

21. LETTER DATED 4 FEBRUARY 1986 FROM THE PERMANENT REPRESENTATIVE OF THE SYRIAN ARAB REPUBLIC TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

Decision of 6 February 1986 (2655th meeting): rejection of a five-Power draft resolution

By a letter¹ dated 4 February 1986 addressed to the Secretary-General, the representative of the Syrian Arab Republic transmitted a letter of the same date from his Minister for Foreign Affairs addressed to the Secretary-General informing him and, through him, the President and members of the Security Council of the act of air piracy that had been carried out on the same date by two Israeli fighter aircraft in international airspace. The letter had stated that at 0854 hours Greenwich mean time the private Libyan civilian G-2 type aircraft registered under No. LN 777 (S-ADDR NDAE) had left the international airport of Tripoli, with an official Syrian delegation on board on its way back from an official visit to the Libyan Arab Jamahiriya. It was further stated that, while the aircraft was flying in international airspace over the Mediterranean Sea, the pilot had informed the Cyprus airport control centre, at 1101 hours, that two Israeli fighter aircraft had been intercepting him and demanding that he accompany them; and that, at 1103 hours, the aircraft's contact with the Cyprus airport had been broken off. The letter then drew attention to the gravity of that act against the safety and security of civilian travel in international airspace and the dangerous consequences deriving therefrom, and requested that the necessary steps and measures be taken to discover the fate of the aircraft and its passengers and crew and to ensure their safety. Finally, the letter had stated that the Syrian Arab Republic placed full responsibility upon Israel for that act of air piracy, which constituted a flagrant violation of the norms of international law and international conventions guaranteeing the freedom and safety of aviation.

By a letter² of the same date addressed to the President of the Security Council, the representative of the Syrian Arab Republic requested an immediate meeting of the Council to consider the Israeli act of air piracy carried out that morning against a private Libyan civilian passenger aircraft flying in international airspace over the Mediterranean.

At its 2651st meeting, on 4 February 1986, the Security Council included in its agenda the item entitled "Letter dated 4 February 1986 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council", and considered the item at the 2651st, 2653rd and 2655th meetings, held between 4 and 6 February 1986.³ In the course of its deliberations, the Council invited, at their request, the representatives of Algeria, the German Democratic Republic, India, the Islamic Republic of Iran, Israel, Iraq, Jordan, the Libyan Arab Jamahiriya, Morocco, the Syrian Arab Republic and Yugoslavia to participate, without the right to vote, in the Council's discussion of the item. The Council also extended an invitation, as requested under rule 39 of the provisional rules of procedure of the Security

Council, to Mr. Samir Mansouri, Deputy Permanent Observer of the League of Arab States (LAS) to the United Nations.⁴ The Council further decided, by vote, to invite the representative of the PLO to participate in the discussion.⁵

At the 2651st meeting, on 4 February 1986, the representative of the Syrian Arab Republic reiterated that an act of air piracy and international terrorism had been directed against international civil aviation by the Israeli authorities, who had intercepted a civilian Libyan aircraft, with an official Syrian delegation on board, flying in international airspace over the Mediterranean Sea on 4 February 1986. He appealed to the Security Council to take all necessary steps and measures to discover the fate of the Libyan aircraft and the fate of its passengers and crew, and to ensure their safety. He said that the Syrian Arab Republic placed full responsibility upon Israel for its air piracy. He said further that Israel's act fell within the jurisdiction of the Security Council since what was done by Israel did affect civil aviation in all parts of the world. He called upon the Council to condemn Israel for the act of piracy and terrorism which it had committed, and to demand that Israel put an end to such acts, and that it should heed international agreements and the norms of international law.⁶

At the same meeting, the representative of Israel said that Israel's pilots had intercepted a Libyan executive aircraft, not a civil airliner, that had been carrying a dozen people. He stated that the aircraft had been suspected of carrying terrorists who had been involved in planning attacks against Israel but that, upon examination of the passengers, it had turned out that there were no such people aboard and that, after a brief respite in Israel, the aeroplane had been retrieved with nobody hurt. He added that his Government's suspicion that there were terrorists on board had grown out of the meeting, which had just ended, of 20 terrorist organizations in Tripoli, which had been convened by President Qaddafi himself under his personal sponsorship. He said that at the meeting, which had been titled "The Revolutionary Forces of the Arab Nation", there had been clear and undisguised declarations about continuing the terrorist attacks against Israel. He then quoted a passage from a General Assembly resolution⁷ pertaining to the duty of every State to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts; and said that neither the Libyan Arab Jamahiriya nor the Syrian Arab Republic measured up to that standard. He contended that, confronted with

⁴For details on invitations under rules 37 and 39 of the provisional rules of procedure of the Security Council, see chap. III of the present *Supplement*.

⁵For the discussion on the proposal to invite the representative of the PLO and for the vote (10 in favour to 1 against with 4 abstentions), see S/PV.2655, pp. 38-42. See also chap. III of the present *Supplement*.

⁶S/PV.2651, pp. 8-13.

⁷General Assembly resolution 2625 (XXV), annex, entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations".

¹S/17785.

