argentina, Canada, People's Republic of the Congo,
Finland, France, Jamaica, Japan, Kingdom of the Netherlands,
Lebanon, Romania, Spain, Union of Soviet Socialist Republics,
United Kingdom, United States of America.

Professor W. Riphagen (Kingdom of the Netherlands) was asked to act as Chairman of the Working Group pending the election of its Chairman. The Working Group would meet on 11 September at 0930 hours and, if necessary, on 13 September at 0930 hours.

57. It was understood that the Working Group would be free to take into account also Article 2, and that it would give consideration to the question raised earlier by the Delegate of Israel as to whether the words "places devices" appearing in Article 1, paragraph 6, covered also the causing of someone else to place the device or substance in question.

(The meeting adjourned at 1740 hours)

Annex 9

International Maritime Organization, *Report of the Ad Hoc Preparatory Committee on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, IMO Doc. PCUA 2/5 (18–22 May 1987)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.



AD HOC PREPARATORY COMMITTEE
ON THE SUPPRESSION OF UNLAWFUL
ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION
2nd session
Rome, 18-22 May 1987
Agenda item 3

IMO

REPORT OF THE SECOND SESSION

INTRODUCTION

1 The Ad Hoc Preparatory Committee, held its second session at FAO Headquarters in Rome at the kind invitation of the Government of Italy from 18 to 22 May 1987.

2 The following Members of IMO were represented by delegations at the session:

| | |
|------------------------------|----------------|
| ALGERIA | IRELAND |
| ARGENTINA | ISRAEL |
| AUSTRALIA | ITALY |
| AUSTRIA | JAPAN |
| BELGIUM | KUWAIT |
| BRAZIL | LIBERIA |
| BULGARIA | MEXICO |
| CAMEROON | NETHERLANDS |
| CANADA | NEW ZEALAND |
| CHILE | NIGERIA |
| CHINA | NORWAY |
| CYPRUS | POLAND |
| DENMARK | SAUDI ARABIA |
| ECUADOR | SPAIN |
| EGYPT | SWEDEN |
| FINLAND | SWITZERLAND |
| FRANCE | THAILAND |
| GERMAN DEMOCRATIC REPUBLIC | TURKEY |
| GERMANY, FEDERAL REPUBLIC OF | USSR |
| GHANA | UNITED KINGDOM |
| GREECE | UNITED STATES |
| INDIA | ZAIRE |

3 The Associate Member, Hong Kong, was represented.

4 Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Tourism Organization (WTO) participated in the session.

5 Observers of the following intergovernmental organizations took part in the session:

COMMISSION OF THE EUROPEAN COMMUNITIES (EEC)
ARAB FEDERATION OF SHIPPING (AFOS)

6 Observers from the following non-governmental organizations in consultative status participated in the session:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL CHAMBER OF COMMERCE (ICC)

ADOPTION OF THE AGENDA (agenda item 1)

7 The Committee adopted the provisional agenda contained in document PCUA 2/1.

CONSIDERATION OF THE DRAFT CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, IN ACCORDANCE WITH THE DECISION OF THE COUNCIL (agenda item 2)

Introduction

8 The Ad Hoc Preparatory Committee took as a basis for its work the revised text of the draft Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation submitted by the Governments of Austria, Egypt and Italy in document PCUA 2/2. In introducing the document on behalf of the co-sponsors, the representative of Italy explained that the new text, which had been prepared in response to the request of the first session of the Committee, was in no way intended to suppress any of the proposals made at that session which had not been included in the draft. Rather, the draft was

merely a reflection of the co-sponsors' perception of the proposals for changes to the original text that seemed to have commanded wide agreement at the first session. In elaborating the new draft, the co-sponsors had endeavoured to identify and take up those solutions which seemed to have been widely supported or, at least, not strongly opposed and which, at the same time, had seemed to them to be most consistent with the purpose and aims of the Convention.

9 At the suggestion of the Chairman, the Committee agreed to have a second reading of the articles in respect of which substantial differences of opinion had emerged during the first session of the Committee. The Committee also decided to entrust to an informal Drafting Group consideration of a number of draft articles which had not given rise to major discussions or in respect of which a wide measure of agreement had been reached in the course of the first session. The articles entrusted to the Drafting Group were the following: 9, 11, 12, 15, 16, 17, 18 and 19.^{1/} The remaining articles were referred to this Group after discussion in the Committee.

10 The text of these draft articles as elaborated by the Drafting Group and agreed by the Committee have been incorporated in the draft Convention which is contained in annex 1 to this report.

11 The Committee agreed by means of an indicative vote (21 votes in favour, 3 votes against and 15 abstentions) to deal also with the question of fixed platforms. By a vote of 29 in favour and 7 against, the Committee decided that the question of fixed platforms should not be dealt with in the Convention, but in an optional Protocol supplementary to the Convention. The text of the draft Protocol, as approved by the Committee and prepared by the Drafting Group, is contained in annex 2 to this report.

12 The Committee considered that it had concluded its work in accordance with the mandate assigned to it by the Council and decided to transmit the draft Convention and the draft Protocol together with observations recorded in the following paragraphs of this report to the Council for its consideration and appropriate action.

^{1/} These articles have been renumbered in the draft Convention in annex 1 as articles 12, 14, 15, 17, 18, 19, 21 and 22.

13 In respect of the articles of the draft Convention and the draft Protocol examined by the Committee, the following observations were made and conclusions reached.

Article 1

14 There was general support for the substance of article 1.

15 In response to a query regarding the use of the expression "dynamically supported craft", it was recalled that it had been agreed at the first session to use this term as it was more modern and more comprehensive than the expression "hydrofoil boats and air-cushion vehicles", which was in the original draft.

16 Noting that article 1 of the draft Protocol contained in PCUA 2/2 referred to fixed platforms as being "anchored to the sea bed", some delegations pointed out that there might be a possible discrepancy between that wording and the wording in article 1 of the draft Convention which referred to "floating craft not permanently attached to the sea bed". It was suggested that further consideration be given to the matter in order to avoid any gap or conflict as a result of the use of the different expressions.

17 One delegation inquired in this context whether the Convention would apply in respect of a platform which was destined to be permanently attached to the sea-bed but which, while being towed to its permanent site, was forced to anchor temporarily.

18 It was suggested that the possible confusion could be eliminated if the words "not permanently attached to the sea-bed" were deleted, or given further consideration by a drafting group at a later stage.

19 Some delegations reiterated their preference for including fixed platforms in the Convention itself.

20 In this connection, the Committee noted the wish of the French-speaking delegations that the term "vessel" in French should be "bâtiment de mer". The Drafting Group was requested to examine the matter and deal with it as appropriate.

63 In the light of these observations and a number of comments on the wording of various provisions, the Committee decided to refer the text of articles 3 and X to the Drafting Group. The draft text agreed by the Committee for article 3 is incorporated in the draft Convention in annex 1 as article 4. The text agreed for article X is in the draft Convention as article 5.

64 Two delegations reserved their positions on article 3 and article X until they had examined the matter further.

Article 2 (article 3 in annex 1)

65 The Committee considered a proposal by the delegation of Kuwait for the inclusion in the Convention of a provision that it would also apply to a person who commits an offence acting on behalf of a Government. In introducing his proposal, the delegation of Kuwait explained that the aim of the proposal was the suppression of politically motivated unlawful acts which constituted an outrage to humanity, regardless of the official or unofficial status of the perpetrators of such crimes. The delegation explained that the principle of the proposal was already included in the draft preamble which referred to the prevention of all unlawful acts and to terrorism in all its forms. The delegation stated that the proposal did not constitute a novel or alarming approach in international law. In this connection, it noted that the International Military Tribunal at Nuremberg had rejected the submission that those who carry out acts of State are not personally responsible because they are protected by the doctrine of the sovereignty of the State. The delegation emphasized that its proposal did not affect State responsibility as it was concerned only with personal responsibility, and it did not see that any serious objections could be raised to the proposal from a legal point of view. All that was needed was the political will to accept the proposal.

66 Many delegations expressed support for the basic principle underlying the proposal of the Kuwaiti delegation, and they agreed that the Convention was indeed intended to apply to all forms of terrorism, regardless of who the offender or instigator might be. However most of these delegations questioned the need for a specific provision in this respect in the Convention. They noted that the opening phrase of paragraph 1 clearly referred to "any person" without qualification and that this applied to any person whether such person was acting on his or her own, or on behalf of another person or entity.

Reference was also made to the relevant provision of the preamble which was also broadly and unambiguously worded, and also to the requirement that the person act "unlawfully and intentionally". Several of these delegations, moreover, feared that inclusion of an express reference to Governments in this Convention could create complications for the interpretation of similar existing conventions such as the Montreal and Tokyo Conventions which did not contain a specific clause either.

67 A number of delegations, however, expressed their preference for an express provision in the Convention to make it clear that any unlawful act even if undertaken on behalf of a Government or other persons, natural or juridical, would be an offence under the Convention.

68 It was also feared by some delegations that the inclusion of such a provision might make the Convention less acceptable to some States. The Committee took note of the suggestion that the matter involved a question of a political nature which would not be resolved at this stage. It was therefore agreed that it would be left for consideration at the diplomatic conference.

69 In respect of paragraph 1(a) some delegations proposed to reinsert a reference to "any other form of intimidation" which had been in the original draft proposed by the co-sponsors. It was suggested that this expression should be reintroduced into the text to maintain the right parallelism with subparagraph (a) of article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.

70 In respect of paragraph 1(b) and (c), the Committee was invited by several delegations to delete references to the threat of committing an unlawful act. Some delegations noted, in this context, that positions on this might be dependent on the legal system under which the question was being viewed. Several delegations were in favour of including a reference to threat in the draft Convention. A number of these delegations which were in favour of maintaining the reference to "threats", suggested that the reference would be better in paragraph 2 rather than in paragraph 1. In this way, threat would be dealt with in the same way as "attempt". Other delegations, noting, inter alia, that the Montreal Convention did not make reference to threat suggested that the concept be deleted from the draft Convention. The Committee decided by an informal indication of preferences, to retain the reference to threats in a new subparagraph (c) of paragraph 2.

71 A number of delegations expressed doubt about the appropriateness of the term "likely to endanger the safety of navigation". Some delegations supported a proposal to replace this expression by the words "could affect the safe navigation of the ship" or "could endanger the safety of the ship". One delegation suggested the addition of a reference to "sea worthiness" in subparagraph (c). Some delegations suggested that the words "which is likely to endanger the safety of navigation" be deleted from subparagraph (c). The suggestion was made that, if such a deletion were made, it would be necessary to add the word "serious" before damage in order to narrow the scope of the provision appropriately. One delegation proposed to include a reference both to the safety of the ship and the safety of navigation.

72 Some delegations proposed the deletion of paragraph 1(d) since it was, in their view, superfluous. Other delegations, however, were in favour of retaining it, possibly in a redrafted form.

73 A number of delegations noted that a number of provisions which had been contained in the original submission of the co-sponsors and which had been redrafted by the informal Working Group during the first session (in document PCUA 1/4, annex) had not been included by the co-sponsors in their revised draft. Particular reference was made in this context to the provisions concerning the "placing on board a ship of devices or substances likely to destroy the ship", "damage to or the interference with aids to navigation and other facilities for safety of navigation" and "the communication of false information endangering the safety of navigation or of the ship". Delegations which spoke on this subject expressed support for the reinsertion of these provisions to varying degrees. Other delegations preferred, in this respect, the co-sponsors' revised text.

74 One delegation considered that certain difficulties of a structural nature would arise from the inclusion of a reference to navigational aids in the Convention. It suggested instead that such reference might be made in the proposed Protocol relating to fixed platforms.

75 With regard to paragraph 2, some delegations suggested that an explicit reference to abettors be included.

76 The observer of the International Chamber of Shipping (ICS), suggested that incidents involving violence among members of the vessel's crew should, as a rule, not be covered by the terms of the Convention and proposed the insertion of the following additional paragraph:

"Nothing in this Convention shall create any new offence or any new powers of enforcement in relation to the normal maintenance of crew discipline on board ship."

There was no discussion on this suggestion.

77 One delegation suggested that there should be a provision to state clearly that the new Convention did not affect in any way the provisions regarding piracy contained in customary or conventional international law. The delegation agreed that a reference to the matter might be made in the preamble.

78 In the light of the discussions, the Chairman invited the delegations for an indication of preferences in respect of the following questions:

- .1 Should the notion of "threats" be included in subparagraphs (b) and (c) of paragraph 1, irrespective of the location of such inclusion?

The inclusion of "threats" was supported by 30 delegations, with 3 against and 7 abstentions.

- .2 With respect to subparagraph (d) of paragraph 1, should the notion of injury be qualified by "severe"?

This qualification was supported by 8 delegations and opposed by 18 delegations, with 13 abstentions.

- .3 Should a subparagraph on "the placement of devices likely to destroy or damage the ship or its cargo" be reintroduced into the text on the model of subparagraph (d) originally proposed for article 2 by the co-sponsors at the first session of the Committee?

The reintroduction of the subparagraph was supported by 19 delegations and opposed by 4 delegations, with 15 abstentions.

- .4 Should there be a specific reference in the text to the communication of false information?

Such a specific reference was supported by 15 delegations and opposed by 13 delegations, with 11 abstentions.

- .5 Should there be a specific reference to "abetting" the offence in paragraph 2?

A specific reference to "abetting" was supported by 19 delegations, with 4 against and 14 abstentions.

79 On the basis of the answers to these questions, the Committee requested the Chairman to prepare a revised text of the article, incorporating the predominant views on the issues in his questions. The Chairman's text, as approved by the Committee and subjected to some amendments, is included in the draft Convention attached to this report.

80 The Chairman observed that he had not sought an indication of preferences with regard to the damage to safety of navigational aids as the level it had received in the discussion warranted its inclusion in a revised draft.

81 It was apparent that the phrase "or while present as an accomplice in the commission" in the present text of subparagraph (d) could be deleted as a result of the redrafting of the French text. This additional phrase did not appear to be necessary.

82 At the suggestion of one delegation, the Committee agreed to insert in paragraph 1(g) the words "or the attempted commission" after the word "commission" (document PCUA 2/D/1/Add.3). It was also agreed that a similar phrase would be inserted in the Protocol.

Article 5 (article 7 in annex 1)

83 With regard to paragraph 1(a), some delegations proposed that the phrase "at the time the offence is committed" be deleted. An indication of views showed that 28 delegations were in favour of including the words, with 3 against and 6 abstentions. The Committee decided to retain the phrase in the text.

Annex 10

*Communications Received from the Republic of Korea, dated 25 November 1983:
Observations on the Question of Measures to Prevent International Terrorism,
Addendum to the Report of the Secretary General, U.N. Doc. A/38/355/Add.2 (29
November 1983)*



General Assembly

Distr.
GENERAL

A/38/355/Add.2
29 November 1983

ORIGINAL: ENGLISH

Thirty-eighth session
Agenda item 123

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, GRIEVANCE AND DESPAIR AND
WHICH CAUSE SOME PEOPLE TO SACRIFICE HUMAN LIVES, INCLUDING THEIR
OWN, IN AN ATTEMPT TO EFFECT RADICAL CHANGES

Report of the Secretary-General

Addendum

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COMMUNICATIONS RECEIVED FROM GOVERNMENTS

REPUBLIC OF KOREA

[Original: English]

[25 November 1983]

Observations on the question of measures to prevent
international terrorism

1. In conformity with its primary foreign policy objectives of peace and international co-operation, the Republic of Korea has always opposed all acts of international terrorism which take innocent human lives and endanger international peace and security, and has attached great importance to international efforts to prevent acts of international terrorism and eliminate their underlying causes.
2. The Republic of Korea therefore welcomed General Assembly resolutions 3034 (XXVII) of 18 December 1972, 31/102 of 15 December 1976, 32/147 of 16 December 1977, 34/145 of 17 December 1979 and 36/109 of 10 December 1981, and supported, in particular, the 11-point recommendations relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism, submitted by the Ad Hoc Committee on International Terrorism 1/ and endorsed by the General Assembly at its thirty-fourth session in resolution 34/145 and at its thirty-sixth session in resolution 36/109.
3. In pursuit of its policy against international terrorism, the Republic of Korea has acceded to the following international conventions mentioned in the recommendations of the Ad Hoc Committee on International Terrorism: 1/
 - (a) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
 - (b) The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
 - (c) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
 - (d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted at New York on 14 December 1973;
 - (e) The International Convention against the Taking of Hostages, adopted at New York on 17 December 1979.
4. The Republic of Korea is gravely concerned over the spread of acts of international terrorism, particularly those perpetrated in the territory of other sovereign States. The recent terrorist bomb attack in Rangoon, Burma, on 9 October 1983, is unparalleled in its scope, brutality, atrocity and barbarity. The bomb attack was aimed at the presidential party of the Republic of Korea during

the State visit of President Chun Doo Hwan to the Socialist Republic of the Union of Burma and claimed 21 lives, including those of four Korean cabinet members and other high-ranking Burmese and Korean officials, while injuring 46 others.

5. According to the announcement by the Government of the Socialist Republic of the Union of Burma on 4 November 1983, issued after a thorough and independent investigation conducted by an Enquiry Committee established by the Burmese Government, it has been fully established from the confessions of the captured Korean nationals, captured equipment and other supporting evidence that the bomb attack was the work of saboteurs acting under instructions of North Korean authorities, and that the two captured alive and the one captured dead were identified as a major and two captains of the North Korean Army. On the same day, the Burmese Government severed diplomatic relations with North Korea and withdrew its recognition of the North Korean régime. The Government of the Republic of Korea welcomed these measures taken by the Burmese Government as most appropriate and justified.

6. In this connection, it may be recalled that the acts of terrorism committed by North Korea are not new to the international community. In January 1968, North Korea dispatched a 31-man commando squad to Seoul in an abortive attempt to assassinate the President of the Republic of Korea. In August 1974, a North Korean agent's attempt on the life of the then President resulted in his killing the First Lady instead. More recently, in August 1982, Canadian authorities uncovered a plot by North Korea to have President Chun killed by hired assassins during his State visit to Canada.

7. The Republic of Korea, together with all other peace-loving States of the world, strongly condemns these criminal acts of terrorism committed by North Korea in violation of the Charter of the United Nations and other rules of international law and, in particular, of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which North Korea acceded to as recently as 1 December 1982.

8. The General Assembly, in its resolutions 34/145 and 36/109, called upon all States to observe and implement the recommendations of the Ad Hoc Committee, in which all States are called upon, among other things, to fulfil their obligations under international law and to refrain from organizing, instigating, assisting or participating in acts of terrorism in another State. The Republic of Korea is of the view that the international community, while condemning unequivocally acts of international terrorism as crimes violating all relevant international norms and endangering international peace and security, should further take necessary steps, including punitive measures, to prevent the recurrence of such terrorist acts and eliminate their underlying causes.

Notes

1/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 37 (A/34/37), para. 118.

Annex 11

*Draft International Convention for the Suppression of the Financing of Terrorism:
Working Document Submitted by France, U.N. Doc. A/AC.252/L.7 (11 March 1999)*



General Assembly

Distr.: Limited
11 March 1999
English
Original: French

Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Third session

15–26 March 1999

Draft international convention for the suppression of the financing of terrorism

Working document submitted by France

The States Parties to this Convention,

Bearing 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,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, “the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States”,

Noting that the Declaration also encouraged States “to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter”,

Recalling General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should “elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments”,

* Reissued for technical reasons.

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly calls upon States to “consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210” of 17 December 1996,

Recalling further General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly calls upon all States “to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and 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, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds”,

Considering that any act governed by international humanitarian law is not governed by this Convention,

Noting that financing which terrorists may obtain increasingly influences the number and seriousness of international acts of terrorism they commit,

Noting also that existing multilateral legal instruments do not specifically address such financing,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective measures for the prevention of the financing of terrorism as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Financing” means 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.
2. “Funds” means any type of financial resource, including the cash or currency of any State, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and any other negotiable instrument in any form, including electronic or digital form.
3. “Organization” means any group of persons, whatever their declared objectives, and legal entities such as companies, partnerships or associations.
4. “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 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.

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.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

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 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 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 or 2 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.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 11 to 17 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by effective, proportionate and deterrent penalties which take into account the grave nature of those offences.

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities located or having their registered offices in its territory may be held liable when they have knowingly,

through the agency of one or more persons responsible for their management or control, derived profits from or participated in the commission of offences referred to in this Convention.

2. Subject to the fundamental legal principles of the State Party, said legal entity may incur criminal, civil or administrative liability.
3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences or of their accomplices.
4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective measures that have substantial economic consequences for them.
5. The provisions of this article cannot have the effect of calling into question the responsibility of the State as a legal entity.

Article 6

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 and are punished by penalties consistent with their grave nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
 - (a) The offence is committed in the territory of that State; or
 - (b) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence was directed towards or resulted in the carrying out of an attack against a national of that State; or
 - (b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (c) The offence was directed towards or resulted in the carrying out of an attack against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over one of the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions efficiently, in particular concerning the conditions for prosecuting and the terms and conditions of mutual legal assistance.

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, 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.

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, in accordance with its domestic law.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, 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 undue 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.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

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.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences referred to in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.
3. States Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article.
4. None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, a request for extradition or for mutual legal assistance may not be refused on the sole ground that it concerns a fiscal offence.

Article 13

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 14

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.

Article 15

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 16

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

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.

Article 18

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 19

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 20

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 21

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 22

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 23

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 24

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 25

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on

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.
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Annex 12

Addendum to Draft International Convention for the Suppression of the Financing of Terrorism: Working Document Submitted by France, U.N. Doc. A/AC.252/L.7/Add.1 and Corr.1 (11 March 1999) (French-language text)



Assemblée générale

Distr. limitée
11 mars 1999

Original: français

**Comité spécial créé par la résolution 51/210
de l'Assemblée générale en date du 17 décembre 1996**
Troisième session
15-26 mars 1999

Projet de convention internationale pour la répression du financement du terrorisme

Document de travail présenté par la France

Additif

Note de présentation du projet de convention

Pourquoi une convention internationale contre le financement du terrorisme?

1. Lutter contre le financement du terrorisme, qu'il provienne d'activités «légales» (commerciales, industrielles ou caritatives) ou «illégalles» (racket, trafic de drogues, proxénétisme, hold up, etc.) constitue un objectif prioritaire pour les services engagés dans la lutte opérationnelle contre le terrorisme. En effet, c'est en fonction de leurs sources de financement que les groupes terroristes tirent leur capacité de projection, la possibilité de se fournir en armement puissant, et la possibilité de se faire connaître, de recruter et d'entraîner leurs membres.
2. Or, des progrès substantiels peuvent encore être réalisés pour compléter le droit international. Celui-ci présente en effet une lacune importante : il n'y a pas de convention internationale destinée à lutter contre le financement du terrorisme. Les 11 conventions internationales existantes ne donnent pas assez de moyens aux enquêteurs pour poursuivre efficacement les bailleurs de fonds et les commanditaires d'attentats terroristes.
3. C'est pourquoi, sur proposition de la France, l'Assemblée générale a décidé en décembre 1998 l'ouverture d'une négociation visant à la conclusion d'une nouvelle convention contre le financement du terrorisme. La France a déposé une première version de cette convention le 3 novembre 1998 (A/C.6/53/9). Nous avons souhaité parallèlement poursuivre une consultation très large avec tous nos partenaires sur ce premier texte, afin de l'améliorer. Fruit de cette concertation, la France a alors déposé, récemment, une deuxième

version (A/AC.252/L.7), qui vient donc se substituer à celle initialement déposée le 3 novembre 1998.

Les principaux éléments du projet de convention

4. *Quel est le sens du «financement» visé par cette convention (art. 1 et 2)?* La définition du financement a été rédigée pour permettre une interprétation large : tous les moyens de financement sont inclus dans le champ de cette convention, tant ceux «illégaux» (racket) que «légaux» (financements privés, publics ou semi-publics, associatifs). En revanche, seul le financement des actions les plus graves est visé.

5. *Quelles sont les personnes visées par cette convention (art. 1, 2, 3, 5 et 7)?* Cette convention vise à la fois les «donneurs d'ordre», conscients de l'utilisation des fonds, et les contributeurs, conscients du caractère terroriste des buts et objectifs de tout ou partie de l'association à laquelle ils versent des subsides, sous forme de valeur ou de prestation en nature, et non les simples particuliers. D'ailleurs, l'élément moral de l'infraction (intention coupable) permet d'exclure du champ de la convention les personnes adressant leurs dons de bonne foi, dans le cadre par exemple de collectes publiques. Cette convention prévoit un régime de responsabilité des personnes morales fondées sur :

- L'établissement du principe même de la responsabilité des personnes morales,
- Des modalités flexibles de cette responsabilité, qui peuvent être, selon les cas, pénale, civile ou administrative.

6. *Quel sens donner à la définition de l'infraction (art. 2)?* La définition de l'infraction a été rédigée avec un objectif double : l'article 2.1 a) vise expressément le financement des actes prévus par les conventions existantes. Bien évidemment, les États n'étant pas tous parties à l'ensemble des conventions antiterroristes, il est prévu que la convention ne s'applique pour un État partie qu'aux infractions prévues par les conventions qu'il a ratifiées. L'article 2.1 b) vise le financement de l'assassinat, entendu comme un acte destiné à causer des morts ou des dommages corporels graves. Bien que non prévus par les conventions existantes (à l'exception de ceux commis par explosifs dans le cadre de la récente Convention internationale pour la répression des attentats terroristes à l'explosif), de tels actes représentent en effet environ 30 % des actes de terrorisme international.

7. *Le principe «juger ou extraditer» les auteurs des infractions visées par la Convention (art. 10, 13 et 14).* L'action publique est mise en oeuvre en application du principe «juger ou extraditer», qui constitue la clef de voûte de cette convention. Ce principe est complété par une disposition préventive désormais classique, qui vise à prévenir les demandes d'extradition ou d'entraide qui seraient formulées avec comme objectif de punir la personne objet de la demande pour des considérations de type raciste, religieux, ethnique, etc.

8. *Régime des sanctions (art. 4, 5 et 8).* Le régime des sanctions est particulièrement dissuasif : des peines lourdes sont prévues pour les auteurs de tels actes. En outre, ce projet de convention prévoit aussi la possibilité de saisir ou de geler les biens ou les avoirs utilisés pour la commission de l'infraction.

9. *Une mesure importante pour l'entraide judiciaire : la levée du secret bancaire (art. 12).* Même si cette convention reste une convention d'incrimination, l'entraide judiciaire a été privilégiée. Des dispositions importantes ont été prévues : interdiction d'opposer le «secret bancaire» aux enquêteurs, interdiction, impossibilité de considérer l'infraction, aux fins d'extradition ou d'entraide judiciaire, comme une infraction fiscale.

10. *Des mesures préventives inspirées des principes généralement admis en matière de lutte antiblanchiment (art. 17).* Tous les magistrats et les enquêteurs de police interrogés avant et pendant la rédaction de cette convention ont insisté sur un point : la difficulté de l'acquisition de la preuve dans le domaine financier. Aussi, cette convention prévoit-elle plusieurs dispositions, directement inspirées des principes généralement admis en matière de lutte antiblanchiment, qui ont pour objectif d'encourager les États parties à prendre des mesures internes faisant obligation aux institutions financières de mieux identifier leurs clients habituels ou potentiels, en particulier en proscrivant la tenue de comptes anonymes, en identifiant formellement les titulaires des comptes, en conservant pendant au moins cinq ans les pièces se rapportant aux transactions effectuées.

Annex 13

*Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of
17 December 1996, U.N. Doc. No. A/54/37 (5 May 1999)*



United Nations

**Report of the Ad Hoc Committee
established by General Assembly
resolution 51/210 of
17 December 1996**

General Assembly
Official Records
Fifty-fourth session
Supplement No. 37 (A/54/37)

General Assembly
Official Records
Fifty-fourth session
Supplement No. 37 (A/54/37)

**Report of the Ad Hoc Committee established
by General Assembly resolution 51/210 of
17 December 1996**



United Nations • New York, 1999

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Chapter I Introduction

1. The third session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 11 and 12 of Assembly resolution 53/108 of 8 December 1998. The Committee met at Headquarters from 15 to 26 March 1999.
2. In accordance with paragraph 9 of resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA).¹
3. On behalf of the Secretary-General, the Legal Counsel, Mr. Hans Corell, opened the third session of the Ad Hoc Committee.
4. The Director of the Codification Division of the Office of Legal Affairs, Mr. Václav Mikulka, acted as Secretary of the Ad Hoc Committee, assisted by Ms. Sachiko Kuwabara-Yamamoto (Deputy Secretary), Ms. Christiane Bourloyannis-Vrailas, Mr. Vladimir Rudnitsky, Mr. Renan Villacis and Mr. Arnold Pronto of the Codification Division.
5. At the 8th meeting of the Committee, on 15 March 1999, it was agreed that the membership of the Bureau would remain the same as at the previous session, with the exception of one Vice-Chairman. The Bureau was thus constituted as follows:

Chairman:

Mr. Philippe Kirsch (Canada)

Vice-Chairmen:

Mr. Carlos Fernando Diaz (Costa Rica)

Mr. Mohammed Gomaa (Egypt)

Mr. Rohan Perera (Sri Lanka)

Rapporteur:

Mr. Martin Šmejkal (Czech Republic)

6. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.6):
 1. Opening of the session.
 2. Election of officers.
 3. Adoption of the agenda.
 4. Organization of work.
 5. Continuation of the elaboration of a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument and elaboration of a draft international convention for the suppression of terrorist financing to supplement related

existing international instruments, pursuant to paragraphs 11 and 12 of General Assembly resolution 53/108 of 8 December 1998.

6. Adoption of the report.

7. The Ad Hoc Committee had before it the revised text of a draft convention on the suppression of acts of nuclear terrorism proposed by the Friends of the Chairman (A/C.6/53/L.4, annex), as well as a draft international convention for the suppression of the financing of terrorism submitted by France (A/AC.252/L.7 and Corr.1) together with an explanatory note to the draft convention submitted by the same delegation (A/AC.252/L.7/Add.1).

Chapter II Proceedings

8. The Ad Hoc Committee held a general exchange of views at its 8th, 9th and 10th meetings, on 15, 16 and 18 March 1999.

9. At the 9th meeting, the Ad Hoc Committee decided to conduct its work in the form of a Working Group of the Whole. The Bureau and secretariat of the Ad Hoc Committee also served as the Bureau and secretariat of the Working Group.

10. The Working Group commenced its work on the elaboration of an international convention for the suppression of terrorist financing. It proceeded in three stages. In its first stage, the Working Group conducted a first reading of those articles unique to the proposed text under consideration, namely articles 1, 2, 5, 8, 12, paragraphs 3 and 4, and 17, as well as of those articles which were similar, but not identical, to the corresponding provisions of the International Convention for the Suppression of Terrorist Bombings, namely articles 3, 6 and 7, paragraphs 1, 2 and 5, on the basis of the text proposed in document A/AC.252/L.7 and Corr.1. Article 4 was also reviewed.

11. In the second stage of the work, the Working Group conducted a second reading of articles 2, 5, 8, 12 and additional provisions, on the basis of a revised text submitted by France (A/AC.252/1999/WP.45; see annex III to the present report), as well as of article 17 on the basis of a revised text submitted by France (A/AC.252/1999/WP.47; see annex III), articles 4 and 7 on the basis of a revised text submitted by Australia (A/AC.252/1999/WP.51; see annex III). The Coordinators of the informal discussions on articles 1 and 2, and 3 and 6, respectively, presented oral reports to the Working Group.

12. Following the completion of the second reading, the Bureau of the Committee prepared a discussion paper on articles 3 to 25 (A/AC.252/1999/CRP.2; see annex I.A) as a basis for consideration by the Working Group of the Sixth Committee at its next session.

13. At the 11th meeting of the Working Group, on 25 March 1999, France submitted a working paper on articles 1 and 2 (see annex I.B), based on the discussion of those provisions during the informal consultations.

14. Written amendments and proposals on the draft international convention on the suppression of terrorist financing were submitted and considered during the discussions (see annex III). Oral amendments and proposals were also discussed.

15. At the 11th meeting, on 26 March 1999, the Ad Hoc Committee adopted the report of its third session.

16. An informal summary of the discussions in the Working Group is contained in annex IV to the present report. The summary was prepared by the Rapporteur for reference purposes only and not as a record of the discussions.

17. Annex III contains a list of the written amendments and proposals submitted by delegates in connection with the elaboration of a draft international convention for the suppression of the financing of terrorism.

Chapter III

Summary of the general debate

18. The Chairman of the Ad Hoc Committee recalled the mandate of the Committee concerning the work at its third session, which was to continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument and initiating the elaboration of the draft international convention for the suppression of the financing of terrorism. In that connection, the Chairman noted the advanced stage of the work on the draft convention for the suppression of acts of nuclear terrorism and expressed the hope that the remaining issue concerning its scope would be resolved in an expeditious manner. He also welcomed the proposed text of the draft convention for the suppression of the financing of terrorism and invited delegations to present their views on both of the draft conventions before the Committee.

A. Elaboration of the draft international convention for the suppression of acts of

nuclear terrorism, proposed by the Russian Federation

19. At the 8th meeting of the Ad Hoc Committee, the representative of the Russian Federation stated that the growing ability of terrorist groups to acquire sophisticated technologies and weapons of mass destruction made international terrorism a most serious problem calling for effective and concerted action by the international community. In that connection, he stressed the importance of completing work on the draft convention for the suppression of acts of nuclear terrorism (see A/C.6/53/L.4), noting that the text of the convention had been almost entirely agreed upon at the previous session of the Working Group, in 1998. It was considered possible to reach a compromise on the remaining issue, on scope of the convention, as the draft convention did not impinge upon acts regulated by other norms of international law and its provisions were consistent with those of other relevant conventions. Furthermore, a failure to arrive at a consensus on the text of the draft convention would send a wrong signal to the terrorist groups.

20. A number of delegations shared the view of the representative of the Russian Federation and expressed support for the early conclusion of the work on the draft convention. It was observed that the draft convention was an important complement to the existing anti-terrorist conventions, providing an effective legal framework for combating and discouraging acts of nuclear terrorism, which posed a real threat to the maintenance of international peace and security. Some delegations reiterated the view that activities of armed forces should be outside the scope of the draft convention and that the relevant provisions of the Terrorist Bombings Convention could be used as the basis for the exclusion clause of the draft convention.

21. Some delegations stressed the need to ensure consistency of the provisions of the draft convention with those of the existing international legal instruments for combating terrorism and noted in particular the importance of paying proper attention to the work of the International Atomic Energy Agency.

22. No formal or informal meetings were held during the third session of the Ad Hoc Committee to discuss the draft convention contained in document A/C.6/53/L.4.

23. At the 11th meeting, concern was expressed about the lack of consultations on the scope of the draft convention during the session. A number of delegations which remained convinced that the special character of the subject matter of the draft convention did not permit the exclusion of the activities of armed forces from its scope reiterated their

position and therefore insisted that its article 4 be deleted. Other delegations expressed the hope that the remaining issues concerning the scope of the draft convention would be resolved successfully with a further exchange of positive and constructive views.

24. The representative of IAEA made a statement regarding the draft international convention for the suppression of acts of nuclear terrorism, recalling that the Agency, at the invitation of the General Assembly, had participated in the work of the Ad Hoc Committee, especially with regard to technical expertise. IAEA regretted that it had not been possible to finalize work on the draft convention and expressed the hope that said result could be attained at the next session of the Committee. IAEA also noted that the draft convention recognized and built upon the Agency's activities. Furthermore, IAEA reiterated its commitment to fight nuclear terrorism and its willingness to assist the Ad Hoc Committee in its work.

25. The Chairman recalled that the General Assembly in its resolution 53/108 of 8 December 1998, had requested the Ad Hoc Committee to continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument. He urged all delegations to have contacts and hold discussions prior to and at the Working Group of the Sixth Committee in order to resolve the remaining issues concerning the scope of the convention so that the draft convention might be adopted by the General Assembly at its fifty-fourth session.

B. Elaboration of the draft international convention for the suppression of the financing of terrorism, proposed by France

26. The representative of France introduced a revised version of the draft convention for the suppression of the financing of terrorism (A/AC.252/L.7 and Corr.1), the original text of which (A/C.6/53/9) had earlier been submitted by France to the Sixth Committee during the fifty-third session of the General Assembly. It was explained that the revision took into account the views expressed by delegations during the debate in the Sixth Committee and the ensuing consultations on the item.

27. It was stated that existing anti-terrorist conventions did not contain adequate means of countering acts of those who supplied funds or sponsored terrorist attacks. The aim of the draft convention was to fill that gap in international law by adopting an international legal instrument specifically addressing the issue.

28. As regards the definition of financing, it was pointed out that, while the draft convention was focused on the financing of the most serious terrorist acts, all means of financing were covered within the scope of the convention, including both "unlawful" means (such as racketeering) and "lawful" means (such as private and public financing, financing provided by associations, etc.).

29. Moreover, the definition of an offence had been drafted with a twofold aim. First, it was concerned expressly with the financing of acts within the scope of existing anti-terrorist conventions binding upon States parties. Secondly, it was also concerned with the financing of murder, which was not covered by existing conventions (except for the Terrorist Bombings Convention).

30. Concerning the persons at whom the draft convention was aimed, they included those who supplied funds in the knowledge of the intention of recipients to commit terrorist acts. Those who made contributions in good faith were excluded from the scope of the convention. The draft text provided also for a regime of liability for legal entities which might be criminal, civil or administrative in nature.

31. As regards other important elements of the draft convention, the sanctions regime, designed to increase its deterrent effect, provided for the possibility of the seizure or freezing of property assets used in committing the offence, in addition to severe penalties for terrorists. Furthermore, the lifting of banking secrecy for the purposes of mutual legal assistance was an important element of the draft. Some delegations, however, stressed that measures of implementation must be left to national legislation. In addition, the draft provided for preventive measures based on generally accepted principles followed in combating money-laundering, which were designed to encourage States to require financial institutions to improve the identification of their customers.

32. Apart from those new elements, the text of the revised draft was mostly based on the provisions of already existing conventions, adopting, in particular, the formulations of the relevant provisions of the Terrorist Bombings Convention, including the well-established "prosecute or extradite" principle. Thus it was suggested that the discussion should focus primarily on new provisions so as to allow a speedy elaboration of the proposed convention.

33. The draft convention for the suppression of the financing of terrorism was supported by many delegations as a valuable and timely initiative. It was noted that the draft text was intended not only to punish those financing terrorist acts, but also to prevent such financing through mutual legal assistance and cooperation or by alerting those whose

donations were intended for charitable, humanitarian and other legal purposes could be used to finance terrorist activities.

34. Some delegations stressed the difficulty of linking financing and terrorist acts and cautioned against adopting overly broad definitions that would criminalize innocent individuals and genuine charitable organizations.

35. Some delegations indicated that revenues derived from the confiscation of property and assets used to commit terrorist offences under the convention should be allocated to benefit victims and to development activities directed at combating terrorism.

36. Differing views were expressed as regards the issue of whether the scope of the draft convention should go beyond the offences already covered by other conventions.

37. A need to pay full attention to the legal cultures of States in the elaboration of the new convention was stressed. Concerns were also expressed regarding some of the enforcement provisions of the draft.

38. Some delegations emphasized the need to distinguish between legitimate national liberation movements and terrorist groups. They reiterated their view that a universal definition of terrorism should be adopted and that a comprehensive global anti-terrorist convention should be elaborated. It was noted that the work on such a convention should begin following the completion of the two draft conventions currently under the Committee's consideration on the basis of a proposal to be submitted on this issue. Other delegations emphasized that no cause could justify terrorist acts and expressed doubt that a universal definition of terrorism could be elaborated.

39. At both the 8th and the 10th meetings, the point was also made that it should be taken into consideration that international terrorism was linked to other criminal activities such as drug-trafficking and mercenarism, as well as violence pursued as a State policy. Specific examples of terrorist activities which originated in the territory of a foreign State were given. In this connection, special emphasis was placed upon existing State obligations to take effective practical measures to suppress and punish such illegal activities, as well as on the need to introduce restrictive norms regarding the responsibility of States for the prevention and suppression of terrorism in their territories aimed against the security of other States and their citizens. Relevant examples of concrete measures adopted at the national level to combat such criminal acts were also reported.

40. The observer of the International Committee of the Red Cross presented its written comments on the scope of the

definition of the offences covered by the draft convention on the suppression of the financing of terrorism² and also made a statement in that connection.

41. The Chairman observed that much progress had been made during the third session of the Ad Hoc Committee; the Committee had completed the first and second readings of the main provisions of the convention at the current session and a number of articles had been revised to facilitate further work on the convention. He was of the view that the work on the draft convention could be completed during the current year in the Working Group of the Sixth Committee, for adoption by the General Assembly at its fifty-fourth session.

Notes

¹ For the list of participants of the Ad Hoc Committee at its third session, see document A/AC.252/1999/INF/3.

² A/AC.252/1999/INF.2.

Annex I

A. Discussion paper submitted by the Bureau on articles 3 to 25*

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 17 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities carrying out activities or located in its territory or organized under its laws may be held liable when they have, with the full knowledge of one or more persons responsible for their management or control, benefitted from or committed offences set forth in article 2.
2. Such liability may be criminal, civil or administrative, according to the legal principles of the State Party.
3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
4. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective and proportionate measures.

Article 6

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.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:
 - (a) The offence is committed in the territory of that State; or
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or
 - (c) The offence is committed by a national of that State.

* Originally issued as document A/AC.252/1999/CRP.2.

2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or
 - (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
 - (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or
 - (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2.
5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.
6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures 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 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 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. 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 criminal acts resulting from the commission 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.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) Be visited by a representative of that State;
 - (c) Be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, 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 undue 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.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate,

such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

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.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

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 proceedings other than those stated in the request without the prior consent of the requested Party.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

4. None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the ground that it concerns a fiscal offence.

Article 13

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 14

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.

Article 15

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 16

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

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 their financial institutions and other professions involved in financial transactions to utilize the most efficient measures 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, including anonymous accounts or accounts under obviously fictitious names;

(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 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 suspected of being involved in such offences;

(ii) The movement of funds or property relating to the commission of such offences.

Article 18

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 19

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 20

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 21

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 22

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 23

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 24

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 25

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on

B. Working paper prepared by France on articles 1 and 2

Article 1

For the purposes of this Convention:

1. "Financing" means the transfer [or reception] of funds.
2. "Funds" means cash, assets or any other property, tangible or intangible, however acquired; and notably any type of financial resource, including cash or the currency of any State, bank credits, travellers' cheques; bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form.
3. "Organization" means any group, public or private, of two or more persons, whatever their declared objectives, and legal entities such as companies, partnerships or associations.
4. "State or government facility" means 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 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.

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.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this 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 or 3 of this article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 3 of this article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 3 of this 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.]

Annex II

Working document submitted by France on the draft international convention for the suppression of the financing of terrorism*

The States Parties to this Convention,

Bearing 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,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should "elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments",

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly calls upon States to "consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210" of 17 December 1996,

Recalling further General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly calls upon all States "to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and 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, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds",

Considering that any act governed by international humanitarian law is not governed by this Convention,

Noting that financing which terrorists may obtain increasingly influences the number and seriousness of international acts of terrorism they commit,

* Originally issued as document A/AC.252/L.7 and Corr.1.

Noting also that existing multilateral legal instruments do not specifically address such financing,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective measures for the prevention of the financing of terrorism as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Financing” means 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.
2. “Funds” means any type of financial resource, including the cash or currency of any State, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and any other negotiable instrument in any form, including electronic or digital form.
3. “Organization” means any group of persons, whatever their declared objectives, and legal entities such as companies, partnerships or associations.
4. “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 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.

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.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

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 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 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 or 2 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.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 11 to 17 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by effective, proportionate and deterrent penalties which take into account the grave nature of those offences.

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities located or having their registered offices in its territory may be held liable when they have knowingly, through the agency of one or more persons responsible for their management or control, derived profits from or participated in the commission of offences referred to in this Convention.

2. Subject to the fundamental legal principles of the State Party, said legal entity may incur criminal, civil or administrative liability.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences or of their accomplices.

4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective measures that have substantial economic consequences for them.

5. The provisions of this article cannot have the effect of calling into question the responsibility of the State as a legal entity.

Article 6

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 and are punished by penalties consistent with their grave nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack against a national of that State; or

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(c) The offence was directed towards or resulted in the carrying out of an attack against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over one of the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions efficiently, in particular concerning the conditions for prosecuting and the terms and conditions of mutual legal assistance.

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, 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.

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, in accordance with its domestic law.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) Be visited by a representative of that State;
 - (c) Be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, 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 undue 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.
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the

extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.
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.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences referred to in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.
3. States Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article.
4. None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, a request for extradition or for mutual legal assistance may not be refused on the sole ground that it concerns a fiscal offence.

Article 13

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 14

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.

Article 15

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 16

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

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.

Article 18

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 19

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 20

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 21

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 22

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 23

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 24

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 25

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on

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.

Annex III**Written amendments and proposals submitted by delegates in connection with the elaboration of a draft international convention for the suppression of the financing of terrorism****Contents**

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1. Proposal submitted by Switzerland (A/AC.252/1999/WP.1)

Article 1

Paragraph 1

The term “financing” includes the following acts:

- (a) Any direct transfer of funds, assets or other property to a person or organization;
- (b) Any reception of funds, assets or other property by a person or organization;
- (c) The organization and implementation of all types of fund-raising on behalf of a person or organization.

In a fund-raising context, the transfer of funds, assets or other property is not covered by the term “financing” if it can be demonstrated or it is recognized that the property is also used for humanitarian purposes by the beneficiary person or organization.

2. Proposal submitted by Switzerland (A/AC.252/1999/WP.2)

Article 2

Paragraph 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 be used, in full or in part, to commit:

- (a) ...
- (b) ...

Paragraph 3

Delete subparagraph (c).

3. Proposal submitted by Switzerland (A/AC.252/1999/WP.3)

Article 5

Paragraph 1

Each State Party shall take the necessary measures to ensure that legal entities located or having their registered offices in its territory may be held liable.

4. Proposal submitted by Switzerland (A/AC.252/1999/WP.4)

Article 12

Paragraph 4

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, a request for

extradition or for mutual legal assistance based on article 2 may not be refused on the sole ground that it concerns a fiscal offence, without prejudice to the constitutional limits and the basic legislation of the States Parties.

Article 13

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance between States Parties 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 article 2 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.

5. Proposal submitted by Switzerland (A/AC.252/1999/WP.5)

Article 17

Paragraph 1 (b) (i)

Adopting regulations prohibiting the opening of accounts whose beneficiary is unidentified or unidentifiable;

6. Proposal submitted by Austria (A/AC.252/1999/WP.6)

Article 1

Paragraph 1

Delete the term “or reception”.

Paragraph 2

“Organization” means any group consisting of a larger number of persons, whatever their declared objectives. Such organizations shall be characterized by a hierarchical structure, strategic planning, continuity of purpose and division of labour.

7. Proposal submitted by Belgium (A/AC.252/1999/WP.7)

Article 1

Paragraph 1

Delete the words “directly or indirectly” and insert them in the *chapeau* of article 2, paragraph 1, after the word “proceeds”.

Explanation

These terms pertain not to the definition of the word “financing”, but to the definition of the offence itself (article 2).

**8. Proposal submitted by Guatemala concerning articles 1 and 2
(A/AC.252/1999/WP.8)**

Article 1

Paragraph 1

Delete the words “or reception”.

Article 2

Add the following paragraph to article 2:

“A. Any person likewise commits an offence within the meaning of this Convention if that person unlawfully receives funds, assets or other property from another person or organization with the intent of using the funds, assets or other property so received, in full or in part, in order to prepare or commit an offence or an act falling, respectively, within the definitions contained in subparagraphs (a) and (b) of paragraph 1 above.”

9. Proposal submitted by Australia (A/AC.252/1999/WP.9)

Article 1

Paragraph 1

“Financing” means the provision of funds or assets directly or indirectly and by whatever means to another person or organization.

10. Proposal submitted by Japan (A/AC.252/1999/WP.10)

Article 1

Paragraph 2

“Funds” means any form of pecuniary benefit.

**11. Proposal submitted by Austria on the definition of offences
(A/AC.252/1999/WP.11)**

Option 1. Articles 2, 20 *bis* and Annex

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 an organization with the knowledge or intent that such financing will be used by that organization, in full or in part, to commit or to prepare the commission of:

(a) An offence within the scope of one of the Conventions listed in the Annex and as specified therein;

(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.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

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 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article.

Article 20 bis

On depositing its instruments of ratification, acceptance, approval or accession, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, that treaty shall not be deemed to be included in the Annex. 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.

Annex

1. Article 1 (a) of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970, which reads as follows: ...

2. Article 1, paragraph 1, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, which reads as follows: ...

3. Article 2, paragraph 1 (a)–(c), of the 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, which reads as follows: ...

4. Article 1, paragraph 1, of the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, which reads as follows: ...

5. Article 7, paragraph 1 (e), of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980, which reads as follows: ...

6. Article II, paragraph 1, of the 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, which reads as follows: ...

7. Article 3, paragraphs 1 (a)–(f) and 2 (c), of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, which read as follows: ...

8. Article 2, paragraphs 1 (a)–(d) and 2 (c), of the 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, which read as follows: ...

9. Article 2, paragraph 1, of the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997, which reads as follows: ...

Rationale

1. Chapeau

(a) Deletion of reference to the financing of “a person”

Mere preparatory acts are usually not criminalized under national and international law. However, if the offence is of a particularly dangerous nature, exceptions from this principle are made. In the context of the offences covered by this Convention, this would seem to be true only of organizations. It is this aspect of organization, which typically includes long-term planning, continuity of purpose, division of labour and particular difficulty of detection, which renders these entities and their activities so dangerous that criminalizing the financing of mere preparatory acts seems justifiable. Similar reasoning does not apply to individuals. Furthermore, financing an individual in order to enable that individual to commit terrorist offences would be a participatory offence falling under the scope of the Conventions listed in the Annex.

(b) Deletion of the term “could be used” and inclusion of the term “intent”

The term “could be used” would create too large a scope of application, since it can rarely be excluded that financing *could* be used for committing offences; knowledge may be difficult to prove, hence the addition of “intent”.

(c) Retention of preparatory acts insofar as they relate exclusively to organizations

Some reference to preparatory acts should probably be retained since this Convention would otherwise become largely redundant (financing terrorist offences is a participatory crime already covered by existing instruments); by deleting any reference to preparatory acts we would not cover some of the most important cases of financing, such as the financing of a training camp for terrorists.

2. Paragraph 1 (a)

(a) Reference only to the main offences of the Conventions contained in the Annex

The present unqualified reference to “offences within the scope of the Conventions listed in the Annex” creates the danger of very long chains of participation removing a reasonably close nexus to the main offence; the scope of application would become too large.

(b) Deletion of “subject to its ratification by the State Party” and inclusion of an opt-out clause instead

This would be more likely to create a reasonably uniform and certainly a clearer scope of application.

3. Paragraph 3

Deletion of subparagraph (c); same reasoning as in section 2 (a) above.

12. Proposal submitted by Austria on the definition of offences (A/AC.252/1999/WP.12)

Option 2. Articles 1, 2 and 20 bis

Article 1

“Main offence” means any offence within the scope of one of the Conventions set forth in the Annex excluding attempts and contributory or participatory offences;

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 an organization with the knowledge or intent that such financing will be used by that organization, in full or in part, to commit or prepare the commission of:

(a) Acts which constitute a main offence within the scope of one of the Conventions listed in the Annex;

(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.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

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 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article.

Article 20 bis

On depositing its instruments of ratification, acceptance, approval or accession, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, that treaty shall not be deemed to be included in the Annex. 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.

Rationale

1. Chapeau

(a) Deletion of reference to the financing of “a person”

Mere preparatory acts are usually not criminalized under national and international law. However, if the offence is of a particularly dangerous nature, exceptions from this principle are made. In the context of the offences covered by this Convention, this would seem to be true only of organizations. It is this aspect of organization, which typically includes long-term planning, continuity of purpose, division of labour and particular difficulty of detection, which renders these entities and their activities so dangerous that criminalizing the financing of mere preparatory acts seems justifiable. Similar reasoning does not apply to individuals. Furthermore, financing an individual in order to enable that individual to commit terrorist offences would be a participatory offence falling under the scope of the Conventions listed in the Annex.

(b) Deletion of the term “could be used” and inclusion of the term “intent”

The term “could be used” would create too large a scope of application, since it can rarely be excluded that financing *could* be used for committing offences; knowledge may be difficult to prove, hence the addition of “intent”.

(c) Retention of preparatory acts insofar as they relate exclusively to organizations

Some reference to preparatory acts should probably be retained since this Convention would otherwise become largely redundant (financing terrorist offences is a participatory crime already covered by existing instruments); by deleting any reference to preparatory acts we would not cover some of the most important cases of financing, such as the financing of a training-camp for terrorists.

2. Paragraph 1 (a)

(a) Reference only to the main offences of the Conventions contained in the Annex

The present unqualified reference to “offences within the scope of the Conventions listed in the Annex” creates the danger of very long chains of participation removing a reasonably close nexus to the main offence; the scope of application would become too large.

(b) Deletion of “subject to its ratification by the State Party” and inclusion of an opt-out clause instead

This would be more likely to create a reasonably uniform and certainly a clearer scope of application.

3. Paragraph 3

Deletion of subparagraph (c); same reasoning as in section 2 (a) above.

13. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.13)

Article 2

Paragraph 1 (a)

Insert the words “, acceptance, approval or accession thereto” between the words “its ratification” and “by the State Party”.

14. Proposal submitted by Egypt (A/AC.252/1999/WP.14)

Article 2

Paragraph 1 (a)

“... Conventions listed in the annex to this Convention, to which that person’s State is a Party.”

15. Proposal submitted by Belgium (A/AC.252/1999/WP.15)

Article 2

Paragraph 1 (a)

Replace the text with the following text:

“An offence within the scope of one of the Conventions itemized in the annex, provided that the State Party in question is also a party to this Convention.”

16. Proposal submitted by Guatemala (A/AC.252/1999/WP.16)

Article 2

Paragraph 1

1. Any person commits an offence within the meaning of this Convention if, without any lawful justification, that person proceeds to the financing of a person or organization in the knowledge that such financing is or is likely to be used, in full or in part, in order to prepare or commit:

(a) An offence of a terrorist nature within the scope of one of the Conventions listed in the Annex hereto, provided that at the material time the State Party concerned was a party to that Convention;

(b) An act designed to cause death or serious bodily injury, in a situation of armed conflict, to civilians, and, in other situations, to any person, when, by its nature or context, such act constitutes a means of intimidating a Government, any other institution or entity or the civilian population.

17. Proposal submitted by the Group of South Pacific Countries (SOPAC) (A/AC.252/1999/WP.17)

(Australia, Fiji, Marshall Islands, Micronesia (Federated States of), New Zealand, Papua New Guinea, Samoa, Solomon Islands)

Annex

8 bis. International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly of the United Nations on 4 December 1989.

Article 6

(1) 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 and are punished by penalties consistent with their grave nature.

(2) 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 created by this Convention or any

other offences created by the Conventions listed in the Annex hereto to which the State is a Party.

18. Proposal submitted by Austria and Belgium (A/AC.252/1999/WP.18)

Article 5

Paragraph 4

Replace the existing text with the following text:

“Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective and *proportionate* measures”.

19. Proposal submitted by Belgium, Canada, Japan and Sri Lanka (A/AC.252/1999/WP.19)

Article 5

Paragraph 1

Delete the words “derived profits from or”.

20. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning articles 1 and 2 (A/AC.252/1999/WP.20)

Article 1

For the purpose of this Convention:

1. “Funds” means cash or any other property, tangible or intangible.
2. (a) Terrorist offences means such offences specified in the treaties listed in the Annex to this Convention as are mentioned expressly in the Annex.

(b) 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 terrorist offences. 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.

(c) 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.

(d) All declarations and other communications concerning the Annex shall be made to or by the depositary and be in writing.

3. "Organization" means ...

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.

21. Revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning articles 1 and 2 (A/AC.252/1999/WP.20/Rev.1)

Article 1

For the purposes of this Convention:

1. "Funds" means cash or any other property, tangible or intangible, however acquired.

2. (a) 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.

(b) 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.

(c) All declarations and other communications concerning the Annex shall be made to or by the depositary and be in writing.

3. "Organization" means ...

4. ...

Article 2

1. Any person commits an offence within the meaning of this Convention if that person knowingly provides funds by any means, lawful or unlawful, directly or indirectly, to 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 in part, to prepare for, or to commit:

- (a) Offences as defined in Annex I to this Convention; or
- (b) An act ...

2. *bis* 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 specific category of offences.

- 2. Any person ...
- 3. ...

22. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.252/1999/WP.21)

Article 5

1. Each State Party shall take the necessary measures to ensure that when a person responsible for the management or control of a legal person, or an employee, has, in that capacity, committed an offence under article 2 of this Convention, that legal person shall incur liability in accordance with the provisions of this article.

2. A legal person which is liable in accordance with paragraph 1 shall be subjected to such civil, administrative or criminal measures as take into account the gravity of the matter.

3. [*no change*]

4/5. [*deleted*]

23. Proposal submitted by Italy (A/AC.252/1999/WP.22)

Article 5

Paragraph 5

The provisions of this article cannot be interpreted as affecting the question of the international responsibility of the State.

24. Proposal submitted by Guatemala (A/AC.252/1999/WP.23)

Article 5

Paragraph 1

Replace the existing text with the following text:

“Each State Party shall, within the limits imposed by its general rules relating to the jurisdiction of its courts and other authorities over legal entities, take the necessary measures to ensure that legal entities controlled from or having their registered offices in its territory or engaging in activities either carried out in or otherwise affecting its territory may be held liable when they have knowingly, through the agency of persons or bodies responsible for their management or control, wrongfully derived profits from or participated in the commission of offences referred to in this Convention”.

Paragraph 4

Replace the words “responsible for committing an offence referred to in this Convention” with “that have incurred liability in accordance with paragraph 1 of this article”.

New paragraph

Insert at the end of the article a new paragraph which reads as follows:

“Each State Party shall inform the Secretary-General of the United Nations of the measures it has taken to comply with this article”.

25. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.24)

Article 5

Paragraph 1

Delete the words “derived profits from or” and add “or acquiesced” after the word “participated”.

Paragraphs 2 and 4

Merge both paragraphs as follows:

“Each State Party shall ensure that, subject to relevant domestic legislation of the State Party, the said legal entity may incur criminal, civil or administrative liability and is subject to effective measures taken as a result of such liability.”

26. Proposal submitted by Australia (A/AC.252/1999/WP.25)

Article 8

Paragraph 2

“Upon the completion of any proceedings connected with an offence set forth in article 2, each State party shall take appropriate measures to permit the forfeiture of property ...”

27. Proposal submitted by Germany (A/AC.252/1999/WP.26)

Article 2

1. Any person commits an offence within the meaning of this Convention if that person proceeds with the financing of a person or an organization in the knowledge **or with the intention** that such financing will be used, in full or in part, in order to 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 act, by its nature or context, **is intended and likely to intimidate** a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or

(c) ...

Rationale

1. Paragraph 1

(a) “unlawfully and intentionally” (second line of the *chapeau*)

Based upon the assumption that the draft is aimed at criminalizing the financing of terrorist acts as a new offence, the mentioning that such financing has to be unlawful seems superfluous. If the financing of terrorist activities constitutes a criminal offence and is not only considered a participatory act, the unlawfulness of such conduct is implied. However, if other States consider a reference to “unlawfully” necessary in the text, the German delegation will not object to retaining it.

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. The deletion of the words “and intentionally” in the second line of the *chapeau* does not mean that the provision should not refer to the intent. The present proposal suggests dealing with the intention of the offender in connection with the knowledge of the offender, because both knowledge and intention are subjective crime elements. Therefore, the words “or with the intention” were inserted after the word “knowledge” in the third line of the *chapeau*. This makes the words “and intentionally” in the second line redundant.

(b) “or could be used” (third line of the *chapeau*)

As many delegations pointed out during the first reading of article 2, the wording “or could be used” is too vague. The financing should only be a punishable act under this Convention if the money, assets or property provided are likely to be used for terrorist purposes. The language “or could be used” covers all possibilities of a use of the assets or

property for terrorist activities and leaves too much room for interpretation. Therefore, the words “or could be used” do not feature in the German proposal.

(c) “in order to prepare” (third line of the *chapeau*)

The reference to preparatory acts in the *chapeau* is superfluous as it pertains to the preparation of the terrorist crimes as described under subparagraphs (a) and (b) of paragraph 1 but not to the preparation of the financing. Preparatory acts in connection with most crimes under the Conventions referred to in the annex are already criminalized. Thus, there is no need to mention explicitly the preparation of the commission of a terrorist act in paragraph 1 as part of the offence. Consequently, the reference is deleted in the proposed text.

(d) “constitutes a means of intimidating” (subparagraph (b))

The exact meaning of the words “constitutes a means of intimidating a government” is unclear to the German delegation. In our understanding, the intimidation of a Government or the civilian population is one of the purposes of the terrorist act. If an offender within the meaning of this Convention is to finance such a terrorist act, his or her intention should also pertain to the criminal purpose of the terrorist act. This does not mean that the financier of the terrorist act has to share the same motives and beliefs as the person or the organization that commits the terrorist crime. The aim of the Convention is not to criminalize political or religious beliefs. However, in order to consider the financing as a criminal act, the financier of terrorist acts has to know or has to act with the intention that the assets or property, which he or she supplies, will be used not just to kill a person but to commit a terrorist crime.

2. Paragraph 3

In many legal systems, the participation in an attempt of an offence is not a punishable act. It is our understanding that the accomplice will participate in the commission of the offence with a view to achieving the completion of the crime. If the completion of the crime fails, the offender will be punishable for the attempt of the crime, as will be the person who participated as an accomplice, provided that he or she has acted with the intention to complete the crime. As the attempt of the crime is already covered by paragraph 2 of the article, the proposed text deleted the reference to the participation in an attempt in paragraph 3 (b).

28. Proposal submitted by Germany (A/AC.252/1999/WP.27)

Article 17

Paragraph 1

States Parties shall cooperate in the prevention of the offences set forth in article 2, including:

1. ...
- (a) ...
- (b) ...
- (i) ...
- (ii) ...
- (iii) ...

- (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.

Rationale

Article 17 is very important in that it provides for methods for the effective cutting-off of funds destined for terrorist purposes. We propose a broadening of the scope of this article with a view to including two components already used in the fight against money-laundering. One is the supervision, insofar as the transfer of funds is concerned, of agencies engaged in money transmission. The other is the introduction of controls over the physical cross-border transportation of cash and bearer negotiable instruments.

Some terrorist groups, like money-launderers, have recourse in the transfer of funds, e.g., from Western Europe to their home regions, to shadow banking systems (e.g., travel agencies or cultural associations) and physical cross-border transport by couriers. In our experience, a great volume of funds is transmitted in such ways. Germany has enacted the necessary legislation with encouraging results.

The text of subparagraph (d) reproduces recommendation No. 22 of the Financial Action Task Force on Money Laundering.

29. Proposal submitted by the Netherlands (A/AC.252/1999/WP.28)

Article 17

Paragraph 1

Subparagraph (b), *chapeau*

Measures requiring their financial institutions and other professions involved in financial transactions to identify, on the basis of an official or other reliable identifying document, their usual or occasional customers as well as customers in whose interests accounts are opened, and to record the identity of their clients.

For this purpose the States shall ensure:

New subparagraph (b) (iv)

Maintaining an information system aimed at recording information about the economic beneficiaries of legal entities. Upon request, States Parties shall consider exchanging this information.

30. Proposal submitted by Austria (A/AC.252/1999/WP.29)

Article 20 *ter*

1. The Annex may be amended by the addition of treaties that:
 - (a) Are in force, and

- (b) Have been ratified by at least 22 States.
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. If a majority of the States Parties do not object to the proposed amendment by written notification no later than [90] days after its circulation, the proposed amendment shall be deemed adopted.
 4. The adopted amendment to the Annex shall enter into force 30 days after the deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession for all those States Parties having deposited such an instrument.

**31. Proposal submitted by the Islamic Republic of Iran
(A/AC.252/1999/WP.30)**

Article 8

1. Each State Party shall take appropriate measures to **identify, detect, freeze or seize** 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, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures for the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.
3. ...

**32. Proposal submitted by the United States of America
(A/AC.252/1999/WP.31)**

Article 17

Paragraph 1

...

- (c) 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; and
- (d) 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; and
 - (ii) The movement of funds or property relating to the commission of such offences.

