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Chairman: Mr. AZZAROUK (Libyan Arab Jamahiriya)

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 126: **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** (continued) (A/42/519 and Corr.1 and Add.1, A/42/193 and Add.1-3, A/42/564; A/C.6/42/L.1, L.2)

(a) REPORT OF THE SECRETARY-GENERAL (continued)

(b) CONVENING, UNDER THE AUSPICES OF THE UNITED NATIONS, OF AN **INTERNATIONAL** CONFERENCE TO DEFINE TERRORISM AND TO DIFFERENTIATE IT FROM THE STRUGGLE OF PEOPLES FOR NATIONAL LIBERATION (continued)

1. Mr. ROBINSON (Jamaica) said that his delegation supported all the measures taken since 1972 to combat terrorism and deplored the loss of innocent lives resulting from acts of **terrorism**. Regrettably, however, institutional attention to enforcement measures had not been matched by regard **commensurate** for the underlying causes of terrorism. He analysed 10 major international instruments which dealt with the outlawing of certain acts, such as hostage-taking, although they did not purport to deal with terrorism as a general phenomenon, or as a crime eo nomine. Conventions such as the 1970 Hague Convention for the Suppression of Unlawful Seizure of **Aircraft** and the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including **Diplomatic Agents** had three common features: the establishment of State jurisdiction, the principal aut dedere aut punire and the consideration that the offence should be included as **an** extraditable offence in existing and future extradition treaties between contracting **States**. While it was important to note those common features of the conventions, it must be acknowledged that no rule of customary international law with regard to international terrorism had emerged from them.

2. On the other hand, declarations such as the Manila Declaration on the Peaceful Settlement of International Disputes had served to consolidate the right **of** peoples to self-determination and independence and to **exclude** from the category of terrorist or unlawful acts the struggle of peoples to attain that right. That exclusion had passed into customary international law. He drew attention to article 12 of the International Convention against the **Taking** of Hostages, which meant that the Convention did not apply to hostage-taking occurring in situations where peoples were struggling **for** self-determination and independence against colonial domination in accordance with the United Nations Charter and the Declaration on Principles of International Law concerning **Friendly** Relations and Co-operation among States. Although the provision did not speak to the issue of the legitimacy of such a struggle, the recognition given to the situations in which such a struggle occurred by rendering the Convention inapplicable to those situations was important in tracing the development of the law and practice with regard to such situations.

(Mr. Robinson, Jamaica)

3. He drew the following conclusions from his examination of the relevant conventions and declaration. The right of peoples to self-determination and independence was a right under customary international law, and perhaps even a peremptory norm of general international law.' As an expression or demonstration of that right, peoples also had the right to struggle for self-determination and independence. Under the Definition of Aggression and the Manila Declaration, however, the right to struggle for self-determination must be exercised in accordance with the principles of the Charter and the Declaration on Friendly Relations. The preservation of that right in the Definition of Aggression was important because that instrument had been adopted by consensus and because of its normative character.

4. The subsequent preservation of that right in the Manila Declaration, also adopted by consensus, was a significant confirmation of its validity, providing further evidence of a generality of practice and opinio juris. It was logical and juridically correct for the Definition of Aggression to preserve within the context of the Definition the struggle of peoples for self-determination, since a struggle which was legitimate under international law could in no way be characterized as an act of aggression. The legal basis for the preservation of that right in the Definition of Aggression and in the Manila Declaration was the legitimacy of the struggle in the circumstances set out in paragraph 7 of the Definition. That legitimacy would have the effect of placing such a struggle outside the framework of anything which was characterized as illegal, such as the crime of terrorism. Therefore, there was currently a rule of customary international law which excluded from the category of the crime of terrorism the struggle by peoples against colonial domination, alien occupation and racist régimes for self-determination.

5. The interplay of different rules of customary international law called for conciliation, since the right to struggle for self-determination was not unfettered but must be exercised in accordance with the Charter and the Declaration on Friendly Relations. The question might be raised as to whether certain acts committed in the course of the struggle for self-determination violated other rules of customary international law; in that regard, the one most often mentioned was that which entitled each person to certain fundamental human rights, such as the right to liberty and to life. However, the International Covenants on Human Rights provided for the right of all peoples to self-determination.

