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THE QUESTION OF WESTERN SAHARA AT THE UNITED NATIONS*

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THE QUESTION OF WESTERN SAHARA AT THE UNITED NATIONS

I. The inscription of Western Sahara
in the list of Non-Self-Governing Territories

The territory of Western Sahara did not figure amongst the territories listed in General Assembly resolution 66 (I) as non-self-governing in regard to which information was to be transmitted under Article 73 (e) of the Charter, owing to the fact that the administering Power, Spain, was not admitted to membership of the United Nations until 1955. After Spain's admission, the Secretary-General, in keeping with usual practice, addressed a letter in February 1956 to the Spanish Government inquiring whether it administered any non-self-governing territories.

The Spanish Government did not respond until November 1958 ^{1/} when it informed the Secretary-General that Spain possessed no non-self-governing territories, since its African territories had been, following legislation enacted since the receipt of the Secretary-General's letter, classified as provinces of Spain.

It was only in 1960, when a draft resolution was submitted in the Fourth Committee enumerating the overseas territories of Spain and Portugal which were to be regarded as non-self-governing, ^{2/} that the representative of Spain conveyed his Government's readiness to transmit information on Western Sahara as well as on the other Spanish territories listed in the proposed resolution. ^{3/} The representative of Morocco expressed reservations with regard to the Spanish Sahara as well as Ifni which, he stated, his Government considered to be an integral part of Morocco. ^{4/} On the basis of the statement by Spain, the resolution eventually adopted, while listing the territories of Portugal which the General Assembly declared to be non-self-governing, limited itself regarding the Spanish territories to welcoming the statement by Spain that it was ready to transmit information to the Secretary-General in accordance with the provisions of Chapter XI of the Charter. ^{5/}

Following the establishment of the Special Committee on decolonization, ^{6/} the Spanish Sahara was included in 1963 in the preliminary list

^{1/} Official Records of the General Assembly, Thirteenth Session, Annexes, a.i. 36, A/C.4/385/Rev.1.

^{2/} Ibid., Fifteenth Session, Annexes, a.i. 38, A/C.4/L.649.

^{3/} Ibid., Fifteenth Session, A/C.4/SR.1038, para. 27.

^{4/} Ibid., A/C.4/SR.1046, para. 39.

^{5/} General Assembly resolution 1542 (XV).

^{6/} Its full title is: Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

of territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples applied. 7/ From that year the question of Western Sahara has been regularly considered by the Special Committee and in the General Assembly. Prior to 1969, the two organs discussed the situation in Western Sahara in conjunction with Ifni, a Spanish enclave in Morocco's South-West coast. After Spain and Morocco reached agreement on the transfer of Ifni to Morocco, the question of Western Sahara was considered separately by the two above-mentioned organs.

II. The United Nations and the Spanish Sahara in the years 1964-1973

Adoption by the General Assembly of Resolution 2229 (XXI)

The Special Committee, which began its examination of the question of Ifni and Spanish Sahara in 1963, adopted its first resolution on the two territories in October 1964. 8/ The resolution inter alia regretted Spain's delay in implementing the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) - hitherto referred to as the Declaration on Decolonization - and urged Spain to take immediate measures towards the full and unconditional implementation of the Declaration.

A year later the General Assembly, in its first resolution on Ifni and the Spanish Sahara, 9/ approved the Special Committee's resolution of 1964, and "urgently requested" Spain to take all the necessary measures for the liberation of Ifni and Spanish Sahara from colonial domination and to this end "to enter into negotiations on the problems relating to sovereignty presented by these two Territories". Significantly, the resolution did not contain the usual reference to the right of the peoples of either Territory to self-determination and independence. While the resolution as a whole received overwhelming approval 10/, the sentence relating to negotiations covering the issue of sovereignty, which was put to a separate vote at Spain's request, was approved only

7/ See Decolonization, Vol. II, No. 6, December 1975, Table III.

8/ Official Records of the General Assembly, Nineteenth Session, Annexes, Annex No. 8 (Part I) (A/5800/Rev.1), Chapter IX, para. 112.

9/ General Assembly resolution 2072 (XX).

10/ The resolution received 100 votes in favour, 2 against (Portugal and Spain) and 4 abstentions (France, South Africa, United Kingdom and United States).

by 33 votes to 2 with 69 abstentions. 11/

When the Sahara and Ifni questions were discussed again by the Special Committee at a session held in Addis Ababa in June 1966, 12/ Morocco, which had hitherto called for the direct reversion of the Territory through direct talks with Spain, declared that in view of Spain's refusal to enter into negotiations, it now proposed that the Spanish Sahara as well as Ifni should as soon as possible be granted independence in the conviction that, once the "Moroccan people" of the "so-called Spanish Sahara" had become masters of their own destiny, they would choose to unite with Morocco. The Moroccan representative stressed that his country's stand should in no way be understood to mean that it had abandoned, in any form, its right to the Sahara.

A similar approach regarding the Sahara was taken by Mauritania, which had hitherto also called for negotiations with Spain with a view to "achieving unification" with the territory of the Spanish Sahara. In his intervention before the Special Committee, the representative of Mauritania declared that without retreating from its stated position,

11/ In favour: Afghanistan, Algeria, Cameroon, Central African Republic, Ethiopia, Ghana, Guinea, Iran, Ivory Coast, Kenya, Kuwait, Lebanon, Liberia, Libya, Mali, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Senegal, Sierra Leone, Sudan, Syria, Togo, Tunisia, Uganda, United Arab Republic, Upper Volta, Yemen, Yugoslavia and Zambia.

Against: Portugal and Spain.