²S/17787, *ibid.*, p. 47.

³For the adoption of the agenda, see S/PV.2651, p. 6; see also chap. II of the present *Supplement*.

reason to believe terrorists who were planning additional attacks were on board, Israel could not be expected to sit idly by and wait to absorb the attack. He said that his Government had acted with the intention of intercepting terrorists; and that not to have acted would have been to succumb to the absolutist inhibition of the essential concept of self-defence, an interpretation which had never been applicable in practice and which was certainly outdated given the nature of terrorist warfare that was being waged. He further said that classic international law actually allowed a country to stop ships in international waters if pirates were believed to be on board, and quoted, as an example, from "Bowett's classic book", where, he said, Bowett had written:

It is clear, as the case of the *Mariana Flora* shows, that the right may be exercised against acts of piratical aggression if the circumstances are such as to reasonably warrant the apprehension of real danger by the State. The fact that the ship subsequently proves innocent of piratical character would seem to be irrelevant if the initial suspicion is well-founded.

He then referred to the principle of the "absolutist" limits on self-defence, and said that a nation attacked by terrorists was permitted to use force to prevent or pre-empt future attacks and that it was simply not serious to argue that international law prohibited States from capturing terrorists in international waters or international airspace. He concluded by asserting that a serious discussion of the problem of international terrorism and its implications for international norms would show that even those who did not yet fully accept the fundamental concept of self-defence, as it must be construed in the age of terrorism, were prepared to accept that the sanctity of human lives preceded the sanctity of airspace.⁸

At the same meeting, Mr. Mansouri, Deputy Permanent Observer of the League of Arab States to the United Nations, charged that Israel's act of intercepting the civilian Libyan aircraft over international airspace constituted an act of broadening the policy of terrorism and aggressive practices beyond aggression in Arab territories and against Arab States. He said that it was an infringement on the safety of civilian aviation in international airspace on the basis of imaginary pretexts and without justification, quite apart from being in complete contravention of international law and norms. He called upon the Council to condemn vigorously Israel's act of aggression and to affirm that it was imperative that there be no repetition of such acts by a State Member of the United Nations.⁹

At the same meeting, the representative of the Syrian Arab Republic, speaking in exercise of the right of reply, disputed the position of the representative of Israel that Israel had acted in self-defence in intercepting the Libyan aircraft. He recalled that in the past Israel had waged many wars against neighbouring Arab territories on the pretext that it had a right to act in self-defence as its security was threatened. He charged that Israel's act of intercepting the Libyan aircraft constituted an act of aggression against the entire international community, against the freedom of international aviation and against the safety of passengers. He called upon the Council to act in the interest of the in-

ternational community by adopting a strong resolution against Israel, in order to deter it from any further acts of aggression against the Arabs.¹⁰

At the 2653rd meeting, on 5 February 1986, the President drew the attention of the members of the Council to a draft resolution¹¹ that had been submitted by the Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates. Under the draft, the Security Council would have condemned Israel for its forcible interception and diversion of the Libyan civilian aircraft in international airspace and its subsequent detention of the said aircraft; considered that that act by Israel constituted a grave violation of the principles of international law and in particular the relevant provisions of the international conventions on civil aviation; called upon the International Civil Aviation Organization (ICAO) to take due account of the resolution when considering adequate measures to safeguard international civil aviation against such acts; and called upon Israel to desist forthwith from any and all acts endangering the safety of international civil aviation and solemnly warned Israel that if such acts were repeated the Council would consider taking adequate measures to enforce its resolution.

At the same meeting, the representative of the Libyan Arab Jamahiriya condemned Israel's interception and diversion of the civilian aircraft flying in international airspace as a criminal act committed in flagrant violation of the Charter of the United Nations, international law and the relevant conventions, in addition to being a violation of the sovereignty of the aircraft's owner State and aggression not only against the freedom of the passengers but also jeopardizing their safety and security. He called upon the Security Council to denounce and condemn the Israeli act and to take firm steps aimed at deterring any further Israeli terrorist acts. He further called upon the Council to deprive Israel of membership in the United Nations and to impose deterrent economic sanctions against it in order to force it to heed the will of the international community, and to comply with the relevant resolutions of the Security Council and to respect its prestige.¹²

At the same meeting, the representative of Jordan stated that Israel's act of intercepting the Libyan civilian aircraft constituted an act of violation of international conventions governing the safety of civil aviation and expressed the hope that the Security Council would condemn the Israeli violation by adopting the draft resolution before it.¹³

At the same meeting, the representative of Morocco expressed the view that Israel had been encouraged to violate international law by the impotence of the Security Council in its failure to adopt more effective measures to put an end to Israel's policy of disregarding international law. He called upon the Council, which bore the primary responsibility for the maintenance of international peace and security, to take the necessary effective measures required by the situation and to guarantee the implementation of the United Nations resolutions on terrorist acts by Israel.¹⁴

⁸S/PV.2651, pp. 14-20. For the discussions regarding the Charter principles provided in Articles 2, paragraph 1, and 51, see chap. XII of the present *Supplement*, case 2.

⁹S/PV.2651, pp. 22-24.