6. The statement in paragraph 88 of the 1979 report of the Ad Hoc Committee on International Terrorism (A/34/37) that care should be taken to ensure that efforts to protect innocent human lives did not result in the curtailment or negation of the fundamental freedoms of others could be reversed to read that care should be taken to ensure that efforts to advance the right to self-determination did not result in the curtailment or negation of the fundamental rights of innocent persons. It might also be questioned whether the assimilation of situations involving a struggle by peoples for self-determination and independence to situations of international armed conflict under the Geneva Conventions of 1949 carried the legal consequence that persons involved in such a struggle might commit crimes in the same way as persons involved in an international armed conflict; that

(Mr. Robinson, Jamaica)

might very well be the effect of article 12 of the International Convention against the Taking of Hostages.

7. It was therefore possible that the interaction of the legal norm providing for the right to struggle for self-determination with the legal norm providing for the fundamental human rights of individuals, or with any other legal norm, could result in certain acts that occurred in the course of the struggle, but not the struggle itself, being qualified as illegal on the basis of a violation of a rule of customary international law.

8. Furthermore, it might be questioned whether the contrasting of the struggle itself, as being wholly legitimate, with acts carried out in the course of the struggle, as having the potential for being unlawful, was in fact real. In his view, the unlawfulness of an act committed in the course of a struggle did not taint the legitimacy of the struggle itself. However, such acts would be better described as unlawful than as terrorist.

9. The real difficulty consisted in identifying the acts in question. It seemed that the legitimacy of the struggle under international law would almost have the effect of raising a presumption that the acts committed in its course were lawful. He did not go so far as to say that such a presumption existed but merely made the point in order to illustrate the difficulty involved in proving that acts committed in the course of a legitimate struggle were unlawful.

10. Mr. KIEWICZ (Poland) said that his country's position on the issue of international terrorism was reflected in the letter dated 23 July 1987 from East European States addressed to the Secretary-General (A/42/416). In order to avoid unnecessary repetition, he proposed to confine his remarks to selected aspects of the problem. Like other States, Poland remained gravely concerned by the alarming growth of international terrorism, which took innocent lives, caused serious complications in international relations and in many cases constituted a threat to international peace and security. In the 1960s and 1970s, the most frequent manifestations of international terrorism had been violations of the security and safety of civil aviation; since then, there had been an intensification of attacks against diplomatic and other internationally protected persons and such terrorist acts as embassy takeovers, bomb outrages, killing of innocent people, hijacking of ships, taking of hostages and blackmail. The situation clearly required an appropriate response and co-ordinated countermeasures on the part of the international community.

11. In that connection, he wished to stress that, his delegation condemned acts of international terrorism in all their forms irrespective of their motives or of the circumstances in which they were committed and attached the utmost importance to the rigorous observance of generally accepted principles and norms of international law in preventing and combating such acts. The struggles of national liberation movements conducted in the exercise of the right of peoples to self-determination and independence in accordance with the Charter and relevant United Nations resolutions within the framework of international humanitarian law in its

(Mr. Mickiewicz, Poland)

application to armed conflicts should never be equated with terrorist activities. Moreover, international terrorism should not be used as a pretext for intervention in the internal affairs of or aggression against another State.

12. His country was strongly in favour of the further development of an agreed basis for international co-operation to prevent and combat terrorism. Poland had concluded bilateral agreements with neighbouring countries; it was a party to most of the existing international conventions on the subject and strongly favoured the broadest possible acceptance and implementation of those conventions. In particular, the primordial obligation of States to extradite or punish offenders should be unconditionally respected. Unfortunately there had been cases when some States had, for political reasons, adopted a tolerant approach towards the perpetrators of illegal seizures of civil aircraft. Such a stance could only encourage potential hijackers. In all 13 cases of hijacking of Polish aircraft, his Government's requests for extradition had been dismissed.

13. His delegation was open to all ideas and proposals for the enhancement of international co-operation against terrorism. The Ad Hoc Committee on International Terrorism, which had proved useful and efficient in the past and whose recommendations of 6 April 1979 had been repeatedly confirmed by General Assembly resolution 8 and, most recently, by resolution 40/61, would be a possible forum.