33. Proposal submitted by Bahrain (A/AC.252/1999/WP.32)

Article 17

Paragraph 1 (a bis)

Measures to prohibit access into their territories of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;

34. Proposal submitted by Lebanon (A/AC.252/1999/WP.33)

Article 3

The Lebanese delegation proposes that the eighth preambular paragraph become paragraph 1 of article 3 and that the existing text of article 3 become paragraph 2.

Article 3 would thus read:

- “1. Any act governed by international humanitarian law is not governed by this Convention.
2. This Convention shall not apply ...”

35. Proposal submitted by the United States of America (A/AC.252/1999/WP.34)

Article 7

...

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack in the territory or against a national of that State;

...

Add a new paragraph 2 (d):

(d) The act for which financing is provided in violation of article 2 is committed in an effort to compel that State to do or abstain from doing any act.

...

5. When more than one State Party claims jurisdiction over one of the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecuting and the modalities of mutual legal assistance.

Add a new paragraph 6:

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**36. Proposal submitted by Ecuador and South Africa
(A/AC.252/1999/WP.35)**

Addition to article 8

...

4. Subject to its domestic law, each State Party shall consider establishing mechanisms whereby such funds, assets and property, or funds derived from the sale thereof, are utilized to indemnify the victims of offences within the ambit of this Convention, or their families.

**37. Proposal submitted by Papua New Guinea
(A/AC.252/1999/WP.36)**

Article 2

Paragraph 1 (b)

Delete the phrase “other than in armed conflict”.

Article 5

Paragraph 5

Delete the paragraph *in toto*.

Article 3

Replace the present text with the following text:

“This Convention shall not apply:

“(a) Where the financing is part of an agreement between States Members of the United Nations in the performance of a bilateral, regional or international obligation recognized by international law; and

“(b) Where the offence is committed within a single State, the alleged offender is a national of and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 11 to 17 shall, as appropriate, apply in those cases.”

38. Proposal submitted by Australia (A/AC.252/1999/WP.37)

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities located in or organized under the laws of its territory shall be held liable when they knowingly, through the action or acquiescence of one or more persons responsible for their management or control, benefit from or participate in the commission of offences referred to in this Convention.
2. ...
3. ...
4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective, proportionate and deterrent measures.
5. *Delete*

39. Proposal submitted by Australia (A/AC.252/1999/WP.38)

Article 17

Paragraph 1 (f)

Option 1

(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, 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;

Option 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 and requiring financial institutions to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business

relations or conducting transactions (in particular, opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash 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 and to verify that any person purporting to act on behalf of the customer is so authorized and to identify that person;

(iii) Requiring financial institutions to take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e., institutions, corporations, foundations, trusts, etc.) that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records should be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour;

(v) Requiring financial institutions to keep records on customer identification (e.g., copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business correspondence for at least five years after the account is closed. These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

40. Proposal submitted by the Netherlands (A/AC.252/1999/WP.39)

Article 8

1. Each State Party shall take appropriate measures for identification, detection, freezing or seizure of any funds, assets or other property used in any manner in order to commit the offences referred to in this Convention, and the proceeds derived from such offences, for purposes of possible forfeiture.

2. Consistent with due process and applicable domestic law, each State Party shall take appropriate measures for the forfeiture of any funds, assets or other property used for committing the offences referred to in this Convention, and the proceeds derived from such offences.

3. *No change*

41. Proposal submitted by Belgium and Japan (A/AC.252/1999/WP.40)

Addition to article 8

Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

42. Proposal submitted by Australia (A/AC.252/1999/WP.41)

Article 7

1. Each State Party ...
 - (a) The offence is committed in the territory in that State; or
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
 - (c) The offence is committed by a national of that State.
2. A State Party ...

43. Proposal submitted by Japan and the Republic of Korea (A/AC.252/1999/WP.42)

Article 4

Paragraph (b)

Replace the words “effective, proportionate and deterrent” by the word “appropriate”, so that the paragraph reads:

“To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.”

44. Proposal submitted by Japan (A/AC.252/1999/WP.43)

Article 3

Replace the words “alleged offender” by the following:

“the alleged offender and the victims of the act or offence set forth in subparagraphs 1 (a) (and 1 (b)) of article 2, the alleged perpetrator of such an act or offence and the person who was financed”

45. Proposal submitted by Bolivia, Colombia, Chile, Ecuador, Mexico and Peru (A/AC.252/1999/WP.44)

Article 12

1. Renumber paragraph 2 as paragraph 3, with the following amendment:

“3. States Parties shall carry out their obligations under *paragraphs 1 and 2* of the present article in conformity ...”
2. Renumber paragraph 3 as paragraph 2.
3. Add a new paragraph 2 *bis* as follows:

“2 *bis*. The Requesting State Party shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized by the Requested State Party.”

46. Proposal submitted by France (A/AC.252/1999/WP.45)

Revised texts of articles 2, 5, 8 and 12 and additional provisions

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.
2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
3. Any person also commits an offence if that person:
 - (a) Participates as an accomplice to an offence as set forth in paragraph 1 or 2 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 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 or 2 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.]

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities having their registered offices or carrying out activities in its territory are held liable when they have knowingly, through the agency of one or more persons responsible for their management or

control, [derived profits from or] participated in the commission of offences referred to in this Convention.

2. Such legal entities may incur criminal, civil or administrative liability, according to the fundamental legal principles of the State Party.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective measures that are commensurate with the offence.

[5. No provision of this article can have the effect of calling into question the international responsibility of the State.]

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.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences referred to in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. States Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article.

4. None of the offences referred to in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the ground that it concerns a fiscal offence.

Additional provisions

1. Reinsert the annex as proposed by the Austrian delegation in document A/AC.252/1999/WP.11.
2. Reinsert the following subparagraphs proposed by the United Kingdom delegation in document A/AC.252/1999/WP.20 under article 1:

“(b) 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 within the ambit of this Convention**. 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.”

(c) and (d) *with no changes*

47. Proposal submitted by Guatemala (A/AC.252/1999/WP.46)

Article 5, paragraph 1^a

Replace the existing text by the following:

“1. To the extent that its fundamental legal principles and international law allow it to do so, each State Party shall take the necessary measures to ensure that legal entities other than States can be held liable or sanctioned whenever they have, with the full knowledge of one or more persons responsible for their management or control, derived profits from or participated in the commission of offences referred to in this Convention.”

Explanatory comments

It would seem that the text of paragraph 1 of article 5 proposed in A/AC.252/L.7 does not spell out with sufficient precision and comprehensiveness the cases where a State party is under an obligation to take action under the paragraph. In A/AC.252/1999/WP.23 we sought to remedy this by spelling out those cases. We have now realized, however, that the enumeration of the latter contained in that working paper was not complete and could also raise some difficulties. Instead of trying to rectify this, we have, in this new proposal, adopted an entirely different and far simpler approach, namely, to provide simply that a State party is under an obligation to take action under paragraph 1 whenever it is in a position lawfully and properly to do so. This would cover all cases where the legal entity that misbehaves has links sufficiently close to the territory or authorities of the State party to enable it to do something about the misconduct. The words “other than States” would appear to render paragraph 5 of article 5 unnecessary. (Moreover, in the text of paragraph 1 we are proposing corrections to some mistakes contained in the English translation of that paragraph.)

^a See A/AC.252/1999/WP.23.

48. Proposal submitted by France (A/AC.252/1999/WP.47)**Revised text of article 17****Article 17****Option 1**

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:

(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.]

Option 2

Proposal submitted by Australia (A/AC.252/1999/WP.38).

49. Proposal submitted by India (A/AC.252/1999/WP.48)

Preamble

Recalling General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should “elaborate a draft international convention for the suppression of terrorist financing to supplement existing international instruments, and subsequently will address 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”.

Article 2

1. ...

(a) ...

(b) An act designed to cause death or serious bodily injury to any person, when such an act, by its nature or context, constitutes a means of intimidating the population or any Government.

Article 5

Delete paragraph 5.

New article

States parties shall cooperate in carrying out their obligations under this Convention and shall refrain from committing, either directly or indirectly, any of the acts prohibited under this Convention and the Conventions in Annex I, or in any manner assisting, encouraging or permitting their commission.

50. Proposal submitted by Austria, Belgium, Japan, Sweden and Switzerland (A/AC.252/1999/WP.49)

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally provides funds, directly or indirectly and however acquired, to any person or organization committing or attempting to commit:^a

^a The inclusion of the term “or attempting to commit” in the *chapeau* is subject to the deletion of any reference to attempts and participatory offences under the scope of the Conventions listed in the annex.

(a) Any offence within the scope of one of the Conventions listed in the Annex and as specified therein; or

[(b) ...]

Such financing shall [either] be made with the intention that the funds be used [or in the knowledge that the funds are to be used], in whole or in part, for the commission of the offences mentioned above.

2. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 of the present article.

51. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.50)

Article 5^a

Paragraph 1

Include the acts of employees undertaken in the name of the legal entity.

Paragraph 2

Replace the words “the fundamental legal principles” with the words “relevant domestic legislation”.

^a See A/AC.252/1999/WP.45.

52. Proposal submitted by Australia (A/AC.252/1999/WP.51)

Revised texts of articles 4 and 7

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by **appropriate** penalties which take into account the grave nature of the offences.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack in the territory of or against a national of that State;

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(c) The offence was directed towards or resulted in the carrying out of an attack against a state government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State;

(d) An act for which financing is provided in respect of an offence under article 2 is committed in an effort to compel that State to do or abstain from doing any act.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of the present article.

5. When more than one State Party claims jurisdiction over the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions **appropriately**, in particular concerning the conditions for prosecution and the terms and conditions for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

53. Proposal submitted by Mexico (A/AC.252/1999/WP.52)

Amendments to article 17^a

1. Renumber paragraph 1 (c) as paragraph 1 (b) (iv).

2. Renumber paragraph 1 (d) as paragraph 1 (c) with the following change:

“(c) States shall also consider implementing measures to detect or monitor ...”

^a See A/AC.252/1999/WP.47.

54. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.252/1999/WP.53)

Article 5

1. Each State Party shall take the necessary measures to ensure that a legal entity located or carrying out activities in its territory is made liable when a person responsible for its management or control knew, or had reasonable cause to believe, that the legal entity was being used in the furtherance of an offence under article 2 of this Convention.
2. Such legal entity shall, in accordance with the domestic law of the State Party, be subjected to such effective measures, whether criminal, civil or administrative, as reflect the degree of knowledge of the offence by officers of the legal entity.
3. Liability under this article is without prejudice to the criminal liability of individuals.
4. *[Deleted]*
5. *[Deleted]*

55. Proposal submitted by Saudi Arabia (A/AC.252/1999/WP.54)

Article 2

We propose to move paragraph 5 of article 8, which is included in the French proposal (A/AC.252/1999/WP.45), to article 2. We propose to change it as follows:

Article 2

Additional paragraph 4:

No provision of this convention shall be construed as prejudicing the rights of third parties acting in good faith.

56. Proposal submitted by Belgium and Sweden (A/AC.252/1999/WP.55)

Delete articles 13 and 14.

57. Proposal submitted by India (A/AC.252/1999/WP.56)

Article 7

Paragraph 2

...

(e) That the State Party has jurisdiction, in accordance with any of the conventions listed in annex I, over the offence for which financing is provided.

58. Proposal submitted by France (A/AC.252/1999/WP.57)

Amend A/AC.252/1999/WP.47 as follows:

Article 17

1. Unchanged

2.

(a)

(b)

(i)

(ii)

(c) In an emergency, and if they consider it necessary, States Parties may exchange information through the International Criminal Police Organization (Interpol).

59. Proposal submitted by the Islamic Republic of Iran and Lebanon (A/AC.252/1999/WP.58)**Article 7, paragraph 6**

Subject to the relevant rules and principles of international law, this Convention does not prejudice the criminal jurisdiction of a State established in accordance with its domestic law.

60. Proposal submitted by the Republic of Korea concerning article 2, paragraph 1 (a), and an additional article (A/AC.252/1999/WP.59)**Article 2, paragraph 1 (a)**

(a) An offence within the scope of one of the Conventions listed in the Annex, subject to its ratification, acceptance, approval or accession by the State Party;

Article^a

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 in writing that, in the application of this Convention to that State Party, offences specified in that treaty shall be treated as offences for the purposes of article 2, paragraph 1 (a).

^a The number of this article will be determined at a later stage.

61. Proposal submitted by Papua New Guinea (A/AC.252/1999/WP.60)

Article 1

Definitions

“Financing” means the provision of funds, assets or other property to a person or organization.

“Funds” means cash or any other property, tangible or intangible, however acquired, including but not limited to bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and any other negotiable instrument, in any form, including electronic or digital.

Note: If article 2 (1) uses the word “funds”, then there will be no need for a definition of “financing”.

Annex IV

A. Informal summary of the discussion in the Working Group, prepared by the Rapporteur: first reading of draft articles 1 to 8, 12, paragraphs 3 and 4, and 17 on the basis of document A/AC.252/L.7

Article 1

1. The Working Group undertook its first reading of paragraphs 1 to 3 of article 1 on the basis of proposals contained in documents A/AC.252/L.7 and A/AC.252/1999/WP.1 (in the case of para.1).

Paragraph 1

2. Suggestions were made to replace the term “transfer” by the terms “provision”, “making available of” or “supply” so as to provide a broader scope of the term “financing” beyond the technical connotations of “transfer”. Attention was drawn, however, to the possible interpretation of the phrase “making available” as including assistance other than through financing. The retention of the word “transfer” was preferred by others, as clearly reflecting the content of the term “financing”.

3. Different views were expressed as regards the notion of “reception”. While some preferred its deletion (see A/AC.252/1999/WP.6 and WP.8) as an offence under article 2 was connected with “financing of a person”, others favoured retaining it. In the latter regard, it was noted that the concept of reception could be kept if it was linked to the knowledge of the ultimate use or to the administration of funds. It was suggested further that the word “reception” should be replaced by “receipt”.

4. Suggestions were also made to delete the phrase “or other property” as being superfluous. Another view was expressed in favour of the deletion of the word “assets”. Still others preferred retaining both terms as distinct notions. Some preferred interpreting “property” as covering only arms, explosives and similar goods. Reference was also made to services in kind.

5. As to the question of retaining the reference to “whether lawful or unlawful”, the suggestion was made to move the phrase to before the words “or funds”. However, a preference was expressed for the retention of the current formulation. It was also recommended that the phrase be replaced by the words “lawfully or unlawfully acquired”.

6. Concerning the phrase “directly or indirectly”, a preference was expressed for its deletion, including the

possibility of inserting the words in the *chapeau* of article 2 (1), after the word “proceeds”. Others supported the retention of the phrase as reflected in article 1 (1). Further suggestions were as follows: to delete “to or from another person or another organization”; and to add at the end of the paragraph the following: “with the intent of aiding the perpetration of offences set forth in article 2”.

7. The suggestion was made to replace paragraph 1 with the formulation contained in document A/AC.252/1999/WP.9.

8. With regard to the proposal for article 1 (1) contained in document A/AC.252/1999/WP.1, while some delegations noted that subparagraphs (a), (b) and (c) of the proposal introduced greater precision into the provision, others commented on their restrictive character.

9. Concerning the final paragraph in the proposal contained in document A/AC.252/1999/WP.1, two positions emerged. While some supported its inclusion, others objected to its inclusion on the grounds that it would unnecessarily limit the scope of the convention and diminish its effectiveness. A proposal was made to replace the words “used for humanitarian purposes by the beneficiary person or organization” at the end of the paragraph by the words “meant exclusively to be used for humanitarian purposes”. Others favoured the inclusion of the underlying concept contained in the paragraph elsewhere in the text of the draft Convention.

Paragraph 2

10. While support was expressed for the use of a generic definition of “funds” such as “any form of pecuniary benefit” (A/AC.252/1999/WP.10), others spoke in favour of the retention of the current formulation. The following proposals were also made: to insert the phrase “but not limited to” after the word “including”; and to replace the definition of “funds” with a reference to “cash or any other property, tangible or intangible” (see A/AC.252/1999/WP.20).

Paragraph 3

11. Although some supported the retention of the current formulation, others favoured the introduction of more precise and detailed elements of the definition of “organization” (see A/AC.252/1999/WP.6).

12. Further proposals in connection with the paragraph included the insertion of the phrase “of three or more” before the word “persons”; as well as the inclusion of a reference to State terrorism.

Additional definitions suggested for inclusion in article 1

13. In connection with one of the possible options for article 2, a definition of the phrase “main offence” was proposed (see A/AC.252/1999/WP.12). A further proposal included a definition of “terrorist offences”, with reference to the list of applicable offences contained in the Annex, as well as, *inter alia*, a mechanism for the addition of Conventions to the Annex in the future (see A/AC.252/1999/WP.20). It was also recommended that the concept of “legal entity” should be defined.

Article 2

14. The Working Group undertook its first reading of article 2 on the basis of the proposal contained in document A/AC.252/L.7. Several additional proposals were submitted during the Working Group’s consideration of the draft article.

15. It was suggested that article 2 should be carefully reviewed so as to avoid the criminalization of minor offences. Furthermore, preference was expressed for avoiding the establishment of different regimes for the extradition of perpetrators and financiers, respectively.

Paragraph 1: *chapeau*

16. Different views were expressed regarding the use of the term “person”. Some suggested that it should cover both natural and legal persons. Others preferred the insertion of the phrase “or State” after the words “or any person”. While the suggestion was made to retain the words “a person” after the phrase “financing of”, a preference was also expressed for their deletion, so as not to criminalize the financing of preparatory acts carried out by a person (see A/AC.252/1999/WP.11 and 12).

17. While some considered the expression “unlawfully” to be redundant, others favoured its retention in the text so as not to criminalize otherwise lawful acts of financing which might have the unintended result of aiding the commission of offences under the article. Likewise, although some delegations suggested the deletion of the reference to “intentionally”, others preferred its retention. It was further proposed that the phrase “or with the intention” (see A/AC.252/1999/WP.26), or the phrase “or intent”, be inserted after the phrase “in the knowledge”. With regard to the phrase “and intentionally proceeds”, it was proposed to insert the words “directly and indirectly” after “proceeds”.

18. The phrase “will or could be used” was the subject of several proposals intended to clarify the scope of the offences being created by draft article 2. Hence, the suggestion was made to replace the phrase “will ... be used” by “is ... to be

used”; others recommended either deleting “or could” before the phrase “be used” (see A/AC.252/1999/WP.2) or replacing it by “is designed to” or “is likely to”. Alternatively, some spoke in favour of the retention of the phrase “or could” as in the draft text under consideration.

19. Concerning the reference to the preparation or commission of the offences specified in the draft article, the suggestion was made to replace the phrase “in order to prepare or commit” by “to commit or to prepare the commission of” (see A/AC.292/1999/WP.11). Some favoured the deletion of the phrase “to prepare” since ancillary offences were covered by paragraph 3, while others favoured its retention. Likewise, opposing views were expressed as regards the addition of the phrase “threaten to commit” at the end of the *chapeau*.

Paragraph 1 (a)

20. It was suggested further to clarify the notion of offence by inserting after the word “offence” the phrase “of a terrorist nature” (see A/AC.252/1999/WP.16).

21. As regards the means by which the States can become parties to the Conventions listed in the Annex, the suggestion was made to insert the phrase “acceptance, approval or accession thereto” after the word “ratification” (see A/AC.252/1999/WP.13). Regarding the phrase “subject to its ratification by the State Party”, in addition to the various suggestions contained in documents A/AC.252/1999/WP. 11, 12 and 14 to 16 (see also WP.20, para. 2 (b)), it was suggested that the above phrase should be deleted.

22. Concerning the Annex to the draft convention, some suggested the inclusion of a provision allowing for future additions to the Annex (see, for example, A/AC.252/1999/WP.20, in the context of article 1), and others specified further Conventions to be added to the Annex, in particular, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries (see A/AC.252/1999/WP.17) and the 1971 Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance. The suggestion was made to add to the future list of offences other acts such as nuclear terrorism and the destruction of the environment. It was also proposed that the list of Conventions in the Annex should include references to the respective articles dealing with major offences, so as to facilitate the judicial application of the draft convention at the national level (see A/AC.252/1999/WP.11).

Paragraph 1 (b)

23. While some delegations expressed reservations regarding the subparagraph as being too broad in scope, even suggesting its deletion, others preferred its retention, maintaining that not all terrorist offences were covered by paragraph 1 (a). As regards the reference to “armed conflict”, concerns were expressed regarding the meaning of the phrase. It was suggested that the words “other than in armed conflict” should be deleted (see A/AC.252/1999/WP.36). In addition, a specific modification (A/AC.252/1999/WP.16) was suggested.

24. Suggestions were made to replace the phrase “constitutes a means of intimidating” by “is intended and likely to intimidate” (see A/AC.252/1999/WP.26) and to add the phrase “any other institution or entity” after the word “Government” (see A/AC.252/1999/WP.16). Addition of the notion of damage to infrastructure was also proposed.

25. The following proposals were also made: to replace the entire paragraph by a new text (see A/AC.252/1999/WP.20); and to insert a new paragraph A to article 2 (see A/AC.252/1999/WP.8).

Paragraph 2

26. Suggestions were made both in favour of the deletion of the paragraph, so as to avoid the practical problem of proving attempt in the case of financing, and in favour of its retention, in order to criminalize such acts.

Paragraph 3

27. While a preference for retaining the text of the paragraph in its current formulation was expressed, the following suggestions in regard to subparagraphs (a) and (c) were also made: in relation to subparagraph (a), the deletion of the cross-reference to paragraph 2, as establishing an excessively remote chain of causation; opposing views regarding the retention of subparagraph (c) were also expressed (see A/AC.252/1999/WP.2).

Article 3

28. The Working Group undertook its first reading of article 3 on the basis of the proposal contained in document A/AC.252/L.7.

29. While a preference was expressed for retaining the provision in the form contained in the text under consideration, the suggestion was made to include a reference to “legal entities” in the provision. This was opposed in the Working Group as it unnecessarily extended the scope of application of the article.

30. It was proposed that the phrase “Except as regards article 5”, should be added at the beginning of the article. It was also suggested that the article should be modified to include the text as proposed in document A/AC.252/1999/WP.43 after the phrase “alleged offender”, so as to broaden the scope of the exclusion clause.

31. It was further suggested that a new paragraph 1 (see A/AC.252/1999/WP.33) should be inserted to expressly exclude the application of humanitarian law from the operation of the convention. Hence, the current text would be included as new paragraph 2.

32. A replacement text for article 3 to include a reference to financial agreements between States in the performance of their international obligations (see A/AC.252/1999/WP.36) was also proposed.

Article 4

33. The Working Group undertook its first reading of article 4 on the basis of the proposal contained in document A/AC.252/L.7.

34. It was proposed that the phrase “effective, proportionate and deterrent” should be replaced by the word “appropriate”, so as to be consistent with the corresponding provision of the International Convention for the Suppression of Terrorist Bombings.

Article 5

35. The Working Group undertook its first reading of article 5 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1

36. While general support for the concept underlying the paragraph was expressed, many delegations made suggestions aimed at improving its formulation. Hence, the suggestion was made to replace the phrase “having their registered offices” by “organized under its laws”. It was also recommended that the language of the provision should be strengthened by replacing the word “may” by “shall”. However, objections were expressed in that regard.

37. Concerns were expressed regarding the specific legal connotation of the word “agency”. In that connection, suggestions were made either to delete the phrase “agency of” or the entire phrase “through the agency of one or more persons responsible for their management or control”. Alternatively, the preference was also expressed for replacing the word “agency” by the phrase “action or acquiescence of” (see A/AC.252/1999/WP.37).

38. While some delegations highlighted the need to raise the threshold of the offence to require knowledge of the acts in question by the entire management body, others opposed that suggestion.

39. On the question of “derived profits”, the following suggestions were made: to delete the phrase “derived profits from or” (see A/AC.252/1999/WP.19 and 24); to replace “derived profits” by the word “benefited”; or to add the word “wrongfully” before the phrase. It was also suggested to add the phrase “or acquiesced” after the word “participated” (see A/AC.252/1999/WP.24).

40. With regard to the phrase “referred to in this Convention”, support was expressed for replacing it by “set forth in article 2”.

41. Four proposals for new formulations of paragraph 1 were also made (see A/AC.252/1999/WP.3 and 21, against which objections were expressly raised in the Working Group; and A/AC.252/1999/WP.23 and 46).

Paragraph 2

42. While preference was expressed for retaining the text in its current form, suggestions to replace the entire paragraph were also made (see A/AC.252/1999/WP.21 and 24 (which proposed the merger of paras. 2 and 4)). The following drafting suggestions were also made: to replace the word “may” by “shall” so as to create a specific obligation; and to delete the phrase “Subject to the fundamental legal principles of the State Party”. The latter proposal was opposed as it would render the draft convention insensitive to the basic norms of different legal systems.

Paragraph 3

43. While some delegations supported the retention of the text in its current form, others suggested the deletion of the phrase “or of their accomplices”, so as to be consistent with their national laws, as well as to avoid the criminalization of petty offences.

Paragraph 4

44. While the suggestion was made to delete the paragraph, some delegations offered modifications of its provisions. These included specific suggestions to merge paragraphs 2 and 4 (see A/AC.252/1999/WP.24) or to replace the phrase “responsible for committing an offence referred to in this Convention” in paragraph 4 by the phrase “that have incurred liability in accordance with paragraph 1 of this article” (see A/AC.252/1999/WP.23). Another suggestion was to insert the phrase “in accordance with its domestic legislation” before the word “ensure”.

45. In order to avoid ambiguity and to apply traditional notions of proportionality of sanctions, the suggestion was made to insert the phrase “and proportionate” after the word “effective” and to delete the phrase “that have substantial economic consequences for them” (A/AC.252/1999/WP.18). A further proposal called for the inclusion of the phrase “effective, proportionate and deterrent measures” (see A/AC.252/1999/WP.37) so as to take into account the grave nature of the offences in question.

Paragraph 5

46. Some delegations suggested the deletion of paragraph 5 (see A/AC.252/1999/WP.21 and 36) since the concept of State responsibility, as understood in general international law, was beyond the scope of the draft Convention. Others considered the possibility of redrafting the paragraph’s provisions so as to make it more specific (A/AC.252/1999/WP.22).

Paragraph 5 bis

47. The proposal was made that an additional paragraph 5 *bis* should be introduced requiring that the Secretary-General of the United Nations be informed of the measures taken by each State party to implement the article (see A/AC.252/1999/WP.23).

Article 6

48. The Working Group undertook its first reading of article 6 on the basis of the proposal contained in document A/AC.252/L.7.

49. The insertion of a new paragraph 2 in article 6 was proposed so as to restrict State involvement in the negotiation, conclusion, implementation, execution or enforcement of any contract or agreement to commit any offences within the scope of the draft convention (see A/AC.252/1999/WP.17). Differing views regarding the inclusion of the proposed text were expressed. The suggestion to delete in the proposed text the reference to offences other than those created by the draft convention was put forward in the Working Group.

Article 7

50. The Working Group undertook its first reading of article 7 on the basis of the proposal contained in document A/AC.252/L.7.

51. Differing views were expressed regarding the usefulness of the insertion in the article of a reference to “legal entities”.

Paragraph 1

52. The insertion of a reference to the commission of an offence on board a vessel or an aircraft was proposed as a new subparagraph (A/AC.252/1999/WP.41) so as to expand the scope of the jurisdictional clause.

Paragraph 2

53. Concerning subparagraph (a), it was suggested that the phrase “in the territory or” should be inserted after the word “attack”, so as to include territorial jurisdiction within the purview of the provision (see A/AC.252/1999/WP.34).

54. Another proposal was the inclusion of a new subparagraph (d) requiring that the act be committed in an effort to compel the State both to do or abstain from doing any act (see A/AC.252/1999/WP.34) .

Paragraph 5

55. The following modifications were suggested: to replace the word “efficiently” by “appropriately” (see A/AC.252/1999/WP.34); and to replace the phrase “terms and conditions” by “modalities”. In addition, opposing views were expressed as regards the deletion of paragraph 5.

New paragraph 6

56. The proposal was made to insert a new paragraph 6 so as not to exclude the exercise of any criminal jurisdiction in accordance with the domestic law of a State party (see A/AC.252/1999/WP.34).

Article 8

57. The Working Group undertook its first reading of article 8 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1

58. The suggestion was made to delete the phrase “to allow for” and replace the phrase “identification, detection, freezing or seizure” by the words “identify, detect, freeze or seize” (see A/AC.252/1999/WP.30), thus strengthening the language.

59. Other proposals of a drafting nature were as follows: to insert “and” after the word “detection”; to replace “goods” by the word “property”; and to replace the phrase “goods, funds or other means” by the phrase “funds, assets or other property” (see A/AC.252/1999/WP.39).

60. It was suggested either to delete (see A/AC.252/1999/WP.39) or to replace the phrase “designed

to be used” either by more permissive language such as “capable of being used”, or by the stronger formulation “intended to be used”.

61. The insertion of the phrase “or other deprivation” after the word “forfeiture” was also proposed.

Paragraph 2

62. The following additions to the text were proposed: to insert at the beginning of the paragraph either the phrase “Upon the completion of any proceedings connected with an offence set forth in article 2” (A/AC.252/1999/WP.25), or “Consistent with due process and applicable domestic law” (see A/AC.252/1999/WP.39); and to insert the phrase “or other deprivation” after the word “forfeiture”. Though the inclusion of a reference to “proceeds” was also favoured by some (see A/AC.252/1999/WP.39), an objection was raised against such inclusion on the grounds that the notion was unclear in the context of the paragraph. The comment was made that the phrase “intended to be used” was too narrow, and should be replaced by “capable of being used”. The deletion of the phrase “permit the” was also put forward (see A/AC.252/1999/WP.30).

Paragraph 2 bis

63. Some delegations (A/AC.252/1999/WP.40) expressed a preference for the inclusion as paragraph 2 *bis* of the following text of article 5 (9) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

“Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.”

An objection was voiced against the inclusion of such a provision.

Paragraph 3

64. A preference was expressed for the deletion of the word “proceeds”. As regards the use of forfeited property, two suggestions were made. One suggestion envisaged a provision ensuring the use of such property to compensate the victims of terrorist offences, or their relatives (A/AC.252/1999/WP.35) as new paragraph 4, while another was aimed at requiring that such property be utilized towards contributing to development projects that addressed the causes of terrorism.

Article 12, paragraphs 3 and 4

65. The Working Group undertook its first reading of paragraphs 3 and 4 of article 12 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 3

66. While some delegations preferred the retention of the current text, the proposal was made to insert a provision, as new paragraph 2 *bis* (see A/AC.252/1999/WP.44), based on article XVI (2) of the 1996 Inter-American Convention against Corruption, which provides:

“The requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State.”

67. It was also proposed that existing paragraph 2 should be renumbered as paragraph 3, and vice versa. New paragraph 3 would then be amended to include a reference to “paragraphs 1 and 2” in the first line (A/AC.252/1999/WP.44).

Paragraph 4

68. While a preference was expressed for the deletion of the paragraph, the following additions to the current text were also proposed: to insert in the second sentence the phrase “based on article 2” (see A/AC.252/1999/WP.4); and to insert the following phrase at the end of the paragraph: “without prejudice to the constitutional limits and the basic legislation of the States Parties” (*ibid.*). Objections were raised with respect to the latter proposal.

Article 17

69. The Working Group undertook its first reading of article 17 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1 (a)

70. The following additions to the text were proposed: to insert “Effective” before the word “measures”; and to insert the word “illegal” before “activities” in order to take into account, for example, freedom of speech and other constitutional guarantees existing in some States. The latter proposal was opposed in the Working Group. Proposed deletions were as follows: to delete the word “groups”; and to delete the word “knowingly”.

71. It was noted that in order for the provision to be successfully implemented, it should also take into account the constitutional norms of States parties.

New paragraph 1 (a) *bis*

72. It was proposed that the paragraph should include as new paragraph 1 (a) *bis* an additional obligation on States parties to prohibit the access into their territories of persons, groups and organizations that knowingly encouraged, instigated, organized or engaged in the commission of offences as set forth in article 2 (A/AC.252/1999/WP.32).

Paragraph 1 (b): *chapeau*

73. As regards the term “other professions”, which was deemed to be unclear, the following suggestions were made: to replace it with the phrase “as well as other institutions and individuals”; to replace the phrase “other professions involved in” by the phrase “other institutions or entities that carry out”; and to replace “professions” with the word “entities”.

74. Concerning the issue of identification of customers of financial institutions, the following suggestions were made: to replace the phrase “to improve the identification of” by “to identify, on the basis of an official or other reliable identifying document” (see A/AC.252/1999/WP.28); and to insert at the end of the first sentence the phrase “and to record the identity of their clients” (see A/AC.252/1999/WP.28). While some favoured replacing the word “consider” by “ensure” (see A/AC.252/1999/WP.28), others spoke against that.

75. The proposal was made to replace subparagraphs (i) to (iii) by a text based on recommendations 10, 11 and 12 of the Financial Action Task Force on Money Laundering, so as to ensure consistency in language (see A/AC.252/1999/WP.38).

Paragraph 1 (b) (i)

76. It was proposed that the word “regulations” should be replaced by the broader term “measures”. Regarding the prohibition of anonymous accounts and accounts opened under fictitious names, the following suggestions were made: to replace the phrase “anonymous accounts or the opening of accounts under obviously fictitious names” by “accounts whose beneficiary is unidentified or unidentifiable” (A/AC.252/1999/WP.5), which was opposed in the Working Group; to replace that phrase by the phrase “accounts whose holders or beneficiaries are not identifiable through formal means”; and to replace it by the phrase “accounts whose holders are not identifiable through formal means”. The addition of the word “holder” before “beneficiary” in the formulation contained in document A/AC.252/1999/WP.5 was also proposed.

Paragraph 1 (b) (ii)

77. It was suggested that the word “verifying” should be replaced by the phrase “the adoption of measures requiring financial institutions to verify” so as to clarify the obligations of States and financial institutions, respectively; and that the word “legal” should be inserted before the word “existence”. It was also proposed that “directors” be replaced with the broader notion of “legal representatives”.

78. Some favoured further clarification of the terms “legal structure”, “legal form” and the phrase “the legal entity’s authority to bind”.

Paragraph 1 (b) (iii)

79. In order to clarify the phrase “for preserving”, it was suggested that it be replaced by the phrase “requiring financial institutions to preserve”.

New paragraph 1 (b) (iv)

80. A new subparagraph (iv) regarding the establishment of an information system for the purpose of recording and sharing information on the economic beneficiaries of legal entities was proposed (see A/AC.252/1999/WP.28).

New paragraph 1 (c)

81. Two proposals for a new subparagraph (c) (see A/AC.252/1999/WP.27 and 31) were presented to the Working Group, regarding the supervision of money transmission agencies and the exchange of information, respectively.

New paragraph 1 (d)

82. Two proposals for a new subparagraph (d) were presented to the Working Group. The first proposal (see A/AC.252/1999/WP.27) concerned the monitoring of the physical cross-border transport of cash and bearer negotiable instruments. The following modifications to that proposal were made: to delete the phrase “implementation of”; and to delete “physical” and replace the phrase “cash and bearer negotiable instruments” by the phrase “funds, as referred to in article 1”.

83. The second proposal (see A/AC.252/1999/WP.31) suggested modalities for cooperation in conducting inquiries with respect to the offences established in accordance with article 2.

B. Informal summary of the discussion in the Working Group, prepared by the**Rapporteur: second reading of draft articles 1 to 8, 12 and 17 on the basis of, *inter alia*, documents A/AC.252/1999/WP.45, 47 and 51****Article 1**

84. Following informal consultations on article 1, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, the Coordinator presented an oral report to the Working Group. He outlined the main issues discussed and noted that, *inter alia*, a general trend had emerged favouring the retention of the crime of financing as a main crime, instead of a participatory crime linked to another crime. It was noted that such an approach called for a careful drafting of article 2, clearly limiting its scope of application. The hope was expressed that remaining issues would be dealt with during the inter-sessional period.

85. A working paper on articles 1 and 2 (see annex I.B) was introduced by the sponsor of the draft convention (A/AC.252/L.7 and Corr.1) at the last meeting of the Working Group for consideration at the session of the Working Group of the Sixth Committee in September 1999.

Article 2

86. The Working Group undertook its second reading of article 2 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

87. While some delegations supported the approach taken in the text of criminalizing the financing of terrorism as a distinct offence, others viewed it as a participatory offence. A further reservation was also expressed regarding the criminalization of the act of financing in case the terrorist act was not committed or at least attempted.

Paragraph 1 — *chapeau*

88. While some delegations continued to consider the expression “unlawfully” to be redundant, others favoured its retention (see A/AC.252/1999/WP.49). Support was also expressed for the deletion of the word “intentionally” as being already encapsulated in the word “intent”. An alternative was also presented, namely to replace the phrase “unlawfully and intentionally” by “voluntarily”.

89. Differing views were expressed regarding the deletion of the phrase “[or to prepare the commission of]” at the end of the paragraph (see A/AC.252/1999/WP.49). Concerning the phrase “will be used”, the suggestion to replace it by “is likely to be used” was reiterated. The option of either

replacing the word “or” by “and” after “knowledge” or deleting “knowledge” was proposed.

90. In order to expand the scope of the offence, it was suggested that the phrase “person or organization” be included in the text. Furthermore, some delegations reiterated their preference for the inclusion of the phrase “directly or indirectly”.

Paragraph 1 (a)

91. A preference was expressed for replacing the phrase “an offence” by “any offence” or “offences”. Opposing views regarding the need to further specify the crimes in the annex to the draft convention were presented. Some delegations reiterated their preference for including a mechanism allowing for the addition of new Conventions to the Annex (see, for example, A/AC.252/1999/WP.20/Rev.1, in the context of article 1), thereby expanding the scope of the draft convention. The recommendation was made that the provision should require that States become parties to the respective Conventions in the annex by the usual means of ratification, approval, acceptance or accession.

Paragraph 1 (b)

92. While reservations were expressed by some delegations regarding the broad scope of the provision, others proposed that reference be made to “any person” and to “population”, instead of “civilian” and “a civilian population”, respectively (see A/AC.252/1999/WP.48), so as to further expand the scope.

93. Suggestions were made to replace the word “injury” by “harm” so as to be more accurate, and to delete the reference to “armed conflict” (see A/AC.252/1999/WP.48). In particular, concern was expressed over the implication of the use of the phrase “armed conflict” for liberation movements. In addition, concern was expressed that the draft might exclude action by groups not covered by humanitarian law.

94. Support was expressed for the inclusion of the notion of “threat” and of damage to property and the environment.

95. An additional phrase requiring that the financing in question be made with the intention or knowledge that the funds would be utilized for the commission of the offence was proposed for insertion after subparagraph (b) (see A/AC.252/1999/WP.49).

Paragraph 3 (c)

96. Opposing views were expressed regarding the retention of the subparagraph.

Introduction of a revised working paper for future consideration

97. At the last meeting of the Working Group, a working paper on articles 1 and 2 (see annex I.B) was introduced by the sponsor of the draft convention (see A/AC.252/L.7 and Corr.1) for consideration at the meeting of the Working Group of the Sixth Committee in September 1999.

Article 3

98. Informal consultations on article 3, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. The Coordinator of the informal consultations presented an oral report at the last meeting of the Working Group in which he noted the general preference among delegations for deferring further consideration of the provision until the finalization of articles 1 and 2. Hence, it was recommended that the formulation of article 3 remain as that contained in document A/AC.252/L.7 and Corr.1, subject to further discussions to be held during the session of the Working Group of the Sixth Committee in September 1999.

Article 4

99. Informal consultations on article 4, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. As a result, the Coordinator of the informal consultations subsequently proposed a revised text of article 4 (see A/AC.252/1999/WP.51). While the new text remained substantially the same as that in A/AC.252/L.7 and Corr.1, it was noted that the original reference to “effective, proportionate and deterrent” penalties had been replaced by “appropriate” penalties.

Article 5

100. The Working Group undertook its second reading of article 5 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

Paragraph 1

101. The suggestion was made to add the phrase “, within the limits imposed by its general rules relating to the jurisdiction of its courts and other authorities over legal entities” after the phrase “Each State Party shall”.

102. The following additions and modifications to the reference in the provision specifying the necessary link between the State party and the legal entity concerned were proposed: to replace the phrase beginning with the words

“having their registered offices” and ending with “in its territory” by either “controlled from or having their registered offices or property in its territory or engaging in activities either carried out in or otherwise affecting its territory” or by “located in or organized under the laws of its territory”. The suggestion was also made to add the phrase “located in or organized under the laws of its territory” after the phrase beginning with the words “having their registered offices” and ending with “in its territory”. A further formulation was proposed in document A/AC.252/1999/WP.53.

103. While some delegations expressed the view that the reference to “are held liable” in the second line was unnecessary since the concept was already covered by the word “shall” in the first line, and therefore that it could be replaced with “may be held liable”, others opposed that idea.

104. Several concerns were expressed regarding the need for the various language texts to be closely aligned with the original French text. For example, it was pointed out that the French text referred to knowledge being required of the persons and not the legal entity, as stated in the English version.

105. Similar concerns arose regarding the reference to “carrying out activities”, as well as the continued reference to the concept of “agency” in the English text undergoing second reading. Some delegations reiterated their preference for the deletion of the word “agency”, which had different legal connotations in certain legal systems and thus could cause confusion. Others proposed that it be replaced by “action or acquiescence of” so as to reflect the legal requirement more precisely.

106. Proposals were made to delete the reference to “one or more” persons, to add the phrase “or bodies” before “responsible”, as well as to add the word “wrongfully” before “derived profits”.

107. Concerning the inclusion of a reference to “derived profits from or”, which the sponsor of the revised text indicated had been left in square brackets to reflect the fact that no clear consensus on the issue existed during the first reading, some delegations expressed the preference for its deletion, while others suggested that it be replaced with the word “benefited”.

108. A preference was also expressed for the inclusion of a reference to the vicarious liability of the legal entity derived from the actions of employees undertaken in its name (see A/AC.252/1999/WP.50). This view was opposed in the Working Group.

109. On the question of the reference to participation contained in the phrase “participated in the commission of”,

while some preferred that it be replaced with “committed”, others supported its retention.

110. A further formulation of paragraph 1 was proposed in document A/AC.252/1999/WP.53.

Paragraph 2

111. Opposing views were expressed regarding the more permissive reference to “may”. While the preference was expressed for replacing the word with “shall”, this was opposed in the Working Group. The suggestion was also made that the reference to the “criminal” liability of legal entities should be deleted.

112. Concerns were expressed regarding the inclusion of the phrase “according to the fundamental legal principles of the State Party”. While some favoured its retention, others preferred replacing the phrase with a reference to “relevant domestic legislation” or “in accordance with the domestic law of the State Party” (see A/AC.252/1999/WP.53). A further proposed solution was to delete the reference to “fundamental”.

113. Following a request from the Chairman that delegations comment on the possibility raised during the first reading that articles 2 and 4 be merged, some stated their preference for retaining two separate provisions, while others expressed flexibility on the issue. The following two merged texts were proposed: “Each State Party shall ensure that, subject to relevant domestic legislation of the State Party, the said legal entity may incur criminal, civil or administrative liability and is subject to effective measures taken as a result of such liability”, and “A legal person which is liable in accordance with paragraph 1 shall be subjected to such civil, administrative or criminal measures that are commensurate with the offence.” Concerning the reference in the latter proposal to “that are commensurate with the offence”, which existed in paragraph 4 of the text under consideration, a further refinement was proposed so as to replace that phrase by “as take into account the gravity of the matter”.

Paragraph 3

114. The suggestion was made to replace the phrase “having committed the offences” with “involved in the commission of the offences”. A further text for the provision was proposed in document A/AC.252/1999/WP.53.

Paragraph 4

115. While the preference was expressed by some delegations for the deletion of the entire paragraph (see A/AC.252/1999/WP.53), other delegations preferred its retention with several modifications. It was suggested that the

phrase “in particular” be deleted. Furthermore, the suggestion was made that the various language texts should be aligned with the French original by replacing the reference to “effective measures that are commensurate with the offence” by “effective and proportionate measures”. Alternatively, proposals were made to insert the phrase “proportionate and deterrent” after “effective” and to insert the phrase “which take into account the grave nature of the offence” after “measures”.

116. The possibility of the merger of paragraphs 2 and 4 was discussed in the Working Group. See the discussion on paragraph 2 above (paras. 111–113) in this regard.

Paragraph 5

117. Opposing views were expressed regarding the retention of the provision. While some expressed a preference for its deletion (see A/AC.252/1999/WP.48 and 53), stating, *inter alia*, that it dealt with matters beyond the purview of the draft convention, others supported either the text under consideration or the following new formulation: “The provisions of this article cannot be interpreted as affecting the question of the international responsibility of the State” (reproduced in A/AC.252/1999/WP.22). A further group of delegations linked the deletion of the provision to the insertion of a precise definition of “legal entity” in article 1.

Article 6

118. Informal consultations on article 6, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. The Coordinator of the informal consultations presented an oral report at the last meeting of the Working Group in which he commented on an emerging trend, among those delegations that were consulted, to delete the phrase “and are punished by penalties consistent with their grave nature” at the end of the provision. It was explained that the deletion of this phrase would remove the overlap with article 4. Some delegations reserved their positions in that regard. The Coordinator proposed retention of the text of article 6, as amended, for consideration at the session of the Working Group of the Sixth Committee in September 1999.

Article 7

119. The Working Group undertook its second reading of article 7 on the basis of the revised text contained in document A/AC.252/1999/WP.51. The suggestion was made that the provision should indicate the options in paragraphs 1 and 2

as alternatives by adding the word “or” after subparagraphs 1 (a) and (b), and subparagraphs 2 (a), (b) and (c).

Paragraph 2

120. With regard to subparagraphs (a) and (c), the proposal was made to replace the word “attack” by the phrase “offences covered in article 2”.

121. Concerning subparagraph (d), the following alternative formulations were proposed: “The offence resulted in an act committed in an effort to compel that State to do or abstain from doing any act”; “The offence for which financing is provided in contravention of article 2 is committed in an attempt to compel that State to do or abstain from doing any act”; “The offence was directed towards compelling that State to do or abstain from doing any act”; or “The offence was directed towards or resulted in an act committed in an attempt to compel that State to do or abstain from doing any act”.

122. The following additional subparagraphs were proposed for insertion under paragraph 2: “That State Party has jurisdiction, in accordance with any of the Conventions listed in annex I, over the offence for which financing is provided” (see A/AC.252/1999/WP.56); and “The offence is committed on board an aircraft which is operated by the Government of that State”.

Paragraph 5

123. Support was expressed for replacing the phrase “terms and conditions” by “modalities”. The suggestion was also made to delete the provision and insert it into article 9.

Paragraph 6

124. While some delegations supported the provision as being common to all anti-terrorism Conventions, others expressed reservations on the necessity of its inclusion in the draft convention under consideration. The insertion of the phrase “Subject to respect for relevant rules of international law” at the beginning of the provision was proposed by way of compromise. A further variation of this proposal was submitted (see A/AC.252/1999/WP.58).

Article 8

125. The Working Group undertook its second reading of article 8 on the basis of the revised text contained in document A/AC.252/1999/WP.45. It was recommended that the various language versions of the text under consideration should be aligned with the original French text. In particular, reference was made to the need for consistency in the use of the words “allow” and “permit”, “goods” and “property”, and the phrases “designed to be used” and “intended to be used”.

126. It was suggested, by way of a general comment, that the provision should be limited to covering financing offences only.

Paragraph 1

127. Concerning the word “allow”, while some delegations preferred its deletion, others suggested that it be replaced with “provide for”. The insertion of the word “and” after “detection” was supported. Although the inclusion of a reference to proceeds by adding the phrase “as well as the proceeds derived from such offences” was supported, other delegations expressly opposed such expansion of the scope of the provision.

Paragraph 2

128. Support was expressed for retaining the provision in its current form. However, other delegations proposed the following modifications by way of improving its formulation: to add “Consistent with due process and applicable domestic law” at the beginning; to replace the phrase “fundamental legal principles” by “domestic law”, which was opposed in the Working Group; to replace “permit” by “provide for”; to delete the phrase “permit the”; to add the phrase “and the proceeds derived from such offences” after “convention”, which was opposed in the Working Group; and to delete the reference to “its” before “fundamental legal principles”.

Paragraph 3

129. While the preference was expressed for retaining the reference to proceeds contained in the square brackets, its inclusion in the text was opposed in the Working Group.

Paragraph 4

130. While support was expressed for retaining the provision as contained in the text under consideration, others proposed deleting the phrase “subject to domestic law”, as well as replacing the word “indemnify” by “compensate”.

Paragraph 5

131. Opposing views were expressed in connection with the deletion of the phrase “acting in good faith”. A further proposal was made to move the provision to article 2 (see A/AC.252/1999/WP.54).

Additional paragraph suggested for inclusion in article 8

132. It was proposed that the text of article 5 (9) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances should be included as a new paragraph in article 8.

Article 12

133. The Working Group undertook its second reading of article 12 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

Paragraph 1

134. Concerns were expressed regarding the scope of the term “investigations”, which could encompass speculative investigations. It was thus suggested to insert the word “criminal” before “investigations”. Other suggested modifications were: to delete the reference to “or criminal”; to delete the word “brought”; and to replace the phrase “at their disposal” by “in their possession”.

Paragraph 2

135. Concerns were expressed regarding the consistency of the last sentence of the provision with article 11 (2) of the draft convention, as contained in document A/AC.252/L.7 and Corr.1.

136. It was suggested that the scope of the paragraph should be expanded to include the obligations contained in paragraph 3. The proposal was also made to switch paragraphs 2 and 3, and renumber them accordingly.

Paragraph 3

137. The proposal was made to replace the entire provision by “State Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy”. The inclusion of the word “solely” after “assistance” was made by way of further refining the language of the proposed new text.

Additional paragraph 3 bis suggested for inclusion in article 12

138. It was proposed that the following provision should be added to article 12 as new paragraph 3 *bis*: “The requesting State shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized by the requested State Party.” The inclusion of this text was opposed in the Working Group.

139. It was further suggested that the scope of the proposed new paragraph should be expanded in accordance with the provisions of article 7 (13) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Paragraph 4

140. The following two modifications were suggested: to add the phrase “based on article 2” before “on the ground”; and to add the word “sole” before “ground”.

Article 17

141. The Working Group undertook its second reading of article 17 on the basis of the revised text contained in document A/AC.252/1999/WP.47, which included a revised text as option 1 and a reference to a text prepared by another delegation, contained in document A/AC.252/1999/WP.38, as option 2. The Working Group limited its discussion to option 1.

Paragraph 1 (a)

142. It was noted that the English text should be aligned with the French original by adding a reference to “illegal” before the word “activities”. A preference for the deletion of the word “groups” was expressed.

Paragraph 1 (b)

143. The suggestion was made to replace the word “improve” by the phrase “utilize the most efficient measures for”.

144. Regarding subparagraph (i), support was expressed for replacing the word “regulations” by “measures”. Of the two proposed formulations for the subparagraph contained in the text under consideration, some delegations expressed a preference for the text in square brackets. It was suggested that the formulation of the text in square brackets could be improved by having the phrase “holder or” inserted before “beneficiary”. A further suggestion was made to merge the two proposed texts.

145. Concerning subparagraph (ii), the preference was expressed for expanding its scope of application to include shareholders and officers. It was suggested that the word “verifying” should be replaced by the phrases “the adoption of measures requiring financial institutions to verify”, or “requiring financial institutions, when necessary, to take measures to verify”. The addition of the word “legal” before “existence”, and the deletion of the word “legal” before “structure”, was also proposed. It was further suggested that

the phrase beginning with the words “from the customer” and ending with “to bind” should be replaced by the following text: “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”.

146. In connection with subparagraph (iii), it was proposed that the reference to “for preserving” be replaced with “requiring financial institutions to preserve”, or that the latter half of the provision beginning from the word “preserving” to the end be replaced with the following: “requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international”.

Paragraph 1 (c) and (d)

147. It was proposed that subparagraph (c) of paragraph 1 should be renumbered as paragraph 1 (b) (iv), and that subparagraph (d) of paragraph 1 should be renumbered as paragraph 1 (c) and modified to replace the phrase “Implementation of feasible measures to detect or monitor” by “States shall also consider implementing measures to detect or monitor” (see A/AC.252/1999/WP.52).

148. The insertion of a new paragraph was also proposed (see A/AC.252/1999/WP.57).

Paragraph 3

149. Opposing views were expressed regarding the retention of paragraph 3 as contained in square brackets, which was based on the proposal contained in A/AC.252/1999/WP.47. A third group of delegations proposed that the paragraph should begin with the phrase “States shall ensure that no assistance is provided”.

Annex 14

Summary Record of the 33rd Meeting of the Sixth Committee, U.N. Doc.
A/C.6/54/SR.33 (2 December 1999) (statement of Syria)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.



Fifty-fourth session

2 December 1999

Official Records

Original: English

Sixth Committee

Summary record of the 33rd meeting

Held at Headquarters, New York, on Monday, 15 November 1999, at 3 p.m.

Chairman: Mr. Mochochoko (Lesotho)

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Agenda item 154: United Nations Decade of International Law (*continued*)

(a) United Nations Decade of International Law (*continued*)

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Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

The meeting was called to order at 3.20 p.m.

Agenda item 160: Measures to eliminate international terrorism (*continued*) (A/54/37, A/54/301 and Add.1; A/C.6/54/2; A/C.6/54/L.1 and L.2)

1. **Mr. Al-Saidi** (Kuwait) said that terrorism, which had widened in incidence and scope during recent years, was the product of an extremism which was unconnected to any specific geographical region, culture or religion. With its dangers sweeping the entire globe, terrorism constituted a major concern of the international community.

2. In that context Kuwait had adopted various legal and practical measures, particularly in regard to aviation safety, with a view to cooperating in the efforts to combat terrorism. It had also acceded to most of the international conventions on terrorism and had signed the Arab Convention on the Suppression of Terrorism. It shared the view that the capacity of the International Crime Prevention Centre of the United Nations Secretariat must be increased with a view to strengthening international cooperation in that area. It also supported the convening of a high-level conference in 2000 under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

3. Efforts aimed at combating terrorism, including the elaboration of a comprehensive legal framework of conventions and the prosecution and trial of those who perpetrated acts of terrorism, should also continue unabated, although it was important to maintain a distinction between terrorism and the struggle of peoples for self-determination. It was equally important that all countries should cooperate to provide the resources needed to combat terrorism, in which connection his delegation supported Security Council resolution 1269 (1999). With a view to eliminating terrorism, States should be encouraged to accede to the relevant international and regional conventions and other conventions should be elaborated to cover any existing gaps. It was also vital that the members of the international community should arrive at a definition of terrorism and ensure non-interference in the internal affairs of States, as well as refrain from any form of activity relating to or in furtherance of terrorism.

4. His delegation condemned all forms of terrorism, the most serious being State terrorism, which Kuwait had experienced during the Iraqi invasion. The Iraqi Government was continuing to hold in its prisons hundreds

of Kuwaiti and other nationals whom it had captured during its occupation of Kuwait and remained under obligation to resume cooperation with the committees formed to determine the whereabouts of such prisoners.

5. **Mr. Al-Kadhe** (Iraq), speaking on a point of order, stated that the Kuwaiti representative should refrain from commenting on matters which were the concern of the Security Council and thus irrelevant to the item under discussion.

6. **Mr. Gao Feng** (China) said that the international community had long waged war against international terrorism, but the phenomenon was yet to be eradicated. It might be that international measures did not address the root causes of terrorism. Effective cooperation in good faith on the part of the entire international community and integrated and multidimensional action were required. If no action was taken but instead its root causes were deliberately created and protected, it would not be possible to suppress international terrorism.

7. His Government, which was committed to establishing a just and rational new international order, had acceded to most of the anti-terrorist conventions, fulfilled its convention obligations, engaged in bilateral agreements and adopted a series of domestic measures. Its approach was positive and sincere.

8. His delegation congratulated the Ad Hoc Committee established by General Assembly resolution 51/210 on formulating, within a few short years, the International Convention for the Suppression of Terrorist Bombings and the draft international convention for the suppression of the financing of terrorism (A/C.6/54/L.16) — a development of great significance and a major effort that his Government would actively support — in addition to concluding preliminary deliberations on the draft convention on the suppression of acts of nuclear terrorism. The manifestations of international terrorism were, however, increasingly complex and multifarious. Consideration should therefore be given to the early formulation of a comprehensive international convention. It would be difficult, but so long as action was taken in a cooperative spirit an appropriate solution could be found. Meanwhile, the measures contained in the existing conventions should be further strengthened.

9. **Ms. Randrianarivony** (Madagascar) said that international terrorism aimed to destabilize international peace and security and was a major obstacle to countries' economic and social development. Constant vigilance and stronger international cooperation were required to combat the phenomenon.

10. On 1 October 1999 her Government had signed the International Convention for the Suppression of Terrorist Bombings. It had also recently acceded to various international anti-terrorist conventions, including the International Convention against the Taking of Hostages, of 1979, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973, and the 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, of 1988. The Government had also undertaken ratification of the Convention on the Marking of Plastic Explosives for the Purpose of Detection, of 1991.

11. Within her country, measures had been taken to reassure the foreign community and investors by mounting a permanent anti-terrorist operation round diplomatic missions. At the regional level, her delegation welcomed the adoption of the Organization of African Unity Convention on the Prevention and Combating of Terrorism in July 1999. Her country had also taken an active part in the regional meeting for Africa held in Kampala in December 1998 to prepare for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which had recommended that the struggle against terrorism should be strengthened, given the serious threat that it posed to human rights and stability, and that the Congress should examine deficiencies in extradition procedures, prosecution and asylum legislation, and display greater vigilance and international solidarity against terrorism. Her Government also aligned itself with the position taken at the Twelfth Conference of Heads of State or Government of the Movement of Non-Aligned Countries in 1998. It supported unreservedly the work on the two draft conventions by the Ad Hoc Committee and hoped that the draft international convention for the suppression of the Financing of Terrorism would be adopted at the current session. Concerted efforts were the best way of combating terrorism; measures taken by countries on their own would not suffice.

12. **Mr. Chimimba** (Malawi) said that his Government had always advocated the total elimination of nuclear weapons and other weapons of mass destruction and therefore had no difficulty in supporting the initiative by the Russian Federation for a convention on the suppression of acts of nuclear terrorism. The danger of nuclear weapons, material or know-how falling into the wrong hands was as real as the consequences were potentially devastating. Recognizing that the issues at stake were

critical and based on principled positions, his delegation was ready to help overcome differences that had impeded earlier adoption of the draft convention.

13. He welcomed the completion of the draft international convention for the suppression of the financing of terrorism. Although his delegation had had difficulties with some of the approaches taken to define the scope of the draft convention, it was ready to join in its adoption, which closed a loophole in terrorist activities.

14. The achievements of the international community, especially the United Nations, over the past three years in finding practical ways of combating international terrorism had been remarkable. He also commended the adoption of the Organization of African Unity Convention on the Prevention and Combating of Terrorism in 1999. Tragic events in the recent past were a clear reminder that the international community must remain vigilant and respond quickly and resolutely to threats that arose. The Ad Hoc Committee had a modest but crucial function in that regard: it must complete its mandate and elaborate a comprehensive legal regime to deal with international terrorism.

15. His Government was party to 5, and signatory to 1, of the global instruments listed in the Secretary-General's report (A/54/301). The Hijacking Act, which prescribed penalties commensurate with the seriousness of the crimes it proscribed, gave domestic effect to three of those instruments. The Government was studying the remaining instruments with a view to ratifying or acceding to them at the earliest opportunity. It had also entered into numerous bilateral air services agreements which had robust aviation security provisions.

16. **Mr. Hetesy** (Hungary) said that his delegation endorsed the statement by Finland on behalf of the European Union at the 31st meeting of the Sixth Committee. His Government had consistently supported the establishment of a global system based on a unified international approach and effective cooperation. Tangible results had already been achieved. The draft international convention for the suppression of the financing of terrorism, elaborated after wide-ranging, heated but always professional deliberations, had a far broader scope than previous related conventions and would raise international cooperation to a new level. Adoption however, would be only the first step. Success would be measured by the level of international acceptance and implementation. The progressive nature of the draft convention would make its incorporation into national legal systems more difficult than had been the case with earlier conventions. For

example, it called for prosecution or extradition for acts that were not yet criminalized in all States. His Government, as a party to all the major terrorism-related conventions, except the International Convention for the Suppression of Terrorist Bombings, which it planned to sign before the end of the year, would do its best to become party to the draft convention and would use the established frameworks for cooperation with the European Union to solve all outstanding issues.

17. His delegation was concerned at the protracted negotiations on the draft convention on the suppression of acts of nuclear terrorism, which was ripe for adoption. Although its scope had remained a major stumbling block, that could be clarified while preserving the status quo in other fields, such as disarmament, without blocking the possibility of future legal and practical developments in those areas. The Working Group of the Sixth Committee had put forward some balanced and encouraging proposals. The speedy adoption of the draft conventions would provide a further basis for deterrence and facilitate the start of discussions on the draft convention proposed by the representative of India and the convening of a conference on further international cooperation against terrorism.

18. **Mr. Perera** (Sri Lanka) said that his country was all too familiar with the devastating impact of terrorism on the lives of innocent people and on the process of seeking political solutions to national issues. The task before the international community was therefore to send out a strong message that terrorism against unarmed civilians was morally repugnant and legally unacceptable. His Government was party to six of the international conventions adopted over the years by the United Nations, including the most recent, the International Convention for the Suppression of Terrorist Bombings, which had been given effect at the national level through the enactment of the Suppression of Terrorist Bombings Act No. 11 of 1999. Measures were also under way to enable the Government to accede to most of the remaining conventions. That testified to the priority that the Government attached to United Nations initiatives to eliminate international terrorism.

19. His delegation was firmly committed to the adoption of the draft international convention for the suppression of the financing of terrorism. Funds collected by terrorist groups in foreign countries, often through front organizations with ostensibly charitable, social or cultural goals, were a major source of sustenance for their activities and the need to deprive terrorists of such financing was increasingly recognized. He associated his delegation with the words of caution by the Chairman of the Ad Hoc

Committee against reopening the text, which had been carefully negotiated in both the Ad Hoc Committee and the Working Group. In addition to the well-tryed "extradite or prosecute" regime, the draft Convention contained several new elements, taking into account the complexities of international fund-raising activities for terrorism. Its effective implementation would require the adoption of domestic measures by States to enable their financial institutions to prevent and counteract the international movement of funds for terrorism. Such measures would be crucial in countering the fund-raising networks of terrorist groups.

20. Unlike existing anti-terrorist conventions, which addressed manifestations of terrorism already experienced, the draft international convention for the suppression of acts of nuclear terrorism addressed the increasing possibility of nuclear material falling into unlawful hands. His delegation hoped that a compromise solution could be found to the one outstanding issue on the scope of application of the convention.

21. Some emerging trends in terrorist operations could assume critical proportions if not countered through enhanced international cooperation. Terrorist groups were resorting to electronic communications for international fund raising, often through front organizations ostensibly for humanitarian purposes. Another problem was the abuse of refugee status by supporters and sympathizers of terrorist groups abroad, particularly to raise financing. Organized trafficking of persons into foreign countries also provided terrorists with a source of income through extortion. His delegation was pleased that the declaration adopted in 1996 as an annex to General Assembly resolution 52/210 made it clear that the Convention relating to the Status of Refugees should not provide a basis for the protection of perpetrators of terrorist acts.

22. Convinced that concerted international action was necessary to eliminate international terrorism, his delegation welcomed the proposal by India to elaborate a comprehensive convention on international terrorism and the proposal by the Non-Aligned Movement to convene a high-level conference in 2000 under the auspices of the United Nations to further strengthen international cooperation against terrorism.

23. **Mr. Yusoff** (Malaysia) said that it was incumbent on the international community to define the term "terrorism" to avoid misinterpretation. None of the anti-terrorist conventions so far elaborated had defined it, and only one even mentioned the word "terrorist" in the title. His delegation understood the ordinary meaning of the term

“terrorist” to be a person who used violence to threaten or harm the public for the purpose of imposing demands on Governments, organizations or groups. The costs involved in combating terrorism diverted scarce resources that could otherwise be used for development. Malaysia reiterated its strong condemnation of all acts of terrorism as criminal and unjustifiable, regardless of motivation, wherever and by whomsoever committed.