¹⁰*Ibid.*, second intervention, pp. 26-36.

¹¹For the text of the draft resolution, see S/17796.

¹²S/PV.2653, pp. 5-11.

¹³*Ibid.*, pp. 12 and 13.

¹⁴*Ibid.*, pp. 17 and 21.

At the same meeting, the representative of Israel refuted the accusations of the previous speakers, whom he accused of being responsible for perpetrating acts of terrorism against Israel over the years, using a strategy not provided for by the founders of the United Nations. He charged the Libyan Arab Jamahiriya, together with other Arab States, of waging a new kind of war which could be met through the policy of self-defence and called upon the Security Council to recognize the supremacy of the principle of self-defence where States were victims of terrorism.¹⁵

At the 2655th meeting, on 6 February 1986, the representatives of the United Arab Emirates, China, Ghana, Algeria, Bulgaria, India, Yugoslavia, the German Democratic Republic, Iraq, the Islamic Republic of Iran, the PLO and the President, speaking in his capacity as the representative of the Congo, rejected the invocation by Israel of the principle of self-defence as a justification for its act, which they deplored as a flagrant contravention of the norms of international law, particularly the international Conventions of Chicago, The Hague and Montreal governing the freedom and safety of civil aviation in international airspace, and called upon the Security Council to condemn Israel for its interception of the Libyan aircraft and to prevent the repetition of such acts. The representatives of Yugoslavia, the German Democratic Republic and the PLO stressed the need for the Council to facilitate the convening of an international conference on the Middle East for a just, comprehensive and lasting solution to the crisis on the basis of Israel's withdrawal from all occupied territories and the Palestinian people's right to self-determination, while the representative of the PLO further said that the Council should consider sanctions against Israel under Chapter VII of the Charter.¹⁶

At the same meeting, the representative of Israel, speaking in exercise of the right of reply, recounted a series of instances pertaining to relations among Middle Eastern States and said that most of the terrorist incidents concerning the threats to international civil aviation did not involve Israel, not even as a target. He added that, on the contrary, they involved Arabs or Middle Eastern regimes striking at other Middle Eastern regimes and that it was not the Arab-Israeli conflict but rather the continuing conflicts among the Middle Eastern regimes which had escalated terrorism beyond the Middle East. In urging the Council to reject the draft resolution condemning his Government for the interception of the Libyan aircraft, the rep-

resentative of Israel said that the States that had pushed for the draft resolution before the Council were the States that sponsored terrorism and that to adopt the draft resolution would be to encourage terrorism.¹⁷

At the same meeting, the representative of France, speaking in explanation of vote before the vote, stated that, while necessary action against terrorism could not be legitimized by violation of international law, his Government realized that Israel's action had been taken in the context of acts of terrorism which had recently been perpetrated in several European countries and that France was not able to support the draft resolution since it included formulations which did not seem to reflect the precise facts of the situation.¹⁸

The representative of the United States of America, also speaking in explanation of vote before the vote, said that although his Government opposed Israel's action, it would vote against the draft since it did not practically and appropriately address the issue of terrorism. The Government of the United States considered that terrorist violence, not the response to it, was the cause of the cycle of violence in the Middle East and the entire world. The United States was of the view that there might arise exceptional circumstances in which interception might be justified. He upheld the principle that a State whose territory or citizens were subjected to continuing terrorist attacks might respond with appropriate use of force to defend itself against further attacks, and that the appropriateness of a particular action always raised considerations of necessity and proportionality. He stressed that, where the target of a defensive action was an aircraft, heightened attention should be paid to considerations of safety, taking measures only in exceptional circumstances and exercising every possible precaution, and paying the greatest possible attention to the safety of the aircraft and those on board. He said that a State should intercept a civilian aircraft only on the basis of the strongest and clearest evidence that terrorists were aboard, but that Israel, however, had not met the standard and that the United States therefore deplored the action. Nevertheless, he concluded, his Government would not support a draft resolution which implied that interception of an aircraft was wrongful, per se, without regard to the possibility that the action might be justified.¹⁹

At the same meeting the draft resolution was voted upon and received 10 votes to 1, with 4 abstentions, and was not adopted owing to the negative vote of a permanent member of the Security Council.²⁰

¹⁵Ibid., pp. 23-33.

¹⁶For the relevant parts of the statements, see S/PV.2655: United Arab Emirates, pp. 11-16; China, pp. 17-18; USSR, pp. 19-23; Ghana, pp. 27-32; Algeria, pp. 33-36; Bulgaria, pp. 37-38; India, pp. 43-47; Yugoslavia, pp. 48-51; German Democratic Republic, pp. 55-56; Iraq, pp. 56-59; Iran (Islamic Republic of), pp. 65-71; PLO, pp. 80-82; and the President, pp. 82-83.

¹⁷S/PV.2655, pp. 83 and 91-96.

¹⁸Ibid., p. 111.

¹⁹Ibid., pp. 112 and 113.

²⁰For the vote on the draft resolution (S/17796/Rev.1) see *ibid.*, p. 114. For the full text of the draft resolution, see note 10, above. See also chap. IV of the present *Supplement*.