

it witnessed in the Territory, especially the mass demonstrations of support for one movement, the Frente POLISARIO ..., that its visit served as a catalyst to bring into the open political forces and pressures which had previously been largely submerged. It was all the more significant to the Mission that this came as a surprise to the Spanish authorities who, until then had only been partly aware of the profound political awakening of the population". 80/

The Mission identified two main political groups in the Territory; the "Partido de la Unión Nacional Saharoui" (PUNS) and the "Frente Popular para la Liberación de Saguia El Hamra y Río de Oro" (Frente POLISARIO). The Mission found that PUNS derived its support from the traditional elements of Saharan society and that most members of the Permanent Commission of the Yema'a identified themselves with the party. Having taken note of the accusation by the opponents of the PUNS that the Party was a creation of the Spanish authorities, the report noted that it had not witnessed in the northern region, which the Mission visited first, any public demonstrations in support of the PUNS "in marked contrast" to the "mass public demonstrations" in support of the Frente POLISARIO which clearly came as a surprise to the Spanish authorities in the Territory. In the southern region where demonstrations both in support of POLISARIO and of PUNS took place, "though the preponderance was clearly in favour of the Frente POLISARIO", the Mission noted that the adherents of PUNS were always placed close to the residence or meeting place of the Mission "where they would be more visible". 81/ The impact which the PUNS made on the Mission was not strengthened when its Secretary-General, whom the Mission met at its arrival in the Territory, proceeded to leave the Sahara for Morocco where he proclaimed his loyalty to King Hassan II, an act which was disowned by his party as an act of treachery. 82/ The Mission found, on the other hand, that the Frente POLISARIO, which had operated as a clandestine movement until that time, "had considerable support among all sections of the population and especially among women who, together with the young people and workers, are its most active adherents". 83/

Apart from the larger number of public demonstrations which the POLISARIO succeeded in mobilizing, the Mission noted that supporters of that movement constituted approximately two-thirds of those inter-

80/ Ibid., para. 203.

81/ Ibid., paras. 210, 211, 220 and 237.

82/ Ibid., para. 213.

83/ Ibid., para. 219.

viewed by the Mission 84/ and that, on the eve of its arrival, two separate patrols of "Tropas Nómadas" 85/ mutinied and joined the Frente POLISARIO with their weapons and equipment. 86/

In its conclusions the Mission stated that "within the Territory the population, or at least almost all those persons encountered by the Mission, was categorically for independence and against the territorial claims of Morocco and Mauritania", and that the Frente POLISARIO, "although considered a clandestine movement before the Mission's arrival, appeared as a dominant political force in the Territory". 87/ The Mission added that all Saharan political refugees in Morocco called for annexation of the Territory by Morocco, that those in Algeria expressed themselves categorically in favour of independence and that in Mauritania some persons appeared in favour of integration with Mauritania, others wanted independence but hoped the new State would freely join Mauritania, while a third group supported the POLISARIO and independence for the Spanish Sahara. 88/

The Mission, after reporting the different views of the Governments of Spain, Algeria, Mauritania and Morocco concerning the Western Sahara, concluded that "the General Assembly should take steps to enable those population groups (within and outside the Territory) to decide their own future in complete freedom and in an atmosphere of peace and security in accordance with the provisions of resolution 1514 (XV) and the relevant resolutions of the General Assembly concerning the question". 89/ To this end, the Mission

84/ Ibid., para. 240.

85/ Indigenous forces led by Spanish officers.

86/ Ibid., para. 261.

87/ Ibid., Chapter XIII, Section B, para. 11 (18) and (21).

88/ Ibid., para. 11 (23) - (25).