24. His delegation viewed with alarm the enormous devastation which could be unleashed through acts of nuclear terrorism and believed that one of the most effective means of suppressing nuclear terrorism was nuclear disarmament, leading to the ultimate elimination of nuclear weapons. States had an obligation not only to pursue disarmament negotiations in good faith but also to bring them to an early conclusion. The creation of further nuclear-weapons-free zones, like those already established in South-East Asia, Africa, the South Pacific and Latin America and the Caribbean, would be a major step in promoting nuclear non-proliferation and hence in reducing the threat of nuclear terrorism.

25. Malaysia fully concurred with the views expressed in the Committee the year before by Zimbabwe on behalf of the Non-Aligned Movement with regard to the draft international convention for the suppression of acts of nuclear terrorism. The issues of concern included but were not limited to the provisions of the preamble, article 1 and article 4 of the draft.

26. The draft international convention for the suppression of the financing of terrorism being elaborated on the initiative of the French delegation would fill a gap left by previous anti-terrorist conventions. However, since a number of its provisions had far-reaching implications, his delegation needed more time to study it.

27. It was encouraging to note in the report of the Secretary-General (A/54/301 and Add. 1) that many States had entered into agreements at the regional and international levels for the prevention and suppression of international terrorism. Malaysia was party to several of the international legal instruments related to terrorism and was considering ratifying the rest. In negotiating such instruments, it was important to take into account the views of all Member States and to strive for consensus on contentious issues, so that the conventions would truly reflect the collective will of the international community. His delegation supported the collective position stated at the Twelfth Conference of Heads of State or Government of Non-Aligned Countries held at Durban, South Africa,

on the need for a comprehensive international convention on terrorism.

28. His Government had found the training programmes and seminars and workshops on aviation security organized by the International Civil Aviation Organization very useful in developing its own national aviation security training programme on combating and preventing incidents of unlawful interference with civil aviation.

29. **Mr. Diab** (Lebanon) said that his country was endeavouring to strengthen its laws to punish acts of terrorism, to which end it had acceded to several of the international conventions on terrorism and remained committed to effective international cooperation for the development of international law to combat the danger of terrorism. In that connection, it was essential to understand the roots of terrorism and the problems which it created, rather than simply to address its violent aspects and seek stability from a narrow political perspective. In elaborating conventions on terrorism, it was important to maintain a clear distinction between terrorism and the struggle of peoples to resist occupation and realize their right of self-determination, particularly since the realization of that right eliminated a major cause in the spread of violence and unrest. The resistance of the Lebanese people, for example, against the highly repugnant form of terrorism constituted by the Israeli occupation of their territory was but a form of struggle for freedom and of legitimate self-defence. State terrorism was more serious than terrorism by individuals, as illustrated by the arbitrary practices which Israeli forces carried out against the inhabitants of the occupied Arab territories. Referring to the many Lebanese detainees held in Israeli prisons in breach of international conventions, he said he regretted the silence of the international community in the face of such terrorist crimes, which proved the existence of double standards.

30. He emphasized that the legal framework to combat terrorism should observe the fundamental principles enshrined in the Charter of the United Nations in connection with the right to resist occupation and achieve self-determination. He therefore welcomed the reference to the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations contained in the preambles of the draft international convention for the suppression of the financing of terrorism and the draft international convention for the suppression of acts of nuclear terrorism. However, in the absence of any specific definition of terrorism, both would continue to suffer substantial gaps, as in the case of the other conventions on the subject. Of these, the International Convention for the Suppression of Terrorist Bombings contained the most

explicit definition, but it did not yet have enough signatures to enter into effect. Similarly, the scope of the draft international convention for the suppression of acts of nuclear terrorism was still a matter of great controversy, particularly in connection with State terrorism. Echoing the view of the Movement of Non-Aligned Countries, he cautioned against using the same language used in the International Convention for the Suppression of Terrorist Bombings and also stressed that the draft convention should cover the subject of the illicit collection of radioactive waste, which should be regarded as a form of nuclear terrorism.

31. He hoped that those issues would not be considered from a purely political viewpoint, which would undermine international cooperation to combat terrorism and pose real difficulties in connection with interpreting the duties and commitments of States towards such conventions. It was essential to strive anew to redress such flaws with a view to achieving a more successful convention that responded to the needs of different legal systems. Moreover, solving those difficulties at the present stage would facilitate future work on the draft comprehensive convention on international terrorism. In conclusion, he said that he looked forward to the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response to terrorism in all its forms and manifestations and to genuine constructive cooperation with Committee members in the task of elaborating conventions which responded to all hopes.

32. **Mr. Hoffman** (South Africa) said that in its deliberations on the draft conventions before it, the Committee should bear in mind that its success or failure would affect the lives of the people of the world. Terrorism by its nature undermined the standards of life and the human rights that the Charter of the United Nations called upon Member States to promote and protect. As the world grew smaller through globalization, no State, and hence no individual, was immune from the effects of terrorism.

33. South Africa therefore reiterated its unequivocal condemnation of terrorism in all its forms and its support for the efforts of the international community to eliminate terrorism. The Government was continuing the process of reviewing national legislation to enable the country to ratify the existing international conventions on terrorism and encouraged other States to do the same. Only concerted international cooperation could ensure that terrorists found no safe haven in any corner of the world. Significant regional initiatives had also been taken. During the past year, for example, the Organization of African Unity had

adopted a convention on preventing and combating terrorism.

34. Although the draft international convention on the suppression of the financing of terrorism was not the perfect legal instrument, his delegation was convinced that it was the best that could be obtained in the circumstances and would make a valuable contribution. One of the most effective means of combating criminal activity was to cut off sources of financing. The principle underlying the convention, that all forms of support to terrorists must be eradicated, was one of the basic tenets of international cooperation against terrorism.

35. It was worth considering, however, whether the continuous elaboration of limited ad hoc conventions on terrorism was an effective use of resources. The framework of international conventions on measures to eliminate terrorism so far constructed was impressive, but in elaborating each new instrument it became increasingly difficult to avoid redundancies and contradictions with existing conventions and other international law initiatives. The consequent resort to sophisticated legal mechanisms to circumvent those difficulties obscured the intent of the text and left too much to the discretion and interpretation of the States parties. A series of specific terrorist acts had been identified without ever defining the term "terrorism".

36. Moreover, the adoption of a long series of conventions resulted in a costly and time-consuming process of review and amendment of domestic law in each case prior to ratification. Those resources might better be spent in implementing the spirit of the conventions.

37. Although many outstanding issues on the substance of terrorism remained, they could no longer be sidestepped. It was time to heed the call made at the Twelfth Conference of Heads of State or Government of Non-Aligned Countries in 1998 for an international summit conference under the auspices of the United Nations on international terrorism, a call reiterated by the Heads of State and Government of the Organization of African Unity in July 1999. The General Assembly in resolution 53/108 had decided that the question of convening a high-level conference should be addressed during the present session of the General Assembly. His delegation believed that the time was ripe for a frank and forward-looking debate on proactive approaches by the international community to terrorism in all its forms.

38. The Committee, too, was at a crossroads. It should take up the challenge of elaborating a comprehensive convention on terrorism, consolidating previous gains but

addressing the issue of terrorism squarely, and it must be prepared to devote sufficient time to that complex but imperative task.

39. **Mr. Obeid** (Syrian Arab Republic) said that his country had always condemned all forms of terrorism, whether perpetrated by individuals, groups or States acting alone or in concert with others. Terrorism was unacceptable in times of peace or war. It was, however, important to differentiate between pure terrorism and legitimate national struggle against foreign occupation. It was therefore important that an international conference should be held in order to agree on a definition of terrorism and distinguish it from national liberation. He recalled General Assembly resolution 53/108 which had noted that the Twelfth Conference of Heads of State or Government of Non-Aligned Countries had called for an international summit conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

40. With regard to the draft international convention for the suppression of the financing of terrorism, his delegation had noted that the amendments it had proposed, which represented the concerns of a number of States, had not been made in the draft, and that the draft remained vague. The terms “financing” and “international terrorism” had not been defined. The draft convention dealt with persons who provided or collected funds for the purposes of terrorism, and made no mention of States, while State terrorism was a much more serious problem, as had been emphasized in Security Council resolution 1269 (1999). Instead of providing a definition of “financing”, the draft completely ignored the term. While the terms “acts of terrorism” and “terrorism” appeared in the preamble to the draft convention, they were not defined in the body of the text. In the absence of any definitions, he believed that the convention in its current form would lead to disputes between States. Despite the fact that his delegation had made repeated requests for discussion of its proposed definition of terrorism whose funding would constitute a criminal act, its proposals had been ignored. It was disturbing to realize that the definition of terrorism had been left for those in power to decide, rather than those who applied the law. He firmly believed that there was no justification for the abuse of power.

41. He wished to point out yet again that the proposal submitted by his country, contained in document A/C.6/54/WG.1/CRP.24, while correctly rendered in English, was incomplete and distorted in the Arabic version, despite having been correctly submitted on three

separate occasions. He regretted that the proposals put forward in that document had not been included for discussion by the Working Group and had merely been referred to in paragraph 99 of document A/C.6/54/L.2 under “further proposals for article 2”. Other oral and written proposals submitted by his country alone or in concert with other countries had been similarly ignored. His delegation therefore could not agree that intent should constitute an offence if none of the acts specified in article 2 of the draft convention had been committed.

42. Any draft that had not been properly discussed, but was presented with the ultimatum “take it or leave it” could not meet the specifications for international codification, but must be considered as a political declaration. His delegation had made that point on many previous occasions and wished to reiterate it yet again, for the record. Although other delegations had expressed support for his country’s position, pressure was being brought to bear in order to ensure acceptance of the whole package. The issue must be fully and properly discussed and consensus reached. The conditions necessary for consensus did not exist. His delegation therefore deeply regretted its inability to support a draft convention in which it had no confidence. It would be difficult for a draft that had not been properly discussed to be adopted unanimously. As it was, the draft represented an attempt to impose the convention as a *fait accompli*. The Working Group had not stated that it had reached consensus on the articles of the draft convention. His delegation had therefore been very surprised by the statement made to the Sixth Committee by the Chairman of the Working Group to the effect that while not all delegations had been satisfied by the draft and some had expressed their reservations with regard to certain formulations, he cautioned against reopening the instrument for discussion and recommended that the Committee should adopt the draft convention. With all due respect to the Chairman of the Working Group, his delegation believed that the oral report he had made represented only his personal views. He therefore believed that the Working Group must be given the opportunity to consider the proposals made with regard to the draft convention and that due respect should be given to the concerns of his own and many other delegations. The formulation of articles 1 and 2 needed a great deal of improvement. The draft should be referred to the Ad Hoc Committee for proper consideration in order to permit a consensus to be reached.

43. With regard to the draft international convention for the suppression of acts of nuclear terrorism, his delegation reiterated its support for the position adopted by the

Movement of Non-Aligned Countries. The excellent work done by the Ad Hoc Committee and the Working Group represented a step in the right direction. It was, however, restricted by the fact that it had only dealt with acts of nuclear terrorism committed by individuals, and had failed to include nuclear terrorism committed by States. It was difficult to imagine that ordinary individuals could commit acts of nuclear terrorism without the support of States. While the work that had already been done was greatly appreciated, the Movement of Non-Aligned Countries, which represented 113 States, together with numerous other States from different groupings, had expressed concern and reservations with regard to the formulation of the articles of the draft convention. It was vital that such an important international convention should not draw the cloak of legitimacy over State terrorism, which was infinitely more dangerous than any act committed by an individual. Security Council resolution 1269 (1999) had noted the significance of acts of international terrorism in which States were involved. It was surprising that the international community should criminalize acts of nuclear terrorism while failing to do the same for the use or threat of use of nuclear weapons, which were the most dangerous of all weapons of mass destruction. The problem of terrorism was compounded by a reluctance to call things by their proper names and by a deliberate vagueness that allowed hostile accusations to be levelled against certain peoples, despite the absence of any supporting evidence.

44. A new form of terrorism, namely, intellectual terrorism, was continually bringing pressure to bear on peoples and individuals alike with a view to persuading victims that they should accept attacks on their freedom and rights without putting up any resistance. Legitimate resistance such as that of the people of south Lebanon, whose territory had been occupied since the Israeli invasion of 1978, was designated as terrorism. Since 1967, the Syrian Arab Golan had been occupied by Israel, its people expelled from their homes and their lands expropriated; those who had stayed were subject to all manner of oppression and Israeli settlements had been established and remained there, in the face of the relevant Security Council resolutions. That could only be described as terrorism and an ongoing criminal act. The Syrian Arab Republic condemned all forms of terrorism, whether committed by an individual or by a State. Its behaviour in the Arab lands that it occupied made Israel a foremost perpetrator of State terrorism. There was no policy for dealing with State terrorism. Nevertheless, the Syrian Arab Republic was a party to a number of international and regional conventions concerning terrorism and looked forward to the beginning

of serious work on the formulation of a comprehensive convention for the suppression of terrorism.

45. **Mr. Lavalle Valdés** (Guatemala) said that his delegation supported the statement that would be made by the delegation of Costa Rica on behalf of the Group of Central American States.

46. When the first international treaty against terrorism had been signed in 1963, a strong, although minimal, legal basis for combating terrorism had already existed for some time. Terrorist attacks, regardless of the circumstances, were very serious crimes which had always been punished by national penal codes. Such crimes included assassination, murder and physical injury, as well as criminal damage and other crimes against property. All such shameful acts were violations of natural law, known as *mala in se* as opposed to *mala prohibita*. Thus, States did not normally have to create new categories of offences in order to penalize the acts of terrorism characterized in the relevant international conventions. For over a hundred years there had been a series of treaties on extradition and judicial assistance that aimed to establish cooperation among States to fight international crime. Even before 1963, there had been some "international superstructure" to deal with terrorist attacks that went beyond a purely national context. The series of international treaties to which he had just referred was an essential complement to that structure, along with the declarations on terrorism adopted by the General Assembly by consensus in 1994 and 1996.

47. The risks associated with terrorist action were increasing, with the use of explosives that had horrendous effects. There was also concern that terrorist groups could make use of nuclear, chemical or biological weapons as well as the most recent developments in technology. Moreover, the growing internationalization of terrorism was keeping the world in a constant state of tension. The background to terrorist movements was international conflict, and terrorists aimed to achieve as much publicity as possible by means of attacks with an international dimension. The shadowy figures of what might be called the "rearguard of terrorism" could be acting from any country, and the sources of financing were equally international. People could become the victims of terrorist crimes in any part of the world. The international nature of terrorism was also reflected in the activities or circumstances of its victims. They were often performing international public duties, or were abroad on business or as tourists. Furthermore, the amount of death and destruction that could be caused by terrorist attacks also contributed to the international nature of the phenomenon:

the greater the force of an explosion in a crowded area, the greater probability of there being foreigners among the victims. Terrorism also had links with drug trafficking and arms smuggling, activities which did not stop at national borders.

48. It was inconceivable that the General Assembly should urge States to ensure that their territories were not used as a terrorist base against other States if there was no danger of that actually happening. Another danger was the possibility that the right of asylum and corresponding institutions could be abused in support of terrorism. Most of the causes promoted by terrorist organizations already caused hostility between nations, and terrorism could clearly seriously jeopardize international peace and security.

49. Even greater efforts should therefore be made at all levels and in all areas to eliminate terrorism. It was a matter of great concern to his delegation that a number of difficulties seemed to be impeding the adoption of the draft convention for the suppression of acts of nuclear terrorism. With respect to the adoption of the draft international convention for the suppression of the financing of terrorism, his delegation firmly supported draft resolution A/C.6/54/L.16. Guatemala therefore hoped that despite the comments of the previous speaker the Committee would be able to adopt the draft by consensus at the current session.

50. **Mr. Keinan** (Israel) said that the recent explosion of three pipe bombs in the coastal town of Netanya, Israel, had wounded at least 14 passers-by. The bombing had taken place one day before the renewal of permanent status negotiations between Israel and the Palestinians, talks that were to lay the groundwork for a final peace settlement. That brutal attack was a reminder that terrorism was not a theoretical issue, but a real and continuous hazard.

51. It had recently become evident that terrorism was not confined to certain countries or peoples, but had become an international menace to all. Extremist groups of different political and ideological streams had joined hands in an unholy alliance, which could leave no one indifferent or neutral. Indeed, neutrality on terrorism was no longer an option for any State, as the onlookers and bystanders of today were the victims of tomorrow. International terrorism knew no limits or boundaries. It had become a web of those who planned, supported, financed and gave refuge to terrorists, as well as States that sponsored and supported them. It not only affected those who were subject to its direct indiscriminate attacks, but it posed a real threat to international peace and security, and endangered the

political process in the international arena, including the peace process in the Middle East.

52. The ongoing struggle against terrorism had to cover all fronts. First of all, States should take all the necessary measures within the framework of their domestic legislation and law enforcement policies. No less important, international cooperation in that struggle, on both the regional and international levels, was essential; that was a fact which had already been accepted and recognized in different international forums and recently by the United Nations Security Council. Less than one month previously, the framework for the joint international effort had been outlined in Security Council resolution 1269 (1999). In the concentrated global effort to combat international terrorism, the Sixth Committee was to promote international legal instruments, which would help the international community in its struggle to preserve peace and security.

53. Israel was party to most of the existing conventions and, as to the remainder, was either reviewing the possibility of accession or was already in the process of ratification. His delegation fully supported the resolution concerning the international convention for the suppression of the financing of terrorism. He also urged members of the Committee to participate in the speedy finalizing of the draft international convention for the suppression of acts of nuclear terrorism. Those two legal instruments, which expressed the clear determination of the international community, would be another milestone in the ongoing international effort to suppress terrorism.

54. **Mr. Al-Baharna** (Bahrain) said he welcomed the Secretary-General's report (A/54/301 and Add.1), which was the follow-up to the 1994 Declaration and General Assembly resolution 50/53. Although the Secretary-General had invited all States to subscribe to the Declaration, and provide all the necessary information, only a small number of States had responded. Bahrain therefore urged all States that had not yet done so to provide the Secretary-General with the information needed to implement the Declaration.

55. In his country, no specific anti-terrorist law existed, although the Penal Code contained penalties for crimes connected with terrorism. Over the past few years, Bahrain had adopted a series of security measures to protect the population against international terrorism. It had also acceded to many of the international conventions listed in the Secretary-General's report, including the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the

Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and its Protocol, and the Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection. As to regional cooperation, his country was a party to the Arab Convention on the Suppression of Terrorism. It was also studying the other conventions relating to terrorism and hoped to accede to them in the shortest possible time.

56. The Sixth Committee had made enormous progress in the past few years, and had adopted all the necessary legal instruments to enhance cooperation between States. He hoped the Committee would continue to play that role. The threat of international terrorism jeopardized international peace and security, which was vital for implementing programmes for developing countries. The international community had thus been compelled to make efforts to combat it, which had led to the adoption of General Assembly resolution 49/60 in 1994, supplemented by the 1996 Declaration. The Ad Hoc Committee had been given the task of developing a comprehensive legal framework of conventions dealing with international terrorism. The Sixth Committee should be in a position to adopt the draft convention for the suppression of acts of nuclear terrorism at the current session. His delegation would continue to participate in the necessary negotiations and consultations.

57. Bahrain supported draft resolution (A/C.6/54/L.16) on the international convention for the suppression of the financing of terrorism. However, the Arabic text should be brought into line with the English version. The adoption of measures for the suppression of terrorism and the prosecution of terrorists would enable States parties to the convention to put an end to international terrorism.

58. Negotiations should be held on the preparation of a comprehensive convention on terrorism in all its forms, including an unambiguous legal definition of international terrorism. It was important to distinguish terrorism from the legitimate struggle of peoples for self-determination. Moreover, although measures had to be taken against States that were guilty of terrorist acts, it was unfortunately not always possible to distinguish such acts from legitimate acts of self-defence. It was also important to distinguish between State terrorism and terrorism on the part of individuals or groups of individuals who acted without the encouragement of States. The draft conventions before the Committee all dealt with particular aspects of international terrorism, but the international community required a comprehensive international convention that would cover all the elements to which he had just referred. The draft

submitted by India at the fifty-third session of the General Assembly could serve as a basis for a working paper on such a convention.

Agenda item 154: United Nations Decade of International Law (*continued*)

(a) United Nations Decade of International Law (*continued*)

(b) Outcome of the action dedicated to the 1999 centennial of the first International Peace Conference (*continued*) (A/C.6/54/L.9*, L.10 and L.18)

59. **Ms. Flores Liera** (Mexico), speaking as Chairperson of the Working Group on the United Nations Decade of International Law, introduced draft resolution A/C.6/54/L.9*. She drew attention to the second and fifth preambular paragraphs and to operative paragraphs 1 and 6. In the seventh preambular paragraph, the word "interpretation" should be changed to "implementation" to reflect the agreement reached during informal consultations. She hoped that the draft resolution would be adopted without a vote.

60. *Draft resolution A/C.6/54/L.9*, as orally revised, was adopted.*

61. **Ms. Flores Liera** (Mexico), speaking as Chairperson of the Working Group on the United Nations Decade of International Law, introduced draft resolution A/C.6/54/L.10. After drawing attention to the third, fifth and seventh preambular paragraphs and to operative paragraphs 13 and 20, she said that some issues remained outstanding. She drew attention to a conference room paper containing several revisions that was before the members of the Committee.

62. First, the sixth preambular paragraph should be redrafted thus:

"Recognizing that, inter alia, the establishment of the International Tribunal for the Former Yugoslavia in 1993, the International Tribunal for Rwanda in 1994, the International Tribunal for the Law of the Sea in 1996 and the adoption of the Rome Statute of the International Criminal Court in 1998 constitute significant events within the Decade."

63. Second, in the fourteenth preambular paragraph, the words "plenary meeting of the" and "held" should be deleted.

64. Third, a new paragraph 15 (b) should be added, reading:

Annex 15

Summary Record of the 34th Meeting of the Sixth Committee, U.N. Doc.
A/C.6/54/SR.34 (17 April 2000) (statement of Sudan)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.



General Assembly

Fifty-fourth session
Official Records

Distr.: General
17 April 2000
English
Original: Spanish

Sixth Committee

Summary record of the 34th meeting

Held at Headquarters, New York, on Thursday, 16 November 1999, at 10 a.m.

Chairman: Ms. Hallum..... (New Zealand)

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Agenda item 160: Measures to eliminate international terrorism (*continued*)

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

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*The meeting was called to order at 10.20 a.m.*

**Agenda item 160: Measures to eliminate international terrorism** (*continued*) (A/54/37, A/54/301 and Add.1; A/C.6/54/2; A/C.6/54/L.2)

1. **Mr. Diaz** (Costa Rica), speaking on behalf of the members of the Central American Group (GRUCA), strongly condemned terrorism in all its forms and manifestations and said that it could not be justified for any political, philosophical, racial, ethnic or religious reason. He also condemned those States and political groups which promoted, supported or financed the commission of terrorist acts, as well as belligerent groups which perpetrated terrorist attacks in clear violation of the provisions of international humanitarian law applicable to armed conflicts, both international and non-international.

2. He expressed particular concern about the campaigns of organized terrorism designed to destabilize democratically elected Governments or to impose extreme ideologies against the wish of the majority of the population. Terrorist attacks which endangered the health or life of a population or its economic development were particularly reprehensible. For that reason, the Central American Group strongly supported the efforts of the international community to prevent, combat and eradicate international terrorism. In that connection, it welcomed the establishment in Vienna of the Terrorism Prevention Branch of the Centre for International Crime Prevention.

3. The Central American Group welcomed the successful conclusion of the negotiations on the draft international convention for the suppression of the financing of terrorism, which struck a balance between the obligation to punish such crimes under the legal system of each State party and the protection of the procedural and fundamental rights of the accused. Particular reference should be made to the balanced system of judicial cooperation and extradition established in the convention. It was to be hoped that it would be possible to adopt the convention at the current session of the General Assembly.

4. He noted with interest the proposal for the preparation of a comprehensive convention on international terrorism and the convening of a high-level international conference to devise a response of the international community to the problem of

terrorism, although he realized the legal and political problems raised by both proposals.

5. Lastly, his delegation noted the adoption by the Security Council of resolution 1269 (1999), which demonstrated the Council's concern about terrorist attacks which, because of their exceptional circumstances, constituted a threat to international peace or security. That resolution would be the basis for enhanced cooperation between the Security Council and the General Assembly, within their respective spheres of competence, to combat offences of that type.

6. **Mr. Buhedma** (Libyan Arab Jamahiriya) said that international terrorism in all its forms and manifestations, including State terrorism, was a criminal act which could not in any way be justified. The elimination of international terrorism was a moral duty as well as a legal obligation.

7. The Libyan Arab Jamahiriya, which in the past had been the victim of acts of terrorism committed by other States, had in 1992 requested the convening of a special session of the General Assembly to deal with the problem of terrorism in all its aspects. The General Assembly, where all the members of the international community were represented, was the most suitable forum for dealing with the problem. In that connection, the Libyan Arab Jamahiriya reaffirmed its support for the position adopted in 1998 by the Heads of State of the Movement of Non-Aligned Countries in Durban, which had been reaffirmed at the Summit Meeting of the Organization of African Unity held in Algeria. On that occasion, there had been a request for the convening of an international conference, under United Nations auspices, which would try to evolve a clear and precise definition of terrorism in all its forms and manifestations. In the past 35 years, several international conferences had been held and various conventions had been adopted which had only outlined some specific aspects of terrorism, without adopting a clear and broad legal definition of the phenomenon. Any definition of terrorism should establish a clear distinction between terrorism and armed struggle in self-defence or for self-determination. It was unacceptable to describe as terrorists persons who were defending their independence and freedom, and the term had been applied to leaders of the stature of Nelson Mandela and Robert Mugabe.

8. His country had never been on the side of the tyrants who received support from certain States,

including financing. There was no worse violence than that practised by States. Such State terrorism used violence to destroy and oppress peoples in a manner contrary to international law. Some States also gave sanctuary to terrorists, provided them with weapons, offered them camps and trained them there so that they could then commit acts of terrorism against their own States.

9. The efforts to combat terrorism required cooperation among States, but in practice it was difficult to achieve that objective unless there was a clear definition of terrorism accepted by all States; at least an agreement should be reached on the elements which constituted terrorism. There should also be scrupulous respect for the conventions on terrorism, because they were useless if they were not then respected as had happened in the conflict between the Libyan Arab Jamahiriya and the United States and the United Kingdom in the Lockerbie case, in which the latter two States had refused to respect the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, as the International Court of Justice had recognized in its judgement of 27 February 1998.

10. The Libyan Arab Jamahiriya welcomed the conclusion of the negotiations on the draft international convention for the suppression of the financing of terrorism, but wished to emphasize the responsibility of the States which financed terrorism and which protected terrorists and gave sanctuary to their leaders and organizations. Those criminal acts should be condemned.

11. The exceptions established in the draft international convention for the suppression of acts of nuclear terrorism weakened it and would make it impossible to tackle the question of nuclear terrorism. The terms of the convention should apply both to natural and to legal persons, including States and international organizations.

12. Some people were trying, for no reason, to link Islam and terrorism; that was another form of terrorism. One wondered who was behind that campaign against Islam and the Muslims. The problem had first arisen in Afghanistan, where those who at one time had been freedom fighters had become terrorists. A definition of terrorism which applied to certain States but not, where convenient, to others was not a good definition.

13. **Mr. Dahab** (Sudan) said that for more than four decades the United Nations had depended on the will of its membership to combat and eliminate terrorism. That political will had been used to prepare conventions on sectoral aspects of terrorism. However, that sectoral approach could not attain its noble objective, unless carried to its logical conclusion.

14. The United Nations had taken steps to criminalize terrorist acts committed by persons, organizations or groups, but the time had come to outlaw terrorist acts committed by officials or agents of States. The danger of State terrorism extended to the security, territorial integrity, stability, well-being and very existence of other States. In view of the magnitude of the problem, it was the bounden duty of the United Nations and its principal organs to deal with State terrorism in the same way and with the same determination with which it would tackle terrorism committed by individuals or groups. It would be advisable to commence with acts of instigation, financing, supplying of weapons and acts of propaganda. In that connection, the General Assembly had already adopted resolutions establishing that States should refrain from organizing, assisting, financing or encouraging terrorist acts or armed acts affecting the stability of States or Governments or interfering in the internal affairs of other States.

15. It was also the duty of the United Nations to tackle the question of the definition of terrorism, since the lack of a definition was fostering impunity. In addition, the lack of a definition had prevented the establishment of international penal arrangements to prevent crimes of terrorism and punish persons and States that committed them. Terrorism was indivisible; there were no tolerable and intolerable terrorist acts. It was the duty of the United Nations, and particularly of the General Assembly, to reactivate the norms and instruments on which the international community had reached agreement and apply them on the basis of justice and equality. The Sudan had signed the International Convention for the Suppression of Terrorist Bombings. With regard to the other instruments to which Sudan was not yet a party, the relevant legislative formalities had already been initiated and, when they were completed, the Sudan would be a party to all the conventions against terrorism currently in force.

16. The Sudan supported the adoption at the current session of the draft international convention for the suppression of the financing of terrorism, although it

believed that the goal of the convention could not be fully met unless its provisions applied to armed conflicts and to State terrorism. He referred in particular to the destruction of the Al-Shifa pharmaceutical plant in Khartoum in 1998. That was an obvious case of State terrorism, in which a powerful country attacked a weaker one. Mention should also be made of the attack perpetrated in 1999 against a pipeline in the north-east area of the city of Atbara by a group which enjoyed the full support of the United States, according to statements by the United States Secretary of State herself. Those incidents confirmed once again the need fully to implement the letter and spirit of the international instruments and to increase cooperation among States.

17. **Mr. Biato** (Brazil) said that States should coordinate their action against terrorism, which was linked to other criminal activities such as illegal trafficking in weapons and narcotics. For that reason, the member States of the Organization of American States (OAS) had adopted the 1996 Lima Declaration and Plan of Action and the 1998 Commitment of Mar del Plata, in order to establish an institutional framework for the development of cooperation to combat terrorism. At the international level, mention should be made of the adoption by the United Nations General Assembly of the 1994 Declaration on Measures to Eliminate International Terrorism and the 1996 Supplementary Declaration. In that connection, Brazil hoped that it would be possible shortly to adopt the draft international convention for the suppression of acts of nuclear terrorism and the draft international convention submitted by France for the suppression of the financing of terrorism.

18. Terrorism preyed on the feelings of frustration and despair of certain sectors of the population. For that reason, in addition to suppressing terrorism, it was necessary to analyse its causes. The time had come to deal with the question of the preparation of a comprehensive convention on international terrorism, as specified in General Assembly resolution 53/108.

19. **Mr. Traore** (Burkina Faso) said that his country had been active in the preparation and adoption of various international instruments within the framework of the Organization of African Unity (OAU), the Organization of the Islamic Conference (OIC) and the United Nations. It also supported the draft international convention for the suppression of the financing of terrorism and the draft international convention for the

suppression of acts of nuclear terrorism. Some provisions in the latter draft were unacceptable, because they allowed for the possibility of armed forces committing acts of nuclear terrorism during an outbreak of war. Burkina Faso therefore considered that military activities should not be excluded from the sphere of application of the convention.

20. Terrorism must be defined if it was to be combated; that presupposed the existence of a common political conception, a similarity of legal systems and a distinction between terrorist acts and common crimes. That was a difficult task which must be tackled.

21. **Mr. Do Nascimento** (Angola) said that many instruments adopted under the auspices of the United Nations to combat terrorism had proved inadequate, since terrorists were using increasingly sophisticated methods. That had resulted in a huge loss of life throughout the world. Terrorism, which was trying to exert pressure on Governments and acquire international legitimacy, was using as a pretext the need to protect a particular ethnic or social group in order to achieve its goals, which in many cases were linked to the activities of transnational organized crime.

22. Efforts to combat terrorism at the national level must be complemented by international cooperation, which was the only way of depriving terrorists of the basis for preparing their activities. It was therefore worrying that some countries accepted in their territory members of terrorist groups, such as the military wing of UNITA, in blatant violation of the relevant resolutions of the Security Council.

23. The fight against terrorism should also tackle its sources of financing, and his delegation therefore agreed with the text of the draft international convention for the suppression of the financing of terrorism, although it had certain shortcomings. In any case, since that instrument alone was not sufficient, his delegation endorsed the Indian proposal concerning the preparation of a comprehensive convention on international terrorism and the proposal of the Movement of Non-Aligned Countries concerning the convening in 2000 of an international conference on that phenomenon. At the regional level, Angola supported the adoption of an African convention against terrorism.

24. **Mr. Kolev** (The former Yugoslav Republic of Macedonia) said that his country unequivocally

condemned all acts of terrorism, irrespective of motive, wherever and by whomever committed, as stated in Security Council resolution 1269 (1999). In addition, the former Yugoslav Republic of Macedonia shared the views of the European Union and the associated countries that all acts of terrorism were criminal and unjustifiable, and was therefore determined to tackle that scourge as part of its efforts to promote peace and stability in South Eastern Europe and throughout the world and in line with its aspirations for integration into the Euro-Atlantic structures.

25. His delegation supported the working document submitted by France on the draft international convention for the suppression of the financing of terrorism, since it was crucial to deprive terrorists of the financial resources which they needed to perpetrate their actions. It also hoped that the preparation of the draft international convention for the suppression of acts of nuclear terrorism would soon be successfully concluded.

26. The former Yugoslav Republic of Macedonia was a party to seven international conventions pertaining to international terrorism, including the latest one, the International Convention for the Suppression of Terrorist Bombings, and was considering the possibility of acceding to the remaining international instruments adopted on that subject.

27. The former Yugoslav Republic of Macedonia welcomed the proposal of the Movement of Non-Aligned Countries for the convening of a conference on international terrorism and the Indian proposal for the preparation of a comprehensive convention against international terrorism, since a collective response was required to that scourge.

28. **Mr. Inam-ul-Haque** (Pakistan) said that his country condemned State terrorism, which was the most ignoble and reprehensible form of terrorism, since it involved the brutal use of State power to subjugate peoples and deprive them of their right to self-determination. The United Nations had reaffirmed in numerous resolutions the right to self-determination of all peoples, in particular the peoples under colonial domination or other forms of alien domination or occupation and had upheld the legitimacy of the struggle of the national liberation movements, in accordance with the principles of its Charter. It was therefore not surprising that those liberation movements were depicted as "terrorist" by those who

sought to impose their will on the population of certain territories, such as Palestine and Jammu and Kashmir. In that connection, reference should be made to the countless sacrifices of the Kashmiri people, whom India was depriving of the right to decide its own future, in violation of the resolutions adopted by the Security Council on that question. The acts of State terrorism committed by India in Kashmir had caused the deaths of over 65,000 innocent Kashmiri men, women and children, but the international community remained a silent spectator. Pakistan itself had been the victim of acts of international terrorism committed from a neighbouring State, which had resulted in the loss of thousands of lives and damage to property.

29. There was an unfortunate tendency on the part of certain sections of the media to identify terrorism with a particular religion. Even random acts of violence involving Muslims were immediately dubbed Islamic fundamentalist terrorism, whereas such stereotypes were not applied to acts perpetrated by individuals belonging to other religious faiths.

30. His delegation believed that the draft international convention for the suppression of the financing of terrorism must define terrorism by differentiating it from the legitimate struggle of liberation movements, and must include the concept of State terrorism.

31. Referring to the draft international convention for the suppression of acts of nuclear terrorism, he said that the fact that article 4 of the draft excluded the activities of armed forces from the scope of the convention was tantamount to condoning State terrorism. His Government therefore agreed with the Movement of Non-Aligned Countries that the article should be deleted.

32. His Government supported the idea of an international conference on terrorism, to be held under United Nations auspices, and was not averse to the idea of a comprehensive convention on international terrorism, although it would first be necessary to define what was meant by terrorism.

33. **Mr. Sharma** (India) said that terrorism was the great global menace of the age, the antithesis of all that the United Nations represented and a violation of the basic precepts of democracy and civilized living. It was also a grave threat to international peace and security, particularly when terrorists were armed, financed and backed by Governments or their agencies and enjoyed

the protection of State power. For over a decade, India had been subjected to a sustained campaign of cross-border terrorism, which had taken the lives of thousands of citizens and ruined countless others.

34. India was a party to all the multilateral conventions on international terrorism, had ratified the International Convention for the Suppression of Terrorist Bombings and had acceded to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol on Fixed Platforms and to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

35. The Declaration on Measures to Eliminate International Terrorism had been the first significant step taken by the United Nations in the fight against terrorism. In accordance with the Declaration, States must ensure that their territories were not used for terrorist installations or training camps or for the preparation or organization of terrorist acts against other States or their citizens. Unfortunately, some States were flouting that Declaration and continuing to finance and provide arms to terrorists. It was necessary to implement the Declaration sincerely and to put into practice the standards set in it.

36. India had supported the establishment of the Ad Hoc Committee on terrorism, with the mandate of elaborating a convention for the suppression of terrorist bombings, a convention for the suppression of acts of nuclear terrorism and, finally, a comprehensive legal framework. It had also supported France's proposal regarding a draft convention for the suppression of the financing of terrorism, on the understanding that the next item to be taken up by the Ad Hoc Committee would be India's proposal for a comprehensive international convention.

37. India hoped that the convention for the suppression of the financing of terrorism would be broader in scope and contain more direct provisions to prevent and suppress at the very earliest stage the financing of all preparations for the commission of terrorist acts. However, it supported the recommendation of the Working Group that the Sixth Committee should approve the draft and submit it to the General Assembly for adoption.

38. Almost all the meetings recently held at the level of Heads of State or Government or Ministers for Foreign Affairs had called for the strengthening of the international legal framework for the suppression of

terrorism. For example, the Twelfth Conference of Non-Aligned Countries, held in Durban in 1998, had called for the urgent conclusion and the effective implementation of a comprehensive international convention for combating terrorism. The Heads of State and Government of the member States of the Organization of African Unity, meeting in July 1999, had adopted the Algiers Declaration, which had called for effective international cooperation to combat terrorism through the speedy conclusion of an international convention for the prevention and control of terrorism in all its forms and the convening of an international summit conference under the auspices of the United Nations. The First Summit of Heads of State and Government of Latin America and the Caribbean and the European Union, held in Rio de Janeiro in June 1999, had adopted a set of "Priorities for Action", in which they had undertaken to intensify international cooperation to combat terrorism on the basis of the principles of the United Nations, to promote the signature and ratification of the conventions and protocols of the United Nations and to strengthen the international legal framework on the subject, supporting the elaboration of instruments to fight terrorism. The Foreign Ministers of the Commonwealth of Independent States, meeting in Yalta in October 1999, had issued a statement calling for compliance with international conventions against terrorism and strengthening of the international legal system in that sphere. On the basis of that global consensus, the time had come to proceed to the third stage: the preparation of a comprehensive convention on international terrorism.

39. **Mr. Thayeb** (Indonesia) expressed support for the statement made by the delegation of Zimbabwe on behalf of the non-aligned countries and said that those countries, in the Final Communiqué of the Meeting of Ministers for Foreign Affairs and Heads of Delegation, on 23 September 1999, had called for an international summit conference to be held under the auspices of the United Nations in order to formulate a joint response of the international community and to conclude the preparation and effective implementation of a comprehensive convention on terrorism.

40. Indonesia had consistently reiterated its condemnation of terrorism in all its forms and manifestations, since it violated the fundamental rights of peoples and undermined the law and order of nations. There were no circumstances in which the

killing of innocent civilians and the destruction of property could be justified. Those criminal acts should not be allowed to become an accepted aberration of the international order. Indonesia believed that only concerted action could remove that menace and the enhancement of cooperation was one of the most effective means to eradicate terrorism at all levels — national, regional and international. Also important was the scrupulous implementation of all the relevant international and bilateral instruments, including the document of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo in 1995. Indonesia had ratified several multilateral agreements relating to international terrorism: the Convention on Offences and Certain Other Acts Committed on Board Aircraft; the Convention for the Suppression of Unlawful Seizure of Aircraft; and the Convention on the Physical Protection of Nuclear Material.

41. The non-aligned countries had consistently stressed that international cooperation to combat terrorism should be conducted in conformity with the principles of the United Nations Charter, international law and relevant international conventions and were opposed to selective and unilateral acts which violated the principles and purposes of the United Nations Charter.

42. His delegation reiterated that all efforts in that direction should be guided by the Charter of the United Nations, the relevant decisions of the General Assembly, the Movement of Non-Aligned Countries, the Organization of the Islamic Conference and the Organization of African Unity. In that way, it would be possible to arrive at comprehensive and effective measures to strengthen the capacity of nations for concerted action against international terrorism.

43. **Mr. Cousineau** (Canada) said that the draft international convention for the suppression of the financing of terrorism was an indispensable tool which addressed one critical aspect of the problem. The draft linked the various anti-terrorism conventions by criminalizing activities which made terrorism possible. It also provided a mechanism for international cooperation in response to terrorism.

44. All countries recognized the serious threat posed by terrorism to the political, social and economic stability of States and the need to develop an effective international legal framework to address that threat.

The draft convention constituted an effective tool and provided an occasion to translate words into deeds. It was necessary to build on the consensus achieved after intense negotiations in order to adopt the convention and send a strong signal that terrorist activities and the activities of those who financed and supported them would not be tolerated.

45. His delegation was concerned at the limited progress achieved in the solution of the outstanding difficulties in respect of the draft international convention for the suppression of acts of nuclear terrorism. As had been noted, the problem was political rather than legal. It was to be hoped that delegations would give due consideration to the seriousness of the threat posed by acts of nuclear terrorism and the importance of establishing a mechanism to prevent incidents of that nature.

46. Canada had consistently advocated the strongest possible measures against terrorism and had ratified almost all the anti-terrorism conventions. The pragmatic approach followed by the United Nations in negotiating international conventions dealing with specific aspects of terrorism had yielded very positive results and had allowed the international community to set up a comprehensive legal framework to combat terrorism effectively, without delving into the very sensitive and potentially counter-productive question of the nature of terrorism.

47. The proposal to hold an international conference on terrorism put forward by Egypt also presented certain challenges, since it could precipitate an unfortunate debate on politicized questions which would ultimately not promote the common goal.

48. **Mr. Galicki** (Poland) said that his country endorsed the statement made by the representative of Finland and supported the international efforts designed to suppress terrorist activities through the elaboration, adoption and application of appropriate legal and practical measures. Poland had signed 11 international and regional conventions for the prevention and suppression of international terrorism, because it considered those instruments as the most useful tools for combating that phenomenon. At the same time, it recognized the importance of further development of such international instruments and believed that the international convention for the suppression of the financing of terrorism could have a positive impact on the elimination of all forms and

manifestations of international terrorism, by eliminating the economic basis for terrorist activities. The draft should be adopted as soon as possible — in other words, during the current session — and its adoption could stimulate the elaboration and adoption of other relevant international legal instruments, particularly the convention for the suppression of acts of nuclear terrorism. Since the obstacle preventing the adoption of that convention was essentially a political and not a legal one, efforts should be made to remove it as soon as possible and to find a solution acceptable to all delegations.

49. Poland was fully aware of the transnational scope of terrorist activities and of their financing. Effective action therefore required a coordinated response from the international community. However, optimism would be misplaced, since a significant number of States did not have appropriate and sufficient anti-terrorist legislation and had not acceded to the relevant conventions and protocols. They should again be urged to join the concerted action of the international community against terrorism, which posed a serious challenge to all nations.

50. The Polish delegation welcomed the establishment of the Terrorism Prevention Branch of the Centre for International Crime Prevention in Vienna, which would deal with the practical aspects of efforts to combat terrorism. The review of the possibilities existing within the United Nations system for assisting States to organize workshops and training courses on the prevention of international terrorism would provide a basis on which to develop international cooperation in that field and combine legislative and practical measures.

51. **Ms. Pipan** (Slovenia) said that, since the issue of international terrorism had first been brought before the General Assembly in 1972, the international community had been adopting measures to combat that global scourge. The 11 international conventions against specific terrorist acts represented a solid legal framework for international cooperation and contained a number of important principles. As the number of brutal terrorist acts increased, it became all the more urgent for the international community to reaffirm its unified stand against terrorism. Apart from universal adherence to the existing international conventions and to those adopted at the regional level, there was a need to adopt new legal instruments in order to fill any lacunae which might exist. In that connection, Slovenia

had endorsed the statement made by the representative of Finland and supported the adoption during the current General Assembly session of the convention for the suppression of the financing of terrorism. That convention would reflect the will of the international community to deprive terrorist organizations of their resources and thus curb their activities. It was also necessary to accelerate the negotiations on the draft convention for the suppression of acts of nuclear terrorism. The early adoption of those two instruments would confirm the determination of the international community to suppress terrorism and would serve as a basis for future codification of anti-terrorist instruments.

52. International terrorism could and should be combated solely within the framework of international law, which included humanitarian and human rights law. When acts of terrorism reached proportions or had effects that made them comparable with the use of force prohibited by the Charter of the United Nations, the question of lawful countermeasures might arise. In that case, the criteria established in international law should be considered, including those of necessity and proportionality of response.

53. Slovenia was a party to seven of the eleven international anti-terrorist conventions and had begun the national legislative proceedings for accession to the remaining conventions. It had also signed the Convention for the Suppression of Terrorist Bombings and would ratify it shortly. The Government of Slovenia unequivocally condemned terrorism in all its forms and manifestations, whatever its motives and origins, wherever and by whomever committed, confirmed its determination to participate in the fight against terrorism by legitimate and lawful means consistent with human rights and the rule of law, and supported the efforts for the further development of a comprehensive legal framework to combat terrorism.

54. **Mr. Mukongo** (Democratic Republic of the Congo) said that international terrorism was an extremely serious issue which required concerted action by the international community, whose participation in the struggle against terrorism depended on the commitment of each State to respect and apply fully at the national level the relevant international conventions. The Congolese Penal Code contained no explicit definition of terrorism, but the Democratic Republic of the Congo had consistently pursued a policy of suppression of international terrorism at all



levels. At the domestic level, it strictly regulated the arms trade and the carrying of weapons. At the international level, it had ratified or signed a number of multilateral conventions on international terrorism. That all proved its commitment and determination to join in the efforts of the international community to combat that scourge. If it had not been for the aggression by the coalition of Rwandan, Ugandan and Burundian armies, which was hampering the process of national reconstruction initiated after liberation in 1997, the Democratic Republic of the Congo would have already signed and even ratified the other instruments designed to combat international terrorism, such as the International Convention for the Suppression of Terrorist Bombings.

55. The draft international convention for the suppression of the financing of terrorism was a quite balanced text on which the Sixth Committee could reach a consensus, although its current version obviously still had some shortcomings.

56. Considerable progress had been made in the consideration of the draft convention for the suppression of acts of nuclear terrorism. It should be recognized that it was an important complement to the earlier conventions and an effective legal framework for combating and discouraging terrorist acts. It was important for the Committee to conclude work on that draft, but it was also important for the draft to cover one of the most essential aspects — the activities of armed groups — in order to meet the concerns of all delegations. Unless the international community was to abandon its mission of combating that scourge in all its aspects and manifestations, his delegation believed that the activities of armed forces were one of the most important aspects of the convention's sphere of application. Although it acknowledged the complexity of the issue, his delegation considered that generalized violations of the rules of international humanitarian law that killed and seriously injured innocent civilians were impermissible.

57. The disagreement on the scope of the convention revealed the serious problem created by the diversity of views about the very concept of terrorism. For some, terrorism was acts perpetrated by individuals or isolated groups; for others, on the contrary, it was organized acts which some States used as a political instrument and which had more serious consequences. That was the type of international terrorism committed by the national armies of Rwanda, Uganda and Burundi

against the peaceful Congolese population with complete impunity. By those acts of terror, the aggressors had violated, firstly, the sovereignty and territorial integrity of a member State of the United Nations and of the Organization of African Unity and, secondly, the basic norms and principles of international humanitarian law and the fundamental rights of the Congolese citizens.

58. His delegation expressed support for India's proposal concerning the adoption of a comprehensive definition of terrorism and the elaboration of a detailed and comprehensive convention reflecting the spirit of the Twelfth Conference of the Movement of Non-Aligned Countries held in Durban in 1998, at which the member States had reaffirmed their willingness to refrain from organizing or facilitating acts of terrorism in the territories of other States and from participating in them. Only in those circumstances would it be possible to respond to the General Assembly's request for the convening of a high-level conference in 2000 to formulate an appropriate response by the international community to terrorism in all its forms and manifestations.

59. **Mr. Wenaweser** (Liechtenstein) said that acts of terrorism continued to pose a very serious threat to societies throughout the world. Targeting innocent civilians, they were aimed at the very basis of democratic processes and were intended to undermine political solutions and negotiated peace efforts and to threaten the enjoyment of human rights. Recently, the international dimensions and ramifications of terrorism had become more significant and more obvious. It was thus important that the international community had stepped up its efforts to eliminate international terrorism and had responded collectively to particular instances of terrorism. There could be no doubt that international cooperation, especially through mutual legal assistance, was an indispensable means to suppress terrorism.

60. Although the Security Council had already established a link between terrorism and international peace and security in particular cases, it had in resolution 1269 (1999) dealt with the problem in a general manner. That resolution, explicitly based on the work done by the General Assembly, was a reaffirmation of the political will of the international community to join forces to combat terrorism. Liechtenstein echoed the condemnation of terrorism in

all its forms and manifestations and by whomever committed.

61. The Sixth Committee was the appropriate body to deal with the problem of terrorism in all its aspects and the Ad Hoc Committee established by resolution 51/210 had efficiently discharged its mandate with regard to the draft convention for the suppression of the financing of terrorism. The strengthening of international cooperation to suppress and prevent financial transactions in support of terrorism was a crucial element of the overall plan to combat international terrorism. While political will had sometimes prevailed over legal exactitude in the negotiations and the outcome was probably not ideal for any delegation, it would be unwise and counter-productive to reopen the discussion of the text submitted by the Working Group. With regard to the draft convention on nuclear terrorism, it was obvious that the remaining issue was political rather than legal in nature, which was why a broader debate on the draft was necessary. His delegation supported the ongoing efforts to bring those discussions to a successful conclusion and looked forward to the work of the Ad Hoc Committee on a comprehensive legal framework and its discussions on the convening of a conference on that subject.

62. Although the international consensus had produced important positive results, there had also been some less welcome developments in the international debate, particularly with regard to the relationship between terrorism and human rights. From a legal perspective, Liechtenstein continued to oppose the notion that terrorists committed human rights violations. That notion, even contained in some General Assembly resolutions, gave an unwarranted status to individual terrorists and terrorist groups. The issue, which was basically a legitimate one, should be considered in the broader context of the question of non-State actors, which was acquiring increasing importance in many areas of United Nations activity. Furthermore, it should be recalled that, since there was no justification for terrorist acts, the fight against terrorism could never be invoked to justify human rights violations, as was unfortunately done in many instances. All efforts to combat national and international terrorism should respect the norms of international law, particularly those relating to human rights. One important principle was that terrorist offences were punishable regardless of the causes or

motives of the perpetrators. For that reason, the term "terrorism" and its derivatives must be used in a responsible manner and not as a wholesale label for political reasons. Those who targeted civilian populations in the name of the fight against terrorism were not only disregarding international humanitarian and human rights law but were ultimately doing a disservice to the international fight against terrorism.

63. **Mr. Hanson-Hall** (Ghana) said that terrorist acts were totally unacceptable as a means of seeking redress, achieving political ends or supporting a cause. Not only did terrorist acts provoke political instability and disrupt economic and social development; they also constituted a danger to international peace and security. Ghana therefore believed that all States were obligated to strengthen international cooperation and to adopt effective measures to prevent, combat and eliminate international terrorism.

64. Ghana hoped that it would soon be possible to finalize the draft international convention for the suppression of acts of nuclear terrorism. Although it was aware of the divergent views among delegations, his delegation believed that the ominous possibility of nuclear terrorism should make all delegations which saw nuclear terrorism as a real threat join forces to ensure that an appropriate convention was negotiated.

65. The draft international convention for the suppression of the financing of terrorism would supplement existing instruments on money laundering. Although some of its provisions posed problems, after reflecting on the main advantages of the draft, his delegation would fully support the adoption of the text, in a desire to eliminate the means of financing of terrorism. With regard to the future work of the Ad Hoc Committee, the draft comprehensive convention on international terrorism proposed by India was a reasonable basis for negotiations.

66. **Mr. Alabrune** (France) said that he wished to make some comments on the draft international convention for the suppression of the financing of terrorism. Firstly, that instrument undoubtedly responded to an urgent need of the international community, demonstrated by the unanimously favourable reaction to the proposal made by France the previous year. Secondly, the Ad Hoc Committee and the Working Group had worked hard and well; all written or oral proposals had been studied carefully and

the result had been a balanced, rigorous and particularly comprehensive text.

67. Thirdly, the draft should be adopted since it met the wishes of the vast majority of delegations, even if some found it to be imperfect. The fourth reason would be the recommendation made by the Chairman of the Ad Hoc Committee and of its Working Group, Mr. Philippe Kirsch, who had stated that the text approved was the best one possible and had warned against reopening the negotiations. In view of Ambassador Kirsch's experience, that recommendation had not been made lightly.

68. The efforts to combat terrorism required not only speeches but also action and decision. France was aware that those prerequisites existed and that they might not occur again. Indecisiveness might be interpreted as a sign of weakness in the face of the scourge of terrorism, and no delegation wanted to send that signal. France therefore hoped that it would be possible to approve the draft without a vote.

69. **Ms. Kalema** (Uganda) regretted that accusations had been levelled against her country at a time when new and promising developments were taking place in the Great Lakes region. Those accusations did not augur well for the peace process. Uganda had become involved in the conflict in the Democratic Republic of the Congo for security reasons, but the authorities were determined to continue to seek a peaceful solution to the conflict in the region. For that purpose, on 10 July 1999, a meeting had been held in Lusaka between six Heads of State (those of the Democratic Republic of the Congo, Namibia, Rwanda, Angola, Zimbabwe and Uganda), who had signed an agreement for the cessation of hostilities between all the belligerent forces in the Democratic Republic of the Congo. The rebel forces had signed the agreement on 1 August and 31 August 1999. The agreement had recognized the need to address the security concerns of the Democratic Republic of the Congo and its neighbouring countries and to initiate a dialogue for reconciliation between the Government and the rebel forces.

70. Following the signature of the Lusaka Agreement, a Joint Military Commission had been established and had commenced work. In addition, in resolution 1258 (1999) the Security Council had authorized the deployment of up to 90 United Nations military liaison personnel, together with the necessary

civilian, political, humanitarian and administrative staff, in the capitals of the States signatories of the Ceasefire Agreement and the provisional headquarters of the Joint Military Commission and, as security conditions permitted, to the rear military headquarters of the main belligerents in the Democratic Republic of the Congo and, in due course, to any other areas the Secretary-General might deem necessary.

71. The first group of 90 liaison officers responsible for preparing for the Observation Mission in the Democratic Republic of the Congo had arrived in Nairobi on 7 September. Furthermore, some countries had also indicated their willingness to provide military personnel for the peacekeeping operation in the Democratic Republic of the Congo. Nevertheless, some obstacles persisted, including financing. The politicization of that question, in the light of all the efforts made by leaders in the region, was not helping the peace process.

72. Uganda reaffirmed its commitment to the peaceful resolution of the conflict in the Democratic Republic of the Congo and to the swift and full implementation of the Lusaka Agreement. It condemned all acts of terrorism and supported all efforts to combat terrorism at the international and national levels.

73. **Mr. Mukongo** (Democratic Republic of the Congo), speaking in exercise of the right of reply, said that the Ugandan Army, which had installed itself in the territory of the Democratic Republic of the Congo, despite the agreements signed, had killed about 60 Congolese civilians in reprisal for attacks allegedly committed by certain armed groups known only to that Army. That showed the bad faith of a country which was totally opposed to peace in the Democratic Republic of the Congo and which was engaged in looting the latter's riches. There was no need to recall the fighting in the streets of the Congolese city of Kisangani, where the armies of Rwanda and Uganda had clashed and thousands of Congolese had been killed. All those facts were well known to the international community and there was no need to repeat them.



# **Annex 16**

Summary Record of the 32nd Meeting of the Sixth Committee, U.N. Doc.  
A/C.6/54/SR.32 (18 May 2000) (statement of Cuba)





# General Assembly

Fifty-fourth session

Official Records

Distr.: General  
18 May 2000  
English  
Original: Spanish

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## Sixth Committee

### Summary record of the 32nd meeting

Held at Headquarters, New York, on Monday, 15 November 1999, at 10 a.m.

*Chairman:* Mr. Mochochoko ..... (Lesotho)

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Agenda item 160: Measures to eliminate international terrorism (*continued*)

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*The meeting was called to order at 10.20 a.m.*

**Agenda item 160: Measures to eliminate international terrorism** (*continued*) (A/54/37 and A/54/301 and Add.1; A/C.6/54/2; A/C.6/54/L.2)

1. **Mr. Štefánek** (Slovakia) recalled that the international community had been concerned with the problem of terrorism since the time of the League of Nations. In 1934 a resolution had been adopted specifically referring to the establishment of an international criminal court for the suppression of terrorism; later, in 1937, the Convention for the Prevention and Punishment of Terrorism had been adopted, although it had never come into force, defining acts of terrorism as criminal acts intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public. The current decade had witnessed the adoption of the Declaration on Measures to Eliminate International Terrorism (General Assembly resolution 49/60 of 9 December 1994, annex), the Declaration to Supplement the 1994 Declaration (General Assembly resolution 51/210 of 17 December 1996, annex) and the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164 of 15 December 1997, annex).

2. Another important step was about to be taken against terrorists: cutting off their financial resources. His delegation supported the adoption during the current session of an international convention for the suppression of the financing of terrorism. It was also in favour of early completion of the work on a draft international convention on the suppression of acts of nuclear terrorism, since the use of nuclear weapons by terrorists and possible terrorist attacks against nuclear facilities posed a serious threat to the civilian population. His delegation also noted with satisfaction the support given by the Security Council to the fight against terrorism in its resolution 1269 (1999), in which it unequivocally condemned all acts, methods and practices of terrorism. However, much more could be done. A step-by-step approach had been taken to the elaboration of rules of international law against terrorism; in other words, specific instruments had been adopted for the suppression of particular forms of terrorist activities. His delegation supported the adoption of a general instrument and believed that the draft convention submitted by India deserved consideration.

3. His Government was a party to 9 of the 11 international conventions against terrorism and soon would be completing the legislative process leading to accession to the other two. It had also signed the International Convention for the Suppression of Terrorist Bombings and would shortly ratify it. It was also a party to the European Convention on the Suppression of Terrorism of 1977.

4. **Mr. Aboul Gheit** (Egypt) said it was regrettable that all States and peoples, regardless of their political orientation or geographic location, were potential targets of terrorist activities that claimed innocent lives. His Government had been one of the first to denounce terrorism and to initiate a long-term campaign against it at all levels. At the national level, it had passed laws and adopted administrative measures to suppress terrorism through plans that addressed cultural, economic and security questions. At the regional level, it had promoted the Arab Convention on the Suppression of Terrorism of 1998 and the two conventions adopted in 1999 under the auspices of the Organization of African Unity and the Organization of the Islamic Conference. At the international level, it was a party to 10 international conventions against terrorism.

5. His Government had decided to sign the International Convention for the Suppression of Terrorist Bombings and urged States that had not done so to accede to the existing international conventions. His Government had responded to the invitation of the Secretary-General to provide information on measures taken at the national and international levels to prevent and suppress terrorism and on incidents related to international terrorism.

6. The Egyptian delegation had always believed that the issue of international terrorism should be addressed by the United Nations. In that regard, the role of the Sixth Committee in drafting guidelines and new legal norms which would enable the international community to coordinate its activities against terrorism had assumed great importance in recent years. Because of the importance his delegation assigned to a legal framework to aid in combating terrorist activities, it had participated actively in the elaboration of the draft international convention for the suppression of the financing of terrorism. Among the priority topics on the Committee's future programme of work was the draft international convention for the suppression of acts of nuclear terrorism. His delegation welcomed the



appointment of a coordinator to study various special provisions related to the scope *ratione personae* of the Convention, since a number of delegations from various groups had expressed dissatisfaction with the current situation, given the sensitivity of the issues involved. With regard to the possibility of adopting a comprehensive convention on international terrorism, as called for in General Assembly resolution 53/108, priority should be given to the draft proposal submitted by India.

7. Also in resolution 53/108, the General Assembly had decided to address the question of convening a high-level conference in 2000 to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. His delegation proposed that the question of convening such a conference should be considered in the Ad Hoc Committee established by General Assembly resolution 51/210, which would be the proper forum. It invited the General Assembly to include the item in the agenda of the Ad Hoc Committee. That would create an excellent opportunity for promoting dialogue directed towards the formulation of a general, comprehensive set of rules for combating terrorism on the political, economic, technological and legal fronts.

8. **Mr. Al-Kadhe** (Iraq) reaffirmed his Government's determination to combat terrorism energetically, in accordance with the rules of international law and the Charter of the United Nations, in order to eliminate the causes of terrorism within the framework of the Arab Convention on the Suppression of Terrorism. His Government also intended to cooperate in the preparation of a similar convention under the auspices of the Organization of the Islamic Conference.

9. His Government supported the position of the Movement of Non-Aligned Countries, as expressed at its conference held in Durban in 1998, with regard to the need to promote international cooperation in combating terrorism in accordance with the principles of international law, and it rejected all selective and unilateral measures which contravened the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States.

10. The time had come for the international community to formulate a legal definition of terrorism in order to provide a comprehensive approach to legislation on the matter. All Member States should

contribute to the gradual elimination of the underlying causes of terrorism and pay special attention to all examples of racism, colonialism and foreign occupation that might give rise to international terrorism. The fact that the draft convention did not contain a definition of terrorism opened the door to abuses on the part of countries which preferred to use force rather than legal means to promote their own interests to the detriment of the interests of peoples. Any definition must take into account the need to differentiate between terrorism and the legitimate struggle of peoples for their territorial integrity and liberation.

11. The draft international convention for the suppression of acts of nuclear terrorism constituted a step forward, although it could be criticized for referring only to acts committed by individuals and not to acts committed by States. The fact that the convention would not apply to the armed forces of States was incompatible with the obligation of the international community to refrain from using nuclear weapons and would open the door to State terrorism. It was significant in that respect that two permanent members of the Security Council, in their aggression against Iraq in 1991, had used depleted uranium weapons. At issue was a new generation of radioactive weapons prohibited by the international community. His delegation supported the position of the Movement of Non-Aligned Countries on that issue, a position that should be taken into account in order to create a consensus on the draft convention.

12. The draft international convention for the suppression of the financing of terrorism did not include a definition of terrorism and lacked a general condemnation of State terrorism. His delegation had reservations about paragraph 5 of article 11, which provided that extradition treaties between States parties should be deemed to be modified to the extent that they were incompatible with the convention, since there were territorial extradition treaties that had been adopted on the basis of special regional considerations.

13. His country had been and continued to be the victim of terrorist acts committed by permanent members of the Security Council. Since the large-scale military aggression in October 1991, those States had, without the authorization of the Security Council, imposed a no-flight zone in the northern and southern portions of the country, and their continued air attacks had claimed scores of victims among the civilian

population and had destroyed public and private property. Those acts were a form of State terrorism, since they lacked any legal basis. The United States of America had passed a so-called "Iraq Liberation Act", by virtue of which millions of dollars had been allocated to finance terrorist groups opposed to the Iraqi regime. On 28 October 1999, a few days after the Security Council had adopted resolution 1269 (1999) condemning all acts of terrorism, *The New York Times* had published an article reporting on the military training given by the Central Intelligence Agency (CIA) to groups of mercenaries and spies of Iraqi nationality. In so doing, the United States was acting as a sponsor of international terrorism, in violation of the Charter of the United Nations. The purpose of those practices, which involved the use of sophisticated technology, was to destroy the infrastructure of another State and to provoke a state of terror in the general public. The victims of terrorist acts committed by States far outnumbered the victims of such acts committed by individuals. His delegation emphasized the responsibility incurred by States which provided weapons, resources and training to terrorists in order to achieve their own political ends.

14. **Mr. Shihab** (Maldives) said it was appalling that, as the new millennium approached, the threat of international terrorism was still continuing to grow. Terrorists had access to modern, lethal weapons and were taking advantage of the rapid technological advances in transport and communications. No State was free from the threat of terrorism. Small States, such as Maldives, were the easiest targets and the most vulnerable to terrorist attacks. In 1988, his country had been attacked by some 70 mercenaries; the attack had been repelled with assistance from India. The aggression against Maldives underlined the transnational nature of modern terrorism; the terrorists had belonged to an organization in a neighbouring country that was financed and armed by contributions from members in safe havens in various corners of the globe. No one country acting alone could effectively combat that kind of transnational terrorism.