Abstaining: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Greece, Guatemala, Honduras, Hungary, Iceland, India, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Luxembourg, Madagascar, Malawi, Malaysia, Maldives Islands, Mexico, Mongolia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, South Africa, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

12/ Official Records of the General Assembly, Twenty-first Session, Annexes, a.i. 23, (A/6300/Rev.1), Chapter X, paras. 62-116.

his country believed that the Spanish Sahara should be "completely independent of Spain, but also, of course, of Morocco".

The positions of these two countries were further elaborated when the Special Committee resumed consideration of the item in the fall of 1966. 13/ Mauritania called for the exercise of the right of self-determination by the people of the Spanish Sahara "under the supervision of international observers". Morocco stated that "if the Special Committee preferred the formula of self-determination, Morocco would not object", provided that Spain withdrew its military forces, discontinued the organized immigration of Spaniards and authorized the return of all the refugees. Morocco further requested that it should actively participate in arrangements for implementing self-determination and the withdrawal of the Spanish administration in order to enable the process of decolonization to be conducted under international supervision. The same position was reiterated by the Foreign Minister of Morocco in his address to the General Assembly in October 1966. 14/

The representative of Algeria, speaking before the Special Committee for the first time on the issue, stressed his country's support for the right of all peoples under colonial rule to self-determination and independence. In the case of the Spanish Sahara, Algeria took a particular interest in the future of a country with which it had common borders, as well as close ties of blood, tradition and culture.

Spain, for its part, in a letter addressed to the Chairman of the Special Committee in September 1966 15/ reiterated its support for the principle of self-determination in the Spanish Sahara and stated that it was making the necessary preparations for the population of the Sahara to express their will "without any form of pressure". The letter added that those preparations were taking some time because of the nomadic character of the population and the special features of the Territory. Later that year, the representative of Spain declared before the Fourth Committee that his country was willing to open talks with the Secretary-General to study the designation of a commission composed of "impartial and disinterested persons" to visit the Sahara to assess the situation in the Territory and "determine the desires of the indigenous people of the Sahara in respect of their future". 16/ The resolutions adopted in

13/ Ibid., paras. 117-243.

14/ Official Records of the General Assembly, Twenty-first Session, Plenary Meetings, A/PV.1441.

15/ Ibid., Annexes, a.i. 23 (A/6300/Rev.1), Chapter X, Annex.

16/ Official Records of the General Assembly, Twenty-first Session, A/C.4/SR.1660.

1966 by the Special Committee 17/ and by the General Assembly 18/ distinguished for the first time, the process to be followed in the decolonization of the Spanish Sahara from that of Ifni. The latter Territory was clearly perceived as falling within paragraph 6 of resolution 1514 (XV) 19/ for both the Special Committee and the General Assembly requested Spain to accelerate the decolonization of Ifni and to arrange with the Government of Morocco procedures for the transfer of powers in accordance with the provisions of General Assembly resolution 1514 (XV), even though the text adopted by the General Assembly, unlike that adopted by the Special Committee, added that the arrangements for the transfer of power were to be undertaken "bearing in mind the aspirations of the indigenous population". Concerning the Sahara, on the other hand, the General Assembly's resolution, which incorporated and expanded on the Special Committee's resolution, "invited" Spain to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise fully its right to self-determination. The resolution further called on Spain to create a favourable climate for the conduct of the referendum, inter-alia, by permitting the return of exiles and by ensuring that only the indigenous population participated in the referendum. Finally, after taking note of the statement by Spain in the Fourth Committee already alluded to, it requested the Secretary-General, in consultation with the administering Power and the Special Committee, to appoint immediately a special mission to be sent to the Sahara for the purpose of recommending practical steps for the full implementation of the relevant resolutions of the General Assembly, and in particular, for determining the extent

17/ A/AC.109/214, adopted on 16 November 1966. See Official Records of the General Assembly, Twenty-first Session, Addendum to a.i. 23, Annexes (A/6300/Rev.1), Chapter X, para. 243.

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of United Nations participation in the preparation and supervision of the referendum. 20/

The 1967-1972 period

The General Assembly's call for the "immediate" appointment of a special mission to visit the Sahara, repeated annually between 1967 and 1974, 21/ was not implemented by the Spanish Government until 1975. Spain, which had voted against resolution 2229 (XXI), objected that the terms of reference of the mission were different from those envisaged in the offer conveyed by its representative in the Fourth Committee. Spain further argued that the United Nations visit should take place in "an atmosphere entirely free from passions and in the absence of any prejudices or preconceived attitudes" and not while "a veritable torrent of high feelings /had/ been unleashed, creating acute tensions". 22/ The resolutions adopted by the General Assembly in the years 1967 and 1968 contained virtually identical provisions regarding the Sahara as

20/ The vote for the resolution in the Plenary was 105 in favour, 2 against (Portugal and Spain) with 8 abstentions (Belgium, Dominican Republic, France, Honduras, Mexico, South Africa, United States and Uruguay). The phrase calling for consultations with Morocco, Mauritania and any other interested party, which was put to a separate vote, was approved by 75 votes to 3 with 37 abstentions. It should be noted that, as Mexico's representative pointed out in the Fourth Committee in 1975 (A/C.4/SR.2176), the abstention by Mexico on that, as well as on some other resolutions on the Spanish Sahara, was motivated by bilateral considerations, namely the non-recognition by Mexico of the Franco régime in Spain.

21/ No resolution on the Sahara was adopted in 1971.

