



18 March 1999

Original: English

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

Third session

15–26 March 1999

### Proposal submitted by Germany

#### 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).

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