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TO BE GIVEN BY: Philippe KIRSCH, O.C.
IN: 6th Cttee -
ITEM: 139
SUBJECT: Terrorism
DATE: October 13, 1989

TO BE ISSUED AS A PRESS RELEASE: YES x NO

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SIXTH COMMITTEE

Item 139: 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.

Statement delivered by
Mr. Philippe Kirsch, Q.C.

Canadian Representative to the Sixth Committee

October 13, 1989

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MR. CHAIRMAN, I WOULD LIKE FIRST OF ALL TO EXPRESS MY PERSONAL PLEASURE TO SEE YOU PRESIDE OVER OUR WORK THIS YEAR. IT IS PARTICULARLY FITTING THAT YOU WOULD GUIDE OUR WORK ON THE QUESTION OF TERRORISM, CONSIDERING THE IMPORTANT ROLE THAT YOUR COUNTRY AND YOURSELF HAVE PLAYED IN THE TWO CONFERENCES THAT WERE HELD LAST YEAR, AGAINST SPECIFIC MANIFESTATIONS OF TERRORISM.

I WOULD ALSO LIKE TO EXPRESS MY DELEGATION'S THANKS TO MR. FLEISCHHAUER, THE ORGANIZATION'S LEGAL ADVISOR, FOR HIS VERY HELPFUL PRESENTATION OF THE SECRETARY-GENERAL'S REPORT (A/44/456). MY DELEGATION WOULD ALSO LIKE TO EXPRESS CANADA'S APPRECIATION OF THE UPDATE OF THE STATUS OF RATIFICATION OF CONVENTIONS DESIGNED TO PREVENT TERRORISM REFERRED TO BY MR. FLEISCHHAUER. WE ARE ENCOURAGED BY THE CONTINUED GROWTH IN THE NUMBER OF COUNTRIES WHICH HAVE RATIFIED THESE EXTREMELY IMPORTANT CONVENTIONS. WE SUPPORT THE SUGGESTION THAT HAS BEEN MADE, THAT THIS INFORMATION COULD USEFULLY BE PROVIDED ON A REGULAR BASIS.

MR CHAIRMAN, IN THE TWO YEARS THAT HAVE ELAPSED SINCE WE LAST DISCUSSED THE ISSUE OF INTERNATIONAL TERRORISM, THE INTERNATIONAL COMMUNITY HAS REPEATEDLY DEMONSTRATED ITS DETERMINATION TO PREVENT AND ELIMINATE THE MISERY AND SUFFERING ASSOCIATED WITH TERRORISM.

IN 1988, THREE INTERNATIONAL LEGAL INSTRUMENTS WERE CONCLUDED, ALL AIMED AT PREVENTING AND PUNISHING TERRORIST ACTS NOT COVERED BY PREVIOUS CONVENTIONS. THE FIRST WAS THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS, ADOPTED BY CONSENSUS BY A CONFERENCE CONVENED IN MONTREAL, AT CANADA'S INITIATIVE, UNDER THE AUSPICES OF ICAO. WITHIN A FEW WEEKS, FOLLOWING AN INITIATIVE TAKEN BY AUSTRIA, EGYPT AND ITALY, A CONFERENCE HELD IN ROME UNDER THE AUSPICES OF IMO ADOPTED, ALSO BY CONSENSUS, THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, AND THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF.