22/ See letter dated 18 April 1967 from the Permanent Representative of Spain to the Secretary-General (Official Records of the General Assembly, Twenty-second Session, Annexes, addendum to a.i. 23 (A/6700/Rev.1), Part II, Chap. IX, Annex, para. 4). The Secretary-General's communications delivered in the month of January of each year between 1968 and 1971 concerning the appointment of the mission were invariably answered by Spain in either October or November of the respective year. (See Official Records of the General Assembly, Twenty-third Session, Annexes, addendum to a.i. 23 (A/7200/Rev.1), chap. XIII, Annexes II and III; Ibid., Twenty-fourth Session, Supplement No. 23 (A/7623/Rev.1), Vol. III, Chap. X, Annex III; Ibid., Twenty-fifth Session, Supplement No. 23 (A/8023/Rev.1), Vol. III, Chap. IX, Annex II; Ibid., Twenty-sixth Session, Supplement No. 23 (A/8423/Rev.1), Vol. III, Chap. X, Annex II).

the one adopted in 1966. 23/ The only new element lay in the increasingly clear distinction which the General Assembly drew between the legal status of Ifni and that of the Sahara and between the decolonization processes to be followed in relation to each Territory, a distinction which was in fact explicitly spelt out in the last preambular paragraph of resolution 2428 (XXIII). Both that resolution and resolution 2354 (XXII) adopted in the previous year consisted of two separate parts: In the first part, which referred to Ifni, the General Assembly reaffirmed that the procedures for the transfer of powers was to be determined between Spain and Morocco bearing in mind the aspirations of the indigenous population, and called on Spain to continue the dialogue it had begun for that purpose with the Government of Morocco. In the second part, which dealt with the Sahara, the General Assembly reiterated the call for a referendum under United Nations auspices to be arranged by Spain in consultation with Mauritania and Morocco and any other interested party and for the immediate dispatch of a visiting mission. 24/ With the retrocession of Ifni to Morocco on 30 June 1969, the resolution adopted by the General Assembly at its twenty-fourth session, like subsequent ones, dealt only with the question of the Spanish Sahara. 25/

The resolution approved in 1970 26/, shortly after the meeting in Nouadhibou of the Heads of State of Algeria, Mauritania and Morocco, went further than previous ones by inter alia, a) declaring that the continued existence of a colonial situation in the Territory retarded stability and harmony in north-west Africa; b) calling on Spain to comply with the General Assembly resolutions on the activities of foreign economic interests operating in the Sahara; c) inviting all States to

23/ With the exception of a brief consensus adopted in 1967, the Special Committee, while considering annually the situation in the Spanish Sahara, has not adopted any further resolutions or recommendations on the question except in 1975 when it approved the conclusions and recommendations of the visiting mission. See below, pages 26 and 27.

24/ Resolution 2354 (XXII) was adopted by a non-recorded vote of 113 votes to 0 with 4 abstentions. Resolution 2428 (XXIII) received 114 votes (including those of Algeria, Mauritania, Morocco and Spain); none against and 3 abstentions (France, Mexico and South Africa).

25/ Resolution 2591 (XXIV) did not contain any new elements by comparison to previous resolutions. It was adopted by a vote of 110 in favour (including Algeria and Mauritania); 0 against and 5 abstentions (Australia, France, Portugal, Spain and United States). Morocco, which had voted for the resolution in the Fourth Committee, was absent when the vote was taken in the Plenary.

26/ Resolution 2711 (XXV).

refrain from making investments in the Territory in order to speed-up the achievement of self-determination and d) reaffirming the recognition of the legitimacy of the struggle waged by colonial peoples for self-determination. 27/

At the twenty-sixth session of the General Assembly, Algeria, Mauritania and Morocco stated that since their countries were engaged in a common effort in conjunction with the administering Power to assist in the decolonization of the Spanish Sahara they had decided that no draft resolution should be submitted that year and requested that consideration of the question be postponed to the following session. 28/ As a result no resolution on the Spanish Sahara was adopted in 1971.

No progress had been achieved in the decolonization of the Sahara when the General Assembly reconvened in the fall of 1972. A few months earlier, it will be recalled, the Algerian-Moroccan border dispute had been settled on the occasion of the OAU Summit Conference at Rabat which, in the view of most observers, marked a high point in relations between the two countries. Speaking in the Fourth Committee, the Foreign Minister of Morocco reaffirmed his country's position on the Sahara as enunciated since 1966 and reiterated support for the application of the principle of self-determination to the Sahara under procedures to be conducted under United Nations supervision. 29/ He blamed Madrid for the lack of progress in the decolonization of the Sahara and particularly for its refusal to co-operate in the dispatch of the visiting mission and suggested that Spain's favourable votes in 1967 and 1968 for the resolutions on the Sahara had been a tactical device to obtain support in the United Nations for the return of Gibraltar. Misgivings concerning Spanish intentions were also expressed, though in milder terms, by the representatives of Algeria and Mauritania. 30/

The representative of Spain for his part repeated his country's commitment to uphold the right to self-determination of the indigenous inhabitants of the Sahara "without any outside interference". He expressed concern at attempts to infiltrate populations from neighbouring countries into the Spanish Sahara in order to distort the act of self-

27/ The resolution was adopted by a vote of 103 (including Algeria, Mauritania and Morocco) to 0 with 11 abstentions (Australia, Austria, Belgium, Canada, France, Italy, New Zealand, Portugal, Spain, United Kingdom and United States).

28/ Official Records of the General Assembly, Twenty-sixth Session (A/C.4/SR.1966)

29/ Official Records of the General Assembly, Twenty-seventh Session (A/C.4/SR.2004).