15. Spurred by the attack, his Government in 1989 had taken the initiative of asking the General Assembly to include in its agenda an item on the protection and security of small States, which had been the subject of resolutions adopted at the forty-fourth, forty-sixth and forty-ninth sessions. The aim of the resolutions had not been to create a United Nations-led peace force to aid

small States, but to draw international attention to the fact that the security of small States was an integral part of global peace and security. Hence, the international community had a collective obligation to respond with seriousness and commitment to threats faced by small States, regardless of the economic prosperity, strategic location or importance of the country in question. Unless the international community assumed that responsibility, small States would have no alternative but to divert their scarce resources from development activities to military purposes or to conclude defence agreements with larger Powers.

16. Maldives was a party to many international legal instruments against terrorism and was actively considering accession to others. It was regrettable that, a decade after the International Convention against the Recruitment, Use, Financing and Training of Mercenaries had been opened for signature, it had still not entered into force; his delegation urged States that had not yet acceded to or ratified the Convention to do so in order to facilitate its early entry into force.

17. Regional cooperation played a very important role in combating terrorism, and consultation and cooperation at the regional level were essential in creating security arrangements and legal frameworks that would complement efforts at the international level. He noted with satisfaction that the Regional Convention on Suppression of Terrorism of the South Asian Association for Regional Cooperation (SAARC), under which States members were committed to extraditing or prosecuting terrorists, had entered into force. The Association had also established a Terrorist Offences Monitoring Desk with the aim of collecting, analysing and disseminating information on incidents of terrorism and the tactics, strategies and methods used by terrorists. However, much remained to be done if those measures were to have an impact on terrorist activity in the region.

18. The best defence for small States should be the Charter of the United Nations and the machinery established under the Charter. Strong and urgent international cooperation and commitment were essential in order to overcome the scourge of terrorism.

19. **Ms. Stancu** (Romania) said that her delegation fully subscribed to the statement made by Finland on behalf of the European Union but wished to add some remarks on specific issues. International terrorism was

becoming one of the most serious threats to international peace and security. It was often, although not always, related to illegal trafficking in weapons or drugs, which were a source of enormous financial gain for transnational criminal organizations. Terrorism was the antithesis of human values and civilization, and all acts of terrorism in all its forms and manifestations should therefore be unequivocally condemned.

20. Combating terrorism required the broadest possible cooperation within the framework of international law. Since 1972, when the topic of terrorism had first been placed on the agenda of the General Assembly, a number of important international conventions had been adopted. Romania had been one of the first countries to sign the International Convention for the Suppression of Terrorist Bombings and had ratified all the other conventions on terrorism. It welcomed the conclusion of negotiations on a convention for the suppression of the financing of terrorism and looked forward to the completion of the draft international convention for the suppression of acts of nuclear terrorism. The United Nations must be actively involved in the fight against terrorism; rhetorical gestures, must be set aside and endless debate must give way to effective action.

21. **Mr. Samir** (Oman) said that his Government shared the concern of the international community with establishing the necessary mechanisms to combat the phenomenon of terrorism in all its forms and manifestations. In recent years terrorism had become transnational; hence the need to intensify cooperation and adopt multidimensional measures to suppress terrorism effectively. All the conventions on terrorism that had been adopted under the auspices of the United Nations should be faithfully and effectively implemented.

22. His delegation hoped that the draft international convention for the suppression of the financing of terrorism and the draft international convention for the suppression of acts of nuclear terrorism would be adopted by consensus as soon as possible.

23. It was important that the drafts should complement the national legislation of all countries in order to ensure their universal acceptance and enforcement, as the application of double standards in dealing with such criminal acts was unacceptable.

24. The international community should arrive at a clear definition of terrorism in order to be able to

differentiate between the struggle of peoples for independence and self-determination and acts of violence aimed at innocent people for the purpose of material gain or for objectives which had nothing to do with the lofty ideals of the peoples' struggles. Acts of violence which endangered the lives of innocent persons could never be justified.

25. On the basis of the principles of Islam, which rejected violence and promoted tolerance and peaceful co-existence among peoples, his Government would continue to condemn terrorism in all its forms and manifestations, whether committed by individuals, groups or States. It would continue to work with the international community to implement all the mechanisms and rules aimed at combating that scourge and to ensure that those responsible for such crimes were brought to justice.

26. The creation of a mechanism to monitor violations of international conventions on terrorism and the establishment of a record of such violations could contribute greatly to the fight against terrorism. His delegation supported the Egyptian proposal for the convening of an international conference on terrorism in 2000 under the auspices of the United Nations.

27. **Mr. Dorjsuren** (Mongolia) said that his delegation condemned all acts, methods and practices of terrorism. Some of those acts, such as terrorist bombings, took the lives of hundreds of innocent people, and the technical potential for carrying out acts of nuclear terrorism was increasing. His delegation therefore fully supported the efforts of the international community to combat terrorism, including the efforts of the Ad Hoc Committee established by General Assembly resolution 51/210.

28. The Mongolian delegation welcomed the draft international convention for the suppression of the financing of terrorism (A/C.6/54/L.16). Although there might be difficulties with some of its provisions, in general the text was well balanced and acceptable, and his delegation hoped that it could be adopted during the current session. Work on the draft international convention for the suppression of acts of nuclear terrorism should be expedited. Political will, rather than legal expertise, was what was needed to complete the work on that issue.

29. Once the two draft conventions were finalized, the Ad Hoc Committee should concentrate its attention on the issue of defining international terrorism, even

though the question was highly controversial. Another possible task might be the drafting of a comprehensive convention on international terrorism, using as a starting-point the proposal presented by India. His delegation also supported the convening of an international convention under the auspices of the United Nations in order to formulate an international response to terrorism.

30. **Mr. Kazykhanov** (Kazakhstan) said that terrorism was spreading and that no country was free of it; that constituted a threat to regional and international security. The only way to combat terrorism effectively was through joint action by States within the framework of the United Nations which, because of its universal character, was in a position to coordinate the activities of Member States in that area.

31. His Government was, as it had stated on many occasions, opposed to terrorism in all its forms and manifestations and believed that an international conference on terrorism should be convened not only to adopt measures to suppress terrorism but also to strengthen cooperation between States to prevent it and to facilitate an exchange of information in that regard.

32. Moreover, the possibility that terrorists might acquire and use weapons of mass destruction made it necessary to elaborate an international convention for the suppression of acts of nuclear terrorism. His delegation also supported the adoption of the draft international convention for the suppression of financing of terrorism, since depriving terrorists of resources was a crucial measure.

33. The terrorist attacks launched recently against Kazakhstan's neighbours had aroused great concern in the region. In September 1999, at the Conference on Interaction and Confidence-building Measures in Asia, the ministers for foreign affairs had adopted a declaration of principles governing relations between States members of the Conference. The declaration had stated that States members would refrain from promoting terrorist activities, directly or indirectly, and would endeavour to coordinate their activities to combat terrorism. Moreover, at a meeting of the Heads of State of the "Shanghai Five" group of countries (China, Kazakhstan, Kyrgyzstan, Russian Federation and Tajikistan), it was agreed that the competent authorities of the five States would take steps to coordinate their efforts against terrorism. Representatives of the States parties to the treaty

establishing a customs union and common economic space (Belarus, Kazakhstan, Kyrgyzstan, Russian Federation and Tajikistan) had also condemned international terrorism at a meeting held in Moscow in October 1999. The ministers for foreign affairs of the States members of the Commonwealth of Independent States (CIS) had adopted a declaration in Yalta, Ukraine, in October 1999, concerning measures to be taken against the growing menace of terrorism. Kazakhstan had also signed the Treaty on Cooperation between CIS States in Combating Terrorism. At the bilateral level, Kazakhstan had concluded agreements with a number of States concerning mutual judicial assistance in criminal matters and extradition.

34. Kazakhstan attached great importance to cooperation against terrorism and had thus become a party to 7 of the 11 international conventions on terrorism. Its Parliament was considering a bill on combating terrorism and had enacted a new penal code which defined a variety of terrorist crimes, such as attacks against internationally protected persons and organizations, the manufacture and distribution of weapons of mass destruction, hostage-taking, the hijacking of ships and aircraft and the illegal export of technology for producing weapons of mass destruction.

35. **Mr. Baali** (Algeria) said that international terrorism was a serious threat to the right to life, liberty and security of person, in that it was part of a terror campaign whose purposes were to paralyse economic, political and social activity, destabilize States and hinder their economic and social development. A new kind of terrorism had arisen, involving drug trafficking and money-laundering. Accordingly, States were stepping up their efforts to combat terrorism and drawing closer in their positions. The collective reaction against terrorism had been reflected in the adoption of General Assembly resolution 49/60, of 9 December 1994, which contained the Declaration on Measures to Eliminate International Terrorism. The commitment of the United Nations in that regard had also been reaffirmed by the Security Council, which had adopted an important resolution in which it had clearly and unequivocally condemned all acts of terrorism, irrespective of motive, wherever and by whomever committed.

36. His delegation attributed great importance to the formulation of a draft international convention for the suppression of the financing of terrorism. It wished to see that important legal instrument adopted by

consensus during the current session in order to demonstrate clearly that the international community was committed to eliminating terrorism by depriving it of its sources of financing and logistical support.

37. States must also refrain from organizing and instigating the commission of terrorist acts in the territories of other States and must not allow their own territories to be used for activities intended to destabilize other States.

38. Since terrorism was a worldwide phenomenon with many forms and manifestations, the international community required a comprehensive legal instrument for combating terrorism, one that was not limited to specific aspects; to that end, an international conference should be convened under the auspices of the United Nations, as had been urged by the Heads of State or Government of the Movement of Non-Aligned Countries at their Durban Summit and by the Assembly of Heads of State and Government of the Organization of African Unity at its Algiers Summit.

39. In its struggle against terrorism, his Government had not only taken legal steps at the domestic level, but had acceded to most of the international conventions on the subject and had promoted the coordination of measures at the regional level, through, among other things, the Conference of Interior Ministers of Western Mediterranean Countries, whose participants had reaffirmed the priority to be given to the fight against terrorism, which was a threat to the stability, peace and security of the region and to democracy, respect for human rights and collective and individual liberties. Within the League of Arab States, the Algerian delegation had helped to elaborate and had ratified the Arab Convention on the Suppression of Terrorism, which had entered into force on 7 May 1999. Within the Organization of the Islamic Conference, his delegation had made great efforts to secure the adoption of a legal instrument to coordinate the actions of Islamic States in preventing and suppressing terrorism. The Organization of African Unity, at its most recent summit in Algiers, had adopted an African convention for the suppression of international terrorism put forward by his delegation.

40. **Mr. Nejad Hosseinian** (Islamic Republic of Iran) said that international terrorism, which claimed thousands of lives each year, also disrupted relations among nations, hampered economic and social development and threatened international peace and

security. As no country was immune from that scourge, it was imperative that the international community should redouble its efforts to eliminate terrorism.

41. Terrorism had cost the lives of many Iranian citizens in the past two decades. The assassination of the Deputy Chief of the Joint Staff of the Armed Forces in April 1999 had been the latest in a series of attacks carried out by a terrorist organization, that had also caused injuries to a number of Iranian diplomats. The terrorist organization received material, military, political and logistical support from a neighbouring country, and its members, sometimes disguised as representatives of human rights organizations, had found safe havens in the countries that supported them. It was also a matter of deep concern that the Taliban continued to ignore calls by the Security Council to prosecute those responsible for murdering members of the Iranian Consulate General in Mazar-e-Sharif, Afghanistan, and the correspondent of the Iranian News Agency in that country.

42. His Government was a party to several anti-terrorist conventions and had taken the steps necessary to become a party to the remaining conventions listed in the report of the Secretary-General on measures to eliminate international terrorism (A/54/301). In addition to taking joint measures with neighbouring countries and countries of other regions to coordinate efforts against terrorism, his Government had played an active role in the preparation and adoption of the convention on combating international terrorism approved by the Ministerial Meeting of the Organization of the Islamic Conference in 1999.

43. Spurious allegations of terrorism against another State diverted the attention of the international community and were detrimental to the common struggle against terrorism. The measures adopted to fight terrorism should be in conformity with the Charter of the United Nations, international law and the relevant international conventions, including General Assembly resolution 49/60, of 9 December 1994, containing the Declaration on Measures to Eliminate International Terrorism.

44. The draft international convention for the suppression of the financing of terrorism (A/C.6/54/L.2) had some shortcomings. It did not contain a definition of international terrorism, a question on which the international community had not reached consensus. Moreover, his delegation would

have preferred to have the word “illegal” deleted from article 18, paragraph 1 (a), so that all activities of persons and organizations that knowingly encouraged, instigated, organized or engaged in the commission of the offences set forth in the draft convention could have been prohibited. Despite those deficiencies, there was no doubt that the draft was a step forward in combating terrorism.

45. With regard to the draft international convention for the suppression of acts of nuclear terrorism, informal consultations should continue so that it could be adopted by consensus as soon as possible. In addition, the time had come to concentrate on the elaboration of a comprehensive convention on international terrorism, as called for in General Assembly resolution 53/108, of 26 January 1999.

46. **Mr. Al-Obaidli** (Qatar) reiterated his delegation’s condemnation of terrorism in all its forms and manifestations, irrespective of origin or motive, and reaffirmed that the struggle against that threat was a universal responsibility. At the same time, he reaffirmed the inalienable right of peoples to struggle against occupation and the need to differentiate between terrorist acts and the legitimate struggle of a country against occupation and aggression, since such struggle was a legitimate right of peoples in accordance with international agreements and the Charter of the United Nations.

47. There was another form of terrorism that was practised systematically by other means, namely State terrorism, which endangered human rights and the right to live in liberty, dignity, security and peace. An obvious example of State terrorism could be seen in the occupied Palestinian territory, the Syrian Golan and the southern region of Lebanon.

48. His delegation supported the convening of a high-level conference in 2000 under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations; it also supported the elaboration of a draft convention for the suppression of acts of nuclear terrorism, to supplement the other international conventions against terrorism.

49. On the threshold of the new millennium, his country aspired to a better future in which justice, equality and prosperity would prevail, a future free of the manifestations of violence, terror and terrorism, in which all human rights would be respected for the

benefit of humanity, so that international stability, peace and security might be achieved.

50. **Ms. Álvarez Núñez** (Cuba) said that international terrorism was spreading and was increasingly diverse; it cost innocent lives in all parts of the world and took the form not only of spontaneous violence and primitive cruelty but also of State policy. Her Government condemned all acts, methods and practices of international terrorism in all its forms and manifestations, including terrorism instigated, financed or tolerated by States.

51. For 40 years the people of Cuba had been the victims of a wide variety of terrorist activities instigated from abroad, which had resulted in great loss of life and property and caused incalculable suffering. Some of the terrorist methods used against her country involved sabotage or destruction of civilian targets within the country; pirate attacks against coastal installations, merchant ships, aircraft and fishing boats; attacks against Cuban facilities and staff abroad; and countless attempts to kill or harm the country’s leaders and even its President.

52. There was ample proof, much of it contained in documents released by the United States, that the organization, financing and execution of all the terrorist activities directed against Cuba in recent years could be directly linked to residents of the United States and various organizations headquartered in that country. It was public knowledge that the Salvadoran mercenaries who had carried out terrorist attacks against hotels in Havana in 1997 had ties to the so-called Cuban-American Foundation, whose mercenaries had been received at the White House by a number of United States presidents. The acts of terrorism directed against Cuba for more than 40 years had been possible only because those who had committed, organized and financed those acts enjoyed impunity in the United States.

53. Much remained to be done by the international community and by the General Assembly, as a truly representative and competent organ, to combat that scourge. Her Government supported all the efforts of the United Nations system to combat terrorism; it had signed bilateral cooperation agreements on terrorism with a number of States and had complied with them scrupulously. It also supported the search for a comprehensive legal framework for the fight against terrorist activities.

54. Her delegation fully supported the initiative of the Conference of Heads of State or Government of Non-Aligned Countries, held in Durban, calling for the convening of an international summit conference under the auspices of the United Nations to formulate a response to terrorism in all its forms and manifestations.

55. Although the conclusion and implementation of international treaties had helped to improve the response capacity of States, there were States parties to some of the main anti-terrorist treaties in whose territories well-known terrorists resided and acted with total impunity. Hence the importance of requiring States parties to comply in good faith with the agreements they had signed and to begin negotiations on a comprehensive convention on terrorism which would define terrorism, set strict rules concerning the responsibility of States to prevent and suppress in their territories the planning of terrorist acts against the security of another State or States and recognize the obligation of States to refrain from assisting, tolerating, or entering into negotiations or agreements with a person or organization to commit crimes related to terrorism.

56. None of the conventions currently in force or recently negotiated included that express prohibition. On the contrary, some countries which claimed to be leading the fight against international terrorism refused even to open negotiations on the issue. In that regard, her delegation supported the proposal presented by India.

57. The adoption of far-reaching measures to suppress the financing of terrorism, whether derived from legal or illegal activities, directly or indirectly, was a highly important element in combating terrorist acts at the international level, and should have been the primary aim of all States in negotiating the draft convention for the suppression of the financing of terrorism. In the negotiations, however, 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.

58. Although there were those who believed that the draft international convention was highly ambitious, it did not distinguish between acts of terrorism and the right of peoples to struggle for self-determination and against foreign domination, nor did it thoroughly define the financing of international terrorism. The draft text was weak and left the door open to impunity.

59. For some, it might turn out to be very revealing and compromising to go to the root of the problem and bring to light the individuals and entities connected at various levels with the financing of terrorist activities to be carried out in other States for clearly political purposes, activities linked to transnational organized crime such as, *inter alia*, money-laundering derived from drug trafficking and the recruitment of mercenaries. As long as States took self-serving positions and applied double standards, the response to international terrorism would be weakened and no real efforts would be made to combat terrorism.

60. With regard to the draft convention for the suppression of acts of nuclear terrorism, her delegation supported the common position of the Movement of Non-Aligned Countries.

61. **Mr. Kouliev** (Azerbaijan) speaking on behalf of Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Uzbekistan, said that hundreds of innocent lives had been lost and substantial material and moral damage inflicted in countries that had suffered from acts of terrorism. It was perhaps an irony of the times that the more strenuous the efforts of the international community were to eradicate terrorism, the more aggressive and inhumane the forms of that phenomenon were; it was a danger to peace and stability even in countries that had never experienced it. One fact was undeniable: no State, large or small, rich or poor, could feel safe against the threat of terrorism, which knew no boundaries and did not distinguish between children and military targets or diplomatic and humanitarian missions and which represented a threat to the territorial integrity and security of States and undermined confidence in their relations.

62. The loss of innocent lives as a result of terrorist acts should not be tolerated. The threat of terrorism required an active counter-offensive on the part of the international community, particularly through enhanced cooperation within the United Nations.

63. The delegations on whose behalf he spoke supported the work of the Ad Hoc Committee established by General Assembly resolution 51/210, of 17 December 1996, and were grateful to the delegation of France for preparing an important draft convention for the suppression of the financing of terrorism. The delegations concerned were also in favour of convening an international conference against terrorism in 2000.

64. In recent years some of the countries on whose behalf he spoke had suffered severely from terrorist activities, involving explosions in public places, attempted assassinations of political figures and other acts that had claimed the lives of hundreds of people. Despite measures taken at the national and regional levels to apprehend and punish the terrorists, some of them had managed to escape and find safe havens in other countries. It was therefore of the utmost importance that all members of the international community should comply strictly with the commitments set forth in the Declaration on Measures to Eliminate International Terrorism and in other international legal instruments.

65. Although progress had been made in creating international mechanisms to combat violence, the measures adopted were inadequate in view of the scope of the terrorist attacks. International efforts must be stepped up and focused on the causes and conditions of international terrorism. All measures taken at the international, regional or national levels must be strictly in accordance with the basic principles of international law and the fundamental principles of the Charter of the United Nations.

66. The presidents of the States on whose behalf he spoke had agreed to join forces in combating ethnic intolerance, separatism, religious extremism and terrorism. There was a close connection between terrorism, separatism and religious extremism. The States concerned reaffirmed that terrorist acts were in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that might be invoked to justify them.

67. The activities of terrorist organizations were financed through other criminal activities, including trafficking in weapons and drugs. It was necessary to sever all channels of funding and weapons supplies to terrorist groups. Legal instruments alone were not

sufficient; there was a need for strong commitment by States and genuine cooperation by law enforcement agencies in exchanging information and experience on the basis of a common position taken by the international community.

68. **Mr. Uykur** (Turkey) said that terrorism, one of the most serious threats to peace, security and civilization as a whole and a challenge to democracy, civil society and the rule of law, violated human rights and fundamental freedoms, first and foremost the right to life, and posed an obstacle to the development of humanity. Each terrorist act threatened the international community as a whole and, accordingly, States must cooperate and coordinate their activities against terrorism in accordance with the relevant international instruments. His country, which had long suffered from terrorist attacks, condemned terrorism in all its forms and manifestations, irrespective of motive or origin and by whomever committed.

69. The Sixth Committee had an indispensable role to play as a forum for elaborating international legal instruments against terrorism, such as the International Convention for the Suppression of Terrorist Bombings, which his country had signed and was prepared to ratify. Another important advance was the draft convention for the suppression of the financing of terrorism, which his delegation had been actively involved in formulating. The overall result was satisfactory, although some ambiguities might have been avoided, because terrorists should be given no opportunity to seek to pass off their crimes as legitimate acts. Nonetheless, his delegation reaffirmed its support for the draft convention. It also hoped that the debate on the draft convention for the suppression of acts of nuclear terrorism would be concluded soon.

70. The process of formulating instruments dealing with specific aspects of terrorism should lead to the elaboration of a comprehensive international convention which might bring more concrete results. His delegation hoped that negotiations on the draft text proposed by the delegation of India would begin without delay, and it was ready to participate constructively in that task. It also looked forward to the speedy publication of the compendium of national laws concerning terrorism.

71. **Mr. Cabrera** (Peru) said that his delegation supported the statement made by Mexico on behalf of the Rio Group, but wished to recall that Peru had been



one of the countries that had suffered directly for over 15 years from the scourge and the barbarity of terrorism, which had cost more than 25,000 lives, and caused incalculable physical damage. Terrorism had been defeated thanks to the vigorous and determined joint efforts of the authorities and the civilian population. The international community should understand clearly that in reality terrorist groups were among the chief perpetrators of systematic human rights violations, and those who argued that the State was solely responsible for such violations should be more flexible in their opinions. His Government particularly welcomed resolution 1269 (1999), adopted recently by the Security Council, which condemned all acts, methods and practices of terrorism. As proof of its interest in eliminating terrorism, his country in 1996 had hosted the first Inter-American Specialized Conference on Terrorism. The Conference had adopted a plan of action to prevent, combat and eliminate terrorism, which had served as a basis for the subsequent creation in 1998 of the Inter-American Committee on Terrorism.

72. Terrorism was a complex phenomenon that required constant vigilance and diligence to combat. Hence his Government had supported from the start the creation of the Ad Hoc Committee established by General Assembly resolution 51/210 and the various instruments elaborated by the Committee, particularly the recent draft international convention for the suppression of the financing of terrorism, which sought to attack terrorism at one of its most sensitive points, namely, the financing of its criminal activities. During the negotiations, his delegation had raised some technical concerns which had not been resolved, but it was aware that, on an issue so complex, the fact that the convention did not completely satisfy any one delegation was a sign that the instrument had succeeded in striking a balance between the different positions put forward in the course of negotiations. His delegation therefore expressed satisfaction at the completion of the draft and supported its adoption and subsequent opening for signature during the current session of the General Assembly.

73. His delegation regretted that the draft international convention for the suppression of acts of nuclear terrorism had not yet been finalized. Although the text was not perfect, it would be better for the international community to have a legal framework governing the suppression of acts of nuclear terrorism

than a legal vacuum on that issue. His delegation therefore urged the Member States whose positions were farthest apart not to flag in their efforts to achieve agreement.

74. His delegation supported the continuation of the work of the Ad Hoc Committee and believed that the time was ripe to take up the study and subsequent elaboration of a comprehensive convention on terrorism. The difficulty of that task did not justify postponing it; rather, it constituted a huge challenge for the international community.

*The meeting rose at 12.35 p.m.*



# **Annex 17**

Summary Record of the 2nd Meeting of the Sixth Committee, U.N. Doc. A/C.6/72/SR.2  
(23 October 2017) (statement of Ukraine)





# General Assembly

Seventy-second session

Official Records

Distr.: General  
23 October 2017

Original: English

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## Sixth Committee

### Summary record of the 2nd meeting

Held at Headquarters, New York, on Monday, 2 October 2017, at 3 p.m.

*Chair:* Mr. Gafoor ..... (Singapore)  
*later:* Ms. McDougall (Vice-Chair) ..... (Australia)

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Statement by the President of the General Assembly

Agenda item 109: Measures to eliminate international terrorism (*continued*)

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*The meeting was called to order at 3.05 p.m.*

### **Statement by the President of the General Assembly**

1. **Mr. Lajčák** (Slovakia), President of the General Assembly, said that the promotion of international law lay at the heart of the mandate of the United Nations, as reflected in its Charter, which called for the establishment of conditions under which justice and respect for international law could be maintained. The Committee played an important role in achieving that aim, and its work affected many people around the world. That work could be strengthened by supporting the International Law Commission as the entity responsible for the progressive development of international law. The Commission's approaching seventieth anniversary offered an opportunity to reflect on how best to provide such support. The completion, at the Commission's sixty-ninth session, of the first reading of the draft articles on crimes against humanity was a particularly welcome development. At the same time, it was important to focus on the men and women who were carrying out the work of the United Nations on the ground. Furthermore, the Organization's efforts to build national capacities in line with international standards would be in vain if those leading such efforts failed to respect the rule of law and engaged in corruption, fraud or any other behaviour that ran counter to the Organization's principles. In that regard, the Committee's work on criminal accountability of United Nations officials and experts on mission remained critical and contributed to ongoing efforts to eradicate sexual abuse and exploitation by such individuals.

2. International law could not be frozen in time. It must adapt to changing circumstances, such as the spread of international terrorism, which was a huge challenge requiring a large-scale and coordinated response. The United Nations Global Counter-Terrorism Strategy was a crucial element of that response. In addition, the draft comprehensive convention on international terrorism should be finalized as soon as possible.

3. Strong rule of law was also important for combating terrorism, since it allowed for mechanisms to counter terrorist recruitment and financing. Strong institutions and justice systems were needed in order to hold perpetrators accountable. Conversely, the absence of the rule of law was often a root cause of conflict, which itself created a breeding ground for terrorism. Furthermore, the rule of law must be integrated across all three pillars of the Organization's work: without it, none of the Sustainable Development Goals could be achieved; no person's rights could be fully protected;

and no peace could last. Lastly, continued discussion of the Committee's working methods would contribute to the revitalization of the General Assembly. He and his team stood ready to support the Committee in its important work.

### **Agenda item 109: Measures to eliminate international terrorism** (*continued*) (A/72/111 and A/72/111/Add.1)

4. **Mr. Bessedik** (Algeria), speaking on behalf of the African Group, said that the African States condemned terrorism in all its forms and manifestations, including State terrorism, wherever, by whomever and against whomever committed. The Group welcomed the establishment of the United Nations Office of Counter-Terrorism and encouraged the Under-Secretary-General newly appointed to head the Office to work closely with the African Union Special Representative for Counter-Terrorism Cooperation, who also served as the Director of the African Centre for Studies and Research on Terrorism. The Group reiterated the importance of concluding a comprehensive convention on international terrorism and remained willing to work with others to achieve consensus on the draft convention and to continue refining the United Nations Global Counter-Terrorism Strategy. The proposal to convene a high-level conference under the auspices of the United Nations to decide on an international response to terrorism should be given serious consideration.

5. Africa had long recognized the need for concrete measures to combat terrorism. The African Centre for Studies and Research on Terrorism had been established by the African Union as a forum for regional and international cooperation on combating terrorism in Africa and had implemented many programmes aimed at enhancing national counter-terrorism capacities. The African Union had also encouraged the development of regional processes such as the Nouakchott Process on the Enhancement of Security Cooperation and the Operationalization of the African Peace and Security Architecture in the Sahelo-Saharan Region. The African Union Mission in Somalia (AMISOM) also played an important role in fighting terrorism. Furthermore, the Peace and Security Council of the African Union had emphasized the need to address the conditions conducive to the spread of terrorism and violent extremism through comprehensive counter-terrorism strategies that empowered civil society organizations, religious leaders, women and vulnerable groups and covered not only security and law enforcement but also poverty eradication, job creation and development. Other

measures were aimed at countering radicalization, improving border control and preventing the financing of terrorism. With regard to legal measures, the Organization of African Unity Convention on the Prevention and Combating of Terrorism had entered into force in 2002 and a plan of action for its implementation had been adopted in the same year. In 2011 an African model law on counter-terrorism had been adopted with a view to assisting African Union member States in strengthening their national legislation in that area.

6. The financing of terrorism was a matter of great concern, particularly as one of its main sources was the payment of ransoms. The Group therefore urged Member States to cooperate in addressing the issue of payment of ransoms to terrorist groups. In view of the need to promote international cooperation and assistance, the Group welcomed the Trans-Sahara Counterterrorism Partnership, developed with the assistance of the United States, and the Madrid Declaration and Plan of Action on strengthening the legal regime against terrorism in West and Central Africa. Africa always endeavoured to comply with its international counter-terrorism obligations, but many African States were hamstrung by inadequate resources and capacities, and they appealed to the international community for assistance in that regard.

7. The conditions conducive to terrorism and violent extremism had to be addressed globally. A more peaceful and just world would go a long way towards delegitimizing terrorist narratives.

8. **Mr. Mounsaveng** (Lao People's Democratic Republic), reiterating his country's condemnation of terrorism in all its forms and manifestations, said that in recent attacks terrorists had employed tools, such as knives and trucks, that were easily accessible and commonly used in daily life. Such attacks were particularly difficult to prevent and could adversely affect the proper functioning of society. His delegation therefore supported the international community's efforts to combat the scourge of terrorism. In order for those efforts to be more effective, the root causes of terrorism must be addressed.

9. The Lao People's Democratic Republic played an active role in regional counter-terrorism cooperation frameworks and remained committed to implementing the Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism and other measures set out in the ASEAN Political-Security Community Blueprint 2025. It had also ratified 13 international counter-terrorism conventions and was taking action to fulfil its obligations both under those conventions and

under the relevant Security Council resolutions. It welcomed the establishment of the Office of Counter-Terrorism, which would strengthen the Organization's support for Member States in their implementation of the Global Counter-Terrorism Strategy.

10. **Mr. Mohammed Al-Thani** (Qatar) said that Qatar condemned terrorism in all its forms and manifestations. A comprehensive convention on international terrorism was needed more than ever, and Qatar would continue to be an active participant in negotiations towards its elaboration. Such an instrument must provide a clear definition of terrorism, which could not be linked to any particular ethnic group or religion or culture. A distinction must be made between terrorism and legitimate self-defence by peoples subjected to foreign domination.

11. International efforts to implement the United Nations Global Counter-Terrorism Strategy were being hampered by such factors as human rights violations, marginalization, discrimination, the manufacturing of crises to cover up States' internal failures and the politicization of counter-terrorism efforts. States often invoked terrorism in the context of a political dispute, or to repress political opponents, or to tarnish the image of other countries, isolate them and undermine their sovereignty. That practice was inconsistent with the Strategy and must be addressed. Counter-terrorism must not be used as a pretext to pressure States for political purposes.

12. Qatar had continued to maintain international partnerships to eradicate terrorism and confront violent ideologies. It had ratified most of the counter-terrorism instruments and taken measures to fulfil all of its obligations, particularly by enforcing sanctions against individuals and entities on the Security Council's sanctions list. Qatar was working closely with the Security Council committees and the experts assisting them, and had donated \$250,000 to the United Nations Counter-Terrorism Centre in February 2017. In September 2017, it had signed a memorandum of understanding with the Silatech Foundation and the Counter-Terrorism Implementation Task Force (CTITF) to tackle violent extremism and the roots of terrorism in the region. Qatar had concluded numerous bilateral agreements on counter-terrorism, including one with the United States of America in July 2017. It was a member of the Global Coalition to Counter ISIL and was host to a United States Air Force base. Qatar was also a founding member and prominent contributor to the Global Community Engagement and Resilience Fund. It continued to strengthen its legislative framework for combating terrorism, including money-laundering and cybercrime in relation to terrorism, and

was monitoring several associations in the country to ensure that they did not support terrorism in any way.

13. **Mr. Hasebe** (Japan) said that, despite the adoption in December 2016 of General Assembly resolution 71/151 on measures to eliminate international terrorism, terrorist attacks continued to occur around the world. Japan strongly condemned terrorism in all its forms and was firmly committed to fighting it. The threat required urgent and coordinated international efforts, with the United Nations playing a critical role. Japan welcomed the recent establishment of the Office of Counter-Terrorism and hoped that it would be effective in coordinating the counter-terrorism activities of United Nations agencies. It also welcomed the adoption of a series of counter-terrorism resolutions by the Security Council, including resolutions 2370 (2017) and 2368 (2017), and had long stressed the importance of their full implementation. In that context, it was providing 45 billion yen over three years to boost counter-terrorism support in Asia and to help train 2,000 counter-terrorism personnel, with a focus on the reinforcement of border security, capacity-building for law enforcement agencies and the promotion of tolerant societies through poverty alleviation and educational and vocational support.

14. As the host for the 2019 Rugby World Cup and the 2020 Olympic and Paralympic Games, Japan was strengthening various security measures, including police guidance for private businesses that handled swords, firearms and explosives, and other chemicals that could potentially be used to make bombs. It also attached great importance to the development of a strong legal counter-terrorism regime. As a State party to the United Nations Convention against Transnational Organized Crime and two of the Protocols thereto, Japan would cooperate with other States parties to combat such crime, including terrorism, through investigation assistance and extradition.

15. **Mr. Hilale** (Morocco) said that his country welcomed the establishment of the Office of Counter-Terrorism and pledged to cooperate fully with that Office in carrying out its work. Despite the efforts of the international community, terrorist attacks continued to take place around the world. He reiterated his country's firm condemnation of terrorism in all its forms, for which there could be no justification. Furthermore, terrorism should not be associated with any religion, nationality, civilization or ethnic group.

16. It was vital for Member States to implement all four pillars of the Global Counter-Terrorism Strategy, including the prevention of violent extremism leading

to terrorism, and the relevant resolutions of the Security Council, in particular resolutions 2178 (2014) and 2253 (2015). The United Nations must support States in that endeavour by providing training and guidance and helping them modernize their judicial, criminal and security systems for combating terrorism. Morocco welcomed the efforts of the Counter-Terrorism Committee Executive Directorate (CTED) to assess States' responses and needs in that regard.

17. In response to the growing phenomenon of foreign terrorist fighters moving across borders to reach various hotspots or to destabilize States, thereby violating their sovereignty and territorial integrity, Morocco had hosted several meetings on border security, including the second Regional Ministerial Conference on Border Security for the countries of the Sahel, West Africa and the Maghreb. The return of such fighters to their countries of origin or residence or their dispersal following military defeats was equally worrying. Their constantly changing methods, their use of information technology and social media to recruit and radicalize young people and push them towards violent extremism and terrorism, and their links with organized crime and trafficking in drugs, arms and human beings required a response at the bilateral, regional and subregional levels, and also a global response through the United Nations and other international forums. No country was safe from terrorism or capable of fighting it alone.

18. The Global Counterterrorism Forum, currently chaired by Morocco and the Netherlands, had adopted several important documents, such as the Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, the Antalya Memorandum on the Protection of Soft Targets in a Counterterrorism Context and the Zurich-London Recommendations on Preventing and Countering Violent Extremism and Terrorism Online. The Forum invited the United Nations to participate in its meetings with a view to exchanging views and practices on countering terrorism and violent extremism.

19. At the national level, Morocco had adopted a strategy that included the optimization of the legal and security framework for combating terrorism, which had led to the dismantling of several terrorist cells; the launch of a national human development initiative to prevent social problems, exclusion and instability; and religious reforms, including the training of young preachers on the precepts of Islam, based on dialogue, tolerance, moderation, coexistence and respect, which the Muslim religion advocated, and programmes to deradicalize, rehabilitate and reintegrate foreign



terrorist fighters and counter the narratives of radicalization and extremism. It had shared that experience with other countries in Africa, Europe and the Arab world.

20. **Mr. Essa** (Libya), reiterating his country's condemnation of terrorism in all its forms and manifestation, said that terrorism should not be associated with any religion, race, ethnic group or community. The international community must work together to tackle it while respecting human rights, State sovereignty and non-interference in the internal affairs of States. It should redouble its efforts to implement the United Nations Global Counter-Terrorism Strategy; terrorism could not be definitively eliminated by military means alone. Swift and effective action would be needed in order to prevent recruitment and prosecute terrorists and their sponsors, particularly by combating organized crime, human trafficking and kidnap-for-ransom; stemming the flow of foreign terrorist fighters; preventing arms smuggling; monitoring and closing down websites and media outlets that promoted a culture of hate; and fostering stability in conflict-ridden States.

21. His own country's instability had created a hotbed for extremist and terrorist groups from various countries. Although the groups had now been driven out of several cities, they had infiltrated other areas and continued to pose a threat. For the sake of international peace and security, they must be eradicated once and for all. In accordance with Security Council resolution 2214 (2015), the international community should facilitate the Libyan Government's access to the arms and related materiel that it needed in order to confront the terrorist organizations.

22. Libya reiterated its support for the convening of a high-level conference under United Nations auspices to examine the issue of terrorism, and it called on all countries to finalize the draft comprehensive convention on international terrorism. The latter should include a clear definition of terrorism and address its root causes and the conditions that allowed it to proliferate. It should also make a distinction between criminal terrorist acts and the legitimate struggle of peoples for the right to self-determination and against foreign occupation.

23. **Mr. Shi Xiaobin** (China) said that, although international cooperation against terrorism had yielded positive results, terrorist attacks continued unabated: the threat from both global and domestic terrorism was increasing, with a rise in the number of improvised attacks on diverse targets and the spread of terrorist

ideologies in cyberspace. Terrorism knew no borders; for the sake of humanity's future, it required a global response.

24. The international community must seek greater consensus and synergy in its efforts to combat terrorism. All parties should unequivocally oppose terrorism in all its forms and manifestations while rejecting double standards and any attempt to link terrorism with any specific ethnicity or religion. Furthermore, a comprehensive approach that addressed both the symptoms and the root causes of terrorism was needed. States must crack down on the recruitment and movement of terrorists, cut off their financing channels and curb the abuse of social media and other information technology platforms by terrorist entities. At the same time, they must work to eradicate poverty, address development needs, promote education and cultural development, facilitate dialogue among civilizations and develop international relations based on win-win cooperation, so as to eliminate the breeding grounds for terrorism. The United Nations, including the Security Council, should play a leading role in such efforts. The potential of the Organization's counter-terrorism entities should be fully tapped, their coordination and division of labour improved and their resources consolidated. Counter-terrorism efforts must also be in compliance with international law, in particular its rules concerning the use of force and the punishment of crime. The purposes and principles of the Charter of the United Nations must be upheld and the sovereignty, independence and territorial integrity of States respected. Efforts to finalize the draft comprehensive convention on international terrorism should be accelerated.

25. Efforts in China to combat East Turkestan terrorists formed part of the international fight against terrorism. China hoped for the international community's continued support in those efforts. Over the past year, it had held consultations with several countries on matters of counter-terrorism and security and had continued to participate in counter-terrorism cooperation through a number of multilateral frameworks. It had played an active part in the establishment of the Brazil, Russian Federation, India, China and South Africa (BRICS) Counter-Terrorism Working Group and had hosted the Group's second meeting. It had also hosted the first China-Russian Federation-India informal meeting on counter-terrorism and the second symposium on combating cyberterrorism of the Global Counterterrorism Forum. At the Astana summit of the Shanghai Cooperation Organization (SCO) in June 2017, member States had issued a statement on joint efforts to combat

international terrorism and had signed the SCO Convention on Countering Extremism.

26. China would continue to promote international cooperation against terrorism in a spirit of mutual respect and on the basis of equality with a view to maintaining world peace, security and stability.

27. **Ms. Kuret** (Slovenia) said that, in order to achieve long-term results, action against the threat of terrorism must be united and coherent. It was important to address the conditions conducive to terrorism through programmes aimed at preventing radicalization and extremism and establishing a favourable social, political and economic environment. Young people, though susceptible to radicalization, could also drive the positive transformation of societies. Education was particularly important in that regard.

28. Regional cooperation was vital in order to combat the threat of terrorism. Of particular concern to Slovenia was the fact that the Western Balkans, a possible transit route between Europe and Syria and Iraq, was being targeted by ISIL in an effort to establish new areas for recruitment and logistical bases beyond the Middle East and North Africa. Her Government had proposed the Western Balkans Counter-Terrorism Initiative as part of the Integrative Internal Security Governance concept, both endorsed by the Council of the European Union, with a view to cooperating on security matters and preventing violent extremism, terrorism and serious and organized crime. It had also initiated an awareness-raising and capacity-building project for practitioners dealing with radicalization issues in the Western Balkan region, aimed at improving the exchange of intelligence, introducing uniform international standards for the investigation and prosecution of terrorist offences and ensuring the secure and lawful exchange of personal data. At the national level, amendments had been made to the Slovenian Criminal Code to toughen its provisions on terrorism, and a new law to prevent money-laundering and terrorist financing had been adopted.

29. She reiterated her Government's support for the newly established Office of Counter-Terrorism, which would strengthen the Organization's action against terrorism through a balanced approach to the four pillars of the Global Counter-Terrorism Strategy. Lastly, her delegation hoped for a successful conclusion to the work on the draft comprehensive convention on international terrorism.

30. **Mr. Tiare** (Burkina Faso), reiterating his country's condemnation of terrorism, said that Burkina Faso had been the victim of several terrorist acts since

2014, including attacks on its defence and security forces, kidnappings, bombings and indiscriminate attacks on restaurants and hotels. His Government had undertaken a number of legal and institutional reforms aimed at preventing and suppressing terrorism while ensuring respect for human rights. They included a new counter-terrorism law and the establishment and strengthening of specialized judicial and law enforcement services. The country had also received capacity-building support from the United Nations Office on Drugs and Crime (UNODC).

31. Conscious that poverty was one of the root causes of terrorism and that security-related measures to combat terrorism would be successful only in a context of economic stability, his Government had recently adopted an emergency programme for the Sahel for the period 2017-2020. Under the programme, \$750 million would be invested in expanding access to basic social services, improving governance and boosting the security of people and property across the region.

32. National counter-terrorism efforts would be successful only if they formed part of a subregional, regional and global approach. For that reason, Burkina Faso had played an active role in the establishment of the Group of Five for the Sahel (G-5 Sahel) and its joint force, with a view to combating terrorism in all five countries concerned, namely Burkina Faso, Chad, Mali, Mauritania and Niger. He called on the international community to support the joint force, which served as a bulwark against the spread of terrorism, radicalization and transnational organized crime to the rest of the world, particularly Europe. Burkina Faso looked forward to the planning conference referred to in Security Council resolution [2359 \(2017\)](#), which would take place in Brussels in December 2017. At the subregional level, one of the most effective means of countering the terrorist threat was cross-border cooperation in both judicial and security matters.

33. His delegation looked forward with an increasing sense of urgency to the finalization and adoption of the draft comprehensive convention on international terrorism, which would take into account all aspects of terrorism and would include a definition of the phenomenon. With regard to the implementation of the Global Counter-Terrorism Strategy, greater attention needed to be given to prevention and the root causes of terrorism, radicalization, violent extremism and irregular migration. His delegation therefore welcomed the Secretary-General's Plan of Action to Prevent Violent Extremism (A70/674).

34. **Mr. Chandrtri** (Thailand) said that his country condemned all forms and manifestations of terrorism and was committed to playing an active role at the national, regional and international levels in efforts to combat it. Thailand had been steadily strengthening its domestic legal framework to combat terrorism and had adopted a number of measures in line with Security Council resolution 1373 (2001) to counter the financing of terrorism. In that regard, its Prevention and Suppression of Terrorist Financing and Proliferation of Weapons of Mass Destruction Act had come into force in December 2016.

35. Thailand remained committed to the implementation of the ASEAN Convention on Counter-Terrorism and would continue to strengthen its cooperation with other ASEAN member States in that regard. Cooperation at the international level, supported by strong international legal frameworks, was also key to the suppression of terrorism. Thailand had ratified nine international counter-terrorism instruments and intended to ratify the remaining ones. In particular, it was in the process of becoming a party to the International Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material and the Amendment thereto and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol thereto. Its National Security Policy 2015-2021 incorporated various counter-terrorism strategies. Thailand stood ready to translate the Global Counter-Terrorism Strategy into practice and supported the work of the various United Nations entities, including the newly established Office of Counter-Terrorism, to that end.

36. Finalization of the draft comprehensive convention on international terrorism would contribute significantly to the global fight against terrorism. His delegation therefore called on all States to step up their efforts to that end and ensure that the convention contained a clear and precise definition of terrorism. More importantly, the root causes of terrorism must be addressed and collective efforts must be made to eradicate poverty, promote social inclusion, ensure respect for basic rights, improve access to resources, and foster interfaith dialogue and tolerance with a view to achieving sustainable and inclusive development.

37. **Mr. Jaime Calderón** (El Salvador) said that his country condemned all acts of terrorism and was committed to the implementation of all necessary measures to prevent, investigate and prosecute those acts. El Salvador had ratified the majority of the conventions on terrorism, including those aimed at preventing its financing. In 2006 it had brought into

force a national law designed to ensure the prevention, investigation, punishment and elimination of terrorist offences, terrorist financing and other related activities. In the prosecution of terrorist offences, it was important to ensure that State institutions were strengthened. Accordingly, the Office of the Attorney General of El Salvador had expanded training activities at the national and international levels in a number of areas, including the prevention of terrorism and its financing and the provision of assistance to victims. At the regional level, El Salvador had participated in projects coordinated by UNODC, such as a training course in March 2017 on terrorism at international airports.

38. The need for counter-terrorism measures that were consistent with the rule of law was all the greater because terrorism threatened international peace and security and social and economic development. El Salvador was open to the strengthening of cooperation mechanisms and other measures, such as the drafting of a comprehensive convention on international terrorism. Measures to combat international terrorism must be in strict compliance with the law, including international humanitarian law and the Charter of the United Nations, and with international standards for the protection of human rights.

39. **Mr. Salam** (Lebanon) said that his country remained scarred and torn by terror, which it continued to oppose, in accordance with its commitments under international law. His Government's condemnation of terrorism in all its forms and manifestations remained firm and absolute; terrorism should never be associated with any nationality, religion, civilization or ethnic group, but only with savagery. In the context of the working group on the draft comprehensive convention on international terrorism, it was important to define the word. It was often used loosely and misapplied to the exercise of the right to resist foreign occupation and the right to self-determination, which were embedded in international law, while criminal acts committed by settlers illegally occupying the territory of a foreign State were not qualified as acts of terrorism but merely as violent acts. His delegation welcomed the establishment of the new Office of Counter-Terrorism, which would better assist Member States in their implementation of the four pillars of the United Nations Global Counter-Terrorism Strategy.

40. **Mr. Fintakpa Lamega** (Togo) said that, in view of the rise in international terrorism throughout the world and even before the adoption of General Assembly resolution 71/151, calling on States to become parties to the various international legal instruments on the prevention and suppression of

international terrorism, Togo had acceded thereto. In addition, and in order to put into effect those instruments, it had recently adopted a new criminal code. His Government was also engaged in the fight against transnational crime and had accordingly taken action to combat money-laundering, in particular by setting up a financial intelligence unit, in accordance with the recommendations of the Financial Action Task Force and the West African Economic and Monetary Union, and had enacted two laws as a basis for its work.

41. The international community needed more than ever to take concerted action to combat the continuing threat of terrorism, which knew no borders and was carried out indiscriminately. No country could achieve its development goals or ensure the well-being of its population without an increased effort by all Member States to preserve peace and security in the world. Togo, for its part, had reaffirmed its steadfast opposition to fundamentalism and violent extremism and called for greater regional cooperation and intelligence-sharing. In that spirit, the national police authorities of 15 African countries had met earlier in the year to consult with each other on the steps taken by their respective countries to prevent terrorist acts, including action to neutralize funding sources for terrorist organizations and extremist groups. His Government remained convinced that there could be no justification for any act of terrorism and condemned in the firmest possible terms all forms and manifestations of terrorism, however and by whomsoever committed. Togo accordingly welcomed the establishment at the current session of a working group to finalize the draft comprehensive convention against international terrorism and to consider the question of convening a high-level conference on the subject under the auspices of the United Nations.

42. *Ms. McDougall (Australia), Vice-Chair, took the Chair.*

43. **Ms. Argüello González** (Nicaragua), reiterating her country's firm condemnation of terrorism in all its forms and manifestations, including State terrorism, of which Nicaragua, its people and its Government had been victims, said that her delegation called for efforts to combat the financing of terrorism, whether by States or by individuals. Terrorism should not be associated with any religion, nationality, civilization or ethnic group and could not be justified on such grounds.

44. Nicaragua was deeply concerned about the wars being waged under the banner of "war on terrorism", causing deaths, violations of the human rights of millions of people and mass refugee flows. Her

delegation wished to express its solidarity with all victims of terrorist attacks, including the hundreds that had occurred over the past year. Condemnations of terrorism must go beyond words and be reflected in concrete measures to prosecute, bring to justice and extradite those committing terrorist acts; above all, such acts must not to be supported or financed through the application of double standards, whereby groups whose intention was to overthrow legitimately constituted governments were viewed as "moderate armed opposition".

45. Her delegation reaffirmed Nicaragua's readiness to make every effort to help conclude a convention on terrorism and called on all Member States to demonstrate flexibility towards that end. Nicaragua also remained firmly committed to the integrated implementation of the four pillars of the Counter-Terrorism Strategy, which should be pursued by States fully and transparently, and had therefore participated actively in the fifth two-yearly review of the Strategy in 2016. Her Government would continue to serve the ideals of the motherland and of liberty and would make every effort to promote stability, security and peace as preconditions for development.

46. **Mr. Heumann** (Israel) said that his delegation hoped that, in the fight against terrorism, the related new appointments within the United Nations would allow the Organization to have a leading voice and result in greater collaboration. Israel had not been spared from the trail of death, blood and grief left across the globe by terrorists, who were quick to avail themselves of new tools to that end. The Internet, in particular, through social media and online chat rooms, had become a platform for the promotion of terrorism and violent extremism; his country had accordingly become deeply involved in combating such abuses and was working with the international community to find creative solutions to that global threat.

47. In its unending fight against the relentless terror attacks that its citizens had endured for decades on all fronts, on an almost daily basis, Israel had continued to seek legal tools to combat terrorism effectively, in line with its domestic and international obligations. It had recently adopted a new, comprehensive counter-terrorism law to address emerging threats while maintaining its constant commitment to the rule of law; the new law was unified, consistent and precise and offered a holistic, "one-stop shop" approach to combating terrorism. His country's democratic norms and obligations remained paramount, even at the cost of a more difficult fight against terrorism. His delegation recognized the importance of international cooperation and the role of the United Nations in that

fight and supported the development of a comprehensive convention that would not admit any justification for any form or manifestation of terrorism. There must be a “zero-tolerance” approach to terrorism, which could not be excused under the guise of martyrdom, so-called acts of liberation, or in the name of any cause. While Israel appreciated the efforts made by Member States in the intersessional period to reach a compromise in that regard, there could be no compromise for the sake of consensus on any text that would exclude any terrorist organization or cause, whatever the alleged justification.

48. **Mr. Lisuchenko** (Ukraine) said that his delegation welcomed the establishment of the Office of Counter-Terrorism within the United Nations; it could be expected to enhance coherence and leadership and mainstream counter-terrorism efforts within the system and contribute to the balanced implementation of the Global Counter-Terrorism Strategy and the Secretary-General’s Plan of Action to Prevent Violent Extremism. The new Office should work closely with the subsidiary bodies of the Security Council to identify new trends, challenges and gaps in the counter-terrorism field, monitor the fulfilment by States of their obligations and facilitate the delivery of technical aid. The root causes of terrorism must be addressed through efforts to counter terrorist ideologies, like the Global Internet Forum to Counter Terrorism, launched recently by major high-technology companies.

49. The fight against terrorism must be a daily pursuit in every State, as it was in Ukraine, which was actively contributing to global and regional efforts to prevent the recruitment and flow of foreign terrorist fighters. With the help of its international partners, it had identified and dismantled 17 transfer points used for the accommodation of such fighters and detained more than 60 members and supporters of Islamic State in Iraq and the Levant (ISIL). As a member of the Security Council, Ukraine had also contributed to the advancement of new communication technology standards by raising the issue of the protection of critical infrastructure from terrorist attacks, resulting in the adoption of Security Council resolution [2341 \(2017\)](#).

50. The international community should ensure that those held liable for terrorist acts were not just the direct perpetrators of such acts but also the organizers and mentors of those perpetrators, especially if such activities were carried out at the State level. His country had had a bitter experience in countering terrorism that had been fuelled by external support for terrorist groups and organizations. For instance, the Russian Federation had used terrorism as one of the

tools of its hybrid aggression against Ukraine, thereby violating many of its fundamental obligations under international law, namely, the obligations to refrain from providing any form of support to terrorists, to eliminate the supply of weapons to terrorists, to suppress the recruitment and movement of foreign terrorist fighters and to prohibit terrorist incitement.

51. The increase in State-sponsored terrorism throughout the world was detrimental to global counter-terrorism efforts. His delegation was particularly concerned about the difficulty of holding States accountable for the financing of terrorism and believed that no effort should be spared to that end. Ukraine had already led the way in its suit against the Russian Federation before the International Court of Justice, resulting in the finding by the Court, in its order of 19 April 2017, that the case was plausible and that a State could be held accountable for violating the Convention for the Suppression of the Financing of Terrorism. The need to hold to account not only individuals and organizations but also States responsible for organizing, encouraging, providing training or otherwise directly or indirectly supporting terrorist activities should be duly reflected in the draft comprehensive convention on international terrorism, which would be an important addition to the existing international legal counter-terrorism framework.

52. **Ms. Granda Awerhoff** (Cuba), reiterating her country’s unwavering resolve to combat terrorism and its condemnation of terrorist acts, methods and practices in all their forms and manifestations, whenever and by whomsoever committed, irrespective of their motivation, including in cases in which States were directly or indirectly involved, said that Cuba likewise condemned any action to encourage, support, finance or conceal any terrorist act, method or practice. Terrorism could not be linked to any religion, nationality, civilization or ethnic group and must be combated through a holistic approach, combining direct confrontation, prevention and measures to eradicate its root causes. Her delegation supported the Secretary-General’s proposal to establish a new United Nations counter-terrorism structure; it should focus on the most effective implementation of the United Nations Global Counter-Terrorism Strategy and should be based on full respect for the principles of the Charter of the United Nations; it should in no case be a mechanism for supervising States.

53. The harmful practices whereby certain States financed, supported or promoted subversive acts aimed at “regime change” and disseminated messages of intolerance and enmity towards other peoples, cultures and political systems with the help of modern

information and communications technologies were violations of the Charter and international law. Cuba reiterated its condemnation of unilateral acts by certain States that took it upon themselves to certify conduct and to establish politically motivated lists, in violation of international law. Such acts undermined the central authority of the General Assembly in combating terrorism. The international community could not accept that, under the banner of a so-called fight against terrorism, certain States carried out acts of aggression, directly or indirectly, against sovereign peoples and committed flagrant violations of human rights and international humanitarian law. Cuba also firmly rejected the manipulation of the sensitive issue of international terrorism as an instrument for use against any country.

54. Cuba was a party to 18 international conventions on terrorism, and it reaffirmed its determination to continue working to strengthen the central role of the United Nations in the adoption of measures and the elaboration of a broad legal framework to fight that scourge. It reiterated its support for the adoption of a comprehensive convention on international terrorism that would fill in existing legal lacunae, and it was in favour of convening an international conference under the auspices of the United Nations to provide an organized response to terrorism in all its forms and manifestations.

55. In defence of its independence, sovereignty and dignity, Cuba had for decades suffered the consequences of terrorist acts that had left 3,478 people dead and 2,099 disabled. The terrorist Luis Posada Carriles, who had masterminded the explosion in mid-flight of a Cubana de Aviación airliner 41 years earlier, resulting in the death of 73 persons, was still at large. On 6 October, Cuba would commemorate with deep sorrow another anniversary of that crime.

56. Cuba had never participated in the organization, financing or commission of an act of terrorism against any country, and it had never assisted and would never assist acts of international terrorism. Cuban territory had never been used and never would be used to organize, finance or commit terrorist acts against any country. Her Government reiterated its support for multilateral and bilateral cooperation to counter international terrorism and was determined to work with all countries on preventing and suppressing terrorist acts, wherever they were committed.

57. **Mr. Sparber** (Liechtenstein) said that his country condemned all acts of terrorism, irrespective of their motivation, wherever and by whomever perpetrated, and remained committed to the international fight

against terrorism in all its aspects, including through cooperation with the United Nations. It had ratified all United Nations counter-terrorism instruments and, as a member of the Group of Like-Minded States on Targeted Sanctions, would continue to promote the effectiveness and legitimacy of terrorism-related sanctions regimes. His delegation particularly valued the work of the Office of the Ombudsperson of the Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities and looked forward to the early appointment of a new Ombudsperson.

58. Although they were often no more than an afterthought, measures to ensure respect for human rights and the rule of law must be the basis for the fight against terrorism. Governments actively involved in that fight should beware of contributing to outcomes opposed to the values they were seeking to uphold. Too broad a definition of terrorism could jeopardize the right to freedom of expression and information; mass surveillance could undermine the right to privacy. International humanitarian law continued to be flouted by various parties to armed conflicts, including non-State actors, at the risk of encouraging perceptions of injustice that could facilitate radicalization and the recruitment of terrorists. Governments must abide by the principles of legality, necessity and proportionality.

59. The international response to terrorism must be strengthened, with the United Nations at its centre. The respective roles of the Security Council, the General Assembly and the Secretariat were complementary and mutually reinforcing. His delegation welcomed the establishment of the United Nations Office of Counter-Terrorism in the interests of streamlining the counter-terrorism architecture of the United Nations; it would lend itself to a more balanced implementation of the Global Counter-Terrorism Strategy across its four pillars. By focusing on the prevention of violent extremism, it could make an important contribution to the Secretary-General's prevention agenda and to bringing human rights to the forefront of the United Nations response to terrorism.

60. The Sixth Committee had also made important contributions, in particular by drafting numerous international conventions in the area of counter-terrorism, notably the 1997 Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism and the 2005 Convention for the Suppression of Acts of Nuclear Terrorism. Following those efforts, the Committee should streamline its work accordingly and avoid a duplication

of its discussions in various formats. His delegation therefore reiterated its call to discuss a comprehensive convention on counter-terrorism in only in the plenary, and remove the item from the Committee's agenda or, if that were not possible, take up the suggestion by the European Union to discuss it only every two years.

61. **Mr. Shingiro** (Burundi) said that his delegation added its voice to those of other delegations that condemned terrorism in all its forms and manifestations; terrorism was an odious violation of positive law and a threat to international peace and security, as well as to the economic and social development of communities. Burundi welcomed the establishment of the Office of Counter-Terrorism and pledged to cooperate fully with it. It was in the interest of all nations to join together in combating the scourge of terrorism globally, regionally and nationally: not one week passed without a terrorist act being committed somewhere in the world and in every continent, blindly striking innocent people.

62. Terrorism could not be associated with any particular region, culture, religion, nationality or race. It was transnational and was not rooted in any one State or locality; it sprung up wherever conditions lent themselves to it. His delegation called for a dialogue between cultures and civilizations and respect for international law and the relevant regional conventions, failing which there was a danger of offering fertile ground and a justification for the violent extremism that was thus continuing to develop in the contemporary world. Indeed, as the terrorist threat shifted away from the Middle East towards Africa and other regions, it was clear that the scourge was due to the interaction of pre-existent political, economic, social and security factors, compounded by military interventionism.

63. If terrorism was to be combated effectively, there had to be greater international cooperation through the exchange of information, the cutting off of its sources of financing, including ransoms, and border controls to stem the flow of foreign fighters. The United Nations offered a suitable platform for a concerted discussion on international terrorism with a view to collective action. His delegation also recognized the urgent need to adopt a comprehensive convention that would provide a multilateral framework for combating the scourge, since the absence of a definition of terrorism left terrorist groups with room to become more firmly entrenched. It was also important to support the implementation of the four pillars of the Global Counter-Terrorism Strategy, avoiding so far as possible a selective approach. Lastly, it had become clear that military action alone could not eliminate the

phenomenon completely and that, if it did not go hand in hand with civil action, could produce instability and foster terrorism.

64. True to the commitments that it had assumed under the multilateral and regional conventions to which it was a party, which included the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2005 Convention for the Suppression of Acts of Nuclear Terrorism and the Organization of African Unity Convention on the Prevention and Combating of Terrorism, Burundi maintained its firm resolve to collaborate with the rest of the international community in combating the pernicious threat posed by terrorism to international peace and security.

65. **Ms. Gaye** (Senegal) said that the ultimate aim of terrorist attacks was to create a climate of instability through collective psychosis. Terrorism was criminal and unjustifiable, wherever and by whomsoever committed, and her delegation condemned it in all its forms and manifestations while rejecting any link between terrorism and Islam: Muslims themselves were among its victims. It was becoming increasingly imperative to combat terrorism synergistically, but also to ensure that all the provisions of the relevant resolutions and recommendations of the various bodies tasked with preventing and combating it were strictly put into effect, in particular through action to prevent the financing of terrorism and step up cooperation among States. While there had been some progress, efforts were still needed to stem the flow of funding generated by ransoms and transnational crime. Member States must do more to share information but also to secure the effective involvement of all counter-terrorism bodies in addressing the issue of foreign terrorist fighters.

66. It was high time for all States, without exception, to enact legislation to fill the gaps in the law that allowed terrorists to prepare and increasingly carry out terrorist acts. Senegal, for its part, while not taking emergency measures, had introduced specific laws and mechanisms to give full effect to international and regional conventions aimed at combating terrorism and the financing of terrorism. Her Government had set up a financial intelligence unit that was fully engaged in its new mission of combating such financing, with particular attention to money-laundering, as well as a counter-terrorism unit which had already secured a number of arrests that augured well for its effectiveness. The machinery put in place could not be fully successful, however, without effective coordination between the police and the judiciary and full cooperation between all agencies involved.

67. Her delegation welcomed the establishment of the United Nations Office of Counter-Terrorism, which had an essential role to play in helping Member States to implement the four pillars of the Global Counter-Terrorism Strategy while ensuring better coordination and coherence throughout the United Nations system. There was still a long way to go to defeat terrorism, but, through perseverance, cooperation, a joint strategy and shared action, success would be achieved. It was therefore all the more important for Member States to reach an agreement on an international convention to combat terrorism. The planned high-level conference on the subject was for that reason a beacon of hope which should lead to the adoption of an international convention supported by the entire international community.

68. **Mr. Hattrem** (Norway) said that, while terrorist networks such as ISIL and Al-Qaida and “home-grown terrorists” remained a global security threat, the fight against ISIL was succeeding, thanks to the efforts of the Global Coalition to Counter ISIL. Norway was playing an important role in that fight, both militarily and through the provision of aid and support. The international community had a critical responsibility to respond to the tremendous need for humanitarian aid by providing support and relief.

69. Preventing and countering terrorism and violent extremism were key priorities for the Norwegian Government, which had adopted a whole-of-society approach for the purpose, engaging civil society, youth, women, faith leaders and local communities. In 2015, the Government had launched a white paper entitled “Global security challenges in Norway’s foreign policy”, with the aim of strengthening the country’s contribution to international stability, peace and development. It had recommended the inclusion of a whole-of-society approach in the mandate of the recently established United Nations Office of Counter-Terrorism. The Office should give greater coherence and provide for better strategic leadership and external and internal communication and enhance the United Nations system’s ability to implement all four pillars of the Global Counter-Terrorism Strategy, while establishing an appropriate balance between them. At the same time, the root causes and upstream factors of violent extremism must be addressed and responses to them must be based on the rule of law.

70. Countering and preventing terrorism and violent extremism called for partnerships with civil society and other non-governmental stakeholders, with the full and effective participation of women at all levels of society. No one must be trapped in impoverished communities where there was no order and no path for

advancement. Young people were an integral part of the solution; their voices must be heard and respected. Injustice and the experience of injustice must be addressed.