14. He was pleased to note that the draft declaration on the enhancement of the effectiveness of the principle of non-use of force or threat of force in international relations (A/42/41, para. 56) contained a provision to the effect that States should co-operate in order to prevent and combat international terrorism and to contribute actively to the elimination of its underlying causes. At the same time, the draft declaration provided that no consideration of whatever nature might be invoked to warrant resorting to the threat or use of force in violation of the Charter of the United Nations. In that connection, he recalled paragraph 11 of the Ad Hoc Committee's recommendations of 6 April 1979 and also drew attention to a proposal submitted in May 1987 by a number of participants in the Vienna Meeting of representatives of States participating in the Conference on Security and Co-operation in Europe which, *inter alia*, condemned as criminal all acts, methods and practices of terrorism wherever and by whomever they were committed and called upon States to seek the elimination of terrorism through co-operation in the relevant international forums, in particular the United Nations and its specialized agencies.

15. Bearing in mind the need not only to improve international practice but also to strengthen and develop the norms of international law directed against terrorism, his delegation commended the efforts of the International Civil Aviation Organization and the International Maritime Organisation reflected in the report of the Secretary-General (A/42/519) and expressed its complete support for those efforts.

(Mr. Mickiewicz, Poland)

16. The strict fulfilment of existing norms of law remained a necessary element in preventing and combating international terrorism. In particular, the punishment of persons found guilty of committing acts of terrorism should be inevitable. In cases where a conflict of jurisdiction existed, the option of extradition should be used more consistently as an efficient deterrent to potential future offenders. In order to strengthen existing measures for the effective and adequate punishment of offenders, it would be desirable to add to the Tokyo, Hague and Montreal Conventions optional protocols establishing the priority of the jurisdiction of the aircraft's State of registration. In the same way, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, should be provided with an optional protocol giving priority to the jurisdiction of the State of which the internationally protected person was a national or on whose behalf he exercised his function. The idea of establishing, within the framework of the United Nations, an international tribunal to investigate acts of terrorism also merited serious consideration. In conclusion, he expressed his delegation's readiness to participate in further efforts aimed at the elimination of the phenomenon of international terrorism from international life, and, to that end, to engage in a search for appropriate solutions on the basis of all constructive proposals. It was to be hoped that the Committee's deliberations would lead to a new consensus resolution reflecting the international community's firm intention to prevent and combat terrorism through intensified international co-operation on the basis of the Charter and other relevant agreements. The constructive line reflected in General Assembly resolution 40/61 and in Security Council resolution 579 (1985) should be preserved and developed.

17. Mr. HEI LNERS (Sweden), speaking on behalf of the five Nordic countries, said that, unfortunately, terrorism had not subsided in the two years which had passed since the General Assembly had last considered the item; on the contrary, grave acts of international terrorism had taken place in many parts of the world, some of them leading to complicated international crises. The magnitude of the problem was such that the whole community of nations was affected by its repercussions. It had been on the General Assembly's agenda since 1972, appropriately in so far as the United Nations was a suitable forum for the consideration of a global problem of that kind and world public opinion expected it to find effective responses. However, practical measures for dealing with acts of terrorism could in many cases be planned more effectively at the regional and bilateral levels as well as within a number of specialized agencies.

18. The General Assembly's adoption without a vote, on 9 December 1985, of resolution 40/61 had represented a major step forward in international co-operation against international terrorism. The resolution was fully in line with the view that terrorist acts could never be legitimized whatever cause they were alleged to have served. Other instances of international co-operation against terrorism in recent years had been the efforts of the International Civil Aviation Organization and of the International Maritime Organization, which the Nordic countries actively supported. As for recent regional instruments of particular interest, he wished to refer to the declaration and resolutions emanating from a European conference of ministers responsible for combating terrorism held at Strasbourg in November 1986.

(Mr. Hellners, Sweden)

19. It was the Nordic countries' firmly held view that resolution 40/61 should remain the basis for any further work on the issue within the United Nations. However, much remained to be done to ensure the resolution's implementation. To explore ways of further developing co-operation among States in accordance with the resolution was consequently of the utmost importance.