30/ Ibid.

determination in the Territory and suggested that the United Nations request Spain and the countries bordering the Sahara to make a solemn declaration that they would respect the integrity of the Territory. 31/

In reply the Foreign Minister of Morocco categorically rejected the accusation that his country had territorial designs on the Sahara. For as long as Spain was occupying the Sahara, it had no right to ask the countries bordering on that Territory what their attitude would be. As and when the United Nations assumed responsibility for a referendum, Morocco would be prepared to make a declaration on the territorial integrity of the Sahara of the kind sought by Spain, but it would not do so for as long as that Territory remained under Spanish domination. If the United Nations guaranteed the holding of a referendum, it could count on Morocco to abide by that referendum's results. Spain, the Foreign Minister concluded, was responsible for the future of the Territory; "once that Territory became independent, its frontiers would indubitably be respected, like those of all independent countries". 32/

The resolution adopted by the General Assembly in 1972, 33/ while following the lines of previous resolutions, contained certain new elements. For the first and only time before 1975, the General Assembly explicitly affirmed the inalienable right of the people of the Spanish Sahara to independence, 34/ expressed support for their struggle to achieve that right and requested all States to give them all necessary moral and material assistance in that struggle. The General Assembly also for the first time deplored that the administering Power had not provided sufficiently clear information on the conditions and time-table to bring about the complete decolonization of the Territory. A paragraph in the original draft 35/ that would have rejected the statement of the Government of Spain that the Saharan people would be consulted only when they expressed a wish to that effect was replaced by another reaffirming the responsibility of the United Nations in all consultations intended to lead to the free expression of the wishes of the people. 36/ On the other hand, the paragraph calling on Spain to determine the procedures for the holding of a referendum under United Nations auspices in consultation with the Governments of Mauritania and Morocco and any other interested party, did not contain the usual reference that this should be done "in conformity with the aspirations of the indigenous

31/ Ibid., A/C.4/SR.2004 and 2005.

32/ Ibid., A/C.4/SR.2005.

33/ Resolution 2983 (XXVII) reproduced in Annex II below.

34/ Hitherto previous General Assembly resolutions affirmed only the right of the people of the Sahara to "self-determination".

35/ A/C.4/L.1018, para. 7.

36/ A/C.4/L.1018/Rev.1, para. 7 which became para. 7 of resolution 2983 (XXVII).

people of the Territory", perhaps because the authors of the draft did not wish to give room to Spain to claim that the people of the Sahara had expressed no desire as yet for a referendum. 37/ Resolution 2983 (XXVII) 38/ was adopted by a vote of 84 in favour (including Algeria and Mauritania), 10 against (Spain, Portugal, South Africa and some Latin American countries) and 26 abstentions (mostly West European and Latin American countries as well as Morocco). 39/

The debate at the Twenty-eighth Session of the General Assembly

The discussion of the question of the Spanish Sahara at the twenty-eighth session of the General Assembly took place two months after General Franco had announced, in response to a request by the Yema'a, the preparation of a new statute granting a greater degree of autonomy to the Sahara and reiterating that self-determination would take place when the population freely so requested. 40/ It also followed the meeting held in Agadir, Morocco, in July 1973, among the Heads of State of Algeria, Mauritania and Morocco. As in previous years, the debate in the Fourth Committee consisted mostly of interventions by Spain, Algeria, Mauritania and Morocco. Commenting on the statement by the representative of Spain 41/ who had mainly referred to the new political

37/ This omission was given by Spain as the main ground for voting against the resolution, the Spanish representative claiming that it was doing so "out of respect to the people of the Sahara", (Official Records of the General Assembly, Twenty-seventh Session, A/PV.2110).

38/ For the roll-call vote see Annex II below.

39/ The Moroccan Foreign Minister explained that his delegation had abstained because it had certain reservations, that he did not elaborate, regarding the contents of the resolution which did not reflect all the aspects of the political developments in the region in the course of 1972. He expressed the hope that the Secretary-General would carry out the mandate given him seven years previously (i.e. appoint the special mission to the Sahara). (Official Records of the General Assembly, Twenty-seventh Session, A/C.4/SR.2015).

40/ The letters by the Yema'a and by General Franco are reproduced in A/9176, Annex IV. The announcement by the Head of the Spanish State did not contain any reference to a United Nations role in the self-determination process in the Western Sahara, nor was the word "independence" mentioned in it.

41/ Official Records of the General Assembly, Twenty-eighth Session, A/C.4/SR.2066.

statute for the Sahara announced by General Franco, the representative of Morocco expressed doubts about the representative character of local assemblies under colonial régimes, particularly when their members found themselves in unanimous agreement with the colonial power. Spain's attitude was based on a dangerous fiction - a local assembly - and as a result, it was following a policy which did not provide for co-operation with the neighbouring States nor with the United Nations. The representative of Morocco criticized the repeated Spanish intention of only allowing "native-born residents" of the Territory to participate in the act of self-determination since, he felt, that reservation did not take account of the nomadic nature of the population nor of the need to allow the numerous political exiles to return to the Territory. In that regard, his country placed complete trust in the United Nations mission charged with supervising the preparation for and conduct of the referendum. The Moroccan representative also expressed criticism of the Spanish contention that the people of the Sahara would be consulted on their future when they expressed such a desire, "since the desire of a people for freedom and free expression must always be taken for granted without the need of consulting it concerning its desire to be consulted". 42/

The representative of Mauritania for his part praised Spain for consistently discharging its obligation to consult with Mauritania and noted that the friendship among the three neighbouring countries and Spain was growing stronger with each passing day. The statement by the permanent representative of Spain, in his view, contained positive elements which could create in the Territory the political conditions necessary for the exercise of the Saharan people's right of self-determination and reflected the desire of the Spanish Government to launch the Sahara on the path of decolonization. Taking account of those developments Mauritania was not pressing for the adoption of a resolution on the Sahara at that session. 43/

The representative of Algeria also expressed doubts about the representativeness of the yema'a and thought the contents of the letter addressed by it to the Head of the Spanish State at least suspect, if not null and void. The reply by the Spanish Government amounted to a reformulation of the position which Spain had always taken but which had not produced the result of enabling the people of the Sahara to exercise their right to self-determination. Rather than a set of principles, what was required were concrete measures within a given time limit to put those principles into practice. The Algerian representative also disagreed with the provision that only indigenous people, born and resident in the Sahara,

42/ Ibid., A/C.4/SR.2073.