71. The underlying conditions that drove individuals to radicalize to violence and join violent extremist groups must likewise be addressed; that was purpose of the Group of Friends of Preventing Violent Extremism, co-chaired by his country and Jordan. The Group would be seeking to provide support within the United Nations system to the prevention of violent extremism, share lessons learned and relevant best practices and provide a forum for discussion and coordination between United Nations entities, Governments, civil society and other stakeholders.

72. **Mr. Tajuddin** (Malaysia) said that his country condemned all acts, methods and practices of terrorism; they were unacceptable; they had tarnished the true image of Islam and were against its teachings. Malaysia continued to consider it vital for the root causes of terrorism to be addressed effectively for a comprehensive response: only if the conditions conducive to violent extremism and terrorism, including unresolved conflicts, were effectively tackled would there be any success in defeating violent extremism and terrorism. His delegation shared the international community’s concern about the urgent need to accelerate global efforts to combat terrorism. It was imperative for States to engage in international cooperation to ensure mutual assistance in times of need and keep abreast of the changing face of terrorism through the exchange of information. Malaysia therefore looked forward to the finalization of the draft comprehensive convention on international terrorism and to continuing during the current session to discuss the question of convening a high-level conference on the subject under the auspices of the United Nations.

73. Prevention was the most effective way of addressing the threat of terrorism. His country had accordingly enacted a number of laws against terrorism in recent years and was a party to the ASEAN Convention on Counter-Terrorism. It was also a party to nine international legal instruments on counter-terrorism.

74. Malaysia favoured moderation as a means of negating the propagation of extremism and radicalization. It was ready to share its experience in using that approach with other nations in the hope that it would be embraced globally. His delegation supported efforts to counter terrorist narratives, in accordance with international law and the guidelines set out in Security Council resolution [2354 \(2017\)](#). The



Southeast Asia Regional Centre for Counter-Terrorism, based in Malaysia, had established a digital strategic communications division which was pursuing a soft approach to countering such online narratives. His Government stood ready to cooperate with any interested Member States in capacity-building programmes and joint research projects on the issue of terrorism, violent extremism and radicalization and remained fully committed to the efforts of the United Nations, including the recently established Office of Counter-Terrorism, to prevent and eliminate all forms and manifestations of international terrorism.

75. **Ms. Al-Dah** (United Arab Emirates) said that the propagation of the transnational scourge of terrorism and violent extremism, especially in her part of the world, had exacerbated the security situation and contributed to humanitarian crises, taking millions of lives and causing untold damage to infrastructure and economies. To eradicate it, Member States must unite around the four pillars of the Global Counter-Terrorism Strategy, which required them to share their experiences and best practices and to enter into international partnerships. Her own country continued to participate effectively in a number of regional and international coalitions against terrorism, including the Global Coalition to Counter ISIL. It had updated its laws in the light of the relevant international conventions to make terrorist practices and the financing of terrorism criminal offences. The aim was to establish an appropriate legal framework to combat terrorism and bring perpetrators to justice.

76. The United Arab Emirates was a party to more than 15 international and regional counter-terrorism instruments and was actively engaged with its partners in efforts to prevent the financing of terrorism, which was a precondition for its complete elimination. No entity could be allowed to give support or shelter to terrorist groups. Her delegation called on all Member States to abide by their commitments under international law. It was also important to strengthen cooperation among countries, cultures and religions to address the causes of extremism. Her country adhered to the principle of prevention: it had set up a ministry of tolerance and a council of Islamic sages and had instituted a special prize for tolerance. Her Government was also fully involved in the fight against cyberterrorism and had hosted a conference on the subject in 2007, resulting in the Abu Dhabi Declaration, which included a number of recommendations on ways to combat that scourge while highlighting the need to combat the ideas propagated by extremists.

Her delegation welcomed the measures taken by the United Nations Secretary-General to reform the United Nations counter-terrorism architecture and continued to call for the adoption by consensus of a comprehensive convention on international terrorism.

77. **Ms. Samarasinghe** (Sri Lanka) said that, as a country that had suffered under the yoke of terrorism for 30 years, Sri Lanka strongly condemned terrorism in all its forms and manifestations. All acts of terrorism were criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whomsoever committed; they were an attack on everyone; everyone should therefore show solidarity and unity of purpose in combating the scourge. Her delegation welcomed the establishment of the Office of Counter-Terrorism and pledged to cooperate with it in its key functions, particularly in regard to assistance for capacity-building in Member States. In 2009, 2016 and 2017 respectively, Sri Lanka had hosted three regional workshops for judges, prosecutors and police officers of South Asian Member States on effectively countering terrorism.

78. While progress had been made in implementing the Global Counter-Terrorism Strategy since 2006, many challenges had arisen as a result of the changing face of terrorism and violent extremism, including through the phenomenon of foreign terrorist fighters, financing of terrorism, the rapid advancement of technology, porous borders and large movements of persons fleeing violence. International networks with linkages to organized crime were a lifeline for terrorist groups, making it imperative for Member States to pool their resources and share intelligence in that regard.

79. Due consideration should be given to the fourth pillar of the Counter-Terrorism Strategy, namely ensuring that human rights and the rule of law were observed, in global efforts to counter terrorism. Moreover, terrorism and violent extremism conducive to terrorism should not be associated with any region, nationality, civilization or ethnic group.

80. Her delegation recognized the value of the steps already taken to develop a normative framework for enhanced international cooperation in combating terrorism, particularly as reflected in the International Convention for the Suppression of Terrorist Bombings, the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism, and appreciated the efforts made during the intersessional period to move on towards a comprehensive convention on international terrorism.

It was regrettable, however, that it had not proved possible to muster the political will needed to break the current impasse surrounding that draft instrument. Sri Lanka urged Member States to resolve outstanding differences without delay so as to send a clear message on the resolve of the international community to combat that phenomenon, for the sake of all victims of terrorism and for the future of the world. The need to do so had never been more urgent.

*The meeting rose at 6.05 p.m.*

# **Annex 18**

Russian Federation Note Verbale No. 10471 to the Embassy of Ukraine in Moscow (15 August 2014)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*



## **MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION**

No. 10471

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and with reference to the note of the Ministry of Foreign Affairs of Ukraine No. 72/22-484-1964 dated July 28, 2014 has the honor to inform about the readiness of the Russian side to hold negotiations on interpretation and implementation of the International Convention for the Suppression of the Financing of Terrorism dated December 9, 1999.

The Russian side proceeds from the understanding that the agenda of the abovementioned consultations, their date and venue can be agreed upon in September 2014.

Nothing in this note shall prejudice the position of the Russian side regarding statements and claims contained in the abovementioned note of the Ukrainian side.

The Ministry of Foreign Affairs of the Russian Federation avails itself of this opportunity to renew to the Embassy of Ukraine in Moscow the assurances of its high consideration.

Moscow, August 15, 2014

**Embassy of Ukraine to the Russian Federation**

**Moscow**



# **Annex 19**

Ukrainian Note Verbale No. 72/22-620-2406 to the Russian Federation Ministry of  
Foreign Affairs (24 September 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## **Ministry of Foreign Affairs of Ukraine**

# 72/22-620-2406

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in addition to the notes #72/22-484-1964 of 28 June, 2014, #72/22-620-2087 of 12 August, 2014, #72/22-620-2185 of 22 August, 2014, and #72/22-620-2221 of 29 August, 2014 has the honor to make a statement about offences in the context of the 1999 International Convention for the Suppression of the Financing of Terrorism, hereinafter referred to as the Convention, committed by the Russian Side.

Article 2 of the Convention provides that any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides funds (assets of any kind, material or non-material, movable or immovable assets), maintains, organizes, direct or assist in collection of such 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, inter alia, 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.

In this regard, the Ukrainian Side once again states that, from March 2014, terrorist organizations “Donetsk People’s Republic”, hereinafter referred to as the DPR, and “Lugansk People’s Republic”, hereinafter referred to as the LPR, have been operating illegally in the territory of Ukraine; they intentionally and consciously carry out in the territory of Ukraine terrorist acts aimed at intimidation of population, killing of civilian population, causing grave bodily injury to civilian population, seizure of hostages and administrative buildings of state and local authorities, provoking military conflict in order to compel the Ukrainian Government to do acts aimed at changing constitutional order, territorial integrity, and other acts that threaten Ukraine’s territorial integrity and security.

In this context, the Ukrainian Side makes the statement that the Russian Federation is carrying out offences identified in Article 2 of the Convention through own governmental agencies, citizens and legal entities, who execute state functions, and terrorist organizations, which conduct under the leadership and control of the Russian Federation.

The position of the Ukrainian Side based on the fact that the Russian Side illegally, directly and indirectly, intentionally transfers military equipment, provides the funds for terrorists training on its territory, gives them material support and send them to the territory of Ukraine for participation in the terrorist activities of the DPR and the LPR etc.

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Of the Russian Federation  
Moscow**

Illegal acts under international law by the Russian Side and/or activities of the terrorist organizations which act under control and leadership of the Russian Federation have been confirmed, inter alia, by the following facts and circumstances.

On August 27, 2014, representatives of the Security Service of Ukraine detained a private of the 9th Independent Motor Rifle Brigade of the Armed Forces of the Russian Federation (based in the Rostov region) in Luhansk oblast. The Russian serviceman, Khokhlov Petro Serhiovych (1995 YOB) during interrogations told that his military unit transfers military equipment and ammunition, in particular, MLRS BM-21 "Grad", BMP-2 amphibious infantry fighting vehicles, BTR-80 amphibious armored personnel carriers to the terrorist organizations - "DPR" and the "LPR". In order to hide the involvement of the Armed Forces of the Russian Federation in the transferring of the military equipment to the terrorist organizations, Russian serviceman has been ordered by commanders of the military unit to physically destroy factory marks, numbers, symbols and logos on the equipment which allow to identify its origin.

According to the data of the Headquarters of the Antiterrorist Center on September 1 - 16, 2014 there has been detected the number of illegal transfers of military equipment and cargos across the state border of Ukraine with the Russian Federation, aimed at provision of material and technical support to the units of the "DPR" and the "LPR", and which has been used against the forces of Antiterrorist operation in Donetsk oblast and Luhansk oblast, including the following:

- near 200 items of military equipment in the vicinity of Stanytsya Luhanska in Luhansk oblast and Snizhne in the Donetsk oblast (September 1-2 this year);
- 20 tanks, 10 MLRS "Grad", 20 trucks "KAMAZ" and "URAL", and also armored personnel carriers in the vicinity of Dibrivka and Novoazovsk in Donetsk oblast (September 4-5);
- 8 MLRS, 1 armored personnel carrier, 2 Fuel Servicing Trucks, 10 trucks with military cargo in the vicinity of Dibrivka in Donetsk oblast (September 8);
- 12 tanks, 48 APCs, 1 combat reconnaissance patrol vehicle, 28 trucks "URAL", 4 anti-aircraft vehicles, 5 Fuel Servicing Trucks in the vicinity of the border check point "Izvaryne" in Luhansk oblast (September 10);
- 10 tanks, 3 self-propelled guns, 10 trucks "KAMAZ", 5 trucks "URAL" and 2 towing vehicles in the vicinity of Dibrivka in Donetsk oblast (September 11);
- 17 tanks, 8 APCs, 22 trucks "KAMAZ", 2 Missiles systems "Tochka-U", 4 multiple launch rocket systems "Smerch" and "Uragan" in the vicinity of Chervonopartyzansk in Luhansk oblast.

The presence of above-mentioned military equipment and cargos on the territory of Ukraine and its usage by the "DPR" and the "LPR" has been indicated, among others, by the following:

- on September 3, 2014 journalists of the TV channel "SKY NEWS" published the materials about stationing of the part of illegally transferred Russian military equipment in Novoazovsk in Donetsk oblast (<http://news.sky.com/story/1329691/sky-films-troops-in-russian-gear-in-ukraine>);

- on September 7, 2014 representatives of the ATO forces and the OSCE Special monitoring mission watched the transfer of 4 Russian tanks “T-72” in the vicinity of Slovyanoserbbsk in Luhansk oblast.

Besides, on September 10, 2014 two servicemen of the Armed Forces of the Russian Federation has been detained during the operative activities in the area of ATO, who are under suspicion of transferring the man-portable air-defense systems to the territory of Ukraine and using them against Air Forces of Ukraine.

The Ukrainian Side also notes that it considers the fact of intentional illegal transfer of cargo trucks, purportedly to provide humanitarian aid, across the state border of Ukraine on August 22, Spetember 12 and September 19-20, 2014, by the Russian Side as an illegal act under international law against Ukraine’s sovereignty in order to provide material support to the activities of the “DPR” and the “LPR”, which is an offense under this Convention organized and carried out by officials of the Russian Federation.

The Ukrainian Side turns the attention to another fact of carrying out of crime under the Convention which has been indicated in the information published on September 1, 2014 by the news agency “RBK” (<http://top.rbc.ru/politics/01/09/2014/946346.shtml>). It consists of the interview of the “RBK” journalist with so-called “Head of Supreme Council of DPR” B.Lytvynov, who confirmed the fact of financial support to the DPR’s activities by the Russian Side through provision the funds to this terrorist organization, in the form of Ukrainian national currency, which have been withdrawn from the banks located on the territory of temporarily occupied Autonomous Republic of Crimea.

The Ukrainian Side once more calls the Russian Side to implement all practically possible measures to stop activities, which have the signs of an offense under the Convention, and provide adequate assurances and guarantees that these activities would not be repeated in the future.

In this connection, the Ukrainian Side reserves the right to claim compensation by the Russian Side for the damage, caused by the its acts with the signs of an offense under the Convention, in the international litigation and arbitration bodies.

Kyiv, September 24, 2014



# **Annex 20**

Ukrainian Note Verbale No. 72/23-620-2674 to the Russian Federation Ministry of  
Foreign Affairs (29 October 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## **Ministry of Foreign Affairs of Ukraine**

# 72/23-620-2674

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in response to the note of the Ministry of Foreign Affairs of the Russian Federation №13355/dnv, dated October 14, 2014, has the honor to state the following.

The Ministry of Foreign Affairs of Ukraine states that the information cited in the notes of the Ukrainian Side and factual data constitute appropriate and acceptable evidences, on the basis of which the Russian Side is obligated to determine the presence or absence of circumstances, which justify the demands of the Ukrainian Side.

In this regard, we take notice that according to Article 9 of the Convention for the Suppression of the Financing of Terrorism of 1999 (further – the Convention), upon acquirement of the information that a person, who has committed a crime, indicated in Article 2 of the Convention, is present on its territory, the respective participant state undertakes actions, which can be necessary according to its internal legislature for investigation of the facts, cited in this information.

Accordingly, the Ministry of Foreign Affairs of Ukraine does not see the need to transmit to the Russian Side the factual materials with regard to the issues raised in the notes of the Ukrainian Side and considers the indicated information and factual data to be sufficient in terms of understanding of the Convention for undertaking the respective actions by the Russian Side. That said, the Ukrainian Side reserves the right to provide additional evidences, which point to commitment of crimes within the meaning of the Convention by citizens, legal entities and governing authorities of the Russian Federation.

The Ministry of Foreign Affairs of Ukraine also does not deem it possible to comply with the request of the Russian Side concerning the transmission of criminal proceedings, instituted by the Ukrainian law enforcement authorities with regard to Russian citizens, who permanently reside in the Russian Federation, as something that goes beyond legal assistance, envisaged by Article 6 of the CIS Convention on Legal

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Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993, hereinafter referred to as the CIS Convention on Legal Assistance, and does not comply

with the procedures and practices, established by the CIS Convention on Legal Assistance.

At the same time, the Ministry of Foreign Affairs of Ukraine states that the Ukrainian Side is ready to provide the Russian Side with the utmost assistance in investigation of the facts, cited in the above-mentioned notes of the Ministry of Foreign Affairs of Ukraine, in the manner prescribed by international agreements in the sphere of legal assistance, including the CIS Convention on Legal Assistance.

The Ministry of Foreign Affairs of Ukraine believes that the concerns of the Russian Side with respect to security situation in the city of Kyiv are unfounded.

In the meantime, the Ministry of Foreign Affairs of Ukraine also deems unacceptable the proposal of the Russian Side regarding the conduction of negotiations in the city of Moscow for security reasons, taking into account numerous facts of involvement of state authorities of the Russian Federation into kidnapping and application of torture and other inhuman methods of conduct towards the citizens of Ukraine, as well as possible provocations on behalf of aggressive population of the Russian Federation, which is incited by the Russian propaganda in the media.

In this regard, the Ministry of Foreign Affairs of Ukraine suggests to revise the position of the Russian Federation and to conduct negotiations on interpretation and application of the Convention for the Suppression of the Financing of Terrorism of 1999 on November 20, 2014, either in Kyiv (Ukraine), or in Geneva (Switzerland), Vienna (Austria), Strasbourg (France). The Ukrainian Side has preliminarily elaborated the possibility of conduction of negotiations in the specified locations.

The Ministry of Foreign Affairs of Ukraine will deem the absence of response of the Russian Side within a reasonable time and unjustified delay on the issue of determining the location and date of conduction of the negotiations as a reluctance of the Russian Side to resolve the dispute with respect to the Convention for the Suppression of the Financing of Terrorism of 1999 through negotiations.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

Kyiv, October 29, 2014



# **Annex 21**

Ukrainian Note Verbale No. 72/22-620-2732 to the Russian Federation Ministry of  
Foreign Affairs (4 November 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## **Ministry of Foreign Affairs of Ukraine**

# 72/22-620-2732

The Ministry for foreign affairs of Ukraine of America presents its compliments to the Ministry of foreign affairs of Russian Federation and in addition to the notes #72/22-484-1964 from July 28, 2014, #72/22-620-2087 from August 12, 2014, #72/22-620-2185 from August 22, 2014, #72/22-620-2221 from August 29, 2014, #72/22-620-2406 from September 24, 2014, #72/22-620-2495 from October 7, 2014, #72/22-620-2529 from October 10, 2014 and #72/22-620-2717 from November 3, 2014, stresses the importance to proclaim that Russian Side committed crime of financing terrorism according to the content of International convention on the struggle against financing the terrorism of 1999, hereafter referred to as the Convention.

Article 2 of the Convention provides that 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, *inter alia*, 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.

In this regard, the Ukrainian Side once again states that, from March 2014, terrorist organizations “Donetsk People’s Republic”, hereinafter referred to as the DPR, and “Lugansk People’s Republic”, hereinafter referred to as the LPR, have been operating illegally in the territory of Ukraine; they intentionally and consciously carry out in the territory of Ukraine terrorist acts aimed at intimidation of population, killing of civilian population, causing grave bodily injury to civilian population, seizure of hostages and administrative buildings of state and local authorities in order to compel the Ukrainian Government to do acts aimed at toppling constitutional order in Ukraine, recognition of the terrorist organizations, and other acts that threaten Ukraine’s territorial integrity and security.

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Moscow**

In this context, we inform that the Ukrainian Side has evidence of participation of citizens and legal entities of the Russian Federation in the carrying out of offences identified in Article 2 of the Convention. Based on the available evidence, which are not limited to the facts below and information on acts that led to initiation of relevant proceedings and pre-trial investigation by the Ukrainian Side, we bring the following to the notice of the Russian Side.

According to the live data of the Antiterrorist Centre Headquarters of Ukraine there were numerous illicit movements of military armour and freights across the state border of Ukraine from Rostov oblast of the Russian Federation which were directed for the material support of the DNR and LNR formations and are used by the latter against the forces, participating in antiterrorist operation in the Donetsk and Lugansk oblasts of Ukraine, particularly:

1) October 17-20, 2014:

- columns of military equipment and commando groups of Russian military forces near the towns of Chervonopartyzansk (30 tanks), Zolotarivka (14 persons) of Lugansk region, Kuznetsi (10 KAMAZ trucks), Telmanove (8 fuel tanks) of Donetsk region;

2) October 22-24, 2014:

- near town of Kuznetsi of Donetsk region columns of Russian military equipment of 11 KAMAZ trucks and 2 fuel tanks;

3) October 24-28 2014:

- columns of Russian military equipment near towns Diakove (14 self-propelled guns, 16 guns, 64 URAL trucks with ammunition, 30 KAMAZ trucks, 10 fuel tanks), village Kruzhylivka (5 tanks, 3 trucks) of Lugansk region, Vaniushkine (2 KAMAZ trucks with trailers), Dibrivka (fuel tanks), Kuznetsi (3 fuel tanks) of Donetsk region and also via the border control station Dovzhanski (7 trucks with 40 militants and ammunition) in Lugansk region and Uspenka (10 multiple launch rocket systems, 2 armoured vehicles, several fuel tanks) in Donetsk region.

The Ukrainian Side also informs that it considers the fact of deliberate movement by the Russian Side across the Ukrainian border during October 29-November 2, 2014 of trucks, aimed at supply of "humanitarian assistance", to be an illegal international action violating sovereignty of Ukraine with the purpose of material support of DNR and LNR actions which is a crime, according to the Convention, organized and directed by the authorities of Russian Federation.

The Ukrainian Side would like to draw the attention of Russian Side to following facts and information which confirms the participation of Russian Federation and its authorities, legal entities which are responsible for the state functions, in committing crimes of financing terrorism according to the Convention on the territory of Ukraine:

1) Beginning with May 2014 financing of terrorist organizations DNR and LNR is done by the Communist party of Russian Federation. It is proved by the gratifying letter for the humanitarian assistance and financial support from so-called Prime Minister of

LNR V.Nikitin addressed to Chairman of Central Committee of the Communist party of Russian Federation G.Ziuganov (#42/03 from June 24, 2014).

The direct proof of these facts was made on October 24, 2014 by the members of the State Duma of the Russian Federation from the Communist party of Russian Federation K.Taysayev and V.Rodin who illegally visited the territory of Ukraine, at their joint press-conference with so-called head of the Supreme Rada of DNR B.Litvinov, where they stressed the transfer to DNR and LNR by the Russian Communist party of more than 2 thousand of “humanitarian” cargos and various support to these terrorist organizations by Russian military and leadership.

In particular K.Taysayev announced: “You know that our military of Russian Federation are doing all to render the maxim support to Novorossiia. For sure there is no one here who could doubt that the Defence Committee (of the State Duma) and Minister of Defence of RF S.Shoigu are doing everything currently possible for Russian Federation and even more that they can do. I think this help will only increase.”

2) On October 28, 2014 Deputy Head of the State Duma of the Federal Assembly of the Russian Federation, leader of LDPR V.Zhyrinovsky during the public event at the Institute of World Civilizations (Moscow, Russian Federation) participated in the preparation of the next “humanitarian” cargo and equipment for transfer to LNR and DNR.

Zhyrinovsky confirmed the transfer of total aid to those terrorist organizations for the sum of 13 million of Russian roubles and 2 UAZ cars, 2 Niva cars, Tiger army off-road car and other automobiles.

The Ukrainian Side turns the attention of the Russian Side to its international legal obligations regarding cooperation to prevent the offenses identified in the Article 2 of the Convention, and, proceeding from its deep concern with the escalation of terrorist acts in all its forms and displays in Donetsk and Lugansk Oblasts, requests to inform the Ukrainian Side as soon as possible about steps taken by the Russian Side in the framework of fulfillment of its international legal obligations and to provide the greatest measure of assistance, including assistance in obtaining additional evidence in the possession of the Russian Side necessary for the investigation of the abovementioned facts (Articles 12 and 18 of the Convention).

Kyiv, November 4, 2014



# **Annex 22**

Ukrainian Note Verbale No. 72/22-620-3008 to the Russian Federation Ministry of  
Foreign Affairs (8 December 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## **Ministry of Foreign Affairs of Ukraine**

# 72/22-620-3008

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in response to the note of the Ministry of Foreign Affairs of the Russian Federation #14587/dnv dated November 24, 2014 has the honor to state the following.

The Ministry of Foreign Affairs of Ukraine considers the rhetoric of the Russian Side concerning the need to respect diplomatic norms of correspondence to be unacceptable, especially in the context of ongoing military aggression of the Russian Federation against Ukraine.

Concerns of the Ukrainian Side about inappropriate security conditions in the Russian Federation in terms of holding any official Ukrainian-Russian events are absolutely justified and reasonable. As evidence to this serve, inter alia, known facts of illegal seizure, moving and detention of Ukrainian citizen by the authorities of the Russian Federation, politically motivated pursuits of Ukrainian officials by Russian law enforcement agencies, as well as ongoing anti-Ukrainian propaganda in the media of the Russian Federation.

Thus, the Ministry of Foreign Affairs of Ukraine considers the Russian position expressed in the above-mentioned note of the Ministry of Foreign Affairs of the Russian Federation to be an attempt to avoid discussion of the issues related to the facts of violations of International Convention for the Suppression of the Financing of Terrorism of 1999, hereinafter referred to as the Convention, by shifting accents and transferring negotiations to resolution of security issues of functioning of diplomatic missions.

In this regard, the Ministry of Foreign Affairs of Ukraine once again reiterates the existence of dispute regarding the interpretation and application of the Convention and insistently asks to adhere to the subject of negotiations proposed by Ukrainian Side, to which Russian Side agreed with the note #10471/dnv dated August 15, 2014.

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The Ministry of Foreign Affairs of Ukraine proceeds from the fact that proposed by the Ukrainian Side initiation of the talks is aimed at discussing the facts stated in the previous notes of the Ministry of Foreign Affairs of Ukraine that indicate the offenses by citizens, legal entities and public authorities of the Russian Federation in the context of Convention, as well as improper fulfillment by the Russian Side of its international obligations.

In this regard, the Ministry of Foreign Affairs of Ukraine cannot agree with the position of the Russian Side, according to which “the fact of discussion of various issues in the course of consultations does not prejudice the question of whether they fall within the scope of [the Convention].”

The Ministry of Foreign Affairs of Ukraine is ready to accept as a base the agenda of bilateral consultations on interpretation and application of the Convention proposed by the Russian Side. The Ukrainian Side, however, proposes to include in the above-mentioned agenda a separate question on the interpretation and application of the Convention in the context of the Ukrainian-Russian relations and reserves the right to supplement it with other issues depending on the development of situation.

Given the position of the Ukrainian Side on the subject of negotiations, we believe that the proposed by the Russian Side issue of security of citizens of the Russian Federation in Kyiv and Ukrainian citizens in Moscow as well as security of diplomatic missions of both countries, including diplomatic staff, cannot be included in the agenda of the negotiations. Nothing in the mentioned note, however, contradicts the position of the Ukrainian Side concerning statements and allegations stated in the relevant notes of the Russian Side.

The Ministry of Foreign Affairs of Ukraine brings to the attention of the Russian Side the fact that the answer to the note of the Ministry of Foreign Affairs of Russian Federation #10471/dnv dated August 15, 2014 was provided by the Ukrainian Side in the note #72/22-620-2443 dated September 30, 2014 within the timeframe defined in the note of the Ministry of Foreign Affairs of the Russian Federation. The Russian side, however, informed about its inability to hold negotiations in Kyiv, proposed by the Ukrainian Side on October 17, 2014, only on October 14, 2014 (note of the Ministry of Foreign Affairs of the Russian Federation #13355/dnv).

Furthermore, the Russian Side provided response to another proposal of the Ukrainian Side to conduct these negotiations on November 20, 2014 only on November 24, 2014 without any explanations or proper justification of changing the venue of negotiations. Such actions of the Russian Side are the evidence of unjustified delay of resolution of the issue of holding negotiations and unwillingness of the Russian Side to resolve the dispute in the context of Convention by means of negotiations. Despite this and guided by desire to resolve the dispute on the interpretation and application of the Convention by means of negotiations, the Ministry of Foreign Affairs of Ukraine is ready to conduct these negotiations on December 22, 2014 in Strasbourg (France) at the Council of Europe premises, as proposed in the previous note of the Ukrainian Side.

We also inform that Ukrainian delegation for the negotiations will be represented at the level of Deputy Minister of Foreign Affairs of Ukraine and include representatives of other state authorities of Ukraine.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, December 8, 2014



# **Annex 23**

Russian Federation Note Verbale No. 16599 to the Embassy of Ukraine in Moscow (17  
December 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

# 16599/ДНВ

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in response to Embassy's note #6111/22-012-4506 dated December 8, 2014 has the honor to inform about the following.

The Ministry accepts with regret the position of the Ukrainian side on the unacceptability of compliance to the norms of diplomatic correspondence. The reluctance of the Ukrainian side to follow the standard procedure of interstate communication is not conducive to effective dialogue.

It is in this context that the Ministry emphasizes that irresponsible and abusive statements of the Ukrainian side about the alleged "armed aggression of the Russian Federation against Ukraine" are aimed at escalating tension and indicate a lack of readiness of the Ukrainian side for a substantive dialogue on the Convention.

Equally ungrounded are the claims of the Ukrainian side about the allegedly "delayed" solving of organizational matters by the Russian side. The Ministry draws attention of the Ukrainian side to the following facts: the responses of the Russian side were sent within 17, 13 and 24 day intervals (54 days in total); while for the Ukrainian side they were 45, 16 and 13 days respectively (74 days in total). In view thereof, the Ukrainian side, while bearing responsibility for the delayed correspondence, prefers to put the blame for that on the Russian side.

The Ministry considers the fact that the Ukrainian side continues to insist without explanation of reasons on holding the negotiations on the Convention exclusively in Strasbourg as yet another display of a lack of good-will on behalf of the latter to have such consultations.

The Ministry underlines that the choice in favor of Minsk (Belarus) as a location for holding the consultations is justified by the absence of visa requirements and substantial economy of resources for both sides as compared to West Europe cities proposed by the Ukrainian side, and by the fact that Minsk has served as an established negotiation platform, also in the framework of the Contact Group on Ukraine. If the Ukrainian side decides to continue putting conditions on the Russian side complicating the dialogue, such as holding of meetings in locations with additional visa requirements and expenses, while also proposing rigid timeframes, that will attest to the intention of the Ukrainian side to complicate the establishing of dialog and eventually undermine it.

As far as the agenda is concerned, the Ministry is confused by the refusal of the Ukrainian side to include in the agenda the issue of protection of diplomatic establishments against terrorist attacks. This issue has direct relation to the Convention as the latter deals with financing of actions constituting an offence under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of December 14, 1973, specified in the annex to the Convention. Such unconstructive position of the Ukrainian side, which refuses to discuss the egregious incidents that took place on the Ukrainian territory and might be related to financing of terrorism, once again indicates unproductiveness of the Ukrainian side's approach to the discussion on implementation of the Convention.

Nevertheless, in the spirit of constructive cooperation in the framework of the Convention, the Russian side confirms its readiness to hold the planned consultations with the Ukrainian side. In order to reach an early mutually acceptable solution regarding the consultations' agenda, the Ministry welcomes the readiness of the Ukrainian side to proceed on the basis of the draft agenda proposed by the Russian side. The Ministry believes that this agenda provides all the possibilities to discuss the concerns of the Ukrainian side regarding implementation of the Convention.

At the same time, the Ministry articulates once again that discussion of any issues either in the course of the consultations or in the exchange of notes between the sides does not predetermine that they shall fall under the Convention, neither shall it indicate presence or absence of a dispute on application and interpretation of the Convention.

The Ministry calls on the Ukrainian side to exercise good-will and constructiveness to make possible holding of the planned meeting in Minsk during the week that begins on December 22, 2014.

The Ministry avails itself of this opportunity to renew to the Embassy the assurances of its high consideration.

Moscow, December 17, 2014



# **Annex 24**

Ukrainian Note Verbale No. 72/22-620-3114 to the Russian Federation Ministry of  
Foreign Affairs (19 December 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in reply to the Note of the Ministry of Foreign Affairs of the Russian Federation №16599/ДНВ of December 8, 2014 has the honour to state the following.

The Ministry of Foreign Affairs of Ukraine considers the position of the Russian Side concerning the alleged non-adherence to the norms of the diplomatic correspondence farfetched and groundless. Such position is perceived by the Ukrainian Side as an attempt of the Russian Side to avoid constructive dialogue and discussion in the spirit of fulfilment of its international commitments on the issues raised by the Ukrainian Side, in particular those regarding peaceful settlement of international disputes.

The allegations from the Russian Side of the irresponsibility and unscrupulousness of the statements of the Ukrainian Side are unjustified and unfounded. Such allegations of the Russian Side are none other than an effort to create an impression of an alleged “lack of readiness of the Ukrainian Side for a substantial dialogue on the Convention”.

In conjunction with that and in order to avoid any ambiguity in the interpretation of the statements and positions of the Ukrainian Side the Ministry of Foreign Affairs of Ukraine states as follows:

- first, the statements and position of the Ukrainian Side concerning the violation by the Russian Side of the 1999 International Convention for the Suppression of the Financing of Terrorism (further referred to as *the Convention*), laid out in the previous Notes of the Foreign Ministry of Ukraine, are a valid notification of the Russian Side about the existence of the dispute, its contents and the subject of legal regulation. Taking that into account the Ukrainian Side reserves the right to broaden the substance and subject of the dispute depending on how the situation develops;

- second, the statements and position of the Ukrainian Side with regard to the negotiations within the framework of the Convention are a real desire and effort to resolve the dispute existing between Ukraine and the Russian Federation concerning the interpretation and application of the Convention by reaching a mutually accepted agreement in order to avoid mandatory international judiciary procedures;

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- third, the Ukrainian Side has a real desire and intention to hold the abovementioned negotiations and continue them for as long as is needed for achieving mutually acceptable agreement on the resolution of the existing dispute.

Within the context of the statements and position of the Ukrainian Side on the armed aggression of the Russian Federation against Ukraine, the Ministry of Foreign Affairs of Ukraine states as follows:

- the said position is a proper notification of the Russian Side about the existence of the dispute, its contents and subject of legal regulation;
- position of the Ukrainian Side is founded and substantiated by concrete factual evidence laid out in the respective Notes of the Ministry of Foreign Affairs of Ukraine;
- Ukrainian Side's position is to be viewed as an appeal to the Russian Federation's international commitments. The Ukrainian Side deems that the aforementioned issues are not related to the subject of negotiations proposed by the Ukrainian Side.

The Ministry of Foreign Affairs of Ukraine considers neither the position of the Russian Side, nor its accusations that the Ukrainian Side "is responsible for the 'delays' in correspondence" as founded. Formal approach of the Russian Side to calculating the terms of the presentation of the replies does not correspond to the facts of the matter, neither does it take into consideration the substance and circumstances that objectively existed. Thus, the Russian Side's measuring has not accounted for the fact that the first Note of the Ukrainian Side in reply to the Note of the MFA of the RF had been presented within the limits of the terms suggested by the Russian Side and was dealing with the wide array of the issues of organization and conduct of negotiations that required additional time for the preparation. The approach of the Russian Side also ignores the *de facto* terms in which the Ukrainian Side receives the answers of the Russian Side, which due to the unknown reasons differ from the date of the registration of an answer.

The Ministry of Foreign Affairs of Ukraine deems such approach of the Russian Side not to be constructive and conducive to an efficient dialogue. The Ukrainian Side's position with regard to a groundless delaying by the Russian Side of the resolution of the issue of holding the negotiations intended to draw the attention of the MFA of the RF to the need of exchanging the positions within reasonable terms, specifically bearing in mind suggested dates of negotiations.

Equally not constructive is the position of the MFA of the RF concerning Strasbourg (French Republic) as the venue of negotiations. In relation to this the Ministry of Foreign Affairs of Ukraine draws the attention of the MFA of the RF to the fact that it was the Russian Side that ignored on the unknown reasons the proposal of the MFA of Ukraine to hold the negotiations in a number of European countries at a neutral site of respective international organizations. The MFA of Ukraine derives from the fact that the Ukrainian Side as an organising party of the negotiations has all

the reasons to suggest the site for the negotiations and consider it acceptable until the time, when the Russian Side expresses concrete and founded objections.

Considering the unwillingness of the Russian Side to hold negotiations at a neutral site in Strasbourg and having fair intentions and real desire to resolve the pending dispute through negotiations in the spirit of constructive dialogue, the Ministry of Foreign Affairs of Ukraine is ready to consent to the proposal of the Russian Side to conduct negotiations in Minsk (Republic of Belarus).

The Ministry of Foreign Affairs of Ukraine believes that position of the Russian side regarding “unconstructive stance of Ukrainian side” on the inclusion to the negotiations of the issue of “protection of diplomatic missions from (alleged) terrorist attacks” to be unjustified and not supported by factual evidence. The issue of the safety of diplomatic missions in the context of defending them from terrorist attacks has been previously never raised by the Russian Side. The way Russian position on the so-called “incidents that could be linked to the funding of terrorist activities” is formulated serves as direct indication that there is no actual factual evidence to support such claims and therefore no part of the Convention has been broken. The Ukrainian Side cannot therefore accept the information provided by the Russian Side as factual information on persons that committed or are suspected of committing a crime under the Convention.

At the same time, the Ukrainian Side is ready to discuss the topic of the safety of diplomatic institutions during the negotiations, if the Russian Side provides factual evidence corroborating concerns of the Ministry of Foreign Affairs of the Russian Federation. Any claims of the Russian Side regarding this issue must pertain to the Convention and must be formulated in a clear enough manner allowing to establish that the Russian Side makes a claim that a dispute has arisen that is regulated by the Convention.

The Ministry of Foreign Affairs of Ukraine also cannot once again agree with the position of Russian Side that “the fact of discussing any issues during ... consultations or in the correspondence by notes between both Sides does not predetermine whether or not such issues are subject of the [Convention] or whether or not there is any dispute regarding the application or interpretation of the Convention”. Such position of the Ukrainian Side is based on the fact that international disputes are started on the basis of factual evidence or actions. Therefore, the position of the Ministry of Foreign Affairs of Ukraine is such that the Ukrainian Side has duly informed the Russian Side about the existence of a dispute, about its substance and the subject regulated by law.

In the constructive spirit of good faith, the Ministry of Foreign Affairs of Ukraine proposes to hold negotiations about proper interpretation and application of the Convention in the city of Minsk (Republic of Belarus) on January 22, 2015. The Ukrainian Side appeals to the Russian Side to do

everything it can to hold these negotiations so that the existing dispute could be resolved in a manner satisfactory for both Sides.

Nothing in the above note affects the stance of the Ukrainian Side regarding the claims and statements made by the Russian Side in its relevant Notes.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

**Kiyy, December 19, 2014**

# **Annex 25**

Russian Federation Note Verbale No. 17131 to the Embassy of Ukraine in Moscow (29  
December 2014)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## **MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION**

#17131/ДНВ

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in order to prevent delaying a decision to hold consultations on matters related to the 1999 International Convention for the Suppression of the Financing of Terrorism, hereinafter referred to as the Convention, has the honor to agree to hold such consultations in Minsk on January 22, 2015.

At the same time, the Ministry insists on amending the agenda of the consultations with an item on strengthening security of the diplomatic missions against terrorist attacks. We emphasize once again that this matter bears directly on the Convention as it covers the financing of acts constituting an offence under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic agents, of December 14, 1973, specified in the annex to the Convention. With regard to "presenting concrete facts and evidence attesting to the concern of the Ministry of Foreign Affairs of the Russian Federation", such facts and evidence can be presented to the Ukrainian side at the forthcoming consultations.

The Ministry notes that reference to "aggression" in the note of the Ministry of Foreign Affairs of Ukraine is an attempt of the Ukrainian side to destabilize the dialogue and take it beyond the framework of the Convention, and it also demonstrates the Ukrainian sides' unwillingness to start substantial discussion and a lack of good-will toward the forthcoming consultations.

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In this regard, the Ministry is compelled to once again bring it to attention of the Ukrainian side that the very fact of discussion of any issues in the course of these

consultations or in the exchange of notes between the Sides does not predetermine their regulation by the Convention as well as existence or absence of a dispute regarding the interpretation and application of the Convention or any other dispute between the Sides.

The Ministry avails itself of this opportunity to renew to the Embassy the assurances of its high consideration.

Moscow, December 29, 2014

# **Annex 26**

Ukrainian Note Verbale No. 72/22-620-48 to the Russian Federation Ministry of Foreign Affairs (13 January 2015)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*



## **MINISTRY OF FOREIGN AFFAIRS OF UKRAINE**

№72/22-620-48

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in response to the note of the Ministry of Foreign Affairs of the Russian Federation №17131/ДНВ of December 29, 2014 has the honor to state the following.

The Ministry of Foreign Affairs of Ukraine reiterates the readiness of the Ukrainian Side to hold negotiations on interpretation and implementation of the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereinafter – the Convention) on January 22, 2015 in Minsk, the Republic of Belarus.

The Ministry of Foreign Affairs of Ukraine can not agree to include to the agenda of the scheduled negotiations the issue of the security of diplomatic missions from terrorist attacks. The Ministry of Foreign Affairs of Ukraine does not consider the mentioned issue as the subject for negotiations within the Convention. The position of the Ukrainian Side is that the main purpose of the scheduled negotiations is resolving disputes on interpretation and implementation of the Convention. However, the Russian Side has not provided any facts or/and information about the persons who had committed offence or were alleged to have committed offence under the Convention.

At the same time, should the Russian Side provide the facts and information about the persons, who, 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 any activity that constitutes an offence under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973, the Ukrainian Side is ready to consider the possibility of holding negotiations to discuss the issues of security of diplomatic missions from terrorist attacks.

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of the Russian Federation  
Moscow**

The Ministry of Foreign Affairs of Ukraine can not agree with the position of the Russian Side about the alleged intention of the Ukrainian Side to destabilize dialogue and put it outside of the Convention framework, as well as about the unwillingness of the Ukrainian Side for substantive discussion and its inappropriate attitude to the future negotiations. The position of the Ukrainian Side on the ongoing military aggression of the Russian Federation against Ukraine is, among other issues, an ascertaining of the objective reality and an appeal to the Russian Side to implement in practice its commitment for peaceful resolution of international disputes, as it is envisaged by the paragraph 4 of the Article 2 and the paragraph 1 of the Article 33 of the UN Charter.

The Ministry of Foreign Affairs of Ukraine reiterates its disagreement with the position of the Russian Side that “the fact of discussing any issues during the consultations or in the form of the note exchange between the Sides does not predetermine that these issues fall under the scope of the Convention, as well as the existence or the absence of dispute on interpretation and implementation of the Convention”. The position of the Ukrainian Side on this matter was stated in the note №72/22-620-3114 of December 19, 2014 and in previous notes and remains unaltered.

Nothing in the mentioned note affects the position of the Ukrainian Side regarding the statements and assertions provided in the relevant notes of the Russian Side.

The Ministry of Foreign Affairs of Ukraine has the honor to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

/stamp/ Kyiv, January 13, 2015

# **Annex 27**

Ukrainian Note Verbale No. 72/22-620-351 to the Russian Federation Ministry of  
Foreign Affairs (13 February 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





№72/22-620-351

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in addition to the Notes No. 72/22-484-1964 of 28 July 2014, No. 72/22-620-2087 of 12 August 2014, No. 72/22-620-2185 of 22 August 2014, No. 72/22-620-2221 of 29 August 2014, No. 72/22-620-2406 of 24 September 2014, No. 72/22-620-2495 of 7 October 2014, No. 72/22-620-2529 of 10 October 2014, No. 72/22-620-2717 of 3 November 2014, No. 72/22-620-2732 of 04 November 2014, has the honour to inform on the commitment of crime under the International Convention for the Suppression of the Financing Terrorism of 1999 (hereafter the Convention) in connection with the terrorist act, which happened on 13 January 2015 near the settlement Bugas, Volnovakha region, Donetsk oblast, Ukraine.

The Ukrainian Side states to have sufficient evidence and information, without prejudice of collecting and submission of additional evidence, that on 13 January 2015 the terrorist organization “Donetsk People’s Republic” (hereafter “DPR”) committed an act of terrorism against the civil population near the settlement Bugas, Volnovakha region, Donetsk oblast, Ukraine. The mentioned act, committed by the “DPR” under support and assistance of the Russian Federation and under its control and guidance. This attack is a constituent element of terrorist activity, including its focus on the indiscriminate killing of civilians, which is being carried out by the so-called “DPR”.

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The circumstances of the terrorist activity, including the attack of 13 January, is an evidence of the Russian Federation awareness and intent in the acts concerning the support of terrorism, which is a violation of the Convention. The position of Ukrainian Side consists in the following facts and circumstances, the list of which is not exhaustive.

On 13 January 2015, the terrorist of the “DPR” launched 88 unguided rocket missiles from BM 21 Grad reactive artillery systems (from their controlled territory) to Ukrainian block post near the settlement Bugas, Volnovakha region, Donetsk oblast, Ukraine. The attack aimed against the block post, through which the civil persons passed to the settlement Bugas, Volnovakha region, Donetsk oblast, Ukraine. The bus, which carried more than 40 people, was on the block post. One of the missiles had exploded 12 meters from the bus. As a result, 10 persons died on-site, two more died at hospital, and 20 persons delivered to hospital with heavy injuries. There were mostly pensioners, who rode to receive their pensions, and students among the dead and injured persons.

The Ukrainian Side informs that experts established that the attack had been launched from the territory controlled by the “DPR” terrorists. The Special monitoring mission of OSCE in Ukraine also confirmed this fact. The attack launched on 13 January is a constituent element of terrorist activity performed by the “DPR”. The Ukrainian Side has repeatedly notified the Russian Federation, that starting from March 2014 the terrorist organization “DPR” illegally acts in the territory of Ukraine. This organization violates the international law and performs the attacks against the civil population with an aim of its intimidation.

The Ukrainian Side announces that the Russian Federation is responsible for financing and support of terrorist acts, committed by the “DPR”, including the attack of 13 January against the civil persons.

The Ministry of Foreign Affairs of Ukraine informs that under the conclusions of experts, the ammunition used during the attack of 13 January, registered as

military items of armed forces of the Russian Federation. Moreover, the Ukrainian Side repeatedly notified the Russian Side on the illegal movement of defense technology, arms and cargo from the territory of the Russian Federation and support of terrorist organizations “DPR” and “LPR”. These deliveries included BM-21 Grad multiple military launcher and uncontrolled missile systems aimed for the homicide of unprotected persons. The Russian Federation is aware that the “DPR” and “LPR” use the Russian military equipment against the civil population. These and other facts reveals that the Russian Federation consciously and intentionally supports commitment of terrorist attacks on the civil population of Eastern Ukraine.

In this regard, the Ukrainian Side repeatedly calls upon the Russian Federation to such actions: to accept that Convention prohibits states and their officials and agents to finance and support act of terrorism, to recognize that continuing supply of funds, military equipment and other support of the “DPR” and “LPR”, to recognize its own awareness of the fact that the “DPR” and “LPR” intentionally and without distinction kill the civil persons for the purpose of its intimidation, using the equipment and arms, supplied by the Russian Federation, to recognize its own responsibility for the attack of 13 January committed by the “DPR” from the Russian military arms and to undertake all practically possible measures for the cessation of violation of Convention and to provide all necessary assurances and guarantees of non-recurrence in the future.

The Ukrainian Side reserves the right to demand the compensation from the Russian Side for the damage, caused by the violation of Convention.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

Kyiv, 13 February 2015



# **Annex 28**

Ukrainian Note Verbale No. 72/22-620-352 to the Russian Federation Ministry of  
Foreign Affairs (13 February 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



№72/22-620-352

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in addition to the Notes No. 72/22-484-1964 of 28 July 2014, No. 72/22-620-2087 of 12 August 2014, No. 72/22-620-2185 of 22 August 2014, No. 72/22-620-2221 of 29 August 2014, No. 72/22-620-2406 of 24 September 2014, No. 72/22-620-2495 of 7 October 2014, No. 72/22-620-2529 of 10 October 2014, No. 72/22-620-2717 of 3 November 2014, No. 72/22-620-2732 of 4 November 2014, has the honour to inform on the commitment of crime by the Russian Federation by financing the terrorism under the International Convention for the Suppression of the Financing Terrorism of 1999.

Article 2 of Convention stipulates that ‘any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully (assets of any types, tangible or intangible, movable or real estate), provides, organizes, leads 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 *inter alia* any other act intended to cause death to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict or cause serious bodily injury, 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.

**Ministry of Foreign Affairs of the  
Russian Federation  
Moscow**

In this regard, the Ukrainian Side repeatedly declares that from March 2014 the terrorist organizations “Donetsk People’s Republic” (hereafter “DPR”) and “Luhansk People’s Republic” (hereafter “LPR”) illegally acts in the territory of Ukraine and which intentionally and consciously commits the acts of terrorism in the territory of Ukraine, for the purpose of intimidation of population, homicide of civil population, infliction of serious body injuries, hostage taking and occupation of administrative buildings of state bodies and municipal government, provocation of armed conflict aimed to force Ukrainian Government to perform acts for the purpose of change of constitutionalism, territorial order and other acts, which threatens the territorial integrity and national security of Ukraine.

The Ukrainian Side declares that the Russian Federation commits a crime under the Convention, acting through its state bodies, authorized persons, physical and legal persons, which performs the state functions and terrorist organizations, which act under the direction and control of the Russian Side.

The position of the Ukrainian Side consists in the fact that Russian Side willfully, unlawfully, directly or indirectly provides and collects funds, particularly sends defense technology, arms, organizes rear supply, performs the training and financing of terrorists in its territory and in the territory of Ukraine, their material security, their deployment to the territory of Ukraine etc., with the knowledge that mentioned funds would be used in or in part by the terrorist organizations “DPR” and “LPR” for the commitment of crimes under the Convention.

The position of the Ukrainian Side is confirmed, inter alia, by the following facts and information regarding the participation of the Russian Federation and its officials, physical and legal persons who performs the state functions, in commitment of crimes by financing the terrorism under the Convention in the territory of Ukraine.

During the last period, the military personnel, arms, technology had been deployed from the territory of the Russian Federation to the territory of Ukraine for the support and involvement in terrorist activity in the territory of Ukraine, especially:



- 104 soldiers of airborne regiment 76 (c.Pskov, Russia), are located in settlement Georgivka and Donetsk city.
- 18 soldiers of separate motorized Infantry brigade 58A (c.Vladykavkaz), are located in Ukrainian settlements Komsomolske and Amrosiivka;
- 31 soldiers of separate airborne brigade (c. Ulianovsk) are located in the Ukrainian settlements Kumachevo, Peremoga, Grygorivka;
- 31 soldiers of separate motorized infantry brigade (s. Shylovo) occupied Ukrainian villages Telmanove, Vasylivka, Kumachevo;
- 33 soldiers of separate motorized infantry brigade (c.Maikop) are located in Ukrainian settlement Starobesheve;
- 331 soldiers of airborne regiment (c.Kostroma) are located in Ukrainian cities Torez and Snigne;
- 35 and 74 soldiers of separate motorized infantry brigade (s. Alchevsk and Vorga) are located in the s. Brianka and Stakhanov;
- 200 soldiers of separate motorized infantry brigade and 61 military personnel of marine brigade (s. Pechenga and Suputnyk) are located in the settlement Faschivka and are taking an active part in committing the terrorist acts in the area of Donetsk airport;
- 7 soldiers of airborne division (c.Novorosiysk) are located near the c. Luhansk and s. Novosvitlivka;
- 13 soldiers of tank regiment (c. Naro-Fominsk) are located in the area of s. Kirovske of Donetsk oblast;
- 136 soldiers of separate motorized infantry brigade (s. Buinakusk) are located in s. Novyi Svit;
- 8 soldiers of separate motorized infantry brigade (s. Khort) are located in the city Makiivka;
- 45 soldiers of separate special unit regiment (c.Kubinka) are located in Ukrainian s. Novoazovsk.

Provision of funds by the Russian Federation for the financing of terrorist activity in the territory of Ukraine by deployment of Russian military personnel, arms and technique to the territory of Ukraine are confirmed, particularly, by “Report on

the establishment in the territory of operational service Division of Ministry of Internal Affairs of Russia of Tarasivka region of emergency issues” from 26.08.2014, addressed to the Head of Main Department of Ministry of Internal Affairs of Rostov oblast police major general FA.P. Larionov from the caretaker of the Head of division of Ministry of Internal Affairs of Russia of Tarasivka region lieutenant colonel I.I. Trofimenko. Especially, it is noted in the mentioned document that on 25.08.2014 at 15:50 by the local time, the privates of military unit No 51182 Polstiakin M.V., Volgin O.Y., Alekseev Y.A., Gerasumenko O.O., who serve in the military unit 51182 in the settlement Millerevo were injured, while carrying their “official duties”, by the forces of National Guard of Ukraine during the fight in 10 km to North West from the settlement Progniy of Tarasivka region.

Provision of the Russian Side of funds for the financing of terrorist activity in the territory of Ukraine is also confirmed by the redeployment of field military hospital on the base of 529 medical detachment of special units (c. Rostov-on-Don) of Ministry of Defense of the Russian Federation from the territory of Russian Federation to the territory of Donetsk oblast, Ukraine. It is proved by the document of Ministry of Internal Affairs of Russian Federation “report on the location of wounded, who arrived from Ukraine on 27 September” in which is stated that 237 wounded Russian soldiers, who took part in the terrorist activity in the territory of Ukraine.

Bearing this in mind, the Ukrainian Side repeatedly calls upon the Russian Side to perform all practically possible measures for the cessation of activities, which have the signs of crime under the Convention and to provide all necessary assurances and guarantees that of their non-recurrence in the future.

In this regard, the Ukrainian Side reserves the right to demand the compensation from the Russian Side for the damage, caused by the violation of Convention.

Kyiv, 13 February 2015

# **Annex 29**

Ukrainian Note Verbale No. 610/22-110-504 to the Russian Federation Ministry of  
Foreign Affairs (2 April 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## **Ministry of Foreign Affairs of Ukraine**

# 610/22-110-504

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and, in addition to its Notes #72/22-484-1964 dated July 28, 2014, #72/22-620-2087 dated August 12, 2014, #72/22-620-2185 dated August 22, 2014, #72/22-620-2221 dated August 29, 2014, #72/22-620-2406 dated September 24, 2014, #72/22-620-2495 dated October 7, 2014, #72/22-620-2529 dated October 10, 2014, #72/22-620-2717 dated November 3, 2014, #72/22-620-2732 dated November 4, 2014, #72/22-620-351 dated February 13, 2015 and #72/22-620-352 dated February 13, 2015, considers it necessary to turn attention to the facts of participation of Russian citizens in the activities of terrorist groups in certain occupied rayons of Donetsk and Lugansk oblasts of Ukraine, as well as facilitation and financing of terrorist activities in Ukraine by citizens of the Russian Federation, officials of local authorities and representatives of religious organizations.

In this regards, the Ministry of Foreign Affairs of Ukraine expresses its deep concern with regard to developments on March 12, 2015, in Yekaterinburg, Russian Federation, where “solemn” farewell ceremony of so-called “volunteers” to participate in terrorist activities of terrorist organizations “Donetsk People’s Republic”, hereinafter referred to as the DPR, and “Lugansk People’s Republic”, which intentionally and consciously carry out in the territory of Ukraine terrorist acts aimed at intimidation and killing of civilian population, causing grave bodily injury to civilian population, seizure of hostages and administrative buildings of state and local authorities etc., took place.

The Ministry expresses its deep concern with the facts of open support of terrorist activity, encouragement of illegal acts in Ukraine, and facts of terrorism financing by local authorities, as well as by the organizers of that ignominious event – citizen of the Russian Federation Volodymyr Yefimov, local businessmen and politicians – citizens of the Russian Federation Volodymyr Konkov, Andri Golovanov and Andriy Pisarev.

The calls for murders of citizens of Ukraine by citizen of the Russian Federation Volodymyr Zaitsev, a priest from the temple of Innocent of Moscow and an active participant of the event, look openly shocking.

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The Ministry views statements by V.Yefimov as the fact proving financing and support of terrorist activity in Ukraine. Thus, according to V.Yefimov, “volunteers have been seriously trained since October at spetsnaz veterans’ training base”, which demonstrates that the training of Russian citizens for participation in terrorist activities in Ukraine is conducted in the territory of the Russian Federation with the knowledge and support of local self-government authorities. V.Yefimov also stated that local businessmen and politicians, in particular, V.Konkov, A.Golovanov and A.Pisarev, provided financing and equipment for the terrorists.

The Ministry stresses that the acts of abovementioned citizens of the Russian Federation, as well as acts of so-called “volunteers” represent public calls for terrorist and extremist activity, incitement of hatred or discord, recruitment or involvement of individuals into the activity of terrorist organizations in the territory of Ukraine.

The abovementioned events that contradict the official statements by high-ranking Russian politicians regarding Russia’s noninterference into the conflict in Ukraine, as well as the international obligations of the Russian Side, including those in the context of implementation of the Minsk Agreements of September 5 and 19, 2014, and of February 12, 2015. The Ukrainian Side views these as yet another proof of the Russian Side’s support of terrorist activity in Ukraine and its financing by Russian citizens and local authorities.

The Ministry demands from the Russian Side immediate investigation of the events of March 12, 2015 in Yekaterinburg and notification of the Ukrainian Side regarding the qualification

of acts by the abovementioned citizens of the Russian Federation, restrictive measures and penalties chosen in accordance with the legislation of the Russian Federation and obligations of the Russian Side under the 1999 International Convention for the Suppression of the Financing of Terrorism, hereinafter referred to as the Convention.

The Ministry also demands immediate measures to halt in the Russian Federation activity aimed at recruitment, training and dispatch of so-called “volunteers” to certain rayons of Donetsk and Lugansk oblasts of Ukraine, which also represents a violation of international legal obligations of the Russian Side under the Convention.

The Ministry of Foreign Affairs of Ukraine renews to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, April 2, 2015

# **Annex 30**

Ukrainian Note Verbale No. 72/22-620-967 to the Russian Federation Ministry of  
Foreign Affairs (24 April 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## MINISTRY OF FOREIGN AFFAIRS OF UKRAINE

№72/22-620-967

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and due to holding of the first round of negotiations between Ukraine and the Russian Federation on interpretation and implementation of the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereinafter – the Convention) on January 22, 2015 in Minsk, the Republic of Belarus, has the honor to note the following.

Within the framework of the first round of negotiations, the Ukrainian Side and the Russian Side discussed a wide range of issues according to the agreed agenda.

During the discussion of *the paragraph 1 of the agenda* on the exchange of information within the Convention about the persons committed offence or are alleged to have committed offence of financing terrorism on the territory of the Russian Federation or Ukraine, the Ukrainian Side has presented the following position:

- Information, facts and proofs, which were communicated to the Russian Side through the relevant notes of the MFA of Ukraine, evidence of the implication of individuals and legal entities of the Russian Federation in committing offence within the meaning of the Convention;

- Presented information, facts and proofs also evidence of involvement of officials and state authorities of the Russian Federation in committing offence within the meaning of the Convention. The position of the Ukrainian delegation derives from the understanding that the provision of the Article 2 of the Convention defines the subject of the offence within the meaning of the Convention also applies to officials and state authorities of the Russian Federation;

- Funds that have been collected and provided to the terrorist organizations “Donetsk People’s Republic” (DPR) and “Luhansk People’s Republic” (LPR) by individuals and legal entities of the Russian Federation, officials and state authorities of the Russian Federation have been used to carry out offence, as envisaged by the subparagraph (b) of the paragraph 1 of the Article 2 of the Convention;

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- The terrorist organizations DPR and LPR have illegally acted on the territory of Ukraine, purposefully and willfully have committed terrorist acts in Ukraine, intended to intimidate the population, cause death or serious bodily injury to civilians, taking hostages and administrative buildings of state and local authorities with the purpose to compel the Ukrainian Government to actions aimed at changing constitutional order in Ukraine, legalizing terrorist organizations and other activities that constitute threat to the territorial integrity and security of Ukraine;

The Ukrainian Side has also urged the Russian Side to take all necessary steps to enable the process of bringing to justice the legal entities on the territory of the Russian Federation, of identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the above-mentioned offences for purposes of forfeiture, as well as to cooperate in prevention of the mentioned offences, to establish jurisdiction of the Russian Federation over the mentioned offences, to investigate the facts, communicated to the Russian Federation.

In response to the declared position of the Ukrainian Side the Russian Side has noted the following:

- The exchange of information in the framework of the Convention about the facts, circumstances of the case and suspects through diplomatic correspondence is ineffective. The exchange of information in the framework of the Convention should be carried out by the competent authorities of the Sides according to the agreements on legal assistance and on cooperation between the units of financial monitoring;

- Facts, circumstances and information, presented in the notes of the MFA of Ukraine are going through verification by the competent authorities of the Russian Federation. The information provided by the MFA of Ukraine does not allow making proper verification and taking necessary measures. On the results of the verification procedures, the Russian Side shall address the Ukrainian Side with a request to specify the provided information;

- The Russian competent authorities investigate the incident around the Embassy of the Russian Federation in Kyiv and have the grounds to believe that this fact falls within the subject of legal regulations of the Convention;

- The Russian Side is interested in receiving from the Ukrainian Side detailed information about the order and the procedure of recognizing LPR and DPR as terrorist organizations.

In response to the statements and comments of the Russian Side, the Ukrainian Side expressed the following position and comments:

- The Convention does not exclude the possibility of information exchange through the diplomatic channels used by Ukraine along with mechanisms of legal assistance to ensure effective use of all existing

mechanisms of information exchange aimed at suppression of the financing of terrorism;

- Recognition of LPR and DPR as terrorist organizations results from qualification of their activities, regarded by the Ukrainian Side as terrorist activities under the Criminal Code of Ukraine and the Law of Ukraine “On Fighting Terrorism”;

- The Ukrainian Side has also communicated to the Russian Side information about the facts related to financing of terrorism within the framework of the agreements on legal assistance, but regrettably has not received any response;

- The Ukrainian Side investigates the incident around the Embassy of the Russian Federation in Kyiv. On the results of the investigation, the Ukrainian Side do not possess any information that proves the facts of financing of terrorism and gives grounds to claim about the terrorist attack on the Embassy.

Summarizing the results of the discussion of the paragraph 1 of the agenda, the Ukrainian Side:

- Noted that information regarding 36 facts of violation of the Convention had been presented to the Russian Side;

- Requested the Russian Side to provide detailed response on the requested information;

- Urged the Russian Side to fulfill its commitments under the Convention.

Summarizing the results of the discussion of the paragraph 1 of the agenda, the Russian Side:

- Reiterated that mechanisms of legal assistance were the appropriate mechanism of information exchange under the Convention;

- Facts and information provided by the Ukrainian Side do not evidence the carrying out of offence under the Convention and need to be specified;

- Claims and demands of the Ukrainian Side are groundless since the provided information is not considered as proofs under the criminal procedure in the Russian Federation.

Within the framework of the discussion of *the paragraph 2 of the agenda* on interpretation and implementation of the Convention the Ukrainian Side stated that provisions of the Convention also apply to the internationally illegal actions of the states, related to the offences within the meaning of the Convention.

On such understanding of the commitments under the Convention, the Ukrainian Side stated that information and facts communicated in the notes of the MFA sent to the Russian Side give the grounds to assert of international legal liability of the Russian Federation for violation of its international legal commitments under the Convention.

In response the Russian Side stated that such tonality of accusations impedes the possibility of efficient cooperation, that the Russian Federation had not violated its commitments under the Convention and that the accusations of the Ukrainian Side were groundless.

The Russian Side has also expressed the position that the Ukrainian legislation in the sphere of suppression of the financing of terrorism does not correspond to the international standards, defined by FATF, MONEYVAL Committee, Egmont Group of financial intelligence units; it proves Ukraine's failure to fulfill its international commitments. Moreover, the Russian Side emphasized that the Russian Federation has recently defended the report within FATF on the compliance of its legislation with international standards and has been granted the simplified monitoring procedure within the framework of MONEYVAL Committee.

Summarizing its position the Russian Side expressed the idea that it is impossible to discuss the issue of the Russian Federation's liability at the present stage.

Within the framework of the discussion of the *paragraph 3 of the agenda* on implementation of cooperation to improve the mechanism of mutual assistance within the framework of the Convention on criminal investigations of financing of terrorism, the Sides exchanged the following views.

The Ukrainian Side again drew the attention of the Russian Side on the absence of the response to the requests of the Prosecutor General's Office of Ukraine for legal assistance on the facts of financing of terrorism, stressed the importance and validity of the provided information on the legal assistance requests, as well as urged the Russian Side to respond properly to the requests of the Ukrainian Side.

The Russian Side has stated that the requested information makes it impossible to fully implement the necessary verification procedures and commented on some facts provided by the Ukrainian Side in the framework of diplomatic correspondence.

In response, the Ukrainian Side drew the attention of the Russian Side to its unconstructive negotiation position and proposed to express the position of the Russian Side, including the provision of specific comments and objections, in writing. Moreover the Ukrainian Side assured that all requested specifications would be analyzed and transmitted to the Russian Side in due course.