89/ Ibid., para. 11 (43).

recommended that the Secretary-General should appoint, "in close consultation with the administering Power and the other concerned and interested parties", 90/ a new visiting mission to define the procedures for such consultation "which should take place under United Nations auspices". 91/ The report of the Visiting Mission was adopted on 7 November 1975 by the Special Committee on decolonization which also endorsed the observations and conclusions contained therein. 92/

90/ The term "concerned parties" was a term frequently used at the United Nations and other international fora in the context of the Sahara question to refer to Morocco and Mauritania, whereas the expression "interested parties" was understood to refer to Algeria.

91/ Ibid., para. 11 (44).

92/ Ibid., para. 8.

V. The Advisory Opinion of the International Court of Justice

The International Court of Justice rendered its advisory opinion 93/ on 16 October 1975, a few days after the publication of the Visiting Mission's report. The Court first dismissed objections raised by Spain to its competence to entertain the General Assembly's request. 94/ It also rejected the Spanish contention that the Court should exercise its right under Article 65 (1) of the Court's Statute to refuse to comply with the Assembly's request since, Spain argued, the questions put to the Court were irrelevant and therefore the answers could not have any practical effect. 95/ The Court met this objection by stating that "the reference in those questions to a historical period cannot hamper the Court in the discharge of its judicial functions" which necessarily required its taking into account "existing rules of international law which are directly connected with the terms of the request". 96/ The Court went on to review the General Assembly texts setting out the basic principles governing decolonization, the relevant resolutions on the Western Sahara and the preparatory work and context of resolution 3292 (XXIX). It concluded that neither the request for an advisory opinion nor resolution 3292 (XXIX) could be construed as affecting in any way "the right of the population of Western Sahara to determine their future political status by their own freely expressed will". 97/

93/ Western Sahara Advisory Opinion, International Court of Justice Reports 1975.

94/ Ibid., paras. 12-22. Spain argued that the questions posed by the General Assembly were not legal, but either factual or questions of a purely historical or academic character.

95/ Another argument put forward by counsel for Spain was that the advisory procedure was being used as an indirect means of forcing Spain against its will to submit to the jurisdiction of the Court on a contentious issue in violation of the fundamental rule, repeatedly reaffirmed by the Court, that a State cannot, without its consent, be compelled to submit its dispute with another State to the Court's jurisdiction. However, the Court found that the purpose of the Assembly's request was not in order that it might later, on the basis of the Court's Opinion, exercise its powers and functions for the peaceful settlement of a dispute between Morocco and Spain but in order to assist the Assembly in the proper exercise of its functions concerning the decolonization of the Western Sahara. (Ibid., paras. 27-42)

96/ Ibid., para. 52.

97/ Ibid., para. 70.

The two questions put to the Court had to be considered in the whole context of the decolonization process and the answers furnished by the Court might assist the General Assembly in future decisions "for instance with regard to consultations between the interested parties and the procedures and guarantees required for ensuring a free and genuine expression of the will of the people". 98/

The Court then proceeded to answer the two questions put to it by the General Assembly. Regarding the first question the Court stated that the information furnished to the Court showed that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them. It also showed that, in colonizing Western Sahara, Spain did not proceed on the basis that it was establishing its sovereignty over terra nullius. On the contrary in its Royal Order of 1884, Spain proclaimed that the King was taking the Río de Oro under his protection on the basis of agreements entered with the local chiefs of "the independent tribes of this part of the coast". Likewise, in negotiating with France concerning the limits of Spanish territory to the north of the Río de Oro, that is, in the Sakiet El Hamra area, Spain did not rely upon any claim to the acquisition of sovereignty over a terra nullius. Therefore, the Court concluded unanimously, the answer to Question I must be in the negative. 99/

Turning to Question II, the Court first indicated that it interpreted the words "legal ties" in the question as referring to such "legal ties" as may affect the policy to be followed in the decolonization of the Western Sahara. 100/

98/ Ibid., paras. 71 and 72.

99/ Ibid., paras. 81, 82 and 163.

100/ Ibid., para. 85.