43/ Ibid.

would take part in the consultation since it failed to take into account those Saharouis who were in exile, particularly in the three neighbouring countries. He called for consultation between Spain and the three governments in the region and, above all, for United Nations supervision of the measures undertaken by the Spanish Government. He found it symbolic that the representative of Spain had spoken of the Spanish Sahara and of Gibraltar in the same intervention and hoped that the arguments put forward so forcefully concerning Gibraltar would influence the Spanish Government's position in the case of the Sahara. 44/

The resolution adopted by the General Assembly in 1973, 45/ while following the general lines of previous resolutions on the Sahara, did not explicitly reaffirm as in 1972, the right of the people of the Sahara to self-determination and independence. Instead operative paragraph 3 reaffirmed the General Assembly's "attachment to the principle of self-determination and its concern to see that principle applied within a framework that will guarantee the inhabitants of the Sahara under Spanish domination free and authentic expression of their wishes in accordance with the relevant United Nations resolutions on the subject". Paragraph 4 of the resolution was identical to paragraph 5 of resolution 2983 (XXVII) and requested the administering Power to determine in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices to enable the indigenous people of the Sahara to freely exercise its right to self-determination and independence and to that end called on Spain to permit the return of political exiles, to ensure that only the indigenous people of the Territory exercised their right to self-determination and independence, and to receive a United Nations mission.

The absence of a specific paragraph reaffirming the right to self-determination of the people of the Sahara was one of the grounds given by the representative of Spain for his country's abstention in the vote. 46/

44/ Ibid.

45/ Resolution 3162 (XXVIII) reproduced in Annex III below. The resolution was adopted by 91 votes (including Algeria, Mauritania and Morocco) to 0 with 24 abstentions (Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, France, Germany, (Federal Republic of), Greece, Guatemala, Honduras, Iceland, Italy, Jamaica, Khmer Republic, Netherlands, Nicaragua, Panama, Portugal, Spain, Turkey, United Kingdom, United States and Uruguay).

46/ Official Records of the General Assembly, Twenty-eighth Session, A/C.4/SR.2077. On the other hand, the formulation in paragraph 3 of the resolution was commended by the representative of Australia as an example of flexibility to achieve self-determination in a particular set of circumstances and as an effort to take into account particular problems in particular territories which might call for some special expression of the main principles to be employed in solving them (ibid.).

The representative of Morocco stated in the Fourth Committee that the affirmative vote of his delegation could in no way be interpreted as an acceptance of the wording of paragraph 4 which, since the 1972 OAU Summit Conference at Rabat, "no longer corresponded to reality". In his view the resolution was a gesture of disapproval of Spain's policy of denying "a Moroccan and United Nations presence" in the Sahara. ^{47/} The reservation by Morocco was questioned in the Plenary by the representative of Algeria who declared that while the OAU Summit in Rabat had settled the Algerian-Moroccan border dispute and marked a decisive turning point in the relations between the two countries, it had not altered the positions of the three neighbouring countries as regards the Spanish Sahara. ^{48/}

III. The request for an Advisory Opinion of the International Court of Justice

The Twenty-ninth Session of the General Assembly convened in the fall of 1974 barely a month after Spain had announced, in the wake of the promulgation of a new statute for the Spanish Sahara, ^{49/} its decision to hold a referendum in the Territory in the first six months of 1975 under the auspices of, and to be supervised by, the United Nations. ^{50/} This decision was severely criticized in the course of the General Assembly's general debate by the Foreign Minister of Morocco, Mr. Laraki, who declared that the decolonization of the two Spanish Saharan provinces - Sakiel El Hamra and Rio de Oro - had always implied for his Government their reintegration into Morocco. ^{51/} Mr. Laraki cited the General Assembly's calls on Spain to consult with Morocco, Mauritania and any other interested party on the procedures for the holding of a referendum as invitations "to negotiate" and as proof that the decolonization of the Western Sahara posed a problem of sovereignty. The Foreign Minister accused Spain of attempting to create a "fictitious entity" in order to perpetuate the reality of a colonial presence and to

^{47/} Ibid.

^{48/} Ibid., A/PV.2202.

^{49/} See letter of 10 July 1974 from the Permanent Representative of Spain addressed to the Secretary-General (A/9655).

^{50/} Letter of 20 August 1974 from the Permanent Representative of Spain addressed to the Secretary-General (A/9714).

^{51/} Official Records of the General Assembly, Twenty-ninth Session, A/PV.2249.

rob Morocco of two provinces which had always been an integral part of its Territory, in violation of paragraph 6 of resolution 1514 (XV). 52/ As in the case of Gibraltar, the matter of Sakiet El Hamra and Rio de Oro was a question of the restoration of the national unity and territorial integrity of a country, not a question of self-determination. Mr. Laraki added that the decolonization of the Territory did not necessarily and automatically lead to the status of an independent State since resolution 1514 (XV) had been complemented by resolution 1541 (XV) which allowed for the possibility of integration of a colonial territory with an independent State. After stating that there was a legal dispute between Spain and Morocco concerning the status of the two Saharan provinces at the time of their colonization by Spain, the Foreign Minister repeated before the General Assembly the proposal, made two weeks before by King Hassan II, that Spain and Morocco submit their dispute to the International Court of Justice for arbitration. In the event of Spain being unwilling to resort to the Court, Mr. Laraki suggested that the General Assembly request an advisory opinion from the International Court.