Within the framework of the discussion of *the paragraph 4 of the agenda* on international legal basis of suppressing of financing of terrorism in the context of the Ukrainian-Russian relations, the Ukrainian delegation:

- Provided the information on international activities of the State Financial Monitoring Service of Ukraine within the framework of FATF,

MONEYVAL Committee, Egmont Group of financial intelligence units, EAG;

- Informed about the Law of Ukraine “On Prevention and Combating Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism, and Financing of Weapons of Mass Destruction Dissemination”, drafted by the State Financial Monitoring Service of Ukraine and adopted by the Verkhovna Rada (Parliament) of Ukraine on September 14, 2014 and key novelties of the mentioned Law on combating financing of terrorism;

- Provided clarifications on the activities of the State Financial Monitoring Service of Ukraine as the unit of financial intelligence of Ukraine, as well as on its competences on collection, processing and analysis of information about financial operations allegedly connected with financing of terrorism;

- Urged the Russian Side to adhere to FATF recommendations and Principles of information exchange between the financial intelligence units while processing the State Financial Monitoring Service of Ukraine requests.

In its turn, the Russian Side provided the information about the state of development of the Russian Federation legislation in the sphere of suppression of financing of terrorism, pointed out the aspects of cooperation at the level of international platforms in this sphere, provided general statistic data of Ukrainian-Russian information exchange within the framework of Egmont Group of financial intelligence units.

Within the framework of the discussion *of the paragraph 5 of the agenda* on measures aimed at increasing the efficiency of investigations of offences of terrorism financing, the Ukrainian Side has noted that the measures aimed at increasing the efficiency of investigations of offences of terrorism financing are an important task both for the Ukrainian and the Russian Sides. In this context the Ukrainian Side is ready to provide any detailed information, should the Russian Side send the relevant requests.

The Russian Side reiterated the necessity of the detailed information about the order and the procedure of recognizing LPR and DPR as terrorist organizations and also noted that in one of the Ukrainian MFA notes the Ukrainian Side had in fact refused to provide information within the framework of the legal assistance mechanism.

In this respect, the Ukrainian Side has provided clarifications on the order and the procedure of recognizing LPR and DPR as terrorist organizations, noting that specifically the terrorist activities of the mentioned organization give grounds to consider them as terrorist groups. Responding to the remarks of the Russian Side to the note of the MFA of Ukraine, the Ukrainian delegation drew the attention that position stated in the mentioned note grounds on the fact that the information requested by the Russian Side could not be requested within the framework of the legal assistance, since the

Ukrainian Side investigates the relevant cases. However, it was stated that the Ukrainian Side was ready to provide any other information allowing the Russian Side to take necessary measures in the framework of the Convention.

Summarizing the results of the first round of the negotiations, the Ukrainian Side would like to state the following:

- Both the Ukrainian and the Russian Sides share common understanding of the necessity to further discuss the issues on interpretation and implementation of the Convention within the framework of the initiated negotiation process aiming at elimination of existing differences and resolving the dispute through negotiations;

- The Ukrainian Side expects to receive the written response of the Russian Side to the MFA of Ukraine notes on the facts of financing terrorism in Ukraine by individuals and legal entities of the Russian Federation, as well as its officials and state authorities;

- The Ukrainian Side expects to receive the request of the Russian Side on the clarification of facts and information, communicated to the Russian Side by the notes of the MFA of Ukraine;

- In the nearest future, the Ukrainian Side will provide detailed information on recognition of LPR and DPR as terrorist organizations in Ukraine;

- In the nearest future, the Ukrainian Side will provide detailed information on the requests of legal assistance sent to the Russian Side.

Within the framework of the joint position on the continuation of talks on interpretation and implementation of the Convention, the Ukrainian Side proposes to hold the next round of negotiations during the week that starts on May 11, 2015. Taking into account the constructive approach of the Ukrainian Side to the issue of approving Minsk, the Republic of Belarus, as the platform for the first round of negotiations, as it was proposed by the Russian Side, the Ukrainian Side expects similar approach of the Russian Side in the issue of defining the platform for the next round of negotiations between the Sides. Taking into consideration the previously expressed reservations of the Russian Side on the financial expenditures optimization and avoiding visa formalities, the Ukrainian Side proposes to hold the second round of negotiations on interpretation and implementation of the Convention in the mentioned time period in Tbilisi, Georgia.

The Ukrainian Side suggests the following agenda of the negotiations:

1. Implementation of the agreements reached during the first round of the negotiations.

2. Exchange of information on acts, which took place or could take place on the territory of Ukraine or the Russian Federation and which may be qualified as acts of financing of terrorism within the meaning of the Convention.

3. Discussion of specific facts that indicate violation of the provisions of the Convention by the Ukrainian Side or by the Russian Side.

4. Discussion of the issues of interpretation and implementation of the Convention.

5. International legal basis of suppressing of financing of terrorism in the context of the Ukrainian-Russian relations.

The Ministry of Foreign Affairs of Ukraine has the honor to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

/stamp/ Kyiv, April 24, 2015





# **Annex 31**

Ukrainian Note Verbale No. 72/22-620-1069 to the Russian Federation Ministry of  
Foreign Affairs (7 May 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



№72/22-620-1069

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in addition to the Notes No. 72/22-484-1964 of 28 July 2014, No. 72/22-620-2087 of 12 August 2014, No. 72/22-620-2185 of 22 August 2014, No. 72/22-620-2221 of 29 August 2014, No. 72/22-620-2406 of 24 September 2014, No. 72/22-620-2495 of 7 October 2014, No. 72/22-620-2529 of 10 October 2014, No. 72/22-620-2717 of 3 November 2014, No. 72/22-620-2732 of 4 November 2014, No. 72/22-620-351 of 13 February 2015, No. 610/22-110-504 of 2 April 2015, informs on the commitment of crime under the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereafter the Convention) in connection with the terrorist act, which happened on 24 January 2015 as a result of the shelling of the city of Mariupol, Donetsk oblast, Ukraine.

The Ukrainian Side states to have sufficient evidence and information, without prejudice of collecting and submission of additional evidence, that on 24 January 2015 terrorist group of the so-called “Donetsk people’s republic” (hereafter “DPR”), which acted under support and assistance of the Russian Federation and under its control guidance, committed an act of terrorism against the civilian population in the city of Mariupol, Donetsk oblast, Ukraine. This attack is one example of systematic terrorist activity, including its focus on the indiscriminate killing of civilians, which is being carried out by the so-called “DPR”. The circumstances of the terrorist activity, including the attack of 24 January, is an evidence of the Russian Federation awareness and intent in the acts concerning the support of terrorism, which is a

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violation of the Convention. The position of the Ukrainian Side consists in the following facts and circumstances, the list of which is not exhaustive.

On 24 January 2015 starting at 9.25 am terrorists of the so-called “DPR” from the territory under their control fired 122mm calibre unguided rockets using BM-21 Grad multiple launch rocket system as well as 220mm calibre unguided rockets using BM-27 Uragan multiple launch rocket system into a residential areas near Olimpiiska Street, Vostochny district in the city of Mariupol.

As a result of the shelling 23 people, including 1 child, have been killed on the spot and 7 more people, including 1 child, died in hospital. In addition, 108 people received injuries of varying severity and were transported to hospitals in Mariupol.

The Ukrainian Side informs that experts of the OSCE Special Monitoring Mission to Ukraine confirmed that the attack was carried out from inside the so-called “DPR” terrorist-controlled territory. According to the shell craters analysis, OSCE experts have determined that the BM-21 Grad system rockets originated from a north-easterly direction, in the area of Oktyabrskoe settlement (19 km away from the site of attack) and that the BM-27 Uragan system rockets originated from an easterly direction, in the area of Zaichenko settlement (15 km away from the site of attack). According to the OSCE SMM to Ukraine, at different times during December 2014 – January 2015 OSCE experts spotted near the mentioned settlements presence of BM-21 Grad and BM-27 Uragan operated by terrorists of the so-called “DPR”.

The attack, executed on 24 January 2015, is one example of systematic terrorist activity, which is being carried out by the “DPR”. The Ukrainian Side repeatedly brought to the attention of the Russian Side that since March 2014 the terrorist group of the so-called “DPR” has been illegally acting at the territory of Ukraine violating international law, including carrying out attacks against the civilian population for the purpose of its intimidation.

The Ukrainian Side states that the Russian Federation is responsible for the financing and support of terrorist acts, which are being carried out by the terrorist

group of the so-called “DPR”, including the attack on 24 January 2015 against the civilian population.

The Ministry of Foreign Affairs of Ukraine has reasons to believe that the equipment and ammunition that were used during the attack on 24 January 2015 had originated from the Armed Forces of the Russian Federation. Besides that, the Ukrainian Side repeatedly informed the Russian Side about the illegal movement of military equipment, weapons and cargo from the territory of the Russian Federation to support the terrorist groups of the so-called “DPR” and “LPR”. These supplies included BM-21 Grad and BM-27 Uragan multiple launch rocket systems as well as unguided rocket launchers designed to kill vulnerable people. The Russian Federation is aware that the terrorist groups of the so-called “DPR” and “LPR” use the Russian military equipment against civilians.

These and other facts demonstrate that the Russian Federation consciously and deliberately supports execution of terrorist attacks against the civilian population of Ukraine.

In this regard, the Ukrainian Side repeatedly calls upon the Russian Federation to such action: to accept that the Convention prohibits states and their officials and agents to finance and support act of terrorism; to recognize the continuing supply of funds, military equipment and other support of the so-called “DPR” and “LPR”; to recognize its own awareness of the fact that the so-called “DPR” and “LPR” intentionally and indiscriminately kill civilians for the purpose of intimidation of population, using the equipment and weapons supplied by the Russian Federation; to recognize its own responsibility for the attack of 24 January carried out by the so-called “DPR” with the use of Russian military weapons; to take all feasible measures to prevent violations of the Convention and to provide necessary assurances and guarantees of their non-recurrence in the future.

The Ukrainian Side also reserves the right to demand compensation from the Russian Side for damage, caused by the violation of the Convention.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

Kyiv, 7 May 2015

# **Annex 32**

Russian Federation Note Verbale No. 6392 to the Embassy of Ukraine in Moscow (8 May 2015)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*





**№ 6392/ДНВ**

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in reply to the Note №6111/22-012-1305, dated April 24, 2015 states the following.

The Russian Side strongly objects the attempt of the Ukrainian Side to distribute its own interpretation and wording as a stance, allegedly stated by the Russian Side during the first round of bilateral Russian-Ukrainian consultations on issues regarding the International Convention on Terrorism Financing 1999 (Convention), which took place in Minsk on January 22, 2015. The Ministry underlines that Russian delegation is the only mouthpiece of the opinion of the Russian party. Distortion of the position of one of the parties is destructive and undermines the basis of negotiation process.

The Russian Side informs that an offer of the Ukrainian Side to conduct the second round of consultation in Tbilisi is unacceptable due to absence of diplomatic relations between Russia and Georgia.

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**Moscow**

The Russian Side offers to continue consultations at the well-trying negotiation platform in Minsk (Belorussia).

Taking into account the need of forming an interagency delegation and solving corresponding organizational issues as well as conducting required checks, according to the information of the Ukrainian Side, also considering the tight schedule of international events in the sphere of antiterrorism, the Russian Side offers to conduct mentioned consultations during a week commencing on June 15, 2015.

Nothing in the above note affects the stance of the Russian Side regarding the claims and statements made by the Ukrainian Side in its relevant Note correspondence.

The Ministry of Foreign Affairs of the Russian Federation avails itself of this opportunity to renew to the Embassy of Ukraine the assurances of its highest consideration.

**Moscow, May 8, 2015**

**The Embassy of Ukraine**

**Moscow**

# **Annex 33**

Ukrainian Note Verbale No. 72/22-484-1103 to the Russian Federation Ministry of  
Foreign Affairs (12 May 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## **Ministry of Foreign Affairs of Ukraine**

# 72/22-484-1103

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and, in addition to its Notes #72/22-484-1964 dated July 28, 2014, #72/22-620-2087 dated August 12, 2014, #72/22-620-2185 dated August 22, 2014, #72/22-620-2221 dated August 29, 2014, #72/22-620-2406 dated September 24, 2014, #72/22-620-2495 dated October 7, 2014, #72/22-620-2529 dated October 10, 2014, #72/22-620-2717 dated November 3, 2014, #72/22-620-2732 dated November 4, 2014, #72/22-620-351 dated February 13, 2015 and #610/22-110-504 dated April 2, 2015, declares that a crime was committed by definition of the 1999 International Convention for the Suppression of the Financing of Terrorism, hereinafter referred to as the Convention, with regard to a terrorist act committed on February 10, 2015 as a result of shelling of the city of Kramatorsk, Donetsk Oblast of Ukraine.

The Ukrainian Side states that it has sufficient facts and information, without prejudice to collection and presentation of additional evidence, that on February 10, 2015, a terrorist group, so-called, "Donetsk People's Republic", hereinafter referred to as the DPR, acting with support and abetting of the Russian Federation, as well as under its guidance and control, committed a terrorist act against civilian population residing in the city of Kramatorsk, Donetsk Oblast of Ukraine. That attack was one of examples of systematic terrorist activity, including as regards its targeting at indiscriminate murder of civilian population conducted by the so-called DPR. The circumstances of the terrorist activity, including the February 10 attack, demonstrate consciousness and intent in the actions of the Russian Federation supporting terrorism in breach of the Convention. The position of the Ukrainian Side is based on the following facts and circumstances, the list being nonexclusive.

On February 10, 2015, unguided 300 mm rockets were fired from BM-30 Smerch MLRS by terrorists of the so-called DPR at locations of dense residence of civilian population in the city of Kramatorsk.

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Due to abovementioned firings, 15 people died onsite, and 2 more died while in hospital. In addition, 63 persons were affected, about 40 of them were sent to Kramatorsk hospitals in various degrees of conditions.

The Ukrainian Side informs that experts of OSCE Special Monitoring Mission in Ukraine have confirmed that BM-30 Smerch rockets were fired from south-south-western direction from the vicinity of the city of Gorlivka, Donetsk Oblast, presently controlled by terrorists of so-called DPR.

The February 10, 2015 attack is one of examples of systematic terrorist activity conducted by the DPR. The Ukrainian Side has repeatedly brought it to the attention of the Russian Side that, starting from March 2014, an illegal terrorist group, so-called DPR, had been operating in the territory of Ukraine, violating international law, including by attacks against civilian population for the purpose of their intimidation.

The Ukrainian Side declares that the Russian Federation is responsible for financing and support of terrorist acts committed by the DPR, including the February 10, 2015 attack against civilians.

The Ministry of Foreign Affairs of Ukraine has grounds to consider that equipment and ammunition used during the February 10, 2015 attack originate from the Armed Forces of the Russian Federation. In addition, the Ukrainian Side has repeatedly notified the Russian Side of illegal movement of military equipment, armaments and cargos from the territory of the Russian Federation in support of terrorist groups, so-called DPR and LPR. Those supplies included BM-30 Smerch MLRS and unguided missile systems designed for killing of unprotected individuals. The Russian Federation is aware that so-called DPR and LPR use Russian military equipment against civilian population. Those and other facts demonstrate that the Russian Federation deliberately and intentionally supports terrorist attacks against Ukraine's civilian population.

In view of this, the Ukrainian Side once again calls on the Russian Federation to: recognize that the Convention prohibits states, their officials and their agents from financing and supporting terrorist acts, recognize the ongoing supply of funds, military equipment and other support of DPR

and LPR, recognize its awareness of the fact that DPR and LPR are deliberately and indiscriminately kill civilian population for the purpose of their intimidation using equipment and armaments supplied by the Russian Federation, recognize its responsibility for the February 10 attack committed by the DPR using Russian military equipment, as well as take all practically possible steps to halt violations of the Convention and provide due assurances and guarantees of their non-repetition in the future.

The Ukrainian Side also reserves the right to demand from the Russian Side compensation of damages caused by the violations of the Convention.

The Ministry of Foreign Affairs of Ukraine renews to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, May 12, 2015

# **Annex 34**

Russian Federation Note Verbale No. 8395 to the Embassy of Ukraine in Moscow (17 June 2015)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*





No. 8395/dnv

Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in reply to the notes of the Embassy No. 6111/22-012-1740 of 10 June 2015 and No. 6111/22-012-1756 of 11 June 2015 informs about the following.

The Russian Side confirms its readiness to hold a second round of Russian-Ukrainian consultations on issues relating to the International Convention for the Suppression of the Financing of Terrorism of 1999 (the Convention) in Minsk on July 2, 2015.

Herewith, the Russian Side expresses its extreme bewilderment concerning the demands of the Ukrainian Side to get "the most rapid reply of the Russian side" regarding the proposed by the Ukrainian Side date of consultations and "getting a response within a reasonable terms". The Ministry feels compelled to remind that the reply to the note of the Embassy of Ukraine in Moscow on April 24, 2015 was sent to the Ministry on May 8, 2015, that is, in two weeks.

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OF UKRAINE

Moscow

At the same time, the response of the Ministry of Foreign Affairs of Ukraine to the Russian note dated on May 8, 2015, was made up only on May 27, 2015 (ie, in a three weeks) and handed to the Russian Side by a note of the Ukrainian Embassy in Moscow on June 10, 2015. That is, more than a month after the Russian note had been transmitted. Such a late reaction of the Ukrainian Side jeopardized consultations on the proposed terms.

Disclaimer of the Ukrainian Side to hold consultations in previously proposed terms (on June 18, 2015) was sent at the end of June 11, 2015. That is, in a three working days before the proposed date of the event.

The Russian Side has to state concern over the constant attempts of the Ukrainian Side to put forward deliberately unacceptable or not easily accessible venues of the talks (in the states with which the Russian Federation has no diplomatic relations or in visa regime countries with the substantial financial costs for the members of the delegation), rather than to use the negotiating platform in Minsk that was previously approved by the Sides.

These facts cast doubt on the real intentions of the Ukrainian Side to discuss effectively and in good faith the issues related to the Convention. Those facts clearly refute attempts of the Ukrainian Side to shift responsibility for the obstacles upon the Russian Side. The Russian Side urges the Ukrainian Side to stop any actions that affect consultations.

Regarding the accusations of the Ukrainian Side that Russian Side behaves unconstructive and in bad faith manner, the Ministry reiterates that according to established diplomatic practice authentic outline of the stance of each delegation is a prerogative of the delegation. One-sided representation of the own interpretation of the consultations results as the stance of partners is not "objective fixation" and is not compatible with the principle of good faith.

The Ukrainian Side's demand on the need to wording detailed objections on the Ukrainian Side's interpretation of the Russian Side in the note correspondence, Ministry considers as an attempt to replace - and ultimately undermine - the agreed mechanism of consultation. The Russian Side proceeds from the fact that any discussion on this matter should be carried out within the established framework of the negotiation process.

Nothing in this note affects the stance of the Russian Side concerning statements and assertions of the Ukrainian Side that was set out in the relevant note correspondence.

The Ministry takes this opportunity to renew to the Embassy the assurances of its highest consideration.

Moscow, June 17, 2015



# **Annex 35**

Russian Federation Note Verbale No. 9070 to the Embassy of Ukraine in Moscow (30 June 2015)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*



No. 9070/dnv

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and has the honour to draw the attention of the Ukrainian Side to the crimes committed on the territory of Ukraine under the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereafter the Convention).

The protests in Kiev during the period from November 2013 to February 2014, known as "Euromaidan", events in Odessa, May 2, 2014, which caused the deaths of civilians in the Kulikovo Field square and in the House of Trade Unions, an attack on the Russian Embassy in Kiev, June 14, 2014 as well as the murder of such Ukrainian citizens as S.Dolgov, S.Babaev, V.Semenyuk-Samsonenko, E.Ischenko, N.Sergienko, M.Chechetov, O.Moroz, C .Suhobok, O.Kalashnikov and O.Buzina have every reason to be qualified as offenses related to terrorism and their financing requires an investigation in accordance with subparagraphs 1a) and 1b) of Article 2 of the Convention.

Based on international legal obligations of Ukraine in accordance with Articles 8 and 9 of the Convention, the Russian Side urges the Ukrainian Side to take measures as may be required by the legislation of Ukraine to investigate the facts listed in this note as well as all

TO THE EMBASSY  
OF UKRAINE

Moscow

necessary means needed to identify, detect, freeze or put under arrest any funds used or allocated for the purpose of committing these crimes and income derived from such crimes, for purposes of possible alienation, and inform the Russian Side of the action taken as soon as possible.

The Ministry avails itself of this opportunity to renew to the Embassy the assurances of its highest consideration.

Moscow, June 30, 2015



# **Annex 36**

Ukrainian Note Verbale No. 72/22-620-2583 to the Russian Federation Ministry of  
Foreign Affairs (22 October 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



**МІНІСТЕРСТВО  
ЗАКОРДОННИХ СПРАВ  
УКРАЇНИ**



**MINISTRY  
OF FOREIGN AFFAIRS  
OF UKRAINE**

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1 Mykhailivska Square  
Kyiv, 01018, Ukraine

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October 22, 2015  
No. 72/6111-620-2584

**To: Acting Charge d'Affaires of  
Ukraine in the Russian Federation**

**R. M. Nimchynskyy**

re: *Handing over a note*

**Dear Ruslan Mikhaylovych,**

Please find attached a note from the Ministry of Foreign Affairs of Ukraine addressed to the Ministry of Foreign Affairs of the Russian Federation concerning the third round of talks on the interpretation and application of the International Convention for the Suppression of the Financing of Terrorism of 1999 in Minsk, Belarus, on October 29 of this year.

Please hand this note over ASAP to the Russian side.

Appendix: Note from the Ministry of Foreign Affairs no. 72/22-620-2583 of October 22, 2015, on 1 sheet

**Respectfully yours,**

**Acting Director  
Department of International Law**

[signature]

**O.V. Gerasimenko**



**MINISTRY OF FOREIGN AFFAIRS OF UKRAINE**

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No. 72/22-620-2583

The Ministry of Foreign Affairs of Ukraine expresses its esteem for the Ministry of Foreign Affairs of the Russian Federation and, in response to Note no. 13457/dnv of October 15, 2015, it hereby communicates the following:

The Ukrainian side accepts the proposal from the Russian side as to the holding of the third round of talks on the interpretation and application of the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereinafter – the Convention) in Minsk, the Republic of Belarus, on October 29 of this year and suggests 1:00 p.m. as the starting time for the event.

At the same time, the Ministry of Foreign Affairs of Ukraine emphasizes the necessity to respect the principle of parity and to consider the proposals put forward by the Ukrainian side, including concerning the venue of the talks. The above-mentioned platform was suggested by the Russian side, and the Ukrainian side accepted it after the Ministry of Foreign Affairs of the Russian Federation expressed a strong objection to several alternative options.

The Ministry of Foreign Affairs of Ukraine was also surprised at the motivation of the Russian side as to Minsk being an established negotiations platform, with references to the Trilateral Contact Group on Ukraine, as its activity has no relation to the talks in the framework of the Convention.

In addition, the Ministry of Foreign Affairs of Ukraine once again states that the Convention does not require that the parties exchange information exclusively through the channels of international legal assistance. In this connection, the Ukrainian side reserves the right to use other methods of cooperation envisaged by the Convention.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

Kyiv, October 22, 2015

[seal:]

The Ministry of Foreign Affairs of Ukraine  
Identification Code: 00026620

**Ministry of Foreign Affairs of  
the Russian Federation  
Moscow**

# **Annex 37**

Ukrainian Note Verbale No. 72/22-620-2604 to the Russian Federation Ministry of  
Foreign Affairs (23 October 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## Ministry of Foreign Affairs of Ukraine

# 72/22-620-2604

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in follow-up to the diplomatic note of the Ministry of Foreign Affairs of Ukraine refers to the events connected with the downing of a civilian aircraft on an international flight, Malaysia Airlines flight MH-17 (hereinafter, “MH-17”), on July 17th, 2014, in Donetsk Oblast, Ukraine.

The publicly known facts of the above incident attest to the following. On July 17th, 2014, at around 4:20 p.m. Kyiv time, MH-17 disappeared over east Ukrainian air space, a few miles from the Russian border. According to the final report issued by the Dutch Safety Board on October 13, 2015, at 4:20:03 p.m. Kyiv time “a warhead detonated outside and above the left hand side of the cockpit of flight MH17. It was a 9N314M warhead carried on the 9M38-series of missiles as installed on the Buk surface-to-air missile systems.” According to the Dutch Safety Board, there is a 320 square kilometer area in eastern Ukraine from which the missile could have been launched. [The area identified by the Dutch Safety Board was controlled at the time by the terrorist organization, the “Donetsk People’s Republic” (hereinafter “DNR”). As a result of this detonation, MH-17 “broke up in flight and fell to the ground near the town of Hrabove, Ukraine.”

The Ukrainian Side is of the view that the attack against the civilian aircraft MH-17 was indisputably a serious violation of international law. Specifically, it involved not only a serious violation of Ukraine’s sovereignty and the Charter of the United Nations, but also, *inter alia*, a violation of treaty obligations arising under the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter, the “Terrorism Financing Convention”. These violations were neither accidental nor technical. International law, including international treaties, was violated deliberately and flagrantly.

The Ukrainian Side has all grounds to believe that the Russian Federation directly and/or indirectly, unlawfully and willfully, provided and/or collected funds, as defined in the Convention, with the intention that they should be used or in the knowledge that they would be used, in full or in part, by agents of the DNR to carry out acts of terrorism. Specifically, the attack on Flight MH-17 was an act constituting an offense under the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and/or was intended to cause death or serious bodily injury to civilians and, by its nature and context, had the purpose, *inter alia*, to intimidate the Ukrainian population and/or to compel the Ukrainian government to change the constitutional order and otherwise act or abstain from acting as desired by the DNR and Russian authorities. 298 civilian passengers and crew on board MH-17 were murdered in this terrorist attack perpetrated by the DNR and funded by the Russian Federation.

The following series of facts, viewed together, and without prejudice to other information that is or will become available, lead to the above-stated conclusions.

First, witness statements, photographs, satellite images and intercepted conversations show that the Russian military provided the Buk used in the attack to DNR. More specifically, available

evidence shows that the Buk is assigned to one of the Russian Air Defense Brigades, located in the Russian Federation near Kursk. The Russian Automobile Battalion convoyed the Buk from Kursk to the Millerovo military airbase (Rostov Oblast, Russia) and from there to the Ukrainian border between June 23 and July 16, 2014. During the night of July 16-17, the Buk crossed the border close to the village of Sjeverne (Luhansk Oblast, Ukraine), and in the early morning of July 18, the same Buk returned across the border again at the same location. On July 19-20, the Russian Automobile Battalion convoyed the Buk to a military camp southwest of Kamensk-Shakhtinsky (Rostov Oblast, Russia).

Second, witness statements, photographs, satellite images and intercepted conversations show that the DNR deployed the Buk to the launch site and transported it back to the Russian border. Specifically, on July 17 the DNR transported the Buk loaded on a truck from Sjeverne to Donetsk and further to Snizhne passing Makiivka, Zuhres, and Torez. After the attack on MH-17, the DNR transported the Buk from Snizhne to the Russian border in Luhansk Oblast through Debaltsevo.

Third, witness statements, photographs, satellite images, and intercepted conversations show that DNR executed the attack. More specifically, the DNR's leadership has admitted that the DNR possessed Buk missile systems and that DNR personnel executed the attack.

Fourth, MH-17 was traveling at an altitude of 33,000 feet at a speed typical for a civilian airliner along an established flight corridor frequented by commercial traffic. MH-17 was transmitting its assigned transponder code corresponding with its flight plan, and flight tracking data was publicly available on the internet.

Fifth, based on all of the available circumstances, it is clear that the Russian Federation provided support to the DNR with full awareness of the likelihood that its weapons would be used in unlawful attacks against civilians. Prior to the shoot-down of MH-17, the DNR was already involved in committing terrorist actions in Ukraine, and the Russian Federation had every reason to expect that it would continue to do so using Russian-provided weapons.

The Ministry of Foreign Affairs of Ukraine expresses deep concern over the Russian Federation's failure to provide the assistance needed to assure adequate investigation of the MH-17 incident.

The Ministry of Foreign Affairs of Ukraine further expresses deep concern over the Russian Federation's continuing provision of funds that are used for terrorist acts against civilians on the territory of Ukraine. The shoot-down of MH-17, in addition to involving a violation of the Terrorism Financing Convention in itself, also gave the Russian Federation added reason to know that any weapons it provided to DNR and similar terrorist groups would be used to murder civilians in illegal acts of terrorism. The Russian Federation has nonetheless continued its support of these groups and the terrorist attacks they commit.

The Ministry of Foreign Affairs of Ukraine considers that the actions of the Russian Side in funding the terrorist activity of DNR on the territory of Ukraine constitute a serious violation of the Terrorism Financing Convention.

The Ministry of Foreign Affairs of Ukraine calls upon the Russian Federation:

- to cease its involvement with terrorist activity in Ukraine, including financing and support of terrorism;



- to acknowledge its international responsibility for terrorist acts committed on the territory of Ukraine, including the attack on MH-17;
- to comply with its obligations under international law, including obligations under the Terrorism Financing Convention;
- to offer appropriate assurances and guarantees of non-repetition of such illegal activity, and
- to make full reparation for the injury caused by its internationally wrongful acts.

It will be understood, in the circumstances, that Ukraine reserves its legal position and its rights of action under international law in accordance with the Charter of the United Nations and the Terrorism Financing Convention.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, 23 October 2015



# **Annex 38**

Ukrainian Note Verbale No. 72/22-620-2605 to the Russian Federation Ministry of  
Foreign Affairs (23 October 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



No. 72/22-620-2605

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in reply to the Note of the Ministry of Foreign Affairs of the Russian Federation #10448/ДНВ, dated July 31, 2015, informs of the following.

The Ministry of Foreign Affairs of Ukraine emphasizes the need in urgent and decisive prevention of the ongoing terrorist campaign on the territory of Ukraine.

The Ministry of Foreign Affairs of Ukraine is of the view that the Russian Federation's investigation of the facts contained in the relevant Ukrainian diplomatic notes does not satisfy the Russian Federation's obligations under Articles 8 and 9 of the 1999 International Convention for the Suppression of the Financing of Terrorism ("the Convention"). The Russian Side's note of July 31 references seventeen Ukrainian diplomatic notes, but purports to address requests raised in only five diplomatic notes sent by the Ministry of Foreign Affairs of Ukraine, all between June and August 2014: # 610/22-110/1591 of June 21, 2014; # 610/22-110-1798 of July 16, 2014; # 610/22-110-1805 of July 17, 2014; # 72/22-620-2087 of August 12, 2014; and # 72/22-620-2221 of August 29, 2014. These five notes represent a small fraction of the more than twenty diplomatic notes concerning the Convention that Ukraine has sent to the Russian Side over the past sixteen months. The Ukrainian Side, through these notes, has provided Russia with detailed information that Russian nationals are financing acts of terrorism in Ukraine and requested repeatedly that the Russian Federation take appropriate measures, as required by Article 8 of the Convention, to halt these unlawful acts.

The Russian Side has not offered any explanation for its failure to respond substantively to the vast majority of the Ukrainian Side's diplomatic notes. The Russian Side also has failed to respond to the detailed factual information presented by the Ukrainian Side concerning the financing of terrorism by organs of the Russian government. Finally, the Russian Side has failed to explain why it required a year to investigate and respond to facts raised by Ukraine in the five diplomatic notes that Russia has addressed in its July 31, 2015, correspondence. Ukraine may reasonably interpret these delays and insufficient responses as reflecting Russia's unwillingness to comply in good faith with its obligations under Articles 8 and 9 of the Convention.

Moreover, the Russian Side has failed to adequately investigate even the information conveyed to it by the Ukrainian Side in the five diplomatic notes that are addressed in the Russian Side's July 31, 2015, note. Rather than undertaking a meaningful investigation based on detailed factual information provided by the Ukrainian Side, the Russian Federation's responses concerning the identity and location of suspect individuals apparently rely almost exclusively on existing government records. Nor has the Russian Side taken any steps to investigate the banking information the Ukrainian Side provided or otherwise acted to halt the ongoing financing of terrorism in Ukraine conducted by Russian nationals and the Russian government.

The Russian Side, in its note of July 31, 2015, referencing the arrangements reached during the second round of negotiations, requested that Ukraine respond to the Russian legal assistance request of May 21, 2015, submit requests for legal assistance on issues raised in the Ukrainian diplomatic notes, and provide written explanation of legal procedures set forth for designating certain organizations as terrorist. The Ministry of Foreign Affairs of Ukraine is of the view that the Russian Side's reference to and understanding of the record of the second round of negotiations is inaccurate for the following reasons.

First, the Ukrainian Side did not make any commitments or promises, or indicate in any other manner, that it would "[submit] to Russian competent authorities the relevant requests for legal aid in the framework of applicable international agreements on all the facts mentioned in the notes of the Ministry of Foreign Affairs of Ukraine." On the contrary, the Ukrainian Side has consistently maintained the position, including during the second round of negotiations held on January 22, 2015, that the Convention permits parties to request information in any way they deem appropriate and most efficient. The Convention contains no requirement to use particular legal assistance channels under entirely separate international agreements. The Russian Side's interpretation of the Convention is particularly inappropriate in view of the urgency of responding to an ongoing campaign of terrorism on Ukrainian territory.

Second, the Ukrainian Side is of the view that information requested in the Russian request for legal assistance of May 21, 2015, is not necessary to enable the Russian Side to effectively investigate the information provided by the Ukrainian Side. This request was issued many months after receiving the majority of diplomatic notes from the Ministry of Foreign Affairs of Ukraine raising allegations under the Convention, and does not excuse the Russian Side's delayed and inadequate responses.

Third, the Ukrainian Side considers that during the second round of negotiations it provided comprehensive and sufficient explanation of the procedures applicable in Ukraine for the designation of terrorist organizations. The Ukrainian Side sees no need for additional explanation. Nor does the Ukrainian Side see the basis for the Russian Side to request this information and how this information better enables the Russian Side to investigate the information provided by the Ukrainian Side. The Ukrainian Side is bound to record its position once again that the formal designation of terrorist organizations is not necessary to trigger Russia's obligations under the Convention.

Fourth, the Ukrainian Side forwards with this diplomatic note the Ukrainian courts' decisions addressing DNR and LNR terrorist activities in Ukraine as promised during the second round of negotiations.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, October 23, 2015

# **Annex 39**

Ukrainian Note Verbale No. 72/22-620-2894 to the Russian Federation Ministry of  
Foreign Affairs (23 November 2015)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## MINISTRY OF FOREIGN AFFAIRS OF UKRAINE

№72/22-620-2894

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in follow-up to the third round of negotiations on interpretation and implementation of the International Convention for the Suppression of the Financing of Terrorism dated December 9, 1999 (The Convention) dated October 29, 2015 reverts to the Russian Side on the necessity to answer the critical questions discussed during the meeting.

In its diplomatic note № 72/22-620-2604 of October 29, 2015, and during the meeting, the Ukrainian delegation raised its profound concerns regarding the downing of the Malaysia Airlines flight MH-17 (hereinafter, “MH-17”), on July 17th, 2014, in Donetsk Oblast, Ukraine. The Ukrainian Side’s position is clear that the Russian Federation’s involvement in this attack against a civil aircraft, resulting in the deaths of 298 civilian passengers and crew, was a serious violation of the Convention.

The Ukrainian Side has all grounds to believe that the Russian Federation financed this terrorist attack on MH-17 within the meaning of the Convention. In the course of the negotiations, the Ukrainian delegation presented its position and asked a number of questions aimed to clarify the Russian Federation’s view of its role in this terrorist attack on MH-17. The Russian delegation refused to give any comments on the facts and circumstances presented and ignored the questions put forward by the Ukrainian delegation. The Russian delegation reserved its position and expressed a preliminary view that this attack does not fall within the scope of application of the Convention, without explaining the basis for this view.

The Ukrainian side views the Russian Federation’s support for the attack on MH-17 as a significant issue between the two parties which must be addressed during the next round of negotiations between the Parties within the framework of the Convention. To ensure that further discussions are productive, the Ukrainian side urges the Russian side to immediately address the questions presented by the Ukrainian delegation in its diplomatic note and during the meeting, including:

1. Did the Russian military provide the Buk missile system to the terrorist organization DNR?
2. Did the terrorist organization DNR deploy the Buk to the launch site, where the missile launch was carried out and did they further transport it back to the Russian border?
3. Did the terrorist organization DNR launch the missile from the Buk, the explosion of which caused the crash of the MH 17 traveling at an altitude and speed typical for a civilian airliner?
4. Did Russia provide support to the DNR with full awareness of the likelihood that its weapons would be used in unlawful attacks against civilians?

The Ukrainian Side has not received any response to, or explanation of the facts showing, the Russian Side's involvement in the supply of weapons to the terrorist organizations DNR and LNR, and the terrorist attacks by those organizations on civilians in Volnovakha, Mariupol, and Kramatorsk. The Russian Side limited its comments on these issues in the course of the negotiations to reference to its diplomatic note of October 15, 2015, and refused to engage in any further discussion of the concerns raised by the Ukrainian Side. The Ukrainian side notes with disappointment that the Russian side has now refused to discuss this issue in two consecutive rounds of the negotiations.

The circumstances and series of facts related to the above-mentioned terrorist acts and activities, together with significant publicly-available information known to Russia, underpin the Ukrainian side's view that the Russian Federation has violated the Convention by supporting these attacks on Ukrainian civilians.

The Ukrainian Side urges the Russian Federation to address diligently and in good faith each and every specific fact and/or argument raised in the Ukrainian diplomatic notes related to the above-mentioned terrorist acts and activities. The Russian Side's refusal to engage with the Ukrainian Side on these issues will be interpreted by the Ukrainian side as indicating the Russian Side's unwillingness to genuinely address appropriately and resolve the existing controversies.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration

Kyiv, 23 November 2015



# **Annex 40**

Russian Federation Note Verbale No. 384 to the Embassy of Ukraine in Moscow (25  
January 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



No. 384/ДНВ

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in the Russian Federation and in response to the diplomatic note of the Ministry #72/22-620-2894 of November 23, 2015 informs of the following.

The Russian Side once again reminds that the practice of generalizations to describe the course of consultations found in the notes of one of the parties to the consultations is inappropriate and inconsistent with international practice of communication.

In order to get back on the track of constructive dialogue, the Russian Side urges the Ukrainian Side to cease this practice.

The Russian Side draws attention to the fact that Ukraine made its proposal to include the issue of the downing of Malaysia Airlines flight MH-17 on July 17th, 2014 into the agenda of the Russian-Ukrainian consultations on the 1999 Terrorism Financing Convention on short notice, before the consultations. Moreover, the Ukrainian Side failed to justify the need to discuss this issue within the framework of the consultation process on the 1999 Terrorism Financing Convention.

Acting in good faith the Russian Side in its diplomatic note #13457/ДНВ of October 16, 2015 asked the Ukrainian Side to forward specific documents in support of Ukraine's position to extend the agenda of consultations. The Russian Side noted that without such documents the discussion would be a priori groundless and, therefore, contrary to the approach to conduct consultations in a constructive way. The Russian Side also proposed to forward these documents through the proper channels for exchange of information in accordance with the MLAT treaties in force between the Parties as it was earlier agreed. The Russian Side expressed its readiness to provide its comments after these document are received and carefully studied.

This notwithstanding, the Ukrainian Side failed to forward the documents to the Russian Side either before consultations on October 29, 2015, or after them. During the consultations, the Russian Side renewed its request to forward specific factual evidence and data, but this request received no response.

The reference in the diplomatic note of the Ministry of Foreign Affairs of Ukraine to "[t]he circumstances and series of facts related to the above-mentioned terrorist acts and activities, together with significant publicly-available information known to Russia" cannot be considered reliable information. Ukraine's call to the Russian Side "to address diligently and in good faith each and every specific fact and/or argument raised in the Ukrainian diplomatic notes related to the above-mentioned terrorist acts and activities" without providing specific information and factual evidence may

witness bad faith intent of the Ukrainian Side and unwillingness to proceed with consultations in a constructive way.

The Russian Side underlines that the Russian-Ukraine consultations presume a discussion of specific evidence relating to the 1999 Terrorism Financing Convention and shall not be used for false claims.

Against this background, the Russian Side once again offers the Ukrainian Side to forward information and specific data supporting statements made in the diplomatic notes of the Ministry of Foreign Affairs of Ukraine #72/22-620-2245 of September 15, 2015 [MH-17 dip note] and #72/22-620-2894 of October 23, 2015 [Dip note following the 3rd round with 4 questions]. The Russian Side is particularly interested in specific data supporting the need to discuss the MH-17 crash of July 17, 2014 during the consultations.

The Ministry stresses that the fact of discussion of any issue during the consultations and in diplomatic correspondence between the Parties, neither prejudices that the issues fall under the 1999 Terrorism Financing Convention, nor demonstrates the existence of a dispute.

Nothing in this note is in prejudice to the position of the Russian Side concerning statements and assertions of the Ukrainian Side that were set out in the relevant note correspondence. The Ministry takes this opportunity to renew to the Embassy the assurances of its highest consideration.

The Ministry avails of this opportunity to renew to the Embassy its assurance of its highest considerations.

Moscow, January 25, 2016.



# **Annex 41**

Ukrainian Note Verbale No. 72/22-620-264 to the Russian Federation Ministry of  
Foreign Affairs (10 February 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## Ministry of Foreign Affairs of Ukraine

# 72/22-620-264

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in follow-up to the third round of negotiations from October 29, 2015, on interpretation and implementation of the International Convention for the Suppression of the Financing of Terrorism dated in 1999 (hereinafter, the Convention) refers to the events connected with the bombings and attempted bombings of civilians and civilian areas of Ukrainian cities.

The Ukrainian Side has all grounds to believe that the Russian Federation directly and/or indirectly, unlawfully and willfully, provided and/or collected funds, as defined in the Convention, with the intention that they should be used or in the knowledge that they would be used, in full or in part, by its agents to carry out acts of terrorism. As described below the terrorist bombings in Kharkiv and attempted bombing in Kyiv were intended to cause death or serious bodily injury to civilians and, by their nature and context, had the purpose, *inter alia*, to intimidate the Ukrainian population and/or to compel the Ukrainian government to change the constitutional order and otherwise act or abstain from acting as desired by the Russian authorities.

During the third round of negotiations, the Ukrainian Side raised its profound concerns regarding the involvement of the Russian Federation in the deadly terrorist bombing that took place in Kharkiv on February 22, 2015. Specifically, the Ukrainian investigation established that Ukrainian citizens V. Dvornikov, V. Tetiutskiy, and S. Bashlykov acted under instructions and with the support and assistance of Russian authorities in planning and executing the terrorist attack against civilians during a peaceful national unity rally. The named terrorists admitted that they had planted and detonated a MON-100 anti-personnel mine on the rally route. V. Dvornikov confessed that he had met with an agent of the Russian security services while in Belgorod, Russia, and received instructions from him where to collect the mine from a “dead drop” location in Kharkiv, how to operate it, and where to set the explosive. Four civilians were murdered, and eleven were injured in this terrorist attack funded and supported by agents of the Russian Federation.

The Russian Federation is similarly responsible for financing what could have been a catastrophic terrorist attack had it not been stopped by law enforcement. On December 19, 2014, the Ukrainian law enforcement prevented a terrorist attack that could have caused massive casualties among civilians in the center of Kyiv. The Ukrainian law enforcement arrested a 30-year-old woman from Luhansk who intended to plant a homemade bomb in the center of Kyiv. She confessed that a representative of the Russian intelligence service had trained her and provided her with the explosive. She disclosed that she had acted under instructions from the Russian authorities and transported a powerful bomb from Luhansk under the direction of the

terrorist organization “Luhansk People’s Republic.” The Russian intelligence agents instructed her to leave the bag with the homemade explosive in the most crowded place in the center of Kyiv to target civilians.

These terrorist bombings are representative of a campaign of such attacks in Ukrainian cities designed to intimidate the Ukrainian people. These attacks include, in addition to the bombings and attempted bombings in Kharkiv and Kyiv, a campaign of bombings in Odessa and other cities.

In December 2014 and January 2015, Odessa was hit by a number of terrorist attacks causing damage, disruption, and injuries. Attacks were directed at pro-Ukrainian groups, with targets including offices of pro-Ukrainian activist groups, bars frequented by activists, military donation centers, banks and railway lines. The intent was to destabilize the political situation in Ukraine, intimidate pro-Ukraine groups and create an atmosphere of fear. Ukrainian authorities arrested several perpetrators who are suspected to be trained, instructed, and assisted by the Russian intelligence. The Ministry of Foreign Affairs of Ukraine expresses deep concern over the Russian Federation’s continuing provision of funds that are used for terrorist acts against civilians on the territory of Ukraine and considers that the actions of the Russian Side in funding the terrorist activity on the territory of Ukraine constitute serious violations of the Convention.

The Ministry of Foreign Affairs of Ukraine regrets that, despite repeated protests from the Ukrainian side, extensive diplomatic correspondence since June 21, 2014, and three rounds of negotiations, material progress has not been made concerning the Russian Side’s numerous violations of the Convention. The Ukrainian side nonetheless proposes a fourth round of negotiations on March 17, 2016, in the hope that the Russian side will be prepared to discuss and attempt to resolve the substantive issues under the Convention the Ukrainian side has raised. At this session, the Ukrainian side intends to discuss, inter alia and without limitation, the acts of financing the terrorist bombings mentioned in this note, as well as the other acts of financing terrorism mentioned in the diplomatic note of September 15, 2015 (#72/22-620-2245).

The Ukrainian side additionally notes the statements of the Russian Federation made in its diplomatic note #384/ДНВ of January 25, 2016, and states that the Ukrainian side will respond to these statements in a separate diplomatic correspondence.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

Kyiv, February 10, 2016

# **Annex 42**

Ukrainian Note Verbale No. 72/22-620-533 to the Russian Federation Ministry of  
Foreign Affairs (29 February 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



## **Ministry of Foreign Affairs of Ukraine**

# 72/22-620-533

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in response to the diplomatic note #384/ДНВ of January 25, 2016 has the honor to express the following.

The Ministry of Foreign Affairs of Ukraine reiterates its position expressed in the note # 72/22-620-1233 of May 27, 2015 regarding the Russian Side's objection to the Ukrainian Side's summary of the negotiations concerning the interpretation or application of the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereinafter, the "1999 Convention"). The Ukrainian Side offered an objective summary of the third round of negotiations in order to facilitate the negotiation process. The Ukrainian Side considers the Russian Side's objections to be unproductive and contrary to the goal of achieving a negotiated resolution of the disputed issues.

The Ministry of Foreign Affairs of Ukraine further rejects the position of the Russian Side that insufficient notice was provided to discuss the attack on Malaysian Airlines flight MH-17 on July 17, 2014. The Ukrainian Side provided timely notice of this topic in the note #72/22-620-2245 of September 15, 2015, issued one month prior to the third round of negotiations, stating the intent of the Ukrainian Side "to discuss [...] the Russian Federation's involvement in [...] the shoot-down of the civilian aircraft Malaysian Airlines flight MH-17." Moreover, the Russian Side is well aware of the Ukrainian Side's view that the Russian Federation bears international responsibility for this attack. For example, on July 18, 2014, the Ukrainian Permanent Representative to the United Nations demonstrated Russian responsibility before the Security Council. Numerous other governments have raised similar concerns.

The Ukrainian Side objects to the suggestion that the attack on MH-17 falls outside the scope of the negotiations concerning disputes under the 1999 Convention. Item 2 of the agreed agenda for the third round of negotiations addressed "specific facts which may be qualified as terrorist financing within the meaning of the Convention." The Ukrainian Side unambiguously asserted violations of the 1999 Convention associated with the attack on MH-17, including in its note #72/22-620-2404 of October 23, 2015. The Russian Side has failed to give any reasons why the MH-17 incident could not be discussed under item 2 of the agreed agenda.

The Ministry of Foreign Affairs of Ukraine states that the information the Ukrainian Side has already shared with the Russian Federation is sufficient to ground the negotiation and resolution of the dispute relating to flight MH-17 under the 1999 Convention. Specifically, the Ukrainian Side in its note #72/22-620-2404 of October 23, 2015 stated

that (i) the Buk surface-to-air missile systems shot-down the civilian aircraft flight MH-17; (ii) the Russian-backed terrorist organization “Donetsk People's Republic” (hereinafter “DNR”) controlled the launched site; (iii) the Russian military supplied the Buk used in the attack to the DNR; and (iv) the Buk came from the Russian Air Defense Brigades, and the Russian Automobile Battalion conveyed the Buk to the terrorist forces in Ukraine. This series of specific facts and all surrounding circumstances lead to the clear conclusion that the DNR executed this attack on civilians using weapons and other assistance supplied by the Russian Federation. In support of its position, the Ukrainian Side relied, *inter alia*, on publicly available sources such as the report “Crash of Malaysia Airlines flight MH17” issued by the Dutch Safety Board on October 13, 2015 (hereinafter “the Dutch Report on MH-17”), evidence released by the Joint Investigation Team led by the Dutch Prosecutor’s Office, evidence (including intercepted conversations) released by Ukrainian law enforcement authorities, and credible investigative reports of independent investigators. The Russian Side will further recall that at the third round of negotiations, the Ukrainian Side made a separate presentation of its forensic investigation of the MH-17 attack.

The Ministry of Foreign Affairs of Ukraine reiterates its position expressed in its note #72/22-620-2605 of October 23, 2015, that the 1999 Convention does not require the parties to exchange information solely through mutual legal assistance channels. The Ukrainian Side has informed the Russian Side of its position that the Russian Federation bears international responsibility for committing offenses of financing terrorism in connection with the MH-17 shoot-down and other terrorist events, and supplied sufficient information through appropriate channels to proceed with negotiations in an attempt to resolve the dispute on this topic.

The Ukrainian Side has been prepared to engage in constructive negotiations concerning Russian responsibility for violations of the 1999 Convention in connection with the MH-17 attack, and hopes that the Russian Side is likewise prepared to do so at the next round of negotiations. In this respect, however, the Ukrainian Side notes its deep concern that the Russian Federation’s officially expressed position on the MH-17 attack will impede meaningful progress in the negotiation. The Ukrainian Side notes that in official comments to the Dutch Safety Board and other contexts, the Russian Federation denied the fact that the aircraft was shot down by a Buk surface-to-air missile systems. Moreover, the Ukrainian side is aware that the Russian Ministry of Defense and Investigation Committee of the Russian Prosecutor's Office officially announced that a Ukrainian military jet, specified as a SU-25, shot down flight MH17. To ensure that further negotiations are productive, the Ukrainian Side urges the Russian Side to clearly state whether the Russian Federation continues to deny the fact that flight MH-17 was destroyed by a Buk surface-to-air missile system launched from DNR-controlled territory, and whether it adheres to the position that a Ukrainian military jet shot down flight MH17.



In the same spirit of fostering productive negotiations, the Ukrainian Side urges the Russian Side to clearly state its position on all matters related to the financing of terrorism that have been raised by the Ukrainian Side for nearly two years. For example, the Russian Side has continuously refused to acknowledge whether it supplies weapons and other assistance to the DNR, Luhansk People's Republic ("LNR"), and other pro-Russian terrorist organizations operating in Ukraine. The Russian Side has further refused to state whether it denies that the well-documented attacks on civilians in Volnovakha, Mariupol, Kramatorsk, and other Ukrainian cities are terrorist actions carried out with weapons and assistance provided by the Russian Federation.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration

Kyiv, 29 February 2016



# **Annex 43**

Russian Federation Note Verbale No. 3219 to the Embassy of Ukraine in Moscow (4  
March 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



No.3219/ДНВ

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in the Russian Federation and in response to the note of the Embassy #6111/22-012-297 of February 10, 2016, has the honor to inform it of the following.

The Russian Side gives consent to hold the fourth round of the Russian-Ukrainian consultations concerning the International Convention for the Suppression of the Financing of Terrorism of 1999 (Convention) in Minsk (Belarus) on March 17, 2016, as it was suggested by the Ukrainian Side in the mentioned note.

However, the Ministry refers to its notes No.13457/ДНВ dated October 15, 2015, and 384/ДНВ dated January 25, 2016, and once again draws Ukrainian Side's attention to impermissible use in official diplomatic correspondence of fictional information and unfounded allegations. Failure to comply with the recognized rules and manner of interstate communication does not promote effective dialog.

The Russian Side notes once again that the Russian-Ukrainian consultations presume a discussion of specific evidence relating to the Convention and shall not be used as a foundation for knowingly false allegations and, moreover, for deliberate provocation.

As an example of such non-constructive approach of the Ukrainian Side, the Russian Side draws attention to the statements in the note of the Ministry of Foreign Affairs of Ukraine No.72/22-620-264 of February 10, 2016 that "material progress has not been made concerning the Russian Side's numerous violations of the Convention." Notwithstanding this bold and confrontational statement, the Ukrainian Side once again has failed to provide sound grounds for its position.

The Ukrainian Side up until now - after more than a year since the events in Kharkiv, Kyiv, Odesa, described in the note - has failed to send to the Russian Side official requests concerning the "cases" referenced in the note of the Ministry of Foreign Affairs of Ukraine No.72/22-620-264 of February 10, 2016 within the framework of international legal assistance as it was agreed between the parties during consultations. Instead of providing specific evidence supporting foundation for the Ukrainian Side statements, the note of the Ministry of Foreign Affairs of Ukraine No.72/22-620-264 of February 10, 2016, references certain unspecified "representatives of the Russian authorities," "agent of the Russian security services," and "agent of the Russian Federation," whose involvements justified by anonymous statement of "a 30-year-old woman from Luhansk," as well as by "suspicion" of the Ukrainian law enforcement authorities raised due to arrest of "several perpetrators," whose names were not disclosed.

Moreover, the Ukrainian citizens V.Dvornikov, V.Tetutskiy, and S.Bashlykov were referred to as "terrorists" in the mentioned note of the Ministry of Foreign Affairs of Ukraine. However, according to para. 2 Article 14 of the 1966 International Covenant on Civil and Political Rights and para. 2 Article 6 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone charged with a criminal offence shall have the right to be

presumed innocent until proved guilty according to law. The Russian Side does not have any information of a verdict of the court establishing the guilt of the mentioned persons. The Ukrainian Side references to “confessionary” statements made by V. Dvornikov, V. Tetutskiy, and S. Bashlykov without considering the fact that these “confessionary” statements were given under torture according to the press statement of these persons. As far as the Russian Side is aware, the Ukrainian Side has not made any statements concerning derogation from the obligations under the European Convention or the Protection of Human Rights and Fundamental Freedoms with respect to Kharkov yet.

The Russian Side confirms its interest in receiving from the Ukrainian Side specific information that includes factual data in support of the statements made in the note of the Ministry of Foreign Affairs of Ukraine No.72/22-620-264 of February 10, 2016.

The Ministry of Foreign Affairs of the Russian Federation once again states that without such documents, that includes factual data in support of the statements made by the Ukrainian Side in the diplomatic correspondence, the discussion would be a priori groundless and, therefore, contrary to the approach agreed by the Russian and Ukrainian Sides to conduct consultations in a constructive and meaningful way. The Russian Side suggests to the Ukrainian Side to forward these documents through the proper channels for exchange of information in accordance with the MLAT treaties in force between the Parties as it was earlier agreed. The Russian Side expresses its readiness to provide its comments after these documents are received and carefully studied.

The Ministry stresses that the fact of discussion of any issue during the consultations and in diplomatic correspondence between the Parties, neither prejudices that the issues fall under the Convention, nor demonstrates the existence of a dispute on application or interpretation of the Convention.

Nothing in this note is in prejudice to the position of the Russian Side concerning statements and assertions of the Ukrainian Side that were set out in the relevant diplomatic correspondence. The Ministry takes this opportunity to renew to the Embassy the assurances of its highest consideration.

The Ministry avails of this opportunity to renew to the Embassy its assurance of its highest considerations.

Moscow, March 4, 2016.

# **Annex 44**

Ukrainian Note Verbale No. 72/22-610-915 to the Russian Federation Ministry of  
Foreign Affairs (13 April 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## MINISTRY OF FOREIGN AFFAIRS OF UKRAINE

№ 72/22-610-915

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and in follow-up to the fourth round of negotiations on interpretation and implementation of the 1999 International Convention for the Suppression of the Financing of Terrorism (The Convention) on March 17, 2016, has the honour to revert to the Russian side on the following issues discussed during the meeting.

Within the framework of the fourth round of negotiations, the Ukrainian Side and the Russian Side discussed a wide range of issues according to the agreed agenda, including the shoot-down of a civilian aircraft, Malaysia Airlines flight MH-17 (hereinafter, “MH-17”), protection of diplomatic missions, terrorist bombings, terrorist training camps, shelling of civilians, and cooperation on specific investigations.

During the meeting, the Ukrainian delegation raised its profound concerns regarding the downing of MH-17, on July 17th, 2014, in Donetsk Oblast, Ukraine. The Ukrainian Side expressed that it had all grounds to believe that the Russian Federation financed this terrorist attack on MH-17 within the meaning of the Convention. The Ukrainian delegation called on the Russian Side to address the merits of Ukraine’s claim.

The Russian delegation claimed that Ukraine had failed to respond to the Russian request to provide additional documents justifying grounds, relevance, and a basis for discussing the MH-17 claim within the agenda and scope of these negotiations. The Russian delegation also claimed that Ukraine’s unwillingness to provide additional information and its reliance on public facts impairs any possibility to find a compromise solution and indicates an unwillingness to faithfully and constructively proceed with negotiations.

The Ukrainian Side articulated that the information it had already shared with the Russian Federation was sufficient to ground the negotiation and resolution of the dispute relating to MH-17 under the Convention. It reminded the Russian Side of the specific facts and surrounding circumstances of the attack on MH-17 referenced in the diplomatic correspondence. The Ukrainian Side explained that the Russian-backed terrorist organization “Donetsk People’s Republic” (hereinafter “DNR”) executed the attack on civilians using weapons and other assistance supplied by the Russian Federation. The Ukrainian delegation observed that these facts and circumstances in their totality led to the clear conclusion that the Russian Federation had committed

an offense within the meaning of the Convention.

The Ukrainian delegation put forward a number of questions aimed at clarifying the Russian Federation's view of its role in the attack on MH-17. Specifically, Ukraine asked the Russian Federation to confirm or deny that (i) MH-17 was shot down by a Buk surface-to-air missile system; (ii) DNR controlled the launch site; (iii) the Russian military supplied the Buk used in the attack to the DNR; and (iv) the Buk came from the Russian Air Defense Brigades, and the Russian Automobile Battalion conveyed the Buk to the terrorist forces in Ukraine.

The Russian delegation refused to respond to Ukraine's questions on MH-17 and argued that Ukraine had failed to provide legal grounds and evidence that this episode related to the subject matter of the negotiations and the Convention. The Russian Side explained that it had not given its final consent to discuss the MH-17 incident on the merits. The Russian delegation further argued that Ukraine had failed to persuade the Russian Side that the MH-17 incident related to the subject of the negotiations and Convention.

The Ukrainian Side noted the official statements of the Russian Ministry of Defense and Prosecutor General's Office of Investigation claiming that a Ukrainian military jet, specified as a SU-25, shot down flight MH-17. The Ukrainian Side urged the Russian Side to clearly state whether the Russian Federation continued to deny that flight MH-17 was destroyed by a Buk surface-to-air missile system launched from DNR-controlled territory, and whether it adhered to the position that a Ukrainian military jet shot down MH-17.

The Russian delegation replied that the Russian Ministry of Defense had never alleged that a Ukrainian military jet SU 25 attacked MH-17 and had stated only that Russia's air control system had detected a Ukrainian Air Force aircraft, specified as a SU-25, moving upwards toward the Malaysian Boeing-777, as well as the radar units of three Ukrainian Air Defense systems, deployed near Donetsk. The Russian delegation argued that Ukraine had relied on fraudulent information in support of its claim against the Russian Federation.

The Russian Side further asserted that the Prosecutor General's Office of Investigation had not expressed Russia's final position on that matter but confirmed that it had been investigating three possible theories of the attack on MH-17, namely (i) an attack by a Ukrainian military jet piloted by Captain Voloshin, (ii) an attack by an unidentified military jet, and (iii) an attack by a missile launched from a Buk system. It noted that the leading theory in the criminal investigation was that the attack on MH-17 was committed by the Ukrainian military jet piloted by Captain Voloshin.

During the meeting, the Ukrainian Side directed the Russian delegation to the open Internet source where it can find the material on MH-17 that Ukraine had presented to the Russian Federation during the third round of negotiations. Additionally, the Ukrainian Side forwards herewith the presentation.

The Russian delegation expressed its concern with what it claims to be systematic attacks on Russian diplomatic missions in Ukraine, and claimed that these attacks constituted an offense under the Convention. The Russian Side asserted that a group of unknown people wearing balaclavas and armed with baseball bats had smashed three cars and had thrown flares, smoke bombs, and eggs at the Russian Embassy in Kyiv on March 6, 2016. It further alleged that in 2014, Ukrainian radical organizations rallying at the Russian Embassy in Kyiv had overturned several diplomatic cars, had piled up tires to block entry into the building, and had thrown stones, smoke grenades, eggs, a Molotov cocktail, and paint at the Embassy's premises. The Russian delegation confirmed that it had launched three criminal cases to investigate these illegal acts.

The Ukrainian Side condemned any attacks on a diplomatic mission, reminded that a Ukrainian diplomatic mission in Russia also had been attacked, and explained that the incidents involving the Russian Embassy did not constitute an offense covered by the Convention. The Ukrainian Side further explained that these incidents had been investigated and that the investigation had been unable to find evidence that would suggest a violation of the Convention. The Ukrainian delegation reserved its right to explain its position in writing if the Russian Side provides grounds for its allegations in writing.

The Ukrainian delegation raised its profound concerns regarding the Russian Federation's involvement in terrorist bombings in Ukraine. The Ukrainian Side expressed that it had all grounds to believe that the Russian Federation financed the terrorist bombings in Kharkiv within the meaning of the Convention. Specifically, it noted that Ukraine's investigation had established that Ukrainian citizens V. Dvornikov, V. Tetiutskiy, and S. Bashlykov had acted under instructions and with the support and assistance of the Russian authorities in planning and executing a terrorist attack against civilians during a peaceful national unity rally in Kharkiv. It further explained that these individuals had confessed that they met with an agent of the Russian security services while in Belgorod (the Russian Federation), opened bank accounts in Russian Sberbank according to the instructions of the Russian security agent so that they could be paid for the terrorist act, set up cell phone accounts to communicate with the Russian security agent, received further instructions and training, and collected the bomb from a "dead drop" location in Kharkiv.

The Russian delegation has failed to respond to these allegations and maintained that its position was reflected in its diplomatic note #3219/ДНВ of March 4, 2016.

The Ukrainian Side rebutted Russia's assertion that Ukraine had obtained confessions from these individuals through torture. Ukraine noted that it had undertaken all procedural formalities in accordance with criminal procedures required by the law and in the presence of defense attorneys representing the individuals. The latter did not report any mistreatment when representatives of the ICRC and the UN monitoring mission visited and interviewed them.

The Russian Side expressed its concern regarding the alleged bombings of four transmission towers located in the region of Kherson (Ukraine), which supply electricity to Crimea. The Russian delegation argued that according to the Convention this act constituted an offense within the scope of and as defined in the 1997 International Convention for the Suppression of Terrorist Bombings. The Russian delegation asserted that this incident had cut off the supply of electricity to Crimea and had caused damage to alleged Russian citizens in Crimea. It further alleged that pro-Ukrainian activists and Crimean Tatars had unlawfully and intentionally delivered, placed, and discharged or detonated an explosive against an infrastructure facility with the intent to cause extensive destruction of such a facility, where such destruction resulted in or was likely to result in a major economic loss.

The Ukrainian Side offered the preliminary view that the alleged incident did not appear to constitute an offense under the Convention, and explained that the alleged offense was committed within a single state and did not fall within the jurisdiction of any other state. The Ukrainian delegation reserved its right to respond to the claim in writing if the Russian Side provides grounds for its allegations in writing.

The Ukrainian Side expressed its concern regarding terrorist training camps maintained by the Russian Federation on its territory in Belgorod, Tambov, and Rostov Oblasts. Ukraine alleged that the Russian Federation had trained and instructed terrorists to commit terrorist acts in Ukraine. Specifically, Ukraine referenced a criminal investigation of the so-called "Kharkiv Guerrillas," a terrorist group that had committed more than 10 terrorist acts in Kharkiv and Kharkiv Oblast. The statements provided to Ukrainian investigators by members of this group proved the existence of the terrorist training camps in the Russian Federation. The Ukrainian Side noted other criminal cases against Russian and Ukrainian nationals that corroborated the existence of terrorist training camps in the Russian Federation.

The Russian delegation reserved its position on this topic and requested the Ukrainian Side to provide this information through what

it deems the proper channels using mutual legal assistance treaties.