The Court proceeded to examine the evidence submitted to it relating to alleged acts of internal display of Moroccan authority over the Western Sahara at the time of its colonization by Spain and immediately preceding that time 101/, and concluded that even taking into account the specific structure of the Sherifian State the material presented to the Court concerning the internal display of authority by Morocco "did not establish any tie of territorial sovereignty between Western Sahara and that State. It does not show that Morocco displayed effective and exclusive State activity in Western Sahara. It does however provide indications that a legal tie of allegiance had existed at the relevant period between the Sultan /of Morocco/ and some, but only some, of the nomadic peoples of the Territory". 102/

The Court also considered the international acts stretching between 1767 and 1911 said by Morocco to constitute recognition by other states of its sovereignty over the whole or part of Western Sahara, and concluded that they did not appear "to establish recognition by other States of Moroccan territorial sovereignty in Western Sahara at the time of the Spanish colonization". It added, however, that "some elements... more especially the material relating to the recovery of shipwrecked sailors, do provide indications of international recognition at the time of colonization of authority or influence of the Sultan... over some nomads in Western Sahara". 103/

101/ The Court cited with approval the statement by the Permanent Court of International Justice in the Legal Status of Eastern Greenland case (P.C.I.J. Series A/B, No. 53) that a claim to sovereignty based upon continued display of authority involves "two elements each of which must be shown to exist: the intention and will to act as sovereign and some actual exercise or display of authority". However the Court found that the historical evidence prior to mid-nineteenth century submitted by Morocco as proof of immemorial possession over the Sahara was of too transitory character to establish title based on continuous display of authority. "Nor", the Court went on, "is the difficulty cured by introducing the argument of geographical unity or contiguity. In fact the information before the Court shows that the geographical unity of Western Sahara with Morocco is somewhat debatable, which also militates against giving effect to the concept of contiguity. Even if the geographical contiguity of Western Sahara with Morocco could be taken into account in the present connection, it would only make the paucity of evidence of unambiguous display of authority with respect to Western Sahara more difficult to reconcile with Morocco's claim to immemorial possession". (ibid., paras. 90-92)

102/ Ibid., para. 107.

103/ Ibid., para. 128.

Turning to the question of the legal ties between Western Sahara and the Mauritanian entity, the Court found that the latter did not possess at the relevant time a corporate personality distinct from the several emirates and tribes which composed it. 104/ It therefore concluded that "at the time of colonization by Spain there did not exist between the Territory of Western Sahara and the Mauritanian entity any tie of sovereignty, or of allegiance of tribes, or of "simple inclusion" in the same legal entity, although it recognized that the nomadism of the great majority of the people of the Western Sahara had given rise to certain ties of a legal character between the tribes of the Territory and those living in the territories of the Bilad Shinguitti which are now comprised within the Islamic Republic of Mauritania. 105/

In conclusion the International Court in answer to Question II stated its opinion that:

"The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties, between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory" 106/

104/ Ibid., para. 149.

105/ Ibid., paras. 150-152.

106/ Ibid., para. 162. The Court's opinion concerning the existence of some legal ties between the Western Sahara and the Mauritanian entity was reached by 14 votes to 1 (Judge Ad Hoc Boni, nominated by Morocco - Ibid., paras. 9,10 and 163). That part of the Opinion concerning the legal ties between the Western Sahara and the Kingdom of Morocco was adopted by a vote of 13 to 2 (Judge Ad Hoc Boni and Judge Ruda). In his dissent Judge Ruda pointed out that in his view the evidence presented did not afford clear indication of permanent real and manifested acceptance of allegiance between any of the tribes in the Territory and the Sultan and that if such ties of allegiance did exist they did not constitute legal ties of the nature referred to in Question II but were merely personal ties (Ibid., pages 175 and 176).