Speaking also in the general debate, the Foreign Minister of Mauritania, after reiterating his country's claims to the Spanish Sahara, agreed with the Moroccan proposal to have recourse to the International Court of Justice. He added, though, that whatever the opinion of the Court, the right to self-determination of the people of the Sahara could not be subject to any impediment. His country offered the solemn undertaking to respect freely the expressed will of the population of the Sahara. Mr. Ould Mouknass called for the dispatch of a United Nations visiting mission to the Territory to recommend the measures for the organization and holding of the referendum, including "arrangements that would enable the genuine Saharans, within and outside the Territory, to participate in that consultation". 53/

The representative of Algeria speaking in the same debate stated that his country saw nothing but advantage in placing the matter before the Court, since such a procedure would facilitate the search for a final agreement, though the opinion of the population of the Territory should always be the most important element and the decisive factor in any settlement. 54/

In his speech before the General Assembly, the Spanish Foreign Minister implicitly rejected a contentious recourse to the Court, when he maintained that his country had no dispute or controversy regarding the Sahara with any country in particular, since all States Members of the Organization

52/ For the text of paragraph 6 of resolution 1514 (XV), see above, footnote 19.

53/ Ibid., A/PV.2251.

54/ Ibid., A/PV.2265

were equally bound by the resolutions advocating self-determination as the appropriate means to bring about the decolonization of the Territory. ^{55/}

The positions of Spain and of the three neighbouring countries were further elaborated in the course of the discussion in the Fourth Committee. The representative of Morocco criticized the silence and inertia with which Spain had responded to the General Assembly's resolutions on the Sahara, particularly regarding the appointment of the visiting mission. ^{56/} Contrary to Spain's assertions, no consultations between his country and Spain regarding the Sahara had taken place. In fact Spain had used the eight years since the adoption of resolution 2229. (XXI) to create a new situation exemplified by its increased military occupation of the Territory, its refusal to accept the return of the exiles and its establishment of "vague administrative councils" with the clearly defined aim of ensuring that such assemblies endorsed decisions which were in fact taken by the administering Power. Given this new scenario, the United Nations was fully within its rights in regarding the so-called implementation of its decisions as invalid so long as other elements of those decisions, indivisibly linked to the envisaged consultations, were totally ignored.

The representative of Morocco denied that Morocco's acceptance of the referendum procedure was permanently binding, firstly, because his country had never renounced its contention that the Sahara had been snatched from it by colonial occupation; secondly because Morocco had endorsed previous United Nations resolutions only when taken as a whole, and finally because his country had agreed to decolonization and not to any specific arrangement. The Moroccan Ambassador proceeded to a lengthy analogy between the Western Sahara and Gibraltar, where the General Assembly had recommended a negotiated solution and had in fact condemned the referendum organized by the occupying Power. The only real difference between the two cases was that there was no legal challenge to the existence of Spanish sovereignty over the Rock prior to the English occupation, whereas Spain maintained that the Sahara had been terra nullius when Spain had occupied it. But the very point of the dispute was that Morocco and Mauritania maintained the contrary view. The intervention of the International Court of Justice would make it possible to ascertain whether the Moroccan thesis was well founded. If it was not, that would mean that Spain would have been right to seek to distinguish the case of Gibraltar from that of the Sahara. However, if the Moroccan thesis was confirmed by the Court, there would be no valid reason to treat the two situations differently. On the other hand, the Court could not be consulted on the

^{55/} Ibid., A/PV.2253.

^{56/} Ibid., Fourth Committee, A/C.4/SR.2117. See also ibid. A/C.4/SR.2130.

question of whether the decolonization of the Territory should be carried out in one manner or another since this was a problem for the General Assembly. Ambassador Slaoui added that a General Assembly decision to request an advisory opinion from the Court as to whether the Sahara had been terra nullius at the time of colonization, should be accompanied by an invitation to Spain to defer the holding of the referendum; such referendum, he stated, could take place only if, having regard to the opinion of the Court, the General Assembly decided on one and specified the procedures for it.

In his intervention, 57/ the representative of Mauritania, after dwelling on his country's ties to the Spanish Sahara, argued that an advisory opinion should be asked from the International Court of Justice not only on the status of the Sahara at the time of its colonization by Spain, but also on the nature of the ties between that Territory and the Kingdom of Morocco and the whole of Mauritania. He stressed that the essential aim of the countries concerned was the complete decolonization of the Sahara in accordance with the relevant United Nations resolutions. The Court's opinion would help the General Assembly in defining more closely the practical means for achieving such decolonization. Pending the conclusion of the matter before the Court, the referendum in the Sahara would have to be postponed.

The representative of Algeria stated that his Government, as always, regarded the question of the Sahara primarily as a colonial problem which could only be solved by the speediest possible eradication of colonial domination. 58/ Algeria's interest in the Sahara was not motivated by any territorial claim, but was based on obvious geo-political considerations and on the need for regional unity. His country, recognizing the need to clarify the legal aspects of the situation, firmly supported the proposal by Morocco that the matter should be referred to the International Court of Justice, since an opinion by that body might facilitate the elimination of the obstacles and misunderstandings which had so far delayed the decolonization of that Territory. However, his Government considered that a solution to the problem would benefit from the involvement of the population directly concerned with guarantees of free and full participation through their freely chosen representatives, since that principle was the very foundation of United Nations doctrine on decolonization.