The Ukrainian Side reiterated that the demand of the Russian Side to provide information through the framework of legal assistance agreements was unfounded and inconsistent with the Convention.

In response to Russia's request, the Ukrainian Side hereby provides as an attachment to this Note an updated version of the statement delivered by the Ukrainian Security Service representative during the meeting, with detailed information related to the topic.

The Ukrainian Side has not received any response from the Russian Side addressing the facts showing Russian's involvement in the supply of weapons to the terrorist organizations DNR and "Luhansk People's Republic" (hereinafter "LNR"), and the terrorist attacks by those organizations on civilians, including in Volnovakha, Mariupol, and Kramatorsk. The Russian Side limited its comments on these issues in the course of the negotiations to reference to the diplomatic note of September 15, 2015, and refused to admit its involvement in the supply of weapons to the terrorist organizations DNR and LNR.

The Parties paid considerable attention to the exchange of information concerning the investigation of specific acts of terrorist financing. The discussion mostly focused on the quality and substance of the information exchanged by the Parties and whether a specific request falls under, or a reply complies with, the Convention. Both Parties expressed their dissatisfaction with cooperation in connection with criminal investigations in respect of the offenses set forth in the Convention.

At the conclusion of the fourth round of negotiations, the Ukrainian Side expressed its disappointment with the negotiations and considered them to be unsatisfactory. The Russian Side also expressed its disappointment with the negotiations and its dissatisfaction, alleging that Ukraine was unwilling to comply with the Convention during the meeting.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration.

Encl. 22 p.

Kyiv, "13" April 2016



# **Annex 45**

Ukrainian Note Verbale No. 72/22-620-1481 to the Russian Federation Ministry of  
Foreign Affairs (27 June 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





## **THE MINISTRY OF FOREIGN AFFAIRS OF UKRAINE**

72/22-620-1481

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and, in response to the note No.8808/ДНВ of June 23, 2016, has the honour to state the following.

The Ukrainian Side expresses its disappointment in the response of the Russian Federation to the Ukrainian Side's note No. 72/22-620-954 of April 19, 2016. The Ukrainian Side recalls that despite an extensive exchange of diplomatic correspondence and four rounds of negotiations concerning interpretation and implementation of the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter, the "Convention"), the parties have failed to resolve their dispute concerning the interpretation and application of the Convention. Ukraine has diligently engaged in this negotiation process for the last two years, and has been flexible and accommodating to the rigid position of the Russian Federation concerning matters such as the venue and time of the negotiations, all with an aim to discuss the existing controversies between the Parties. Ukraine notes with disappointment that over the course of these prolonged negotiations, the Russian Side has demonstrated no willingness to address Ukraine's claims of international responsibility and has refused repeated requests to discuss important aspects of the dispute.

The Ukrainian Side must strongly object to the Russian Side's accusation that Ukraine has not engaged in these negotiations in good faith. The Ukrainian Side has constructively engaged with the Russian Side and diligently carried out all arrangements agreed by the parties. The Ukrainian Side regrets that the Russian Federation has been unwilling to cooperate effectively and has obstructed meaningful progress toward resolution of the dispute.

The Ukrainian Side must further reject the Russian Side's objections to the Ukrainian Side's summary of the negotiations and its unfounded accusation that the Ukrainian Side has made misrepresentations. The Russian Side has failed to identify any inaccuracies in the Ukrainian Side's summaries. The Russian Side has been free throughout the negotiations to exercise its right to express specific objections or comment on summaries set forth by the Ukrainian Side.

In light of all of these circumstances, and for the further reasons mentioned in the Ukrainian Side's note No. 72/22-620-954 of April 19, 2016, the Ministry of Foreign Affairs of Ukraine has concluded that the Russian Side is unwilling or unable to resolve the dispute between the parties through negotiations. Ukraine views the statement of the Russian Side rejecting the existence of a dispute under the Convention, notwithstanding the extensive protests made by Ukraine over the course of the negotiations, as entirely unfounded, and considers that statement to be further confirmation that continued negotiations would likely be futile.

Nonetheless, guided by its good faith desire to resolve the dispute, and without withdrawing its proposal to submit the dispute to arbitration and without prejudice to Ukraine's right to resort to the Convention's compulsory dispute resolution procedures on the timetable set forth in the Convention, the Ukrainian Side accepts the Russian Side's offer to hold the fifth round of negotiations in Minsk during the week commencing August 1, 2016. The Ukrainian Side notes its expectation that at this round of negotiations, the Russian Side will be prepared to address all claims and issues under the Convention that Ukraine has raised, and to respond to Ukraine's proposal for arbitration.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its consideration.

the city of Kyiv, June 27, 2016

# **Annex 46**

Russian Federation Note Verbale No. 13322 to the Embassy of Ukraine in Moscow (19  
September 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



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September 21, 2016 no. 6111/72 - 110 – 2334

**Department of International  
Law at the Ministry of Foreign  
Affairs of Ukraine**

*Re: The original note from the Ministry of Foreign Affairs of the Russian Federation*

Please, find attached the original of Note no. 13322/dnv from the Ministry of Foreign Affairs of the Russian Federation of September 19, 2016 regarding the International Convention for the Suppression of the Financing of Terrorism of 1999.

Appendix: the aforementioned, on 3 sheets

**Acting charge d'affaires of Ukraine in Russia** [signature] **R. M. Nimchynskyy**

*Sent to:*

*Ministry of Foreign Affairs of Ukraine*

No. 13322/dnv

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in response to the note of the Ministry of Foreign Affairs of Ukraine, No. 72/22-620-2049 dated August 31, 2016, regarding matters connected to the International Convention for the Suppression of the Financing of Terrorism (ICSFT), has the honor of informing the Embassy as follows.

The Russian Party would urge the Ukrainian Party to turn its attention to the note of the Ministry of Foreign Affairs of the Russian Federation, No. 8808/dnv dated June 23, 2016, which states, *inter alia*: "... the Russian party is ready for a discussion of the issues of organizing the arbitral proceedings requested by the Ukrainian Party, taking into account the provisions of Article 24 of the Convention." This position was upheld by Russian representatives during the fifth round of Russian-Ukrainian consultations on August 4, 2016. The Russian Party is therefore perplexed by

TO THE EMBASSY OF UKRAINE

Moscow

the continuing statements by the Ukrainian Party regarding the “lack of consent” from the Russian Party to the holding of arbitral proceedings, and would urge the Ukrainian Party to take part in a discussion in good faith of the issues of organizing the arbitral proceedings in the manner provided for by the provisions of Article 24 of the ICSFT.

The Russian Party wishes to express its gratitude to the Ukrainian Party for forwarding its considerations in the form of an outline of the requirements for the organization of the arbitral proceedings, as was promised by the representatives of the Ukrainian Party during the fifth round of Russian-Ukrainian consultations on August 4, 2016. The Russian Party will review these ideas carefully and will forward its position [to the Ukrainian Party] in the near future. At the same time, the lengthy delay in the forwarding of the considerations of the Ukrainian Party (which, as claimed by the representatives of the Ukrainian Party, were ready back on August 4, 2016), and likewise the advancing by the Ukrainian Party of various conditions precedent prior to the discussion of the issues of the organization of arbitral proceedings on their merits do not attest to a striving for a conscientious and effective resolution of these issues.

The Russian Party proceeds from the need to discuss the aforementioned issues of organizing the arbitral proceedings, as well as other issues related to the ICSFT. The Russian Party believes that the potential for constructive dialogue relating to the issues of the ICSFT is still far from exhausted.

The Ministry would again draw attention to the fact that the actual discussion of any issues during the consultations or in the exchange of notes between the Parties does not pre-determine the issue of their regulation by the Convention, and likewise the existence of a dispute on the application or interpretation of the Convention.

Nothing contained in this note prejudices the position of the Russian Party in respect of the statements and claims of the Ukrainian Party set forth in the exchange of notes on this matter.

The Ministry wishes to avail itself of the opportunity to renew to the Embassy the assurances of its highest consideration.

Moscow, September 19, 2016

[seal:] Ministry of Foreign Affairs of the Russian Federation No. 1



# **Annex 47**

Ukrainian Note Verbale No. 72/22-663-2234 to the Russian Federation Ministry of  
Foreign Affairs (29 September 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*



72.22-663-2234

The Ministry of Foreign Affairs of Ukraine presents its compliments to the Ministry of Foreign Affairs of the Russian Federation and, in reference to the parties' dispute concerning interpretation and implementation of the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter, the "Convention"), and in response to the note of the Russian Side #13322 of 19 September 2016, has the honour to state the following.

The Ukrainian Side must strongly protest the suggestion that it does not approach the topic of arbitration in good faith. The Ukrainian Side does not understand why the Russian Side is "perplexed" by the note of 31 August 2016.

In that note, the Ukrainian Side specifically noted the Russian Side's willingness "to discuss issues concerning organization of the arbitration," but observed that the Russian Side has refused to specifically agree that it would in fact participate in an arbitration. The Ukrainian Side expressed the reasonable view that the Russian Side should clearly state its agreement to proceed to arbitration.

The Ukrainian Side notes with concern that the Russian Side's most recent note, despite accusing Ukraine of misunderstanding its position, still refrains from specifically agreeing to participate in an arbitration, provided the parties can reach agreement on the organization of the arbitration.

Despite the Russian Side's unwillingness to state clearly its agreement to participate in an arbitration, the Ukrainian Side has repeatedly expressed its readiness to negotiate the organization of the arbitration, at the meeting of 4 August 2016 in Minsk, and in the diplomatic of 31 August 2016.

The Ukrainian Side continues to urge the Russian Side to state unequivocally that it agrees to participate in an arbitration. Nonetheless, even if the Russian Side is not prepared to do so, the Ukrainian Side continues to be ready to discuss the organization of the arbitration, upon which the parties must agree.

The Ukrainian Side must further object to the Russian Side's suggestion of a "long delay" between the meeting of 4 August 2016 and its note of 31 August 2016. Following the meeting of 4 August, the Ukrainian Side produced formal written views elaborating on the organization of the arbitration. The Ukrainian Side considers that issuing its written correspondence before the end of the month was well within the norms of diplomatic correspondence between the two sides, particularly in light of the fact that this period arose during summer holidays. The Ukrainian Side must further note its surprise at the suggestion of a "long delay," given that the Russian Federation received Ukraine's proposal of arbitration no later than 21 April 2016, and

the Russian Side provided no response until 23 June 2016. Notwithstanding this delay and other tactics engaged in by the Russian Side, the Ukrainian Side has sought to have a good faith discussion on the organization of the arbitration. The Ukrainian Side regrets that the Russian Side appears focused on misguided accusations of bad faith, rather than on holding a productive dialogue on the organization of the arbitration.

The Ukrainian Side further objects to the unfounded statement that it has put forward “various preconditions before discussion of the organization of the arbitration on the merits.” To the contrary, the Ukrainian Side has reasonably suggested that the parties should first agree to participate in an arbitration, before negotiating and reaching agreement on further details related to the arbitration’s organization. The Ukrainian Side considers this to be a reasonable way for proceeding with the discussion of the organization of the arbitration. At no time, however, has the Ukrainian Side indicated that its suggestion for how the discussion of arbitration should proceed is a “precondition.” To the contrary, Ukraine has provided views on the organization of the arbitration, while Russia has not.

The Ukrainian Side accepts the Russian Side’s acknowledgement of receipt of Ukraine’s initial views on the organization of the arbitration, including its proposal to hold the arbitration through the mechanism of an *ad hoc* chamber of the International Court of Justice. The Ukrainian Side notes that although it introduced these concepts at the meeting of 4 August 2016, and provided further details in writing in the note of 31 August 2016, the Russian Side states only that it continues to study the matter.

In order to avoid delay while the Russian Side continues to consider its views, the Ukrainian Side proposes that the parties agree promptly to schedule a meeting to discuss the organization of the arbitration. The Ukrainian Side proposes that the parties meet on 18 October 2016 in Minsk.

In order to avoid delay while the Russian Side continues to consider its views, the Ukrainian Side proposes that the parties agree promptly to schedule a meeting to discuss the organization of the arbitration. Taking into account the schedules of the members of the delegation of Ukraine, the Ukrainian side offers, this time, to conduct negotiations in the Hague, Kingdom of the Netherlands, on 18 October 2016. If the negotiation in the Hague will be grounds for Russia to refuse to participate, the Ukrainian delegation, in a spirit of cooperation, is ready to negotiate the same date in Minsk, Republic of Belarus.

The Ukrainian Side reiterates its position, reflected in note No. 72/22-620-954 of 19 April 2016, that the parties’ extensive negotiations concerning the substantive dispute under Convention had become futile. The fifth round of negotiation held on 4 August 2016 further confirmed the Ukrainian side’s view that the Russian Side is not prepared to make progress on the resolution of the parties’ dispute. Indeed, the Ukrainian Side must express its surprise and

disappointment that after more than two years of extensive discussion, the Russian Side still refuses to recognize that a dispute even exists.

The Ministry of Foreign Affairs of Ukraine avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Russian Federation the assurances of its highest consideration

Kyiv, 29 September 2016



# **Annex 48**

Russian Federation Note Verbale No. 14426 to the Embassy of Ukraine in Moscow (3  
October 2016)

*This document has been translated from its original  
language into English, an official language of the Court,  
pursuant to Rules of the Court, Article 51.*





The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and, in response to diplomatic note №72/22-620-2049 of the Ministry of Foreign Affairs of Ukraine dated August 31, 2016, on the issues related to the International Convention for the Suppression of the Financing of Terrorism, and in addition to its note №13322/dvn dated September 19, 2016, has the honor to inform the Embassy of the following.

The Russian side takes note, that in note verbale №72/22-620-2049 dated August 31, 2016, it was requested to share its view in respect of the explanations of the Ukrainian side on the issue of 'the organization of arbitration for the settlement of the dispute between the parties in accordance with the Convention'.

In particular, the Ukrainian side claimed that, in its opinion, "if the Russian Federation is ready to agree on the arbitration, the Parties shall reach an agreement, that the arbitration shall take place using the mechanism of *ad hoc* Chamber of the International Court of Justice established in accordance with the part 2 of Article 26 of the Statute of the International Court of Justice and based on a special arrangement between Ukraine and the Russian Federation agreed upon and concluded between the Parties for this purpose". Besides, the Ukrainian side claimed that "if the Russian side confirms in writing its consent to refer the dispute to the arbitration, and agrees to take part in the arbitration established within the framework of an *ad hoc* Chamber of the International Court of Justice, it would be expedient for the Parties to further discuss other issues related to the organization of the arbitration".

**TO THE EMBASSY OF UKRAINE  
MOSCOW**

We are puzzled by the position of Ukraine which, apparently, intends to discuss the organization of the arbitration only in case when the Russian Federation agrees to participate in the 'arbitration proceeding' at an *ad hoc* Chamber of the International Court of Justice.

First of all, the Russian Federation wishes to draw attention once again that under the paragraph 1 of Article 24 of ICSFT a dispute shall be referred to the arbitration 'upon the request of any' ICSFT Member States. The Article 24 does not contain a requirement that another Party must make any additional statement to enable the discussion of the Parties on the organization of the arbitration for which the Russian Federation has repeatedly given its consent. Imposition of such a requirement undermines the previous discussions.

Additionally, the Russian Federation does not consider the settlement of dispute by *ad hoc* Chamber of the International Court of Justice a form of arbitration either in the context of Article 24 of ICSFT, or in a broader sense.

Firstly, *ad hoc* Chamber of the International Court of Justice is not an arbitration: in accordance with Article 26 of the Statute of the International Court of Justice, such an *ad hoc* Chamber is a form of work of the International Court of Justice. The composition of a Chamber is finally determined by the International Court of Justice which is not bound by any decision of the parties on this matter. Such a Chamber also acts on the basis of the Statute of the Court, not an arbitration agreement between parties. Finally, in accordance with Article 27 of the Statute of the Court, a judgment rendered by a Chamber is considered as rendered by the Court; a Chamber itself cannot render a judgment.

Secondly, under Article 90 of the ICJ Rules, proceedings at the

Chambers are subject to the provisions of the ICJ Rules. This deprives the Parties of one of the main advantages of the arbitration - the possibility to agree on the procedure of the dispute settlement. Although under Article 101 of the ICJ Rules, parties to a dispute may propose modifications and additions to some (not all) rules of the Court or a Chamber, the wording of this article is explicit that a decision on this matter is taken totally at the discretion of the Court or its Chambers.

Accordingly, the modes for the dispute settlement proposed by Ukrainian Side, virtually, constitute a reference of the case for consideration by the International Court of Justice, but not the arbitration.

ICSFT provides for that any dispute between its states parties which cannot be settled through negotiation within a reasonable period of time, 'shall be submitted to arbitration upon the request of one of them'. The reference of a dispute to the International Court of Justice is envisaged in Article 24 of ICSFT only at later stage after all the preconditions have been fulfilled.

The Russian Side expresses a hope, that the Ukrainian Side, within the framework of negotiations on the organization of arbitration under the Article 24 of ICSFT, will not insist that the Parties should agree to refer the dispute to an *ad hoc* Chamber of the International Court of Justice. If Ukrainian Side continues to adhere to this position, it would undermine the nature of the negotiations, which, in such case, cannot be regarded as negotiations on the organization of arbitration, and the request of the Ukrainian Side to submit the dispute to arbitration will not be deemed as such within the meaning of Article 24 of ICSFT *ab initio*.

Nevertheless, the Russian Side does not exclude the possibility to consider the issue of the establishment of a Chamber in accordance

with the part 2 of Article 26 of the Statute of International Court of Justice at appropriate time, in particular: when the parties fail to reach an agreement on the organization of arbitration after *bona fide* negotiations on this issue have been conducted. However, at this moment both Parties are to take all efforts to reach an agreement on the modality of arbitration, but not to try to submit the dispute directly to the International Court of Justice fully omitting the procedure of arbitration.

On its part, in full compliance with the position expressed in note №8808/dnv dated June 23, 2016, and confirmed during the fifth round of consultations on August 4, 2016, and which was further underlined in note №1332/dnv dated September 19, 2016, the Russian Side expresses again its consent to discuss the organization of the arbitration. Certainly, it is made without prejudice to any objections in respect of jurisdiction or admissibility, which the Russian Side might claim during the arbitration proceeding, including on its position about the absence of a dispute between the Parties on the interpretation and application of ICSTF within the meaning of its Article 24. In order to expedite the discussion, the Russian Side transmits hereinafter a draft bilateral Arbitration Agreement and draft Rules of the Arbitration Procedure, prepared on the basis of the model of the Permanent Court of Arbitration. The Russian Side is open for the discussion of the draft documents mentioned above as well as for proposals of Ukraine on possible changes to the draft documents.

At the same time, without prejudice to its consent on the discussion of the organization of arbitration, the Russian Side continues to believe that any disagreements between the Parties can be settled by the means of consultations. The Russian Side is ready to continue the consultations at any time.

In order to conduct constructive discussions of the organization

of arbitration and other issues related to the ICSFT, the Russian Side proposes to hold the sixth round of bilateral consultations in Minsk, October 13-14, 2016.

The Ministry draws attention once again that the fact of the discussion of any issues during the consultations as well as in the diplomatic correspondence between the Parties can predetermine neither the issue of their regulation by the ICSFT, nor the existence of a dispute on interpretation and application of the ICSFT.

Nothing in the present note can prejudice the position of the Russian Side in respect of the claims and allegations of the Ukrainian Side contained in the diplomatic correspondence on this matter.

The Ministry of Foreign Affairs of the Russian Federation avails itself of this opportunity to renew the assurance of its highest consideration.

Moscow, October 3, 2016

**ARBITRATION AGREEMENT**  
**between the Russian Federation and Ukraine**

the Russian Federation and Ukraine, hereinafter referred to as the Parties,  
have agreed as follows:

**Article 1. Establishment of the Arbitral Tribunal**

In accordance with Article 24 of the Convention for the Suppression of Financing of Terrorism (hereinafter the ICSFT) the Parties hereby set up an *ad hoc* Arbitral Tribunal to decide on matters set out in Article 2 of this Agreement (hereinafter the "Arbitral Tribunal").

**Article 2. Jurisdiction of the Arbitral Tribunal**

1. The Arbitral Tribunal shall have jurisdiction only over such dispute or disputes between the Parties concerning the interpretation or application of the International Convention for the Suppression of Financing of Terrorism (hereinafter the ICSFT) that (1) cannot be settled through negotiation within a reasonable period of time and (2) that are submitted to the Arbitral Tribunal in the application and in the counter-memorial (if any) as defined in this Agreement and lodged in accordance with paragraph 2 of this Article.

2. A Party institutes arbitration by submitting an application that shall describe the nature of the dispute and the claim or claims of the Party. Such application shall be lodged within [30] days of the entry into force of this Agreement. The other Party may lodge its claims against the initial claimant Party that shall be included in that Party's counter-memorial. The Arbitral Tribunal shall have no jurisdiction to entertain any new claims lodged by the Party instituting arbitration after the application is filed and by the other Party after the counter-memorial is filed.

3. The Arbitral Tribunal shall issue a separate decision or award on its jurisdiction to entertain any application or claim lodged by a Party and on admissibility of such application or claim.

4. Nothing in the present Agreement shall be interpreted as conferring on the Arbitral Tribunal jurisdiction more extensive than the International Court of Justice would have had if a Party submitted its application to the International Court of Justice invoking Article 24 of the ICSFT.

5. Nothing in this agreement shall be interpreted as admission by the Russian Federation of the existence of a dispute concerning interpretation or application of the ICSFT. Nothing in this Agreement constitutes a waiver of any objections any of the Parties may raise to jurisdiction of the Arbitral Tribunal, including objections based on the absence of a dispute, inapplicability of the ICSFT to the dispute or the application of a Party or failure of a Party to satisfy preconditions to jurisdiction set out in Article 24 of the ICSFT, or objections to admissibility of the claim. Nothing in this Agreement constitutes a waiver by any of the Parties of any of the objections to the jurisdiction of the International Court of Justice or admissibility of the claim it may have raised had the application been submitted to the International Court of Justice on the basis of Article 24 of the ICSFT.

**Article 3. Arbitral Procedure and Rules of Procedure**

1. The Arbitral Tribunal shall be composed of [three] arbitrators to be appointed in accordance with the rules of procedure. Each party shall appoint one arbitrator and the presiding arbitrator shall be appointed by the agreement of the parties [or by the appointing authority]. Rules of procedure shall provide a more detailed procedure for the appointment of arbitrators.

2. Rules of procedure shall be agreed by the Parties through diplomatic channels and shall be binding.
3. The Arbitral Tribunal shall apply international law.
4. The place of Arbitration shall be [Minsk, Belarus or the Hague, the Netherlands].
5. The language of arbitration shall be [English].
6. The award of the Arbitral Tribunal shall be final and binding.
7. [provision on confidentiality - to be agreed by the Parties].

#### **Article 4. Obligation not to commence proceedings before the International Court of Justice**

From the date this Agreement is signed by the Parties a Party shall not commence proceedings before the International Court of Justice concerning any matter that has or may have been submitted to the Arbitral Tribunal on the basis of Article 2 of this Agreement.

#### **Article 5**

1. This Agreement shall enter into force on the date of receipt via diplomatic channels of the last written notification of ratification of the Agreement by the Parties.
2. Paragraph 7 of Article 3 and Article 4 shall enter into force on the date of signing of this Agreement.

Done in \_\_\_\_\_ on \_\_\_\_\_ 2016 in two originals each in Russian, Ukrainian and English, the three texts being equally authentic.

**RULES OF PROCEDURE  
FOR  
THE ARBITRATION UNDER ARBITRATION AGREEMENT OF [ ]  
\_\_\_\_\_ 2016  
BETWEEN  
UKRAINE  
and  
the RUSSIAN FEDERATION**

**SECTION I. INTRODUCTORY RULES**

**Scope of Application**

*Article 1*

1. The arbitration shall be conducted under the Rules set out in the Arbitration Agreement dated \_\_\_\_\_ (the 'Arbitration Agreement') and these Rules.
2. [The International Bureau of the Permanent Court of Arbitration / the Registry to be established by the ad hoc tribunal (the 'Registry')] shall act as the Registry of arbitration.

**Notice, Calculation of Periods of Time**

*Article 2*

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the addressee.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-work day in the State of the addressee, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

**Commencement of the proceedings**

*Article 3*

The proceedings shall be deemed to commence on the date one of the parties delivers to the other party an application that shall contain a brief description of the subject-matter of its claims and the underlying facts, but not earlier than entry into force of the Arbitration Agreement.



## **Representation and Assistance**

### *Article 4*

Each party shall appoint an agent or agents. The parties may also be assisted by persons of their choice. The name and address of the agent (or agents) must be communicated in writing to the other party, to the Registry [after it has been established] and to the arbitral tribunal after it has been appointed.

## **SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Number of Arbitrators**

#### *Article 5*

1. The Arbitral Tribunal consists of [three] arbitrators: [names of the arbitrators] [Option 2: [Three] arbitrators shall be appointed pursuant to the procedure set out in Articles 6 and 7].
2. [Insert appointing authority to be agreed between the Parties] (**‘Appointing Authority’**) acts as the appointing authority and performs such functions and exercises such powers as are provided in this Rules.

#### *Article 6*

[Option 2 and Option 1 for replacement of arbitrators

1. Either of the parties shall appoint one arbitrator within thirty days of commencement of arbitration. The other party shall appoint an arbitrator within thirty days of receipt of the other party’s notification of the appointment of arbitrator. The remaining arbitrator shall be appointed in accordance with the procedure set out in paragraphs 3 and 4 of this Article.
2. If within thirty days after the receipt of a party’s notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed: the first party may request the Appointing Authority to appoint the second arbitrator. The Appointing Authority may exercise its discretion in appointing the arbitrator.
3. [The presiding arbitrator] shall be appointed by the Parties within [ninety / one hundred and twenty] days of appointment of the last of the party-appointed arbitrators. In the event parties fail to agree on the appointment of the presiding arbitrator within that period, the Appointing Authority shall, at the request of one of the parties, appoint the presiding arbitrators promptly as possible. In making the appointment the Appointing Authority shall use the following list-procedure:
  - (a) At the request of one of the parties the Appointing Authority shall communicate to both parties an identical list containing at least [nine] names;
  - (b) Within thirty days after the receipt of this list, each party may return the list to the Appointing Authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
  - (c) After the expiration of the above period of time the Appointing Authority shall

appoint the remaining arbitrators from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the Appointing Authority may exercise its discretion in appointing the remaining arbitrators.]

4. In making the appointment, the Appointing Authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall appoint arbitrators of a nationality other than the nationalities of the parties, except where the Appointing Authority appoints an arbitrator pursuant to paragraph 2, in which case it may appoint an arbitrator or arbitrators of the nationality of the party which failed to appoint an arbitrator.

#### *Article 7*

1. When Appointing Authority is requested to appoint an arbitrator or arbitrators pursuant to article 6, the party which makes the request shall send to the appointing authority a copy of the application, a copy of the treaty or other agreement out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the treaty or other agreement. The Appointing Authority may request from either party such information as it deems necessary to fulfill its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

3. In appointing arbitrators pursuant to these Rules, the parties and the Appointing Authority are free to designate persons who are not Members of the Permanent Court of Arbitration at The Hague.

#### **Challenge of Arbitrators (Articles 9 to 12)**

##### *Article 8*

A prospective arbitrator shall disclose to those who approach him/her in connection with his/her possible appointment any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him/her of these circumstances.

##### *Article 9*

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. The standard of impartiality or independence that applies to the judges of the International Court of Justice shall apply to the arbitrators appointed by the parties.

2. A party may challenge the arbitrator appointed by him/her or appointed by agreement of the parties only for reasons of which he/she becomes aware after the

appointment has been made.

#### *Article 10*

1. A party who intends to challenge an arbitrator shall send notice of its challenge within thirty days after the appointment of the challenged arbitrator has been notified to the challenging party or within thirty days after the circumstances mentioned in articles 8 and 9 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his/her office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his/her right to appoint or to participate in the appointment.

#### *Article 11*

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by [the remaining members of the arbitral tribunal / the Appointing Authority].

2. If the challenge is sustained, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 7.

### **Replacement of an Arbitrator**

#### *Article 12*

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 and 7 that was applicable to the appointment or choice of the arbitrator being replaced. Any resignation by an arbitrator shall be addressed to the arbitral tribunal and shall not be effective unless the arbitral tribunal determines that there are sufficient reasons to accept the resignation, and if the arbitral tribunal so determines the resignation shall become effective on the date designated by the arbitral tribunal. In the event that an arbitrator whose resignation is not accepted by the tribunal nevertheless fails to participate in the arbitration, the provisions of paragraph 3 of this article shall apply.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his/her performing his/her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall

apply, subject to the provisions of paragraph 3 of this article.

3. If an arbitrator on the tribunal fails to participate in the arbitration, the other arbitrators shall, unless the parties agree otherwise, have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of one arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, or award without the participation of an arbitrator, the other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the other arbitrators determine not to continue the arbitration without the non-participating arbitrator, the arbitral tribunal shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of articles 6 and 7, unless the parties agree on a different method of appointment.

### **Repetition of Hearings in the Event of the Replacement of an Arbitrator**

#### *Article 13*

If under articles 10 to 12 an arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

## **SECTION III. ARBITRAL PROCEEDINGS**

### **General Provisions**

#### *Article 14*

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.

2. If either party so requests at any appropriate stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party and a copy shall be filed with the Registry.

### **Place of Arbitration**

#### *Article 15*

1. The place of arbitration shall be [Minsk, Belarus or the Hague, the Netherlands].
2. The arbitral tribunal may determine with agreement of the parties a different place for holding the hearings. It may hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. The award shall be made at the place of arbitration.

## **Language**

### *Article 16*

1. The language of arbitration is [English]. Parties submissions both oral and written shall be in the language of arbitration.
2. Any documents submitted as evidence or otherwise not as part of submission that are not in the language of arbitration shall be delivered in their original language and be accompanied by a translation into the language of arbitration. If only a part of a voluminous document is relevant for the purposes of arbitration the party submitting the document shall provide a translation of the relevant part together with a short summary of the content of the entire document. The arbitral tribunal may order the entire document to be translated into the language of arbitration.
3. With respect to witness or expert evidence if the witness or expert evidence is not in the language of arbitration translation of any written statements and reports shall be provided together with the statements and reports in the original language. If oral evidence is given in language other than the language of arbitration, translation shall be arranged for by the Registry.

## **Order and Content of Submissions**

### *Article 17*

#### **[Option 1:**

1. Following the constitution of the arbitral tribunal it shall expeditiously consult with the parties on the time periods for the presentation of the [Memorial, Counter-Memorial, Reply and Rejoinder]. A procedural meeting in person or via teleconference may be held if the arbitral tribunal deems it necessary or desirable. In prescribing time periods for submission the tribunal shall follow in the first instance the practice of the International Court of Justice .
2. Following the consultation with the parties the arbitral tribunal will fix the time periods for the presentation of parties' submissions.]

#### **[Option 2: Agreed timeline for presentation of submissions]**

3. The Counter-Memorial may include a claim by the respondent against the claimant arising out of interpretation or application of the International Convention for the Suppression of Financing of Terrorism that shall be dealt with by the Arbitral Tribunal simultaneously with the application.

## **Pleas as to the Jurisdiction of the Arbitral Tribunal**

*[Article 18*

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction to admissibility of any claims made.
2. A plea that the arbitral tribunal does not have jurisdiction or that a claim or claims are inadmissible shall be raised:
  - (a) Where the Russian Federation (or Ukraine if the Russian Federation submits an application envisaged in the Arbitration Agreement) requests that the submission be dealt with as a preliminary issue, not later than 3 months from the time of filing of the Memorial or Counter-Memorial respectively;
  - (b) In all other circumstances, in the Counter-Memorial, or with respect to the Reply, in the Rejoinder.
3. If it is requested that certain issues of jurisdiction and admissibility be dealt with as a preliminary matter, the arbitral tribunal shall suspend proceedings on the merits and after consultation with the parties fix a schedule for presentation of submissions on such issues of jurisdiction and admissibility and a hearing on them and render a separate award with respect to these issues. ]

**Evidence and Hearings**

*Article 19*

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. At any time during the arbitral proceedings the arbitral tribunal may call upon the parties to produce documents, exhibits or other evidence within such reasonable period of time as the tribunal shall determine after consulting with the requested party. The tribunal shall take note of any refusal to produce the requested evidence as well as any reasons given for such refusal.

*Article 20*

1. In the event of an oral hearing, the arbitral tribunal shall consult with the parties regarding the dates and procedures of the hearing and shall give the parties adequate advance notice of the date, time and place thereof. The arbitral tribunal should in principle issue a procedural order providing for detailed procedure of the hearing following consultation with the parties regarding the same.
2. If witnesses are to be heard, at least thirty days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The Registry shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing.
4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which

witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### *Article 21*

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties endeavor to provide the expert any relevant information or produce for his/her inspection any relevant documents or goods that he/she may request of them. If requested by the expert the Tribunal may call upon the party of party to provide such assistance to the expert. The tribunal shall take note of any refusal to provide such assistance as well as any reasons given for such refusal.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his/her report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 20 shall be applicable to such proceedings.

#### **Failure to Appear or to Make Submissions**

#### *Article 22*

1. If, within the period of time fixed by the arbitral tribunal in accordance with article 17, the claimant has failed to communicate its written submission without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal in accordance with article 17, the respondent has failed to communicate its written submission without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

## **Closure of Hearings**

### *Article 23*

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

## **Waiver of Rules**

### *Article 24*

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

## **Confidentiality**

### *Article 25*

[To be discussed between the parties]

## SECTION IV. THE AWARD

### **Decisions**

#### *Article 26*

1. Any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his/her own, subject to revision, if any, by the arbitral tribunal.

### **Form and Effect of the Award**

#### *Article 27*

1. In addition to making a final award, the arbitral tribunal shall be entitled to make award or decision on jurisdiction and admissibility.
2. The award shall be made in writing and shall have the effect provided in the



Arbitration Agreement. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. If one or more of the arbitrators fails to sign, the award shall state the reason for the absence of the signature(s).
5. The award may be made public only with the consent of both parties.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the Registry.

### **Applicable Law**

#### *Article 28*

1. The arbitral tribunal shall decide such disputes in accordance with international law by applying:
  - (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
  - (b) International custom, as evidence of a general practice accepted as law;
  - (c) The general principles of law recognized by civilized nations;
  - (d) Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. The arbitral tribunal does not have the power to decide the case *ex aequo et bono*.

### **Settlement or Other Grounds for Termination**

#### *Article 29*

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated to the parties by the Registry. Where an arbitral award on agreed terms is made, the provisions of article 28, paragraphs 2 and 4 to 6, shall apply.

### **Interpretation of the Award**

#### *Article 30*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 28, paragraphs 2 to 6, shall apply.

### **Correction of the Award**

#### *Article 31*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 28, paragraphs 2 to 6, shall apply.

### **Additional Award**

#### *Article 32*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 27, paragraphs 2 to 6, shall apply.

### **Costs**

#### *Article 33*

The arbitral tribunal shall fix the costs of arbitration in its award. The term 'costs' includes only:

- (a) The fees of the arbitral tribunal;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) Any fees and expenses of the appointing authority as well as the expenses of the Appointing Authority and the Registry.

#### *Article 34*

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.

2. When a party so requests, the arbitral tribunal shall fix its fees only after consultation with the [Secretary-General of the Permanent Court of Arbitration] who may make any comment he/she deems appropriate to the arbitral tribunal concerning the fees.

#### *Article 35*

1. Each party shall bear its own costs of arbitration. [However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. ]

2. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 33 and article 34, paragraph 1, in the text of that order or award.

3. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 30 to 32.

### **Deposit of Costs**

#### *Article 36*

1. The [Registry] following the commencement of the arbitration, may request each party to deposit an equal amount as an advance for the costs referred to in article 33, paragraphs (a), (b), (c) and (e). All amounts deposited by the parties pursuant to this paragraph and paragraph 2 of this article shall be directed to the account designated by the Registry, and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, the Appointing Authority and the Registry.

2. During the course of the arbitral proceedings the arbitral tribunal may request

supplementary deposits from the parties.

3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

4. After the award has been made, the Registry shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

# **Annex 49**

Russian Federation Note Verbale No. 12566 to the Embassy of Ukraine in Moscow (10 October 2016)

*This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.*



No. 12566/2DSNG

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in response to the notes of the Ministry of Foreign Affairs of Ukraine, No. 72/22-663-2234 dated September 29, 2016, and No. 72/22-663-2301 dated October 7, 2016, regarding matters connected to the International Convention for the Suppression of the Financing of Terrorism (ICSFT), has the honor of informing the Embassy as follows.

In connection with the statement of the Ukrainian Party regarding the need for an urgent meeting to discuss the issues of the organization of arbitral proceedings, the Russian Party would recall that in its note, No. 14426/dnv dated October 3, 2016, it had already proposed holding a discussion of these issues during the meeting in Minsk on October 13-14, 2016. However, insofar as this was unacceptable for the Ukrainian Party, the Russian Party is prepared to hold the meeting on October 18, 2016 in The Hague.

The Russian Party is pleased with the readiness of the Ukrainian Party to discuss the proposals of the Russian Party regarding the organization of possible arbitral proceedings and to provide clarifications regarding its own position. That said, in light of the complexity of the practical issues connected to organizing the arbitral proceedings, the Russian Party proceeds from the assumption that the proposals of the Russian

TO THE EMBASSY OF UKRAINE

Moscow

Party, and likewise the “preliminary vision” provided by the Ukrainian Party of the organization of arbitral proceedings will require fundamental discussion. In this connection, one day of consultations may be insufficient for a discussion and coordination of the various issues involved in the procedure.

The Russian Party is again perplexed by the latest statement of the Ukrainian Party in its note dated September 29, 2016 regarding the need to grant consent to participate in the arbitral proceedings before the Parties have reached agreement on issues of the organization of the arbitral proceedings. The Russian Party confirms that if the Parties reach agreement on the organization of the arbitral proceedings, the Russian Party intends to participate in such proceedings.

In addition, the Russian Party continues to be of the opinion that it would be expedient to continue the consultations on other issues connected to the ICSFT, and regrets that in its note dated October 7, 2016, the Ukrainian Party formally declined to discuss these issues during the forthcoming meeting. Nevertheless, the Russian Party is counting on the continuation of constructive dialogue regarding the ICSFT in future and confirms its readiness for such dialogue at any time.

The Ministry would again draw attention to the fact that the actual discussion of any issues during the consultations or in the exchange of notes between the Parties does not and cannot pre-determine the issue of their regulation by the Convention, and likewise the existence between the Parties of a dispute on the application or interpretation of the Convention.

Nothing contained in this note, including the reference to the readiness of the Russian Party to participate in the aforementioned discussions, prejudices the position of the Russian Party in respect of



the statements and claims of the Ukrainian Party set forth in the exchange of notes on this matter.

The Ministry wishes to avail itself of the opportunity to renew to the Embassy the assurances of its highest consideration.

Moscow, October 10, 2016

[seal:] Ministry of Foreign Affairs of the Russian Federation No. 1



# **Annex 50**

Transcript of Arbitration Organization Negotiations Between Ukraine and the Russian Federation, Minsk, 18 October 2016



18 october 2016 r.

ROMAN KOLODKIN: Good morning! I think we can let go. Hopefully, I think, we do not need interpretation, if it is English, of course.

ELENA ZERKAL: So let me start. And, first of all, thank you for our meeting. We are pleased to meet Russian delegation today and discuss organization of an arbitration pursuant Art. 24 of the International Convention for the Suppression of Financing of Terrorism. The Ukrainian side today is joined by our outside counsels, Marney Cheek and Jonathan Gimblett, both from the law firm *Covington & Burling*. And we also invite you to present your counsel when you will have opening remarks.

Ukraine transmitted its proposal that the Parties proceed to arbitration on April 21, 2016, and after several rounds of negotiations had failed to make a progress to worth the resolution of substance of the dispute between the Parties on the Convention. Ukraine side also aligns its proposals to conduct the arbitration rule through the mechanism of an *ad hoc* Chamber of the International Court of Justice. When the Parties met on August, 4 and deliberated further on that proposal in its diplomatic note on August 31, 2016.

We thank you for your initial reaction on our proposal and presenting an alternative proposal of an *ad hoc* arbitration – Model of the Permanent Court of Arbitration / Arbitration Rules – as set out in your diplomatic note.

And I would like today to open the discussion by summarizing our several core principles of our position on organization of arbitration. Ukraine side views these principles as critical to the organization of arbitration and we hope we can reach common understanding concerning them. We are on the view that to move forward we must assess whether these core principles are common ground between us.

First, Ukraine believes that transparency is essential in a light of importance of this matter to the people of Ukraine.

Second, the decision should be rendered on the basis of rules of International Law.

Third, the composition of Tribunal must be handled in a manner that insures participation by highly-qualified and independent experts in Public International Law.

Forth, the arbitration must be as cost-efficient as possible.

Fifth, the Parties must guarantee their participation and demonstrate a commitment to the process throughout the arbitration.

Sixth, the Parties should guarantee compliance with the Arbitration Agreement, Rules of Procedure and the decision of the Tribunal with appropriate consequences for failure to comply.

Seventh, the Parties must guarantee implementation of the Tribunal's decision.

Eighth, the arbitration must insure the timely resolution of the dispute and avoid unnecessary delay.

Ninth, the arbitration must provide for provisional measures to insure that the Party may protect their rights during the arbitration.

Tenth, because of the subject-matter of the dispute will be the interest of other States the Tribunal should be permitted to consider the appropriate participation of the interested Parties.

And, finally, the Arbitration Agreement should enter into force promptly, without the possibility for one side to delay the arbitration.

We will discuss each of these principles in more details later and we ask you to give them in mind as you present your proposal.

We suggest to organize our today's discussion as follows. First, we invite you to present proposal for the arbitration which we have recently received and, next, we will present our comments on this proposal and ask questions in order to clarify various aspects of it and also present our views on it. And now I invite you to respond and to introduce your delegation and to start our today's discussion. Thank you.

ROMAN KOLODKIN: Thank you very much for your introduction and introductory remarks. Our delegation today is the following. We also have our legal counsels here with us. Here are Mr. Usoskin, Mr. Samuel Wordsworth from *Essex Court Chambers*. We have Ms. Suchkova here and we have Mr. Torkanovskiy. We have also here my colleges from the Ministry of Foreign Affairs, probably, you already know them, Mr. Kosorukov, Mr. Trofimenkov and Mr. Medvedev. And I am Roman Kolodkin, the Director of the Legal Department of the Ministry of Foreign Affairs.

We are also here today to discuss the organization of the arbitration. I presume our position on the readiness to do this is absolutely clear to you. And I am grateful to you that you are not mentioning anymore the clarity or not clarity of the Russian position on this.

Listening to you and having in mind the notes that we recently received, we are also resuming Ukraine is absolutely prepared to discuss the arbitration. You did not mention your proposal on the arbitration because this... I understand that it was not only about critical or principal issues that you want to discuss, we heard some new critical elements which were never mentioned before – it seems to me – in your notes and during our meeting in August. We are ready, of course, to discuss it. But, if I have heard it properly, the idea of the *ad hoc* Chamber was not mentioned.

We are looking for having discussion on the Arbitration Agreement. You mentioned the issue of delays. In our understanding, and I hope you share it, the Agreement, which we, hopefully, will have, will be an international treaty; in our case it will be [...] to be an international treaty which will have to go through the appropriate procedure provided for under our legislation. It is not at all about any delays, it just an indication that as an international treaty this agreement will have to go, first, through the proper procedure like signature or exchange of notes, and we will have to get the necessary decision for it internally. And I would appreciate if you tell me if this is the same in your case. And our perception [...] that we will have to ratify this Agreement because, for example, it will provide for the binding and final nature of decision – legally binding decision or arbitral award of the arbitration. And, secondly, well... We all, of course, need cost-effectiveness but we will have to spend some [...] money for the arbitration, definitely, and this is the second reason why we will have to ratify – almost certainly will have to ratify – this Agreement. So, it will still take some time. Though, of course, I hope, we both are going to [...] that it is appropriate, effective internal procedure without any undue delays. But still it is an internal procedure and we still have to agree on the text. So, in this case it will take some time anyway.

In response to your proposal of the *ad hoc* Chamber, which – as you know – we do not consider to be an arbitration procedure, we sent you quite – as you yourselves described it during our meeting in August – a kind of ‘sketch’ proposal; we sent you quite detailed text of the draft Agreement and Rules, and listening to

your view on the critical issues which we must cover during our conversation and I am thinking that some of them are covered – as I see it – by the text we have sent to you – by draft text we have sent to you.

If – as I understand – we are putting aside the *ad hoc* proposal and you ask to us to present our proposal, we are in the position to do so and I will ask to my colleagues to present the draft we have sent to you. Sergey, please.

SERGEY USOSKIN: Right. The proposal that was sent consists of two documents which, I think, are logically, self-explanatory and what they say.

The Agreement... The Agreement records, obviously, the establishment of an *ad hoc* Arbitral Tribunal and then the subject-matter of the controversy that may be submitted to such a Tribunal. And the approach we have taken is to proceed with this in an application [...]. So, the State instituting the arbitration in the Arbitral Tribunal so created would submit an application which it believes [...] in the scope of the Arbitral Agreement. And it would be done for the Arbitral Tribunal to decide whether it have jurisdiction within the Arbitral Agreement to resolve it. It also notes that it has been, obviously, some discussions between the Parties concerning whether consultations or negotiations on the matters that we have been discussing previously should be continued and – this is obviously – also questions raised with respect to the scope of the International Convention on the Financing of Terrorism. And so what the Agreement does... It preserves the position of both Parties that the Tribunal would only have jurisdiction over disputes properly following within the Convention and also where the conditions for ceasing the binding dispute resolutions forum providing in Art. 24 of the Convention and customary International Law more generally have been satisfied.

Then the Agreement sets out the most important – as we see – the elements of the procedure such as the place of arbitration, the language of arbitration and the binding force of the ultimate award.

And it refers to the Rules of Arbitration for more detailed elaboration of that and a special mechanism is provided for Agreement are given in the Rules is more detailed document and as such may require more extensive discussion.

And then – I think what may raise some questions for you – it contains the rule that, if the Agreement is signed, the Party should refrain from ceasing the Court, which we think is a practical solution that to insure that, if we signed



Agreement and proceeding in a good faith to its ratification, no Parties surprises the other and renders the whole Agreement without purpose.

And, as Mr. Kolodkin noted it makes entering into force subject to ratification which is necessary element and as your advisors are, probably, aware the Russian Federation ceases the binding force of arbitral award as very important question that requires ratification.

With respect to the Rules of the Arbitral Procedure, they are based on the PCA Optional Rules, there are some amendments made in most part to streamline the procedure and in a light with the practice that has evolved of using those rules; but also to incorporate some of the proposals also made by Ukrainian side such as, for instance, the Arbitral Tribunal may be – as one option – composed by Parties already at the time of signing of the Arbitral Agreement – as one option – or – as another option – there is an appointment mechanism.

It also more extensively dues with the submissions that the Parties would make, it provides, as Ukraine also suggested, that Parties may discuss at this stage the timeline for arbitration if that is practical and an Agreement can be achieved at this stage already.

It also does determine which awards and decisions that Tribunal should render and given if this *ad hoc* arbitration created in light of already existing discussions between the Parties. We find it practical to limit the types of decisions that Tribunal will make, given that we can already foresee what types of decisions can be forecasted.

And I would think that the rest of the arbitral rules are essentially either the optional rules or amendments there are self-explanatory. But if you require explanation of our position I or my colleagues are, obviously, ready to provide them. Thank you.

MARNEY CHEEK: Thank you for that explanation. Good morning! We have had a plenary opportunity to review the proposal that you sent, you just underline it, and have a number of questions about it. So, we may propose that the way we proceed is to ask some questions about your proposal, so you can clarify some issues for us. And if everything is OK, let's proceed. Very good.

You did reference on our proposal for an *ad hoc* Chamber arbitration this morning and one value that we see in the *ad -hoc* Chamber approach is that – it be

governed by the ICJ Rules and another Party can agree some deviations or amendments to the ICJ Rules. And ICJ Rules are quite comprehensive.

The first issue actually is quite relevant to that and that is [...] mentioned this morning transparency. And we know that your proposal appears to contemplate confidentiality and, of course, the ICJ Rules are clear both the pleadings are would be accessible to the publics and that the hearing itself would be open to the public. There are two important aspects of the ICJ Rules – a transparency that we think would be important to any arbitration between the Parties. And we wonder if you could comment and elaborate your thoughts on transparency or as you have provided some principles of confidentiality of proceeding.

SERGEY USUSKIN: The idea behind confidentiality is that starting point of the arbitration, one of the advantages of the arbitration confidentiality. And one of the principles of arbitration is confidentiality, although here are some recent developments on that. More importantly the practice of interstate arbitrations; there are some recent examples of transparent arbitration. The majority practice do remain the arbitrage should be confidential and there are good reasons for such road because interstate arbitration involve political issues, highly... such... they are not necessarily be [...] in the media before the [...] addressed by Arbitral Tribunal which is a body that automatically should decide them.

And an additional element [...] to the particular situation, that we are dealing with now, I believe representatives of the Government of Ukraine will agree with me, that sensitive issues that may be raise security issues dealing with military, bank secrecy, personal secrecy and that may be implicated in this arbitration such as [...] respect use of various weapons [...]. This kind of information may require confidential treatment at all stages of the proceedings.

You mentioned the International Court of Justice as a reference point but the... again the strating position for the Russian Federation is that the mechanism contemplated by the Convention is that the dispute should be referred to arbitration, not to the International Court of Justice, so that it cannot be that... This arbitration should be not the International Court of Justice but it must be something different. Otherwise, the provision of the Convention on Arbitration would be rendered without effect. So, that is the reasoning behind our proposal in respect to

confidentiality. And you see it that we have left those provisions as [...] so to say that we can discuss them in more detail during this meeting.

ROMAN KOLODKIN: If I may just, probably, to break a silence... I mean it is not [...] like we said. It is the proposal which is quite... So... we... So... We are ready to discuss. Was it the only question? I think you want to use the time effectively. So, please... Go ahead!

MARNEY CHEEK: To be clear we have more than one question about your proposal. We are just giving you an opportunity to confer... I did take note of your comment and then you are so may clear in your diplomatic note that you were perspective moving forward with arbitration under the *ad hoc* Chamber proposal... is not from your perspective arbitration under Art. 24. We do have some comments in that regard but we thought it may be more productive, to first, ask some further questions about your proposal we can clarify where we have [...] and differences on core principles. I mean, we can make some further remarks, perhaps, regarding the *ad hoc* Chamber proposal a bit later.

So, specifically just to follow upon your explanation about confidentiality is your assumption and we would engaged, for example, in a separate confidentiality agreement that would govern specific issues relating to bank secrecy and alike... Or is your solution to close proceeding or [...] additional provision on confidentiality are not necessary... Normally, I presume, we do enter into two parallel agreement on confidentiality to address the specific issues you articulated but there no way impede the ability to proceed without a public hearings and public filings. So, it seems to me, we could go forward with both proposals for openness as well as some specific provision on confidentiality. I am interested in you view on it.

SERGEY USOSKIN: The precise mechanism is something which we are quite open to discuss. I would envisage that there must be an instrument that guarantees confidentiality with respect to methods that are covered by confidentiality is preserved by Tribunal and any registry of the Tribunal and also by the Parties. And, so, there must be an Agreement but must also be the provisions and rules which, I believe, are also the provisions of the Optional Rules of PCA with respect to in-camera hearings and obligations of the Tribunal and the registry not to disclose the information that is not public; or the Parties involved must be covered by some of confidentiality. How this is achieved as one of

instruments is to be used for that matter is something which we are open to discuss with you. In terms if you see some mechanism better suited for it and more agreeable to Ukraine than others, we are, obviously, open to discuss with respect to the transparency or hearings and submissions... Again, as Mr. Kolodkin noted, we are open to discuss these issues. So, there is no an issue we are working out of the room if you do not agree on.

MARNEY CHEEK: I suggest, I can clarify do I understand correctly that you would be open to the possibility of having public hearings and making a filings available to the public as long as there is in a provision of employees to protect confidential information?

SERGEY USOSKIN: The [...] point that must be provision that would insure reduction, for instance, of confidential information – sensitive information, and we can agree what is sensitive, obviously, from the submissions. And there must be also mechanism of hearing if such information is going to be this... refer to discuss there. With respect to whether we can agree to public findings and/or open hearings, I think, it would be indicated within the overall. Agreement on Arbitration is something where we may agree on.

MARNEY CHEEK: I am sorry, could I ask you to repeat the categories of information that you believe need to be covered by confidentiality agreement just like to make sure that we are thinking through.... what is a scope of confidentiality agreement we need to look like to protect sudden information?

SERGEY USOSKIN: The list would be subject to discussion on Agreement, I think. We don't take an exhaustive list right now. But some of the examples would be military secrecy, bank secrecy, personal information which can be defined. So, those are kind of examples of the sensitive information which would be covered by some form of additional confidentiality arrangements.

MARNEY CHEEK: And what would be open to the possibility of an Agreement that deals with confidential information [...] or different categories? In other words: some information might be entitled to more protection or restricted access than other. So, there might be provisions for a sudden level of confidential information but than there might be further more sensitive data like restricted access provision which would restrict in a circulation of that information even among the Parties or this [...].

SERGEY USOSKIN: That sounds like something obvious. We may agree on. But that is a practical arrangement which we need to be discussed with the particular arrangement proposal.

ROMAN KOLODKIN: Just to add to this. Of course, there is a [...] of information involved in this case... are going back to the discussions to delegations had – I was not present but I read, of course, reports and the script and so on and so forth, I may presume that... Well... Of course, our security agencies are involved, I presume, the same as on your side. So it may be insisting on this or that information – that categories of information – we will have to look at it, if we are dealing in more detail with this issue, if we will be in more detail with this issue, it will be more clear which kinds of information we want to protect and so on and so forth. But the examples are given; it's just indicative... yer...

MARNEY CHEEK: So, I think, I might move on from transparency to some additional questions related to your proposals for constitution of the Tribunal.

You did mention that there are two options in you current proposal either we agree on the names of those who form a tribunal or we alternatively agree to an appointment mechanism. In a first instance, I noted – we noted – that you have proposed panel of three rather than a panel of five. I am experienced in disputes such as this; it would most often be hearted by a panel of five. And, of course, the *ad hoc* Chamber approach, in our vision, is a Chamber of five. I was wondering whether you open to be five arbitrators rather that three or there is a principle reason behind you suggestion for three arbitrators?

ROMAN KOLODKIN: Well, having in a mind a cost-effectiveness issue, of course, we are thinking of three but, as you probably noticed, we put [...] around three. So, of course, we are prepared to talk about five. We believe seven would be excessive. Let's put it on this way.

MARNEY CHEEK: So, thank you for that clarification. And I think Ukraine is suddenly open to possibility trying to reach an Agreement with the Russian side on who those [...] five arbitrators would be... And we may want to consider that approach.

But putting at one side, perhaps, we could ask you some additional questions about your proposal to constitute the tribunal if we can not agree. In a first [...] it was unclear for us whether... who would be consider the appointing authority

under your proposal, if we were unable to create a composition of the Tribunal. And we want to hear your thoughts in that regard.

ROMAN KOLODKIN: Well, probably, you would excuse us if we... that specific in our proposal because if we compare, for example, our proposal and your 'sketch' proposal...

Is it fine? Ok. I will continue then...

Our proposal is much more specific. But not that specific, probably, as to indicate immediately whom exactly or which institute exactly we would like to see as an appointing authority. But we make consider some options, of course, which are well-known. I think nothing extraordinary and nothing as a pre-condition to whatever. So, there are some options – you know them, we known them – and we may discuss which one which having you to take.

SERGEY USOSKIN: I ask a question of clarification of my own. Ukrainian 'sketch' proposal of August, 29 suggested that all arbitrators must be mutually agreed between the Parties. Am I taken is that now Ukraine takes the position that we must discuss the appointment authority as the primary mechanism?

ROMAN KOLODKIN: And, probably, to add to this. We think that this discussion of appointing authority would not be enough. We would need to discuss this procedure in more detail then. It is not just about appointing authority... For example, we have five arbitrators: how many of them we would like to appoint, how... and so on and so forth. And how to proceed this and shall be, first, try to agree or lets say the fifth one or three out five... or do anything, or go immediately to the appointing authority. I don't know, I mean there are lots things to discuss.

MARNEY CHEEK: Yes, I agree that there are a lot of elements to discuss. No... We do not think necessarily that we should abandon the notion that we might agree on the composition of the Tribunal. But, of course, attempting to agree on a composition of the Tribunal can often lead to delay and suddenly the Ukraine side does not interest in delay. So, we do think that it would be important to sketch out, if we are unable to reach Agreement what exactly the mechanism to move forward would look like. And I suddenly agree that there are many aspects of this: how many each side would appoint, how than in a first instance we [...] try to appoint a chair of the Tribunal... So, there are many aspects.

But, it seems to us, we want to understand exactly what a mechanism looks like to make sure that there is not a delay in moving forward. So, for example, for

our perspective we think it be appropriate for the ICJ President to serve the appointing authority, if we unable to reach Agreement either on the chair of that which is chose to proceed or another members depending on how that [...]. And obviously these details would be important; timelines for these details would be important. So, we do not spent a valuable time running around [...] to compose the tribunal.

One other issue related to composition of the Tribunal and, perhaps, we think [...] reach Agreement on composition of the Tribunal, that is a qualification of the members of the Tribunal.

One reason why an *ad hoc* Chamber approach appeal to us is... We want to have appointed judges from the ICJ who, we know, have the requisite Public International Law background to hear such a dispute. And I was wondering with the exception of having a background in Public International Law which, I presume, we agree whether you have giving any further thought to the types of qualifications that Tribunal's members might have, whether you've be a [...] to the notion that the Tribunal should be comprised of ICJ judges regardless of whatever, you know, ultimate form that the Arbitration Agreement takes... It would be better the arbitrators [...] be an approach – would be judges of the ICJ. That seems to us to be a good mechanism for insurance that they have the requisite background to hear... an experience to hear a dispute.

ROMAN KOLODKIN: Our views on the qualification of the arbitrators are... Well, let me out on this way [...] absolutely normal... as for the arbitration will which apply Public International Law. So, nothing extraordinary but the judge's aspect of the composition is slightly different from the general criteria applicable to future arbitrators. We are not against having this or that judge, of course, appropriately chose or nominated for the arbitration, but we see no reason in having all the arbitrators as judges of the ICJ. We think that this is absolutely unnecessary limitation. And we would definitely prefer more flexibility for the composition of arbitration, of course, with the application of the normal criteria including high qualification in Public International Law, of course, impartiality and so on and so forth. But nothing... Nothing extraordinary, once again.

And sorry, I presume this also covers one of the questions you raised, a principle [...] – applicable law. I mean, application of Public International Law or of International Law. I will put on this way.

MARNEY CHEEK: A question about applicable law is also seems to Ukrainian side as we were agreed on that International Law principles would govern. I thought it is clear from your proposal as well. So, perhaps, that is one issue upon which we can agree.

ROMAN KOLODKIN: I think that in our proposal recovered slightly more issues which are crucial to you and which we can agree. There are some new issues which you indicated today, which are crucial to you, which – once again – as I mentioned I do not think I have heard before. But some others are definitely covered by draft proposal. Thank you.

MARNEY CHEEK: I think some of the issues that you have heard explicitly for the first time are covered by the ICJ Rules because our initial proposal with was about an *ad hoc* Chamber and an *ad hoc* Chamber [...] to the ICJ Rules. We were explicit about some of these issues but we suddenly will intend to discuss them further this morning.

Well, another issue, actually, that you mentioned is cost-efficiency which can go to the number of arbitrators. One feature of the *ad hoc* Chamber is it actually the Party would not pay for the arbitration fees and there could be the significant cost savings to both sides. And we are wondering if you consider the costing [...] if we are going through an *ad hoc* Chamber approach and giving what save for both our budgets some money.

ROMAN KOLODKIN: Yes, probably, it would. Though it depends also on the period of time which the procedure will take and we know what it means to the budgets. But it may be considered as the advantage of the *ad hoc* procedure.

But, at the same time, we would like to stick to the Convention, to Art. 24, and that is why we clearly see that we are in the arbitration stage, not in the stage of the ICJ. And the reasons, which – in our view – make the idea of the *ad hoc* Chamber, are the main reasons not acceptable to us, what are indicated in our note. Though there are some advantages in it. But... Well, we are prepared to spend [...] some money for the arbitration dealing with Art. 24 of the Convention.

MARNEY CHEEK: I take note of your disagreement that Tribunal comprised of the *ad hoc* Chamber was not constituted an arbitration under Art. 24. I believe you understand that our view that an *ad hoc* Chamber arbitration was satisfied with those requirements that we want to discuss more later.



Let me, actually, ask just one detailed matter which... maybe I have just overlooked something or which is just unclear from your proposal to us. To the extent that Parties are paying the cost for the arbitration and, of course, also legal costs I believe that the PCA Rules would provide that to the extent of any cost-shifting that also includes the legal fees of the Parties. And I believe something in the language in your proposal make it seems like perhaps you exclude legal fees from any type of determination in that regard. May be it is just misreading of the proposal, perhaps, you meant something different to the normal PCA Rules but if you had there a specific reason for the language you chose we would be interested to hear it.

SERGEY USOSKIN: I believe... If we start with the PCA Rules [...] there is no cost-shifting with respect to the counsel's fees and that, we believe, reflects more general attitude into interstate dispute resolution that there is no cost-shifting. There is this rule which is [...] because we wanted to discuss further whether this rule on the [...] costs is really necessary given in the interstate dispute resolution. There is no a practice to shift costs.

MARNEY CHEEK: I see. So, your brackets indicated that may be a provision we leave out entirely.

SERGEY USOSKIN: The brackets indicated that the provision on shifting the costs may be removed or may be left if this is something that Ukraine wants to insist on.

MARNEY CHEEK: So, I have been ask you a question about some details and nuances how we are going to comprise the Tribunal issues related to costs. But this is, actually, a quite fundamental element of any Arbitration Agreement and we feel it is missing from your proposal. And that is that it is important.

The both sides are guaranteeing to participate in this process from beginning to end. That there is a commitment to that process and to comply with decisions of the Tribunal as well as comply with the Arbitration Agreement and ultimately comply and implement any award of the Tribunal.

Of course, if one party ceases to participate at any stage, this is effectively no longer be an Agreement on the Arbitration, and some of the Rules you proposed seemed to indicate that the Tribunal might proceed even if some point Russia decided to no longer be actively participating in [...] that of serious concern to Ukraine. And we believe that there needs to be in any Arbitration Agreement –

consequences for either material breach of the Arbitration Agreement or for failure to abide by Tribunal decisions. It is a truth of the matter is the Russian Federation has not... has declined to participate in international arbitrations in a recent past and it certainly of concerned Ukraine. And if the arbitrate here, that we have Russia for participation and commitment to abide by the Agreement and any Tribunal decisions as part of that process.

That will also include decisions that the Tribunal might reach related to production of documents, compelling appearance of witnesses, etc.

We think that full participation is essential to be able to resolve the dispute. And for that reason we think that if there is a cessation of active participation, material breach of the Agreement or failure to comply with the orders that Ukraine will needs to retain its right to proceed to the ICJ as a Convention contemplates because we would not have effective arbitration, nevertheless, and there is that effective participation. And we believe that the Arbitration Agreement needs to reflect this.

ROMAN KOLODKIN: So, we indicated we consider this Agreement to be an International Treaty which will be governing by International Law. So, I would... I tend to think that to have an additional agreement on what to do in case of, for example, material breach would be redundant. I think this issue would be governed by Public International Law which will be applicable.

In my view, non-appearance of one of the Parties in the arbitration would definitely not mean the determination of the international treaty under International Law. So, we provided the default provision, following the PCA Rules applicable in case when Party does not appear, the procedure will continue but out one of the Parties which we see around us – examples of which we see around us.

But well, I would also want to hear Ukrainian view on what would be the nature of the Agreement, whether you agree with this that it would be a treaty under International Law, and of your internal procedures, I do not know whether you need ratification or not, it is up to you and in accordance with the applicable legislation of Ukraine. But here we would like to have some clarity from you; our views are as I explained.