THIS YEAR, ON JUNE 14, WE WERE PLEASED TO NOTE THE UNANIMOUS ADOPTION BY THE SECURITY COUNCIL OF A RESOLUTION WHICH PRIMARILY CONCERNED THE MARKING OF SHEET OR PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION, AND CALLED FOR VARIOUS STEPS BY STATES AND, AGAIN, BY ICAO, IN THIS AREA. IT ALSO CONDEMNED ALL ACTS OF UNLAWFUL INTERFERENCE AGAINST CIVIL AVIATION, AND CALLED ON ALL STATES TO CO-OPERATE IN DEVISING AND IMPLEMENTING MEASURES TO PREVENT ALL ACTS OF TERRORISM. ON JULY 31, THE SECURITY COUNCIL ADOPTED UNANIMOUSLY A RESOLUTION INITIALLY COSPONSORED BY CANADA AND FINLAND, CONDEMNING HOSTAGE-TAKING AND ABDUCTION. THIS RESOLUTION CONTAINED A NUMBER OF IMPORTANT ELEMENTS INCLUDING THE DEMAND THAT ALL HOSTAGES AND ABDUCTED PERSONS BE IMMEDIATELY RELEASED. THE COUNCIL ALSO APPEALED TO ALL STATES IN A POSITION TO INFLUENCE HOSTAGE-TAKERS TO RELEASE THEIR VICTIMS, AND CALLED ON STATES WHICH HAVE NOT YET DONE SO TO BECOME PARTIES TO THE RELEVANT CONVENTIONS.

MR CHAIRMAN, IT HAS TRADITIONALLY NOT BEEN EASY FOR STATES TO REACH CONSENSUS ON INSTRUMENTS DEALING WITH ACTS OF TERRORISM. CONSENSUS, IN OUR VIEW, IS EXTREMELY IMPORTANT IN THIS AREA. THE FACT THAT GENERAL AGREEMENT HAS CONSISTENTLY BEEN REACHED IN A NUMBER OF CASES IN LESS THAN TWO YEARS, AND THAT PRACTICAL MEASURES ARE BEING TAKEN IN ADDITION TO THESE INSTRUMENTS, IS QUITE REVEALING. IT FIRST DEMONSTRATES, THE DEEP AND PERSISTENT CONCERN OF STATES OVER THE PERSISTENCE OF THE SCOURGE OF TERRORISM. INDEED THE THREAT OF TERRORISM HAS NOT DISAPPEARED. NEW MANIFESTATIONS OF THIS PHENOMENON HAVE APPEARED, AND OTHERS HAVE INCREASED, THREATENING ALL STATES, THREATENING ALL HUMAN BEINGS, INDISCRIMINATELY. HOSTAGE-TAKING IS A CASE IN POINT. IN THE FINAL ANALYSIS, PRACTICALLY ALL ACTS OF TERRORISM AIM AT HOLDING A GENERAL POPULATION HOSTAGE THROUGH THE USE OF TERROR TO ACHIEVE A GOAL. THE DEGREE OF AGREEMENT THAT IS NOW APPARENT ALSO SHOWS THAT STATES CONTINUE TO AGREE THAT THOSE ACTS MUST BE UNEQUIVOCALLY CONDEMNED, AND PUNISHED.

THESE DEVELOPMENTS FINALLY TELL US THAT THE INTERNATIONAL COMMUNITY REMAINS CONFIDENT THAT THE BASIC APPROACH THAT HAS NOW BEEN FOLLOWED FOR A LONG TIME IS THE RIGHT ONE. THAT APPROACH, WHICH CONSISTS OF IDENTIFYING SPECIFIC ACTS OF TERRORISM AND TAKING VARIOUS MEASURES AGAINST THEM, BY MEANS OF SPECIFIC INSTRUMENTS, REMAINS AT THE SAME TIME MORE EFFECTIVE AND MORE ACCEPTABLE TO DIFFERENT CATEGORIES OF STATES THAN ATTEMPTS TO DEAL WITH THE PROBLEM GLOBALLY. NONE OF THOSE ATTEMPTS HAVE, SO FAR, BEEN SUCCESSFUL.