In the course of his interventions during the debate, 59/ the repre-

57/ Ibid., A/C.4/SR.2117.

58/ Ibid., A/C.4/SR.2125.

59/ Ibid., A/C.4/SR.2117, 2126, 2130 and 2131.

representative of Spain reminded the Committee that at the beginning of September he had wished to explain before the Committee of Twenty-Four the policy that the Spanish Government intended to adopt with regard to the decolonization of the Sahara and had sent a note to its Chairman asking to be allowed to participate in the Special Committee's examination of the question. However, his request had been ignored since certain parties had an interest that the question was not discussed in the Special Committee. ^{60/} He stated that, in order to remove any doubt concerning Spain's intention to implement resolution 3162 (XXVIII), his Government was ready to receive a United Nations visiting mission to study every detail of the situation in the Territory. Contrary to the allegations by the representative of Morocco, Spain had unequivocally declared that the referendum should be held under the auspices and guarantee of the United Nations and had held consultations with the three Governments in the region at a series of high level meetings which he proceeded to enumerate. The representative of Spain went on to say that, owing to its nomadic nature, the population had only recently wished to take a more active part in public affairs and that was why the Spanish Government had accepted in 1974 that the Territory should become independent in accordance with the procedure laid down by the General Assembly, though they had the inalienable right to be united with a third country if the population so decided. He denied that Spain had ever considered the Sahara terra nullius since the Sahara, like any other African territory, had been populated. Spain could support the proposal for an advisory opinion, provided the question put by the delegations of Morocco and Mauritania were supplemented by another question on the legal consequences of the provisions of the Charter and of General Assembly declarations and resolutions on decolonization for the indigenous population of the Sahara, the administering Power and the countries bordering on the Territory.

The draft resolution introduced in the Fourth Committee, which was

^{60/} At its 981st meeting, held on 5 September 1974, the Special Committee decided to postpone consideration of the question of the Spanish Sahara following a statement by its Chairman that his preliminary consultations with the parties directly concerned had indicated a strong feeling on the part of some of those consulted that the Committee should defer taking any action at that stage. (A/AC.109/PV.981).

eventually sponsored by 35 African and Arab countries, 61/ recalled in its preambular paragraphs, resolution 1514 (XV) as well as all previous General Assembly resolutions on the Sahara, reaffirmed the right of the people of the Territory to self-determination, 62/ considered that the persistence of a colonial situation in Western Sahara jeopardized stability and harmony in the north-west African region and noted that during the discussion in the Committee "a legal difficulty arose over the status of the said Territory at the time of its colonization by Spain". Under its first operative paragraph, the General Assembly would request the International Court of Justice "without prejudice to the application of the principles embodied in General Assembly resolution 1514 (XV)", to give an advisory opinion at an early date on the following question:

"I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)?"

If the answer to the first question was in the negative,

"II. What were the legal ties between this Territory and the Kingdom of Morocco and the Mauritanian entity?"

Under the third operative paragraph, the General Assembly would urge the administering Power to postpone the referendum it contemplated until the General Assembly decided "on the policy to be followed in order to accelerate the decolonization process in the Territory, in accordance with resolution 1514 (XV), in the best possible conditions, in the light of the advisory opinion to be given by the International

61/ Algeria, Bahrain, Burundi, Chad, Democratic Yemen, Egypt, Gabon, Guinea, Guinea-Bissau, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Oman, Qatar, Rwanda, Saudi Arabia, Senegal, Somalia, Sudan, Syrian Arab Republic, Tunisia, Uganda, United Arab Emirates, Upper Volta and Yemen. The resolution was introduced by the representative of Upper Volta who stated that it was the fruit of long negotiations among the delegations concerned, particularly those of Algeria, Mauritania and Morocco and that it reflected the consensus of the African Group.

62/ The original draft in its English version spoke of the right to self-determination of the "populations" of the Spanish Sahara. (A/C.4/L.1090 and Corr.1). The term "populations" was eventually replaced by "population" after Spain's Permanent Representative pointed out that the term "populations" might be interpreted as a subterfuge to seek something damaging to the unity of the Territory (A/C.4/SR.2130).

Court of Justice". The remaining paragraphs called on States to abstain from contributing by their investments or immigration policy to the maintenance of a colonial situation in the Territory and requested the Special Committee on Decolonization "to keep the situation under review, including the sending of a visiting mission to the Territory".

In the course of the discussion in the Fourth Committee, 63/ several speakers supported the request for an advisory opinion from the International Court, while at the same time, expressing solidarity and support with the positions of Mauritania and Morocco concerning the Western Sahara. 64/ In the view of one delegation Spain was placing too much emphasis on the "devolution" of Spanish Sahara at a time when a constructive proposal acceptable to the parties concerned, to the majority of African countries and to many Arab countries, ought to have received the approval of Spain. 65/ Another delegation emphasized the special circumstances of the problem of the Western Sahara including the need to re-establish territorial integrity in that region. 66/ Mention was made by another delegation of resolution 1541 (XV) which, by providing for the possibility of free association and integration, had clarified the modalities for the implementation of the Declaration on Decolonization. 67/ To another speaker the draft resolution had the merit of setting just limits and proper parameters to the scope and legitimacy of resolution 1514 (XV), since the rights defined by that resolution could not infringe on other rights such as the right to territorial integrity and national unity of States. 68/

Other countries, while not necessarily expressing reservations concerning the request for an advisory opinion, stressed that the problem of the Sahara was first and foremost a decolonization problem which called for the exercise of the right of self-determination through the consultation of the indigenous people of the Territory regarding their future. 69/

Several delegations, on the other hand, expressed reservations con-

63/ Official Records of the General Assembly, Twenty-ninth Session, Fourth Committee, 2115th, 2117th, 2124th, 2126th, 2130th and 2131st meetings.