20. Referring to the Syrian proposal for the convening, under the auspices of the United Nations, of an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation (A/42/193), he remarked that, as past experience had shown, problems of definition in the field of terrorism were particularly thorny. No satisfactory legal definition of terrorism had been found so far, although the general concept of such seemed to be quite clear to most people. To believe that an international conference could offer an easy solution would be self-delusion. Furthermore, it was not evident what kind of relationship, if any, existed between the concept of terrorism and that of struggles for national liberation. The idea of trying to distinguish between the two was hardly relevant to the central purpose of combating international terrorism. Indeed, the holding of an international conference for such a purpose might complicate the issue still further. Lastly, a conference with a mandate such as that indicated in the Syrian proposal might, albeit unintentionally, convey the idea that terrorist acts were justified in special cases. That would undermine the principles of resolution 40/61 and other relevant documents. The Nordic countries therefore did not favour the holding of an international conference on terrorism with the mandate described in the Syrian proposal.

21. The item under discussion called not only for the adoption of measures to prevent international terrorism but also for the study of the underlying causes of some of its forms. Scientific analysis of those causes would not, however, be enough; concrete action on the part of all Governments concerned was called for. At the same time, that did not mean that the manifestations of terrorism should not be tackled. The lives of innocent persons and the values and fundamental freedoms on which societies were built could not be left unprotected pending the outcome of efforts to identify the underlying causes of certain forms of terrorism.

22. Turning to the question of the international community's response to the problem, he recalled that the third preambular paragraph of resolution 40/61 referred to a number of existing international agreements in that field, while paragraph 4 of the resolution appealed to all States that had not yet done so to consider becoming party to those conventions. It was important to reiterate that appeal, particularly with regard to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the Convention against the Taking of Hostages, to which relatively few States had become parties so far.

23. Another point of the utmost importance was the actual fulfilment of obligations existing under internationally binding agreements. Proper law enforcement procedures had to be introduced so that the solemn undertakings of

(Mr. Hellners, Sweden)

States did not, as was sometimes the case, remain a dead letter. Scrupulous compliance with the principle set forth in paragraph 6 of resolution 40/61, namely, that States should refrain from organizing, instigating, assisting or participating in terrorist acts in other States or acquiescing in activities within their territory directed towards the commission of such acts - a principle also set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations - was likewise of fundamental significance. States should also make efforts to intensify their practical collaboration in combating terrorism, e.g., by using existing legal and police channels to exchange information, and should enforce the principle of either prosecuting or extraditing persons guilty of terrorist acts. There must be no safe haven for terrorists. The work at present in progress within the International Civil Aviation Organization and the International Maritime Organization should be brought to a conclusion so as to cover new categories of terrorist acts. Other international organizations, such as the Universal Postal Union, might be requested to consider what other measures could usefully be taken within their respective fields to combat and eliminate terrorism.

24. In conclusion, it should be the Committee's overriding consideration not to jeopardize resolution 40/61 and to maintain the consensus achieved on the occasion of that resolution's adoption. The draft resolution co-sponsored by the five Nordic countries (A/C.6/42/L.2) was aimed at serving that objective.

25. Mr. SZELEI (Hungary) said that, although the adoption of General Assembly resolution 40/61 had set a precedent, the record of the two years which had since elapsed could not be viewed with satisfaction. Terrorism was not, of course, a new phenomenon, but it was increasingly being recognized that, in addition to depriving innocent people of their lives, international terrorism could destabilize international relations and create new sources of tension. While acknowledging the growing importance for States to combat international terrorism, his delegation continued to condemn all ill-advised attempts at drawing unwarranted parallels between terrorist acts and the activities of recognized national liberation movements or support for those movements. Hungary firmly believed in the inalienable right of all peoples to self-determination and independence and held the struggle of national liberation movements to be fully legitimate.

26. The Hungarian Government, enjoying the all around support of the Hungarian people, rejected and condemned all forms of terrorism, wherever, by whomever and for whatever motive they were committed. The values of Hungary's socialist society were incompatible with acts of terrorism. His Government therefore advocated genuine co-operation among all States in working out effective measures to prevent acts of terrorism and firmly believed that the United Nations provided a framework for such co-operation, the prevention and combating of international terrorism undoubtedly being one of the common ends referred to in Article 1, paragraph 4, of the Charter.