So, this is, probably, a difference also between the Anglo-Saxon and Common Law and continental approach as to thinks you would like to have as many details as possible as I see it covered by this Agreement, additional

agreement... an additional agreement and this kind a sort of things. We are proceeding from that effect that we... what we are dealing here with is the organization of the arbitration, it exactly follows from Art. 24 of the Convention. And with respect we need to have an Agreement which will be an international treaty as we see it, on the organization of arbitration, not on the enforcement of the arbitral award, not on other things on enforcement of the additional agreement on something. But we want to have – under Art. 24 of the Convention – we want to have the Arbitration Agreement as it is. And it will be covered by the rules of International Law, including, of course, treaty and customary rules on treaties where we have the material breach, for example.

MARNEY CHEEK: To clarify we do not believe that we need a separate agreement on Russia's participation in arbitration. In our view, the Arbitration Agreement that we will enter into, which you think from your prospective would be a Treaty, needs to have an explicit language that would guarantee for participation of the Parties. It is difficult to see how we would still have a valid Agreement on arbitrate if one Party decides not to arbitrate and, therefore, that is certainly something where we believe the Agreement should be explicit in that regard.

SERGEY USOSKIN: I just want to clarify. In terms of the Rules – the draft Rules – you referred to concerning, the continuation of proceedings in event of default and non-compliance with the order, those are the defaults Rules of the PCA, so this is not to be some unspoken arrangement that Russia is suggesting. This is and has been the practice of interstate arbitration, not the ICJ reference point but ICJ proceeding are exactly the same. But the question, I guess, is that you say that you do not need an Agreement of Russia to participate, you want some other mechanism. So, I think... Our question is what mechanism that would be?

And you mentioned going to ICJ and in this respect just more detailed question is how does this achieve cost-efficiency, if in the middle of the process either of the Parties – and I am not saying any of the Parties – would not comply with some order of the Tribunal. But if one of the Parties does not comply with not to produce a document than the Parties goes to ICJ – it is, to me, rise a question would it be cost efficient and time efficient procedure?

MARNEY CHEEK: I suddenly will not suggest saying that, you know... that any time there is lack of compliance with order from the Tribunal and this

would automatically enable a Party to go to the ICJ. I think it depends on the gravity of the lack of compliance. But, certainly, what the Convention contemplates in Art. 24 is that we would be agreeing to arbitrate the dispute.

If one Party is not in good faith follows participating in that process, which, certainly, could also include producing the evidence, that the order to produce that the Tribunal believes that it can do its job – to hear of the dispute – is fall, that would be problematic because, in our view, we no longer have an arbitration. So, we would propose that is that rather than the default Rules under the PCA, that there are some provision in the Arbitration Agreement itself that makes clear that the Parties are agreed to participate throughout the process. And if one of the Parties withdraws or fails to participate then the Arbitration Agreement would be null and void and we back to the Art. 24 and a Party will proceed to the ICJ.

ROMAN KOLODKIN: As for me, it is an interesting idea of suggesting that one of the Parties is not appearing in the arbitration, the arbitration is null and void. I have never thought about it. So, may be it is a good idea because we have this... Of course, you gave us these examples and we all know about *Arctic Sunrise*. So, it would be interesting to explore this idea, I have never thoughts about it.

For me, the arbitration, as it was, for example, in *Arctic Sunrise*, I am sorry to bring this example but you mentioned it, I mean, your delegation mentioned by itself. So, I thought that the arbitration was ongoing and non-appearance of Russia nothing to do with unclose Agreement on the Arbitration. But I need to explore it further. Thank you very much for this idea.

That as for our arbitration – once again – I mean, I think that we have covered this issue in our draft Rules. We do believe that it will be an international treaty with all the consequences of it, with its binding force, and non-appearance of either of the Parties will not damage to this Agreement.

If you want to have some particularly language you would appreciating, it is okay. Give us the text of this proposal, we are looking into it. But, I think, we have covered the issue. And, frankly, I have never looked at this issue like you have just indicated: that there would not be Agreement, if the Party does not appear in the arbitration. It is an interesting thing, thank you.

MARNEY CHEEK: I think, before we move on, let me clarify because, perhaps, you have misunderstood, and, do not know, what I mean to... [...] on Russian participation and, therefore, we, of course, would given your consent to

arbitration. There are an agreed set of rules governing as arbitrations and whether not you choosing to participate in other proceedings has been doubt with. Here we would be engaging in an Arbitration Agreement between the Parties and giving that we are not... we may adhere to set of rules and we may deviate from those rules.

From our prospective to give importance of the issues that would be arbitrating into the Convention, we believe it is appropriate to insure Russia's participation. That you know what I mean that your participation or lack thereof another proceedings in any way nullifies those proceedings what I was referring to the Arbitration Agreement, that we would enter into between Ukraine and Russia. And, of course, naturally, if we enter into a specific agreement and it has a specific provision in regard to your participation, and you specifically renege on that provision, and that provision calls that in the event of default of participation a Party can go to the ICJ – all of these is implementing in an Agreement between the Parties.

So, certainly, in no way do I think that our proposal, which would be to have something explicit in our Agreement that enforceable within our Agreement related to participation by the Russian side. I do not think that speaks, in anyway, to the consent to give another proceedings and your own choice in those proceedings not to participate.

ROMAN KOLODKIN: Thank you for this explanation. Probably, it was my understanding but I am not sure about it. But so far we are answering your questions but – we will continue, of course, – but may I ask once again: how do you see the nature and the character of the possible future Agreement on Arbitration? It is important for us to know whether you considered to be an international treaty and it is the subject to ratification or not?

ELENA ZERCAL: To answer your question I need also additional information from your side because I have not heard any references to particular article of your Law on International Treaties according to which you will require ratification of such an Agreement. And, thus, I would like to have clarification from your side why do you think this Agreement may require ratification.

ROMAN KOLODKIN: Well... The first question is whether it is an international treaty or not and second one is whether it will require ratification or not. We may, of course, ask each other again and again. But just to clarify, the first

question I raised was whether it will be an international treaty and the second one whether it would require ratification.

With respect to your question – I am answering it. We had a huge internal debate on the meaning of the provisions in our Law of Treaties which is saying that treaty subjects to ratification when it contains a rule which is different. You are looking at the text so you may read it yourself, please, and will not to try to quote it because I do not have a text in front of me but you have. We have a specific article in a text in front of you which is saying that one of the reasons for ratification is that the treaty contains the rule which is different from all the Russian legislation.

The provision which stipulates that we have an arbitration and the decision of the arbitration, award, the decision of the court or the arbitration will be binding – legally binding – for the Russian Federation is considered these days in Russian as a provision which on at this particular provision under our Law of Treaties has requires ratification, because we are accepting external jurisdiction under international treaty and the result of the process will be legally binding to the Russian Federation. That is why all the treaties of this kind these days are going to ratification in Russian. There is kind of common understanding in our country.

When and saying that, I am not a hundred per cent sure that for these reasons this text, which we, hopefully, will agree on – the Arbitral Agreement, - which definitely will be an international treaty for us. It will require ratification – I am not a hundred percent sure – is that because somebody – not myself but somebody else which is much more important than myself in a country – would believe that, for example, the binding nature of the arbitral decision or arbitral award is covered by Art. 24 of the Convention. There is nothing in this article about this. But somebody may think that “Well, this article provides for this and that... And if there is no arbitration, it is the ICJ and the decision of the ICJ or its judgment is binding – legally binding – for Russia. So, it is implying the arbitral award also be binding for the Russian Federation...” That is may be such logic, somewhere. I do not know... And that is why we will need to ratify. But still it will be an international treaty binding like all other international treaties for my country.

Hopefully, this is enough. I cannot give you anymore explanation of this... But this is a... And my question remains would it be a treaty for you and would it be a subject to ratification.

ELENA ZERKAL: The nature of such kind of documents for us is absolutely clear. As for the procedure which it can require for entering into force, we are not so persuaded by your position. And, actually, for us in any case it will not require ratification, for sure, because this is definitely on the authority of the president to define whether we can have the right just to sign it or we will need to ratify it.

However, on the basis of our practice I may say that this kind of treaties will not require ratification.

ROMAN KOLODKIN: Thank you very much. This will be one thing we [...] this will be a treaty. But for the second thing we do not need to be either persuaded by each other or coincide of this because in your case you will no need to ratify and in our case most probably we will. It is our internal procedure. Thank you.

MARNEY CHEEK: We do have some additional questions about proposal but I am going to turn it over to my colleague, Mr. Gimblett.

JONATHAN GIMBLETT: So, further, core principle for us is a [...] must clearly commit bidding by the decision of the Tribunal and implementing the award that the Tribunal issues. We note that your proposed Arbitration Agreement provides that the Parties will be bound by the award. But it is not clear from your text what the internationally legal effect of that provision will be and order of spell out that the Party will undertake to implement all aspects of the award. So, we have further questions of clarification for you in that regard.

First, some of the other models that we have looked at provide much robust language committing Party to comply with an optional award. For example, the language which makes clear that the Parties will take all necessary steps to implement the award including verifying the national legislation and setting time limits for the implementation. So, the first question to you is whether your proposal would allow for that kind of specific language committing both Parties to implementation within the specific timeframe?

ROMAN KOLODKIN: Yes, the idea for doing something to the legislation just adds to the reasons why we would have to ratify the Agreement, of course. I do not know how it will be in your case but having in the agreeing the international treaty – the idea of changing the obligation to change it necessary legislation would most probably require ratification. In our case it will, no doubt about it.

We will proceed on the basis of the PCA Rules. We do not think we have anything extra to what we suggested in the PCA Rules. If there is, we will be prepared to go further, of course. But the effect of the binding nature, of the binding force of the Agreement will be governed by the applicable International Law definitely. It will be a treaty, will be governed by the Law of Treaties, for us it will be governed by the Vienna Convention, with all the consequences, with the application of Art. 26, Art. 27 and so on.

SERGEY USOSKIN: Just to add to clarifying, Art. 27, para. 2 of the Rules. There is a sentencing part is undertake to carry out the work without delay, this is the PCA default model, obviously. If you want to suggest some extra language, this would need to be looked at... specifically at the language that is suggested.

ROMAN KOLODKIN: If I may. I presume that in our bilateral relationship with Ukraine it will be governed by the Vienna Convention if it is an international treaty.

ELENA ZERKAL: I presume that we all obey by international conventions which we are Parties of.

ROMAN KOLODKIN: It was my question about the consequences of the binding legal nature of this Agreement. I was answering it.

ELENA ZERKAL: I just can not understand what legislation will you have to change on the basis of such kind of Agreement?

ROMAN KOLODKIN: For the agreement itself proper will have to change nothing, it will just continue rule different to the provisions of our legislation. Once again, I am trying to explain because there is a provision on a binding legal nature of the arbitral award. This is... These day it is considered as a reason for ratification of international treaty in Russia. Whether for the implementation of the decision or of the award itself we will need to change legislation or not to change legislation will definitely depend on the content of the future arbitral award which is very difficult to discuss right now. Well, we see... We even have not seen you claim. We do not know what will be in a claim, so, how can we discuss what will be needed to implement the award? Isn't it a bit premature to do this? And we are discussing here the organization of the arbitration as such under Art. 24. Thank you.

JONATHAN GIMBLETT: So, we are discussing under this heading is whether it is to explore the extent to which Russia's proposal satisfies Ukraine's



[...] concerns with the guarantee that whatever award issues from the arbitration will be implemented.

I thank you for the clarification concerning the provision of the Rules. One question to that, actually, brings up in Mr. Kolodkin's introductory remarks. I believe you referred to the possibility that the Rules were [...] more extensive discussion, is it your conception that the Arbitration Agreement on anvil be agreed simultaneously or the one proceeds the other?

ROMAN KOLODKIN: We do not exclude neither possibility. I mean we can, if we are on the position, to do so agree simultaneously on both... We also are not excluding the possibility of agreeing of an Agreement as such and then agreeing on the Rules. But I would say for... taken into account the internal procedures I would prefer to have the simultaneous agreement; that is why we sent you both texts, not just the draft of the Agreement. But, at the same time, if there is a situation when okay, we have an agreement – only agreement – and on some basic staff of the draft Rules and still need some time to agree this or that, we can separate these two... But we sent you two texts and I am looking at you saying to my counterpart.

JONATHAN GIMBLETT: Thank you for that clarification. One of the advantages, we see, of an *ad hoc* Chamber approach is that under the applicable rules in that case, an award would have forced the binding judgment pursuant to Art. 49 of the UN Charter. We wonder whether Russia would be open to an arrangement where by the Parties agreed to the Security Council may take actions concerning non-compliance with an award. For example, under such an arrangement both Parties would abstain from participating in any Security Council vote concerning enforcement of such an award.

ROMAN KOLODKIN: I think this would be extremely difficult to explain, even at home, even it to explain at home. We are speaking about the organization of the arbitration, not about going directly to the ICJ where we know the consequences, but about the organization of the arbitration.

I tend to think that in Moscow some people look at me like at a very strange person if I said that we prepare to go immediately to Security Council to abstain there, to withdraw our veto power, to suspend our participation in Council as such or something else or something like this.

You may ask for whatever you want to ask but I am not sure that I can be positive in my answer to your question.

We, of course, know that you have a possibility to go immediately straight to the court in case if we are, you believe, not able to agree on the arbitration.

SERGEY USOSKIN: Just a comment possibility as a matter of fact and not necessarily long.

JONATHAN GIMBLETT: Let me move onto another heading of concern. And this relates to Ukraine's concern that any Agreement on the organization of arbitration should provide for timely resolution of the dispute. We have a number question about your proposal in that regard.

First, it seems to us that the proposed process for appointing arbitrators is unduly long. That, there is a number of points in a process where a Party could delay things, I highlight, for example, the provision for up to 220 of discussion on the third arbitrator seems to us the when you put all of the different provisions in this part of the proposal together, it could take easily, at least, seven months for the Tribunal be constituted. And we invite the Russian side to count of the thinking of that proposal and whether it sees possibilities of accelerating the process of the Agreement on the Tribunal.

SERGEY USOSKIN: The thinking behind the timelines is that negotiating on arbitrators is a sensitive matter and would require time. And it would require time not only to come up with the potential nominees but also to do the necessary homework on them and also because the appointments are being agreed on by States, would require consultations within the internal mechanism of the States. So, in light of this, fact is also the practice of communication between the Parties which understand for both Parties. So, in turn of proofs, it makes require some time for the proposals are there.

But to answer your question if we are prepared to discuss a reduction of those periods, yes, we are prepared to discuss it.

ROMAN KOLODKIN: Definitely, we are, but to reasonable extent, of course. Because we all know that the selection of arbitrators is a quite a procedure... We are presumed, we are or we were reading same books, and same articles, and same doctrine and whatever about practice of appointing or choosing or selecting of arbitrators. We all know that... I could finally come down to an issue... well, I do not know... of a personal history of a particular candidate: where

he ore she was born or any other personal details which could create a difficult situation internally, when internally people will be in the Parliament or somewhere else. Considering why this or that particular person was choosing for the arbitration and accepted by this Party as to be an arbitrator.

So, I presume that we will both have to do some homework within this process. And for this we, of course, can agree on the reduction of time but to reasonable extent. Because both of us should do homework in this process, not just to being in a position where we just sitting in front of each other proposing names and saying “Okey, I agree with this name, you agree with that name”. It is impossible and you know this. If you want to be reasonable, of course, if we are here doing some *bona fide*... and we are discussing in *bona fide* way of how we proceed. We will need some time. How much time is another issue, but we must be reasonable. But I have to say this, of course, confirm what Mr. Usoskin has said. Well, we can consider reduction, of course, of the terms.

If I may... We worked for one hour and a half, mostly answering your questions, not you were answering our questions... Will we ask for a five-minute coffee-break, if we may have coffee outside? I do not know...

JONATHAN GIMBLETT: Would it be convenient to just finish this one topic we have today?

ROMAN KOLODKIN: Yes-yes, please.

ELENA ZERKAL: I suggest to finish this topic and to, actually, inform that we have few additional questions. And we suppose that we can continue after the break with our questions.

ROMAN KOLODKIN: No doubt about it. It is just a bit trouble with idea of the topic. What means ‘the topic’? This particular question or the whole topic of our proposal?

JONATHAN GIMBLETT: It is a question about timely resolution of the dispute. And I have a few questions on that heading, one of which went to the appointment of the Tribunal. And then I will have a couple of questions on other aspects going to the timelines. That is the topic, I propose, we complete before the break.

ROMAN KOLODKIN: So, this is about the composition of the Tribunal? Just... Or the nomination? Or what?

JONATHAN GIMBLETT: The topic is a timely resolution of dispute.

ROMAN KOLODKIN: Timely resolution in general?

JONATHAN GIMBLETT: I have a few components. If you would like to answer, may we finish talking about the aspect because of the Tribunal and we can break. Then I can finish the other parts after the break.

ROMAN KOLODKIN: Perfect for me.

JONATHAN GIMBLETT: So, may I just follow upon...

ELENA ZERKAL: I think that we will ready understand each other...

ROMAN KOLODKIN: No, I am sorry. That is why now we have some clarity – more clarity – about this. So...

ELENA ZERKAL: Can you repeat, please?

ROMAN KOLODKIN: No, we do not need the repetition of this clarification. Just...

JONATHAN GIMBLETT: Let me just to finish off with the issue of the composition of the Tribunal.

ROMAN KOLODKIN: Thank you.

JONATHAN GIMBLETT: And we understand, obviously, the sensitivity around an appointment of the arbitrators in the State-to-State context. But it does seem to us that there are other systems of State-to-State arbitration rules, to which Russia has consented, which prefunded for much more speedy process than that which is proposed here. I would mention more necessary proposing but this would be the model but if you look at the Chapter 7 of the United Nations Convention on the Law of the Sea that has a [...] timelines which would provide, I think, for the Tribunal would be composed in much less time than it is likely under this proposal. Is Russia prepared to agree to timelines in line with the speedy other mechanisms to which it has already given its consent?

ROMAN KOLODKIN: Well... My colleagues talking to each other that we are prepared to discuss the reduction to use other models which... – other models and other issues, of course. Chapter 7 – probably, we will have to deal with it quit soon. So, Chapter 7 of UNCLOS is considered. We are prepared to discuss the reduction and to have the reduction of the terms that we have now in the draft. Just it is about reasonable, nothing else.

JONATHAN GIMBLETT: I think it is an appropriate moment to break.

*Break*

JONATHAN GIMBLETT: So, before the break I was speaking to Ukraine's concern that the Rules of any arbitration... the organization of any arbitration provide for timely resolution of the dispute. Try to move onto a secondary... the second issue of that concern. The proposal put forward by the Russian Federation requires that proceedings be bifurcated between the jurisdictional face and [...] face. It seems to us that prejudice an issue that is usually left to this question to the Tribunal to decide upon personal facts and circumstances and has the potential to lengthen the proceedings significantly. So, we would be interested in understanding the thinking behind that language which writes bifurcation into the organization the Tribunal from the beginning.

ROMAN KOLODKIN: That is obvious, I think, we believe that the issue of jurisdiction is crucial for this process. And that is why that is the reason why I would like to have an explicit language on this Agreement. Well, it could make, of course, the process more lengthy; though, at the same time, consideration of jurisdiction together with merits could be also length it. But... once again, I mean, we think that it is one of the crucial issues for this process. That is why we have this language.

By the way, we are going back and during the break where we were discussing once again the issue of the time limits for the whole process including the preparatory stage. If there is an idea of shorting the time for the composition for putting together the arbitration is that crucial to you. So, we can have if in case we have, for example, five arbitrators, we can have four of them be appointed by the Parties and leaving just one arbitrator be agreed upon or appointed by appointing authority that will definitely shorter the process.

JONATHAN GIMBLETT: So, on issue of bifurcation just to clarify... Is the Russian Federation open to language which would leave this to the discretion of the Tribunal or is it an absolute point principle for Russia that bifurcation be provided for in advance?

ROMAN KOLODKIN: Well... Taking into account... Well, you have your crucial issues which, you believe, are at the most important to you for this process, we have our crucial issues. Taking into account the importance of this issue, we think that we need to express language on the jurisdictional stage – admissibility and jurisdiction stage – in this process, also, of course, from the point of view of

the prospective of having an internal procedure at home about this Agreement. I mean, if you keen about timing and length as itself of the process, the problem is say that okay for the... If we under the jurisdiction, it is short process or short process that if we are going to the merits of the case. But despite the importance of this issue, we could consider a possibility of leaving the arbitration with the discretion with respect to this issue.

SERGEY USOSKIN: [...] the Optional Arbitration Rules of the PCA have a Rule 21, para. 4 which says, in general, the Arbitral Tribunal should draw the plea is concerned to jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration a rule on such a plea without... and raise it in a final award. The default rule should be decided in the preliminary manner for that reason also of consideration of costs which would undoubtedly be reduced if the Tribunal decides that. The jurisdiction is restricted or it has no jurisdiction over and the costs would be saved. So, in other words, it is standard practice to bifurcate an interested arbitration which is reflecting an Optional Rules. But I think we again your proposal to have... This rule can be a model for discussion from the Optional Rules.

JONATHAN GIMBLETT: For clarification, which Rule?

SERGEY USOSKIN: Art. 21, para. 4 of the Optional Rules of PCA.

JONATHAN GIMBLETT: You are referring to the PCA Rules. Whatever the PCA Rules does not necessarily apply, they do not generally accepted to practice. And if we looked, for example, at the ICJ Rules, that would apply if the Parties follow an *ad hoc* Chamber approach, those Rules provide that the Court may decide that jurisdiction is to be decided separately, just as in a practice everywhere. There is absolutely no presumption that the Court will have a preliminary bifurcated jurisdictional face that is left to the Court to decide. And I think if you look at international investment arbitration practice, it is commonly the case that the Tribunal has to decide as part of the power to determine the procedure of arbitration.

But let me move on. I thank you for the clarification of Russian position. And let's move now to a different concern relating to the power of the Tribunal to impose provisional measures on the Parties. Again, it seems to us, this is very common provision in the arbitral rules. Suddenly the ICJ Rules would apply if we follow the *ad hoc* Chamber approach expressed to provide for a power of the Court

to impose provisional measures. It seems to us given the circumstances of this case which concern ongoing actions which threaten peace and security in Ukraine. That it would be absolutely appropriate for the Court to consider – for Tribunals to consider – provisional measures. Russia’s proposal is not to be lucky in that regard and we would be interested to understand again the thinking behind the omission of the provisional measures from your proposal.

SERGEY USOSKIN: As a general clarification. You mentioned two things.

You mentioned the ICJ Rules but this is not the ICJ, this is Arbitral Tribunal we are discussing.

More important is you refer to the ongoing activities. As I remember the meetings we had with Ukraine on this subject, no ongoing activities were mentioned, the references in diplomatic notes you made to events in the past and as such.

The original position was that that there is the certain events are in the past and Ukraine relied on and those can be doubted within the award. And as there is no reliance on anything other than intra measures [?] are not necessary given that we have very much set of situations that the Arbitral Tribunal may consider but if again Ukraine insists on having the provisions in the arbitral rules on intra measures, that is something we again may consider. This is an answer on your question. So, if you insist, there must be intra measures, the intra measure procedural stage. Please, make such a proposal and that was what the Russian note communicating the Agreement on the Procedure rules expressly invited Ukraine to do.

JONATHAN GIMBLETT: So just be clear, you were saying that Russia is open to inclusion of a mechanism of the provisional measures in your organization of arbitration.

ROMAN KOLODKIN: If you have some specific proposals, please, come up with them. We will consider them.

JONATHAN GIMBLETT: I am just trying to clarify the extent to which...

ROMAN KOLODKIN: I am answering your question. Please. We are open to them.

JONATHAN GIMBLETT: You are open, okay. Thank you. That is what I am asking.

ROMAN KOLODKIN: Could I just... Sorry... It is a flow question. I just want jumping to a moment. There was something about ongoing activities, in

general, peace and security and so on and so forth. Just for the record, I do not remember Security Council's mentioning or something like this and any of its resolutions. So, it is your qualification [...] just to be certain where we are. Thank you.

JONATHAN GIMBLETT: Thank you for that. Let me move on to a further concern which relates to the potential participation of other interested Parties in arbitral proceedings. Again, it seems to the Ukrainian side, that the Tribunal should have the power to consider requests by interested States to intervene or otherwise participate in the proceedings.

Again, if we look at the nature of the dispute and some of the incidents that happened and raised, including the shooting down a flight MH-17... Those incidents involve the nationals of the Third State, we think it is entirely protectable that they may will be interesting – that States – in participating. And we would be interested in hearing the Russian Federation's views on whether it would be acceptable for the Tribunal to be organized with all these possibilities.

ROMAN KOLODKIN: This is one of the novelties that we heard today about the Third Parties. We will consider it, of course. I have not immediately answered to this because this is – once again – this is one of the issues we have heard for the first time today. Discussion was ongoing for two years and it was never mentioned, so, we need to think about it, of course.

I do not know how it will be formulated... If you have some kind of language for this and if you can surmise with the basis for this proposal for us to understand... The one of the reasons I have just heard whether it will be a part of the process or not, I do not know this particular thing, we will see it. So, we need some explanation for this and a specific text, reasons, examples and so on and so forth. I am sure, you have something to tell us, so, please, do.

I am looking forward to hear the explanation of your proposals, including the nature of the *ad hoc* Chamber, because we are in a bit kind of situation when we have some specific language suggested to you with detailed drafts. And from your side we so far discussing some 'sketch' ideas which – some of them – some of which are new to us. So, I think, I am sounding reasonable when I am saying that this is the first time we are listening to it and hearing it. Please, give us some more explanation, and reasons, and examples. We have the arbitration, so, we are discussing the arbitration. Give us more and we will concenter it. Thank you.



JONATHAN GIMBLETT: Well... I do not believe that it is entirely new issue. One of the advantages that we see in the ICJ Chamber approach is that the ICJ Chamber would – unless the Parties agree otherwise – apply p.1-3 of the Rules of the ICJ, Art. 62-63 of these Rules. Aloud to the Thirds States to request to intervene in the proceedings is that one provisions – two provisions – of the ICJ Rules that Ukraine would not propose that the Parties to part from... We would not to see those Rules incorporated in any ICJ Chamber approach. The reasons I raised in this part of the discussion is to understand the extent to which the Russian Federation is prepared to reflect that approach under that proposal.

ROMAN KOLODKIN: That is what I am a bit concerned with... I mean, once... Again and again, time after time we are hearing that “Look in the Rules of the ICJ, in the Rules of the ICJ, in the Rules of the ICJ, yes, in the Rules of the ICJ...”

I presume, here we are discussing the organization of the arbitration, not the procedure in front of the ICJ. And you are bringing us again and again to the Rules of the Court. I wonder whether it is the right approach to this issue. But we are discussing the organizational of the arbitration, not of bringing the case to ICJ. So, I think it would be reasonable... It is up to you, of course, absolutely. But to hear for each question you are asking as the explanation of it, to each proposal that this is what we have in the Rules of ICJ...

JONATHAN GIMBLETT: I do not think that anything unreasonable about the way that we trying to proceed here. The Ukrainian side and its preliminary proposal indicated that in favor of the ICJ Chamber approach, which we believe, does constitute the arbitration. The Russian Federation is expressed disagreement with our position. We will talk about that a little bit more after the lunch break.

The Russian Federation has responded with a proposal based on the PCA Rules. Well, we are trying to do here and by going through these various headings and concerns, Ukraine has to understand the extent to which advantages that we see reflected in the ICJ Chamber approach would be reflected under your proposed approach and the extent that not reflected in your approach. The extent to which we are prepared to change our approach to reflect those concerns.

So, let me continue. And just of [...] line under this item about possible participation of interested parties, could I just ask for clarification whether it is

something to which the Russian Federation is open under its own proposal to incorporate that possibility?

SERGEY USOSKIN: The question is whether we are open to discuss the proposal that would envisage intervention to the extent that would not be more extensive than that envisage by the ICJ Rules? Or...

JONATHAN GIMBLETT: I am not placing any particular limitations on it. I am just asking...

SERGEY USOSKIN: ...so, more extensive than that...

JONATHAN GIMBLETT: I cannot negotiate details; let we are talking about the core principles. And the principle that I have raised is whether Russia is prepared to reflect in its proposal the possibilities of the Parties to intervene. Mr. Kolodkin asked for what I would mention Art. 62-63 of the ICJ as an example of that. If you want to refer to that in your response, you are free to. But the question is whether it is a possibility that Russia will prepare to provide for?

ROMAN KOLODKIN: We prepare to consider it. You want me to continue?

JONATHAN GIMBLETT: That is fine, thank you. Let me move on to a further issue which is the entering into force of the Agreement. And we discussed earlier Russia's view that it would be an international treaty for which it would be required ratification. It raises two concerns on the Ukrainian side's part.

Firstly, the way that you enter into force provision [...]. It provides the Agreement itself does not come into force into ratification. Yet, the certain provision would come into force upon the signature. Notably, an obligation on the Parties not to refer dispute to the ICJ seems to us that that construction is open the possibility that an Agreement we will be signed. The Parties will be bound by the obligation not to go to the ICJ, and the Russian authorities would never ratify. That seems to be a major problem from our perspective. And we are welcome your comments on whether that is intended, whether you see a possibility of fixing that problem.

SERGEY USOSKIN: Well, our proposal proceeds from the assumption that both Parties would act in good faith and would proceed to expedition to ratify the Agreement. This issue would not raise but we see your concern and the Russian Federation will consider place and time limit – reasonable time limit – on this... on suspension to... Because I understand your concern is that there is a definite

suspension with one of the Parties holding a key to kind of removing it. And we are, of course, open to include a mechanism which prevent a such situation.

ROMAN KOLODKIN: And, by the way, take into account what you said about the ratification... Your delegation said about the ratification. We will be prepared to change the language in a way that it would indicate, of course, the internal procedures – the completion of internal procedures – not expressly mentioning the ratification. And, probably, it would be good also for us because, I have said, it most certainly will be a subject to ratification but not hundred per cent. So, we will need to change language here.

JONATHAN GIMBLETT: Just to be clear. This is not a point about the good faith of the Parties; it is entirely possible in the system that the executive branch might sign up to international obligations but the legislative branch might be disagreeing. That happens all the time in the United States.

So, just to be clear on that point can I just also ask to clarify the point that you made, Mr. Usoskin. When you say that there could be a time limit, there would be a time limit on the suspension of the Party right to go to the ICJ or time limits on how long it will be reasonable to take for ratification?

SERGEY USOSKIN: I think it could be either. I can see some advantage in allowing the Parties to take more time to ratify and not immediately abrogate the Arbitration Agreement. But this is something we can consider. As a preliminary view... We are open to... Both options appear to some reasonable what perhaps we would reflect a bit further.

ROMAN KOLODKIN: Yes, I agree. We will probably deal with this language because in some respect, I mean, come up with such a language, we were, probably, influence a bit, by the way, by your thinking having guarantees here and there, and here and there. I think we can drop it relying on the *bona fide* conduct of the Parties. If we are in a normal process of bringing this Agreement into force – agreeing on the arbitration and bringing into force, we will be doing this and not bringing the case elsewhere. Thank you.

JONATHAN GIMBLETT: On the possibility of a time limit that relates to how long the Party wait on ratification that does go to a separate concern that we would have with the entering into force the provision which is that the ratification processes is again not necessarily question of good will of the Parties, but they can [...] on it definitely. And clearly, you know, the timely resolution of this dispute

requires that we have an effective Agreement. If the Agreement is going to require ratification on Russian's side that happen in a timely [...].

So, you are welcome to say about the possibility of that kind of a time limit. Can I ask if the Russian Federation can indicate the sort of time limit that you mind to consider reasonable on ratification?

ROMAN KOLODKIN: Not immediately but definitely we can do this. And we will look at average time of this process at home. And we will give you some indication, if this kind of indication will be satisfactory to you it would be fine, otherwise, it would be very difficult to me to say "I pledged to ratify it in a month/in 15 days/in 45 days" – this would be difficult. And... But something like an indication of the time we can give to you.

We can think of different things... Once again, I think, it is a kind of different approaches to the issue... I am not sure that we will be able to provide guarantees-guarantees-guarantees-guarantees and guarantees. But some kind of... I do not know... I am just thinking aloud of the possibilities which could be envisaged. We do not fixing... The exact terms could not be fixed in the Agreement as such. But having a kind of exchanging of notes on the reasonable of limits – time limits – for bringing into force of the Agreement... And in case of failure to do this, of course, the possibility for any Party to go whatever direction... Something like this. I do not know, I just thinking aloud, I do not have anything specific to add because this is not normal procedure for us and this will, of course, be reason for [...]. I will come up with such a proposal. But we can think of it.

JONATHAN GIMBLETT: Thank you.

ROMAN KOLODKIN: Just if you expect us to – of course, like we expect you – to be in this respect reasonable and do everything necessary at home to bring the Agreement into force, to express how consent to be bound for both sides... be bound of the Agreement. I mean, if we put forward all the conditions, and all the guarantees, and preconditions, it would complicate the internal process.

JONATHAN GIMBLETT: Thank you very much for the clarification. That concludes what I have said about entering into force. Nevertheless, my colleagues have further points to make.

MARNEY CHEEK: I did just have one further question regarding entering into force of the Agreement and the confidentiality issues we discussed earlier. The way you proposed earlier to us would be that, actually... it was not clear whether

the Arbitration Agreement itself would be covered by some kind of confidentiality proposal. In our view, it would be any confidentiality provisions go to the specific concerns that you raise related to confidential information but that the nature of the Agreement would not be confidential after it signed. Well, if you could provide clarification on your views regarding the execution of the Agreement and confidentially...

SERGEY USOSKIN: The Agreement itself would not be confidential because, I believe, we do not have confidential agreements ratified by the Russian Parliament and we do not have confidential international treaties. More generally, Public International Law...

ROMAN KOLODKIN: No, let me say it. We do have, of course. I see no reason for this Agreement to be confidential. I cannot provide any more guarantees but I do not see any reasons for this Agreement to be confidential.

JONATHAN GIMBLETT: I believe we conclude with our questions on the Russian Federation's proposal. And would not it be a good moment to take a lunch break?

ELENA ZERKAL: If you do not mind, we can have our lunch break a little bit earlier. We have a possibility to work around [...].

ROMAN KOLODKIN: [...]

ELENA ZERKAL: I suggest 2.30. Thank you.

### *Break*

ELENA ZERKAL: So, we are ready, actually, to introduce you in more detail with our 'sketch' and elaborate a little bit more about core principles and how do we see them in our position and how we see the elaboration of them in a future kind of Agreement. And now I will pass the floor to Marney.

MARNEY CHEEK: Thank you. So, I want to talk a bit more about our proposal to move forward with an *ad hoc* Chamber arbitration.

We aware that, from your perspective... that does not seem to you to be arbitration. But we would like to test that proposition because we are a bit puzzled by it. And that many of your objections if they will to an *ad hoc* Chamber approached arbitration seemed quite formalistic to us. And if you consider that there are really two or three core elements to any arbitration: that it is consensual

procedure the both Parties agree to enter into, that there are would be adjudicators of the Parties choosing or chosen through an agreed-upon procedure and Agreement on the applicable law that would apply, – from our perspective, an *ad hoc* Chamber approach to arbitration accomplishes those three objectives. And because an *ad hoc* Chamber arbitration uses as its framework not the PCA Rules but the ICJ Rules, to the extent that we have been referring to the ICJ Rules, it simply because, from our perspective, many of those rules would be the ones which would govern the arbitration proceeding just like – it is quite obvious to us – that you would prefer the PCA Rules in that regard.

So, when we propose the *ad hoc* Chamber arbitration, because it is established and that would be governed by the ICJ Rules... In our view, we are presenting a framework for the arbitration that, actually, goes into some... some detail. And, of course, there have been proceedings between other Parties, we would not be the first where the ICJ Rules or ICJ judges sitting as arbitrators would be an agreed element the Parties here need to agree on the organization of arbitration.

And there have been State-to-State arbitrations in the past where either the Parties agreed, for example, that the Tribunal be composed of ICJ judges. That is a perfect proposal that we have put forward and that that would be a composition under an *ad hoc* Chamber arbitration approach. And there also have been circumstances where in State-to-State arbitration Parties have agreed that the Rules of the Court – of the ICJ – would be appropriate. And that is also although I think the Parties may agree to some modification or in particular some clarity on specific issues such as confidentiality, etc., and we see this as a model... Of course, we are not entirely... We are not alone in viewing the *ad hoc* Chamber arbitration approach is akin to any other arbitration approach the Parties might engage. And I think there are many commentaries. Judge Oda, for example, has put forward the view that in *ad hoc* Chamber approach really is akin to international arbitration. I mean, it would be consistent with our view.

So, let me just take a moment to go through some of the specifics that if we proceeded with an *ad hoc* Chamber arbitration that was largely governed by the ICJ Rules. Some of the provisions that would be addressed... So, for example, two issues we mentioned – your side mentioned that they are hearing them for the first

time – from our perspective because they are part of the ICJ Rules, they would govern *ad hoc* Chamber proceeding, we consider them already on the table.

But to be explicit, under Art. 81 and 82, the ICJ Rules provide procedures for other interested Parties to intervene. Under Rule 73, for example, a Party may apply for provisional measures. And under an *ad hoc* Chamber approach to arbitration these rules would apply to the Arbitral Tribunal, distinct from whether or not... distinct from proceeding before the ICJ. Similarly, Art. 53 and 59 of the ICJ Rules address transparency issues, and the public hearings, and the public pleadings issue we discussed earlier.

And so, as a set of rules, as a departure point, I think, what we see in our proposal is that the ICJ Rules should be the point of departure. Another comprehensive and cover many of the key areas in which we believe we need to reach Agreement in order to proceed with arbitration and whereas we do understand your approach to be something that is based instead on the PCA Rules.

Under an *ad hoc* Chamber arbitration approach, as I am sure you are aware, the arbitral judgment also would have the force of the binding judgment pursuant to Art. 94 of the UN Charter.

One issue that we have already expressed concern about its insuring that an Arbitration Agreement... I am also looks to each Parties agreement to implement any award that's issued. And, so, that is two elements of the ICJ Rules that would apply to an *ad hoc* Chamber arbitration that we think would be appropriate and given the dispute that are at issue here.

And, of course, there is also the cost-saving aspect of it which we will be referred to... referred to earlier.

There are a number of specific objections if you will that I believe you raised in your diplomatic note regarding an *ad hoc* Chamber. And I would like to handed over to my colleague, Mr. Gimblett, to talk through some of those issues in a bit more detail.

JONATHAN GIMBLETT: Thank you, Marney. I will just walk through three or four specific points that the Russian Federation has made in its diplomatic note.

To begin with the Russian Federation has expressed a view that an *ad hoc* Chamber is not an arbitration because the composition of the Tribunal is finally determined by the Court which is not bound – formally bound – by the decision of

the Parties. We regard this view is inconsistent with the uniform practice of the ICJ and States relating to the *ad hoc* Chambers.

In practice the Court has [...] to the wishes of the Parties in formerly appointing the members of the Chamber. And, more specifically, the Parties – Canada in the past – have taken special precautions to insure that the Chamber is composed only on the terms which they have agreed. And in that regard I would pointed to *The Gulf Maine case* between Canada and the United States in which the Parties executed a special agreement that provided that they would withdraw from the preceding if the Chamber was not composed according to the agreement. And in consistent with its general practice the Court did not [...] integrate in his chamber as the Parties have requested. So, the practical matter is the Parties do have the ability to determine the membership of the Chamber.

Secondly, the Russian Federation is also expressed the view that an *ad hoc* Chamber is not an arbitration because it is absolutely based on the Statute of the Court, not on the Arbitration Agreement between the Parties. Ukraine does not understand this position; it does not believe it is a valid objection. The Tribunal would be vesting the jurisdiction pursuant to a special agreement by the Parties which would operate as the Arbitration Agreement between the Parties.

Thirdly, the Russian Federation has objected that the judgment rendered by a Chamber is considered as rendered by the Court. As Marney was mentioning the definitional characteristics of an arbitral tribunal that it is based on the consent of the Parties and composed according to the Parties' agreement. There is no rule in International Law stating that the judgment of the arbitral tribunal must take a particular form.

Ukraine also does not understand the practical objection. The Russian Federation would have to a judgment of the Court as a result of the arbitral proceeding. Russia's own proposal states that the arbitration award would be binding on the Parties just as the judgment of the ICJ would be. Under [...] arrangements of the Russian Federation would be bound under International Law to comply. And [...] the Russian Federation does not intend to comply with the decision of the Tribunal, it does not appear to be any reason to focus on the nature of the judgment. Now it is true that the judgment of the Court is distinctive in nature because it can be in force by the UN Security Council. But this question of enforcement is only relevant if the Russian Federation is not prepared to commit



itself to be bound by the results of the abjuration. Those are just our key concerns that we are expressed before the lunch break. Such position would raise serious problems under any approach to the organization of the arbitration.

Finally, the Russian Federation objects the proceedings before the Chamber is a subject to the ICJ Rules which, it says, deprives the Parties of the possibilities to agree on the procedure of the dispute assessment. As the Russian Federation has noted the ICJ Rules provide a mechanism for the Parties to make changes to the procedures. And one of the formal matters, those requests are decided by the Chamber: it is common practice to include details of the agreed procedure in a special agreement.

And as I mentioned earlier, there are precedents for all Parties to such special agreements to building mechanisms in their agreement to insure that an arbitration will only proceed if those terms are respected by the Court. Either way is based on past practice. We regard is highly likely that the Chamber would respect procedure agreed to by the Parties.

So, Marney said, the outset of Russia's objections seem some formalistic to us. And if Russia has substantive objections to an *ad hoc* Chamber approach, we would be interested in understanding what that substantive objections are.

ROMAN KOLODKIN: Well, I appreciate this explanation. Though I have to admit that, as I see, it is rather 'sketchy' explanation. There are a bit different situations, of course, and different positions with respect to the proposals for the organizational of arbitration.

We still have this idea of *ad hoc* Chamber arbitration from Ukraine with not a lot of specifics, just with the indication of some issues that you consider to be crucial. And we are giving you quite the detailed text which, of course, give... making for us a lot of questions. We also still have questions with respect to your idea of the *ad hoc* Chamber arbitration, if we understand it correctly, of course. But before we are going to these questions I would like to say couple of words and to ask Mr. Usoskin also to add to this.

What I would like to start with this, what to say is that, in our view, there is a clear difference on Art. 24 – or clear indication in Art. 24 – of three distinct stages of dispute settlement: negotiations, arbitration, adjudication in the form of the ICJ. We believe that article in this respect – Art. 24 – is clear. These are three distinct stages; there are consecutive. And the drafts in the negotiating of the

Parties to the Convention had no idea of merging these three distinct stages and mechanisms for the dispute settlement on the Convention. And we proceed from this view.

We also believe that a Party to the Convention, which initiates and would like to have after what, it believes, is non-settlement of dispute by the negotiations, should come up with a kind of real proposal for the arbitration. And here I would like to ask Mr. Usoskin to recapitulate a bit the history of what we have right now with respect to this approach of Ukraine to the issue of arbitration.

SERGEY USOSKIN: Right... I will start with Ukraine's note of April 19, 2016. I will be reading unofficial translations, of course, to English of the text which was the Russian Federation received in Russian. The note of April 19, 2016 set that in a view of the foregoing [...] to para.1 of Art. 24 of the Convention Ukraine addresses the Russian Party with a request to submit the dispute to arbitration in compliance with the rules that must be agreed by the Parties.

The Russian Federation replied to this of June 26, 2016, saying – among other things – that the subject to certain reservation and without prejudice that Russia is prepared to discuss the issues of the organization of arbitration as requested by Ukraine taken into account para.1 – taken into account Art. 24 of the Convention.

To this Ukraine replied on July 28, 2016 – among other things – stating that Ukraine hopes that during the consultations Russia will provide response to the proposal with Ukrainian side to submit the dispute for consideration of arbitration.

During the meeting on August 4, 2016 the following text was read out by a representative of Ukraine. And again this is translation: “The position of the Ukrainian side is that in the absence of the express agreement of the Russian Federation to submit the dispute to arbitration it is impossible to make a formal proposal on the organization of arbitration and any hypothetical discussion on procedural details of arbitration would be devoid of substance and non-productive, what for was a short outline of various possible elements including mention of an *ad hoc* Chamber.

Then, in the note of August 31, 2016 the Ukrainian side further considers that if the Russian side is prepared to agree to participate in an arbitration, the Parties should agree that the arbitration should be held through the mechanism of

an *ad hoc* Chamber of the International Court of Justice constituted per the Art. 26, para. 2 of the Statute of the Court and special agreement.

And then, finally, in a note of September 29, 2016 the Ukrainian side accepted the confirmation of receipt by the Russian side of its preliminary vision of the organization of arbitration including proposal to conduct an arbitration through the mechanism of *ad hoc* Chamber.

ROMAN KOLODKIN: To retreat and underline what, I believe, is also important that in the August 4 we were told that – as we, of course, remember – we were told that because Russia’s position is not clear, – on the one hand, Russia denies the existence the dispute and, on the other hand, it expresses readiness to discuss organization of the arbitration, to go arbitration – it was not possible for Ukraine to come up with the formal proposal on the organization of arbitration. Then there was just the ‘sketchy’ – I am sorry to say like today – explanation for the idea, we ask for the written text, we were promised the written text, and then we received the written text with no details a month or almost a month later... And it was all about the arbitration in the form of the *ad hoc* Chamber, with nothing else. And then we submitted we tabled our proposals for the arbitration.

Today – again – we heard this short explanation of why the arbitration in the form of the *ad hoc* Chamber is very possible. We got this *ad hoc* Chamber arbitration idea again; no further details. We got additional questions today – crucial issues and issues which are crucial – which we discussed in the morning. And we are bit... confused.

So, this is the proposal for the arbitration. If it is, then we have several questions.

By the way, it was... You pointed to some doctrine of International Law – important piece of doctrine, of course, – Judge Oda – arguing for the possibility of having arbitration in the form of the *ad hoc* Chamber, not mentioning this very solid portion of authorities of International Law like Judge Lachs, for example, or Sir Robert Jennings and others, who are very clearly distinguishing – probably, they also formalistic but still – they are very clearly distinguishing between the arbitration, on one hand, and the procedure in the *ad hoc* Chamber. Their views were not mentioned. But it is just testify that Russia is not completely alone on this.

But I would like to ask you do you believe that the Convention in the Art. 24 – as we do – provides for different distinct mechanism of settlement of disputes, arranged three distant procedures, arranged in three consecutive stages? Or you believe that we are alone in our view and you have different idea on Art. 24?

MARNEY CHEEK: So, Art. 24 of the Convention certainly provides that one Party may request arbitration, if a dispute cannot be settled through negotiation. And we were at that stage in April – I would agree – if the Parties are unable to agree on the organization of the arbitration and – that is correct – there is an option to refer the dispute to the ICJ.

But I think it is useful, if I could use an American expression, English expression and I would think also an expression in Russia that “you do not put the cart before the horse”. And, so, from our perspective, in the first instance, it was entirely unclear whether the Russian side was in express agreement that at this point in having the negotiations not resulted in any resolution of the dispute that it was appropriate to begin discussing the details of an organization of an arbitration and that only recently be claimed clear through the last exchange of diplomatic notes. So, that would be the first issue [...] that the Parties are now in agreement that it is appropriate to discuss the organization of the arbitration.

The second way in which we “do not put the cart before the horse”, for example, is we should agree on core principles that will govern the arbitration before we start deciding whether to remove brackets on an Art. 35 of a much longer document. So, while we appreciate the Russian side’s eagerness to [...] various provisions from the PCA Rules and submit those to us for consideration, equally, so, you could let us know that from your perspective basing on the PCA Rules would be more appropriate. But I think, we gave a view that the ICJ Rules should be the major framework for the arbitration; you are on the view that the PCA Rule should be the major framework of the arbitration.

But I think [...] in the beginning laid out a certain number of issues, you know: transparency, provisional measures, etc. And we on the view that the Parties should agree that these principles are part of any Arbitration Agreement before we decide making sure that we have crossed [...] and remove the brackets from a very specific provision. And, I am sure, in your experience of negotiating international agreements it is often the case that there is, at first, a common understanding of the objectives and the terms of reference if you will for the exercise. Before we are

looking at – you know – pages and pages of text on which to negotiate, so, from an efficiency standpoint and... frankly, just as these things usually go... From our perspective, it is appropriate to understand that both Parties see [...] on the essential elements of that Arbitration Agreement. Before we start producing voluminous documents that prejudging our view, you know, whether we actually reached Agreement on core... the core elements and particularly given some of the substantial brackets that even you provided us with a link to the proposal but very significant issues just remained in brackets.

It is not clear to us that we have actually reached an Agreement on these core principles that we have outlined today. So, to be clear, our side made a proposal and that is, we believe, the ICJ Rules are an appropriate framework to look at... I mean, an *ad hoc* Chamber arbitration is an appropriate approach to arbitration; your view is that it is not appropriate and you think the PCA Rules should govern. So, we are here to insure that despite what appears like a wide gap between us that if we are able to discuss the core elements of any agreement and know that we have an understanding of an agreement on those core elements, and then from there we can figure how to build the rules. But what you see from our side is certainly a quite serious commitment to this exercise but no reason “to put the cart before the horse”, if you will.

ROMAN KOLODKIN: Thank you. Probably, I miss something but my question was... Probably, I was not clear... But my question was do you believe that Art. 24 sets three different – distinctly different – consecutively stages of settlement of disputes. If that was the answer to my question – well, I cannot insist, of course, on any additional clarification but... I am not sure that it was an answer to my question.

May I ask you than another thing? Well, you mentioned this formalistic – it is interesting, I am presumed being legal... I mean... a little bit, at list, formalistic... If it is not true... I am not sure that I do understand completely what is being legal. But in your approach with this idea of the *ad hoc* Chamber arbitration do you believe that the Chamber – the *ad hoc* Chamber of ICJ – is a kind of independent body from the Court or...? Do you believe or do you think it is the part of the Court, the arm of the Court, the body of the Court, integral part of the Court? It means... which means that it is still the ICJ itself.

MARNEY CHEEK: We certainly see a distinction between... The Parties reached an agreement to proceed with the *ad hoc* Chamber of the ICJ – particular if the Parties agree on the five arbitrators that would hear that dispute – and received a distinction between appearing before the [...] of the ICJ.

ROMAN KOLODKIN: You give us some examples of what, you believe, are similar cases or cases with similar approach to the arbitration to what you are suggesting – the *ad hoc* Chamber arbitration. Could you be more specific? Could you surmise at least one example when it was – I do not know how to put it formalistically or legally – *ad hoc* Chamber... of the *ad hoc* Chamber arbitration... when the *ad hoc* Chamber was used by the States as a mechanism of arbitration? Because we are not aware but, probably, there is such an example confirmed by authority that yes, this is the case of the *ad hoc* Chamber being used for as the arbitration forum or as arbitration procedure.

JONATHAN GIMBLETT: I believe that that comes back to the point I was making about the case *The Golf of Maine* between the United States and Canada where very explicitly the Parties provided in their Special Agreement that they would have control – the ultimate control – over which arbitrators would hear the case. There was a language provided that into that agreement which specifically reserved the possibility that the Parties would resort to different means if the ICJ did not... did not approve the membership.

Specifically, this is the Treaty between the Government of the United States of America and the Government of Canada to submit the binding disputes settlement delimitation of maritime boundaries in the Gulf of Maine area. And particular provision read: “If any reason the Chamber, referred to an Art. 1, has not been constituted in accordance with the provisions of this Treaty and a Special Agreement by the end of six full Canada months after the day after the entering into force of this Treaty, either Party may at any time prior to the Constitution of the Chamber terminate the Special Agreement. Whereupon the Agreement between the Government of Canada and the Government of the United States of America to submit to [...] for the arbitration the delimitation of the maritime boundaries in the Gulf of Maine area and [...] into force. In the event if the Special Agreement is terminated, the Party should join and notify the International Court of Justice that the proceedings under the Special Agreement are discontinued”.

So, this is a very specific example of how the Parties can retain autonomy and control over the key issues of an arbitration including both the composition of the Tribunal and the rules supplying to the proceeding.

ROMAN KOLODKIN: We have a comment the Gulf of Maine.

KONSTANTIN KOSORUKOV: Yes, that is an interesting example because – as you have just quoted – the situation with *The Gulf of Maine case*, actually, clearly shows that the Court is not in any way bound by the suggestions of the Parties regarding the constitution of the *ad hoc* Chamber. And it was precisely the intention of the Parties to take precautions against a decision of the Court regarding the composition of the Chamber which would not coincide with the choices of the Parties. So, it is very illustrative that the Court has discretion in this regard which, of course, stands perfectly from the position of the Statute of the Court.

Second, that is again an example of the distinction between arbitration and adjudication. In one case... In one option we have to appeal to the *ad hoc* Chamber of the ICJ and, at the same time, the Parties have prepared an Arbitration Agreement with the arbitration tribunal as an alternative to giving the *ad hoc* Chamber.

And, thirdly, you have mentioned the position of Judge Oda. Well, again – as has been mentioned already by our side – there is prevailing the position in the doctrine that there is a number of major distinctions between the *ad hoc* Chamber of the ICJ and the arbitral tribunal. Judge Oda in that case in his opinion exactly stood against the [...] of the *ad hoc* Chamber provisions in such a way as to somehow force the Court to follow the composition requested by the Parties.

So, that illustrates once again that there is no real discretion of the Parties in that case. And if we elect somehow to follow the scheme as in *The Gulf of Maine case*, we would have to draw up an Arbitration Agreement in case the court refuses our composition or our suggestions regarding the rules of procedure, etc.

ROMAN KOLODKIN: Of course, we may differently interpret the doctrine of the authorities on the issue where they are clearly formalistic or non-formalistic. Distinction between two procedures – you maybe of one way or of another... And it will be then... or somebody else to do...

But if I remember rightly – reading whatever – the very idea of introducing the *ad hoc* Chamber and making... then making the procedure in the Chamber a bit more flexible was to create an alternative to the arbitration, attractive one to keep

the Court busy with the cases, to create the alternative to arbitration to – not to merge this procedure with the arbitration, not to create other procedure which is this the same as an arbitration but to create the alternative.

This is also, of course, a view of those people who participated in the elaboration of the rules. There might be different views on this in doctrine. And, besides, nobody is obliged to follow the views in the doctrine. So, it will be, of course, up to you how to see it. But we still do believe that the *ad hoc* Chamber procedure is different from the arbitration and we have just another question here.

SERGEY USOSKIN: I think, just a small point of clarification because during the presentation of Ukrainian proposal you mentioned the different stages of discussing this proposal. But also what I understood was Ukraine's second stage [...] proposal that there are must be submission to an *ad hoc* Chamber arbitration. And I was just wanted to clarify what Ukraine means by that? And does it mean an *ad hoc* Chamber under Art. 26, para. 2 of the Statute of the Court... So, the *ad hoc* arbitration that I understand is Ukraine's proposal for the mechanism is it *ad hoc* Chamber constituted [...] to the Statute of the Court?

ROMAN KOLODKIN: If I may add to this... This is your proposal for arbitration. How to organize the arbitration to have an *ad hoc* Chamber and to follow the Rules of the Court? Thank you.

MARNEY CHEEK: So, let me provide a number of responses to each of these points.

Of course, in the Gulf of Maine example there was an Arbitration Agreement by which they referred the dispute to a Chamber of the ICJ and then also agreed to modifications, particularly with regards to the appointment of the arbitrators.

Whether or not you are before the ICJ itself – I am going back to an earlier point – or before an arbitration tribunal in large part depends on whether what is the basis for the tribunal's jurisdiction in the first instance.

In this case the Parties – Ukraine and Russia – are trying to reach agreement on an arbitration and, if there is an Arbitration Agreement, it would not stem from the ICJ Statute itself that we have composed an arbitral tribunal of the ICJ judges, but it would flow from the Agreement of the Parties. And so, the foundational document in our instance would be the Agreement of the Parties. And I think the Parties have flexibility within that Agreement to decide how to proceed.



So, yes, we refer to an *ad hoc* Chamber arbitration; we are referring to Art. 26 too. But, at the same time, it seems quite apparent to us that there are additional details and in particular selection of judges, perhaps, also confidentiality issues, issues related to ongoing participation where the parties are going to want to have a specific agreement in place. And so, I think having an Agreement gives the Parties the opportunity to decide on the framework of the arbitration between the Parties to resolve these particular issues.

So, the *ad hoc* Chamber arbitration approach, governed in large part by the ICJ Rules, for us is the bulk of the agreement. But I think it is been clear given the back in forth today that there are other issues that would be addressed in our Arbitration Agreement. And so, fundamentally, it is the Arbitration Agreement that would form the basis of the tribunal's jurisdiction to hear the dispute.

ROMAN KOLODKIN: We attempted... Member of our delegation attempted to say something in addition to what we said already and presenting our arguments against... In a way... I am hesitant to continue like this but I cannot stay in a way of Mr. Kosorukov because he wants to provide additional arguments. So, I give him a floor.

KONSTANTIN KOSORUKOV: Well, certainly... There have been mentioned early by the Ukraine side that there are examples of proceedings where are ICJ Rules or ICJ judges have been used. Well, we cannot just equate a situation when, for instance, the Parties agree that an arbitral tribunal would be compose of ICJ judges or that the arbitral tribunal would use – in whole or in a par – the ICJ Rules to the situation on the establishment of the *ad hoc* Chamber under Art. 26.2 of the Statute of the Court. The Chamber is established by the decision of the Court and, in fact, the Court has discretion in establishing this Chamber. So, even if the Parties agree to submit the dispute to the *ad hoc* Chamber, a Court can simply refuse to constitute such a Chamber.

And, furthermore, a decision of an arbitral tribunal which could consist of judges of the Court who use some Rules of the Court would not have the power of decision of the Court. And that is a fundamental difference between what you are proposing to do and those examples which you are referring to.

So, when you are saying that the fundamental document – the foundational document – would be the Agreement of the Parties, the Chamber – as it stamps from the Statute – would derive its competence from the Statute of the Court and

would be established by Court, not by the Parties. So, in this light how can we view such a document as a foundational for the *ad hoc* Chamber. So, these are the kinds of questions which just raise themselves when talking about your proposition.

MARNEY CHEEK: Yes, thank you. I am glad that, actually, you raise that question again and that I might not have directly responded to it earlier, I mean, that is the notion that the composition of the *ad hoc* Chamber is at the discretion of the Court.

I am sure that you well aware the common practice has been for the Court to respect the views of the Parties when composing the Chamber, particularly if the Parties have expressed specific views, and in some cases even written into their Agreements that they cannot proceed under an *ad hoc* Chamber approach and less the ICJ can agree. We aware [...] where this has moved forward successfully and the ICJ has respected the wishes of the Parties as expressed in their Agreement.

If you are aware of cases where the ICJ has rejected the choice of the Parties to serve on an *ad hoc* Chamber tribunal, we would be interested in hearing of those. We can study them further.

KONSTANTIN KOSORUKOV: Yes, well... Just because the Court has elected in some cases to follow the request of the Parties, it is not, in anyway, mean that the Court is somehow bound by the request of the Parties or that it will be continue doing so in the future.

And again, *The Gulf of Maine* is very illustrative in this case that the Parties had to provide for an alternative means of dispute resolution in case the Court does not follow their requests in this matter. So, the Court is independent in its decision regarding the composition. The only part where the Parties play role is determining the number of judges which is a completely different matter. In this regard we simply cannot say that the Parties have a [...] influence of the Court in this matter.

And if we again – I see that you are proposing once again – *The Gulf of Maine* procedure, if, for instance, we proceed from the assumption that the court can reject our propositions and, in fact, it can theoretically even refuse to even constitute the Chamber. What would that mean? That means that we would have to go back to discussing real arbitration as opposed to the *ad hoc* Chamber. So, it is simply not within discretion of the Parties as oppose to actual arbitration which is found it upon the consent of the Parties.

JONATHAN GIMBLETT: Can I ask one question for clarification of the Russian Federation's position? So, this morning Ukrainian side set out a series of substantive concerns through which we want to understand exactly what the Russian Federation's proposal was. Am I right to understand that apart from this point about the ICJ Chambers is arbitration that the Russian Federation has no other substantive concerns about the Ukrainian side's proposal? Because if you do it, it will be very good to hear what they are now.

ROMAN KOLODKIN: When you say, I'm sorry, 'Ukrainian side proposal' you mean the *ad hoc* Chamber arbitration?

JONATHAN GIMBLETT: I mean the approach that my colleague, Ms. Chick [?], laid out in her presentation at the beginning of the session.

ROMAN KOLODKIN: But this is one thing – the number of crucial issues which are important, which are crucial to Ukraine, the other thing is the organization the arbitration as such. This or that form of the arbitration... You believe this is an arbitration, we think, probably, differently with respect to the form and substance of the procedure.

You can also – I do not know how to put it – be based upon the number of the substantive formulations – of the rules which would reflect the crucial... crucial issues raised by Ukraine. But, for me, one thing is this number or this list of crucial issues which we – I think – covered in the morning extensively that once again... Some of them were, at least, sounded new for us. Another thing is a kind of proposal for the organization of the process and for this I do not know whether we do understand correctly... Sergey, do you have a question?

SERGEY USOSKIN: Yes-yes, because you were conferring a bit trying to summarize what the kind of endgame is for Ukraine and what the proposal is...

So, what we can out with this... Confirm it or clarify that Ukraine's proposal is that the Parties conclude an agreement that Ukraine caused an Arbitration Agreement to approach the Court under Art. 26 of the Statute to form an *ad hoc* Chamber which would then decide the disputes under the ICJ Rules subject to any modifications and the Court may agree to and leading to the judgment of the International Court of Justice which you call an ICJ judgment. Is this the position – the proposal – of Ukraine?

JONATHAN GIMBLETT: I think you "are putting the cart before the horse" again.

What we have done today is to explain the Ukrainian side's perspectives starting from the core principles that we believe an arbitration should be organized to fulfill. We have explained that we believe that those core principles of [...] by the ICJ Chamber approach. We are sort of understand how you believe those core principles could be served by the approach that you put forward. Where the level of saying if you got Agreement on core principles from which we can then elaborate a detailed proposal.

So, trying to... trying to [...] still and [...] stay the differences of proposals as you just add is premature. Well... We need to see is whether the Parties have that Agreement on core principles... This is precisely why I ask the question! I just ask about whether Russia has any substantive objections to an ICJ Chamber approach. We should understand because it would help us to consider where we should go next.

ROMAN KOLODKIN: I am sorry. I have got... a bit confused of it. Probably, coffee-break is needed... I mean...

We believe that what you call formalistic is our substantive objections to the *ad hoc* Chamber agreement procedure. If we do understand it correctly – we will try to capture the idea... So, if we understand it correctly, if what [...] is correct understanding, than we have the objections. You may call whatever you may call it but we have objections to it.

With respect to the core issues, principals, we were discussing in the morning, I thought that we have got indicating some of them are already covered – partially covered – in the draft – elaborated draft – we sent to you. Some of them we are ready to consider and we would like to see something on paper about it. And I do not remember... one thing that... even that thing the UN Security Council was not outright rejected this... But... This is how we addressed the crucial issues.

And then we turned to the proposal of Ukraine on the organization of... to the proposal of you Ukraine on the organization of arbitration. And if you are asking us whether we do not agree with it – yes, we do not agree with this proposal and we have our proposal. And we have an elaborated proposal and we are prepared to work further on this taking into account your crucial concerns which could be address to this, of course. But we have your proposal of the *ad hoc*

Chamber arbitration... And you believe that your concerns is more [...] only be addressed if you use your vehicle.

So, I would suggest that we have a coffee break to understand where we are. That is enough ten minutes and then resume. Yes? Thank you.

*Break*

ELENA ZERKAL: So, it seems to me, that we come to the final stage of today's discussion and you are waiting for us... from us our written submission. And we are ready to specify our crucial points and matters of concern and come up to you with our ideas how they should be elaborated in any kind of the Agreement.

ROMAN KOLODKIN: Yes, we will be thinking about the same thing. So, we are, of course, prepared to do our part of the homework as we did previously. But it will be very helpful if we received, first, what you are... what are your intentions and sent us. Then we will see how... what we can do with, for example, our draft Agreement and the Rules... how to address your concerns and, probably, how to reflect also the ideas which we got during this very helpful meeting, I would say... It is just, probably... Well... Of course, it could be a waste of time for us doing this homework because we still have to understand what is going on with this your proposal of the organization of the arbitration.

We were mentioning several times that it is premature to “put the cart...” – that we are “putting the cart before the horse”. Frankly, probably, we are wrong but for the time being we see no ‘the cart’ from your side. I mean, if it is ‘the cart’ – okay but... As I am saying it is premature... So, we do not know where the ‘cart’... But, definitely, we will be waiting for [...] mentioned.

ELENA ZERKAL: And we will then wait for your reaction on our suggestions, okay?

ROMAN KOLODKIN: Okay. Is it all for today?