64/ Bahrain, Democratic Yemen, Egypt, Guatemala, Iran, Iraq, Kuwait, Senegal, Syria, Tunisia, United States and Yemen.

65/ Senegal, A/C.4/SR.2130.

66/ Egypt, A/C.4/SR.2124.

67/ Syria, A/C.4/SR.2130.

68/ Guatemala, A/C.4/SR.2131.

69/ Algeria, Costa Rica, Cuba, Democratic Yemen, Equatorial Guinea, Grenada, Kenya, Libyan Arab Republic, Singapore, Trinidad, United Republic of Cameroon and Venezuela.

cerning aspects of the draft resolution. Criticism was expressed in particular about what some viewed as the casual reference to resolution 1514 (XV). The right to self-determination of the people of the Sahara had not been reflected adequately in the resolution with the result that the problem of the Sahara was ceasing to be one of decolonization and had become mainly a legal controversy between certain States. 70/ Concern was also felt that the draft resolution might set a dangerous precedent for other territories under colonial rule. 71/ One delegation voiced the opinion that the resolution would enable the colonial power to procrastinate and evade the implementation of United Nations resolutions. 72/ Another delegation strongly dissented about the request to the International Court for an advisory opinion on an issue that was essentially political, rather than legal, in nature. Resort to the Court would delay, if not deny altogether, the exercise of the right to self-determination of the indigenous people of the Sahara. 73/ Doubts about the request for an advisory opinion were also expressed by other delegations 74/ but a proposal by Kenya to ask for a separate vote on operative paragraph 1 of the draft resolution was withdrawn following an appeal by the Ivory Coast in the name of African solidarity. 75/

70/ Canada, Libya, Kenya and Venezuela.

71/ Argentina, Colombia, and Kenya.

72/ Libyan Arab Republic, A/C.4/SR.2131.

73/ Kenya, A/C.4/SR.2131.

74/ Argentina, Colombia, Costa Rica, Ecuador, France, Equatorial Guinea and Venezuela.

75/ A/C.4/SR.2131.

The 35-power draft resolution was approved by 87 votes to none with 43 abstentions. 76/

76/ General Assembly resolution 3292 (XXIX). For the full text of the resolution, see Annex IV below. The voting in the Plenary was as follows:

In favour: Afghanistan, Algeria, Bahrain, Bangladesh, Bhutan, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Central African Republic, Chad, Chile, Cuba, Cyprus, Czechoslovakia, Dahomey, Democratic Yemen, Egypt, Equatorial Guinea, Ethiopia, France, Gabon, Gambia, German Democratic Republic, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Jordan, Khmer Republic, Kuwait, Laos, Lebanon, Liberia, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Niger, Nigeria, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, United States of America, Yemen, Yugoslavia, Zaire.

Against: None

Abstaining: Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Canada, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, Germany (Federal Republic of), Greece, Grenada, Haiti, Honduras, Iceland, Ireland, Israel, Italy, Jamaica, Kenya, Lesotho, Luxembourg, Malawi, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Spain, Swaziland, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

IV. The Report of the United Nations Visiting Mission

Following the adoption of resolution 3292 (XXIX) and at the Spanish Government's invitation, the Special Committee on Decolonization decided that a three-member mission, composed of the representatives of Cuba, Iran and Ivory Coast, would visit the Spanish Sahara in May 1975. The Committee also decided that the Chairman of the Mission should be the Permanent Representative of the Ivory Coast to the United Nations. The Mission's mandate was to assist the Special Committee in the discharge of its tasks by securing first-hand information on the situation prevailing in the Territory, including information on political, economic, social, cultural and educational conditions, as well as on the wishes and aspirations of the people. To that end the Mission decided that it should a) hold consultations with the Government of Spain and the authorities in the Sahara in order to ascertain its policies concerning the Territory and the measures it proposed to take to ensure its decolonization; b) have access to all towns and localities in the Spanish Sahara which it considered necessary to visit for the accomplishment of its task and c) make direct contacts with the largest possible number of indigenous inhabitants of the Territory, including those currently living outside it.

The Mission spent one week extensively touring the Territory and visited Madrid for consultations with the Spanish Government, as well as Morocco, Mauritania and Algeria for discussions with the Governments and to make contact with the Saharan population living in those countries as either residents or refugees.

Concerning the political situation in the Western Sahara, the Mission in its unanimous report ^{77/} stated that it had been able to visit virtually all the main population centers and to ascertain the views of the overwhelming majority of their inhabitants. "At every place visited, the Mission was met by mass political demonstrations and had numerous meetings with representatives of every section of the Saharan community. ^{78/} From all of them it became evident to the Mission that there was an overwhelming consensus among Saharans within the Territory in favour of independence and opposing integration with any neighbouring country". ^{79/} The report went on to express the Mission's belief, "in the light of what

^{77/} Official Records of the General Assembly, Thirtieth Session, Supplement No. 23. (A/10023/Rev.1), Vol. III, Chapter XIII, Annex.

^{78/} These meetings included interviews with groups and individuals representing differing shades of opinion held in private in the absence of any Spanish representatives (Ibid., para. 230).

^{79/} Ibid., para. 202.