THIS OBSERVATION, MR CHAIRMAN, LEADS ME TO MAKE SOME BRIEF OBSERVATIONS ON THE PROPOSAL THAT HAS BEEN MADE TO CONVENE A CONFERENCE TO DEFINE TERRORISM AND TO DISTINGUISH IT FROM THE STRUGGLE FOR NATIONAL LIBERATION MOVEMENTS. MR CHAIRMAN, ANYONE WHO LOOKS AT THE HISTORY OF THE CONSIDERATION OF TERRORISM BY THE UNITED NATIONS, ANYONE WHO HAS PARTICIPATED IN SOME OF THOSE DISCUSSIONS KNOWS THAT THOSE QUESTIONS HAVE CONSISTENTLY PROVEN INTRACTABLE. WE ARE QUITE CONVINCED, REGRETTABLY, AS WE WERE TWO YEARS AGO, THAT IRRESPECTIVE OF THE GOOD INTENTIONS OF THOSE WHO HAVE MADE THOSE PROPOSALS, SUCH CONFERENCE COULD NOT SERVE A USEFUL PURPOSE AND COULD BE DAMAGING BY CREATING NEW, UNNECESSARY DIVISIONS. WE DO NOT BELIEVE THAT A NEW ATTEMPT TO DEFINE TERRORISM TODAY CAN BE ANY MORE SUCCESSFUL THAN ATTEMPTS THAT HAVE BEEN MADE TO DO SO IN THE PAST. WE HAVE HAD MORE EVIDENCE OF THIS IN SOME OF THE STATEMENTS THAT HAVE BEEN MADE SO FAR. THE HISTORY OF THE ISSUE IS SIMPLY TOO CHARGED. ALSO, WE MUST REITERATE THAT, WHETHER A PARTICULAR ACT IS OR IS NOT AN ACT OF TERRORISM DOES NOT DEPEND ON WHO COMMITS IT. IT IS DIFFICULT TO UNDERSTAND TODAY, MR CHAIRMAN, WHY THERE IS A NEED TO DISTINGUISH THE STRUGGLE OF LIBERATION MOVEMENTS FROM TERRORISM, WHEN MAJOR LIBERATION MOVEMENTS HAVE TAKEN THE LEAD IN RENOUNCING TERRORISM AS PART OF THEIR ACTION. THIS PROPOSAL CULTIVATES AN AMBIGUITY WHICH IS UNNECESSARY AND, IN OUR VIEW, BENEFITS NO ONE.

WE THEREFORE BELIEVE, MR CHAIRMAN, THAT THE COURSE OF ACTION THAT HAS BEEN FOLLOWED BY THE INTERNATIONAL COMMUNITY, THE DEVELOPMENT AND APPLICATION OF SPECIFIC INSTRUMENTS, REMAINS A WISER AND MORE CONSTRUCTIVE APPROACH. IN THIS CONNECTION, WE WELCOME THE FORTHCOMING DEVELOPMENT BY ICAO OF AN INTERNATIONAL REGIME FOR THE MARKING OF PLASTIC OR SHEET EXPLOSIVES FOR THE PURPOSE OF DETECTION.

MR CHAIRMAN, CANADA HAS COSPONSORED DRAFT RESOLUTION A/C.6/44/L.2 OF SEPTEMBER 26, 1989, BECAUSE WE CONSIDER THIS DRAFT RESOLUTION TO BE A SOBER AND BALANCED SUMMARY OF INTERNATIONAL ACHIEVEMENTS AND GOALS IN THE FIELD OF ANTI-TERRORISM. I WOULD NOTE ESPECIALLY THE OPENING OPERATIVE PARAGRAPH, WHICH ONCE AGAINST UNIQUIVOCALLY CONDEMNS ALL ACTS, METHODS AND PRACTICES OF TERRORISM. THIS MUST BE A GUIDING PRINCIPLE OF OUR WORK, AN INDISPENSABLE FRAMEWORK TO DEAL WITH THIS CHALLENGE. THE DRAFT ALSO DEALS WITH MANY OF THE PRINCIPLES AND DEVELOPMENTS I HAVE TOUCHED UPON AND I WILL NOT AT THIS STAGE DWELL ON THEM.