(Mr. Szelei, Hungary)

27. Fulfilling its obligations as a Member of the United Nations, Hungary ~~was~~ a party to the multilateral conventions adopted to combat international terrorism, namely, the Tokyo, Hague and Montreal Conventions and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and had recently acceded to the International Convention against the Taking of Hostages, which had entered into force for his country on 2 October 1987. It also attached great importance to bilateral co-operation in that field. Agreements which Hungary had concluded with a number of countries on extradition and juridical co-operation in criminal cases, including provisions which could also be used against acts of terrorism, continued to be effectively applied. At the national level, the Hungarian Criminal Code stipulated that terrorist acts were grave crimes and provided for the prosecution and punishment of all forms of terrorism.

28. Together with the delegations of other socialist countries, his delegation had addressed a letter to the Secretary-General (A/42/416) offering a number of suggestions on the item under consideration with a view to assisting the United Nations and broadening the sphere of co-operation in that field. Those suggestions were certainly relevant to the discussion now in progress and he therefore found it unfortunate that the document had been omitted from the list appearing in the Journal for that day and hoped that the omission would be promptly rectified. In conclusion, his delegation was open to any suggestion aimed at enhancing co-operation among States against acts of international terrorism and welcomed all proposals submitted for strengthening the role of the United Nations in that field. Whether within the framework of a resumption of the work of the Ad Hoc Committee on International Terrorism or of an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation or in any other forum, his delegation was prepared to take part in working out an agreed recommendation for the General Assembly, and hoped that others would adopt an equally open-minded approach.

29. Mr. MAKSOJID (Observer, League of Arab States) said that the idea of convening an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation was a response to the need to dispel, once and for all, the deliberate attempts that were being made to distort the image and functions of national liberation and resistance movements, on the one hand, and the repulsive acts of international terrorism, on the other hand. The aim was to focus on the international community's efforts to safeguard the principles laid down in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as to protect authentic national liberation movements. Obstacles to defining terrorism, such as the blurring of the distinction between the activities of national liberation movements and individual acts of terrorism, should be an incentive to the international community to convene an international conference on the subject. Some States, racist groups and colonial Powers applied the term "terrorism" to liberation movements, and it was therefore essential to have a clear definition of the concept in question.

(Mr. Hakaoud, Observer, League
of Arab States)

30. Israel had declared south Lebanon a "security zone", which meant that in the view of the Israeli Government any resistance activities directed against Israeli occupation were terrorist acts. Israel had also declared the Golan Heights part of the Israeli State, with the result that acts of resistance in that area were considered by Israel not only as terrorist acts but as acts directed against its sovereignty. The situation was similar where Jerusalem, Gaza and the West Bank were concerned. The issue was whether the acts in question were acts of terrorism or acts of national liberation. Over a period of time the blurring, particularly by the Western media, of the distinction between the two types of acts began to conceal reality, and ultimately a process of delegitimization of national liberation movements could be set in motion.

31. The resistance inside occupied territories was a consummate and legitimate act of national liberation, whereas incidents outside occupied territories could be classified as terrorist acts. There was no justification for acts of terrorism outside occupied territories, but there was indeed an explanation for such acts, which might constitute mitigating circumstances. That was where the notion of the root causes of violence came in. In the case of national liberation, violence was the option of last resort, whereas it was the first option chosen by a colonial occupying Power. Thus, the term "violence" was applicable to State terrorism. Acts of violence were committed by terrorists when peoples reached the conclusion that the international community was disregarding their needs and rights. Terrorists believed that they were not bound by international moral standards and that they could take the law into their own hands. The violent acts of terrorism were to be condemned and fought. Terrorism was a sign of resignation and the loss of all hope. One of the top priorities in the struggle against international terrorism should be to support and to solidarity with authentic national liberation movements. Acts of terrorism could thus be isolated and condemned and would become counterproductive. The United Nations had recognized the rights of national liberation movements, but its recognition had not been matched by a commitment to make such rights implementable; Acts of terrorism should be dealt with not only by means of international security measures, which should be supported, but also by means of addressing the root causes of such acts.

The meeting rose at 5.05 p.m.