I WOULD LIKE, HOWEVER, TO MAKE A FEW OBSERVATIONS ON ONE PARTICULAR ASPECT OF THE DRAFT RESOLUTION WHICH WE CONSIDER TO BE OF VITAL IMPORTANCE. THE DRAFT RESOLUTION PROPERLY ENCOURAGES STATES WHICH HAVE NOT YET DONE SO TO BECOME PARTIES TO THE CONVENTIONS DESIGNED TO PREVENT AND PUNISH ACTS OF TERRORISM. INDEED, THE DEVELOPMENT AND GENERAL ACCEPTANCE OF LEGAL INSTRUMENTS ARE ESSENTIAL STEPS IN INTERNATIONAL COOPERATION AGAINST TERRORISM. A LEGAL INSTRUMENT, HOWEVER, IS NOT AN END IN ITSELF. IN THIS CONNECTION, THE DRAFT RESOLUTION URGES ALL STATES TO FULFIL THEIR OBLIGATIONS UNDER INTERNATIONAL LAW AND, IN PARTICULAR, TO TAKE PROMPTLY ALL STEPS NECESSARY TO IMPLEMENT THE INTERNATIONAL CONVENTIONS ON THIS SUBJECT TO WHICH THEY ARE PARTY. TOO OFTEN, STATES HAVE IGNORED THEIR INTERNATIONAL OBLIGATIONS, RELEASING ALLEGED OFFENDERS AND THEREBY UNDERMINING THE OFTEN DIFFICULT WORK THAT HAS BEEN CARRIED OUT BY THE INTERNATIONAL COMMUNITY. THE OFFENCES COVERED IN THE INTERNATIONAL INSTRUMENTS ARE INTERNATIONAL CRIMES, WHICH STATES ARE BOUND TO PUNISH. IT IS NOT AN EXAGGERATION TO SAY THAT THIS PRINCIPLE IS QUICKLY BECOMING HAS BECOME ONE OF CUSTOMARY INTERNATIONAL LAW, PARTICULARLY IN THE REALM OF INTERFERENCE WITH INTERNATIONAL CIVIL AVIATION, DUE TO THE BROAD ACCEPTANCE OF THE CONVENTIONS INVOLVED.

OCCASIONALLY, STATES RELEASE OR AGREE TO RELEASE OFFENDERS UNDER THE DURESS OF HOSTAGE-TAKING. IN OUR VIEW, THE VALIDITY OF COMMITMENTS MADE UNDER SUCH CIRCUMSTANCES IS QUESTIONABLE UNDER BASIC LEGAL PRINCIPLES. MOREOVER, STATES ARE IN BREACH OF THEIR INTERNATIONAL OBLIGATIONS WHEN THEY RELEASE OFFENDERS UNPUNISHED AFTER AN INCIDENT HAS ENDED, OR WHEN THEY GRANT PARDONS TO OFFENDERS AFTER DURESS HAS COME TO AN END. FROM AN INTERNATIONAL POINT OF VIEW, PRISONERS WHO HAVE COMMITTED INTERNATIONAL CRIMES AND ARE PARDONED UNDER DURESS, ARE SIMPLY CRIMINALS WHO HAVE NOT COMPLETED THEIR SENTENCES AND HAVE SUCCEEDED IN ESCAPING THROUGH ILLEGAL MEANS. TO TAKE ANY OTHER POSITION SIMPLY CREATES A LOOPHOLE TOO LARGE FOR THE INTERNATIONAL COMMUNITY TO ACCEPT.

THE SIMPLE MESSAGE IS TO APPLY EFFECTIVELY THE CONVENTIONS WE NOW HAVE IN PLACE; IN DOING SO, WE SHALL MAKE GREAT STRIDES IN COMBATTING THE PROBLEM OF TERRORISM. TO DO SO IS TO UPHOLD THE PRIORITY OF INTERNATIONAL LAW AND IS TO RELY ON THE PEACEFUL AND JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES. WE WERE HEARTENED RECENTLY TO LEARN ABOUT DISCUSSIONS BETWEEN THE USA AND THE USSR TO APPLY THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE TO POSSIBLE DISPUTES IN THE REALM OF TERRORISM. APPLICATION OF THE CONVENTIONS WE HAVE IN PLACE AND RELIANCE ON EXISTING MECHANISMS TO SETTLE JUDICIALLY ANY DISPUTES THAT MAY ARISE OUT OF THESE CONVENTIONS, IS THE SIMPLE FORMULA THAT WE ADVOCATE FOR THE YEARS AHEAD.

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