VI. The Security Council's reaction to the "Green March"

First Meeting of the Security Council

King Hassan II's call for a march by "unarmed civilians" from Morocco into the Sahara on the day following the publication of the Advisory Opinion led Spain to request an urgent meeting of the Security Council "so that the Moroccan government may be dissuaded from carrying out the announced invasion" which, Spain claimed, not only would jeopardize international peace and security, but also disregard the right of the Saharan people to self-determination and was contrary to the purposes and principles of the United Nations Charter. 107/

The Security Council, meeting on 20 and 22 October 1975 108/ adopted a resolution by consensus 109/ which, after reaffirming in the preamble the terms of resolution 1514 (XV) and all other relevant General Assembly resolutions on the Territory, requested the Secretary-General to enter into immediate consultations with the parties concerned and interested 110/ and to report to the Security Council as soon as possible on the results of his consultations "in order to enable the Council to adopt the appropriate measures to deal with the present situation concerning Western Sahara". 111/ The Council further appealed to the parties concerned and interested to exercise "restraint and moderation and to enable the mission of the Secretary-General to be undertaken in satisfactory conditions".

107/ S/11851.

108/ S/PV. 1849 and 1850.

109/ Res. 377 (1975). The Security Council in 1975 was composed as follows: Byelorussian SSR, China, Costa Rica, France, Guyana, Iraq, Italy, Japan, Mauritania, Sweden, the Union of Soviet Socialist Republics, United Kingdom, United Republic of Cameroon, United Republic of Tanzania and the United States.

110/ i.e. Spain, Morocco, Mauritania and Algeria.

111/ The Council stated that it was acting under Article 34 of the Charter, and therefore under Chapter VI of the Charter dealing with Peaceful Settlement of Disputes, and without prejudice to any action which the Assembly might take under the terms of its resolution 3292 (XXIX) or to negotiations that the parties concerned and interested might undertake under Article 33 of the Charter.

A draft resolution previously introduced by Costa Rica 112/ which would simply have requested, "as a matter of urgency", that the Government of Morocco desist from the proposed march was withdrawn by the sponsor following informal consultations which led to the adoption of the above mentioned resolution.

First Report of the Secretary-General

Immediately after the adoption of resolution 377 (1975) by the Security Council, the Secretary-General left New York for consultations with the Heads of State of Morocco, Mauritania and Algeria and with the Prime Minister of Spain. In his report 113/ the Secretary-General outlined the respective positions of the four Governments, which might be summarized as follows:

Morocco could not accept that the decolonization of the Spanish Sahara could be kept separate from the "Green March". It did not agree with the International Court's conclusion that there was no evidence of a tie of territorial sovereignty between the Territory and the Kingdom of Morocco. Recently there had been direct contacts between Spain and Morocco "with a view to arriving at a solution on a bilateral basis, with the participation of Mauritania".

Mauritania's position was basically similar to that of Morocco. It too shared the opinion that "a solution on the decolonization of Western Sahara could be reached through direct negotiations between Spain on the one hand and Morocco and Mauritania on the other".

Algeria "categorically rejected" the position taken by Morocco and Mauritania that Western Sahara belonged to them by historical ties and insisted that the people of the Territory must be enabled to decide their own future by means of a referendum organized by the United Nations. Algeria would accept the results of such referendum but could not accept any trilateral settlement which might be agreed upon between Spain, Morocco and Mauritania.

112/ S/11853/Rev.1.

113/ S/11863.

Spain had established direct contacts with the governments of Morocco and Mauritania "because of the urgency of the situation" but had not committed itself to seeking a bilateral or trilateral solution to the decolonization of Western Sahara. Spain strongly desired to find an agreement acceptable to all the parties in the area. In order to achieve this Spain was ready to contemplate the temporary administration of the Territory by the United Nations until such a time as the wishes of the population might be ascertained. In conclusion, on the basis of his consultations, the Secretary-General was of the opinion that all parties "would be prepared to recognize the United Nations as an essential element in the search for an acceptable solution".

Second meeting of the Security Council

The day after the publication of the Secretary-General's report, Spain requested "an extremely urgent meeting" of the Security Council in view of the deterioration of the situation in the Sahara "owing to the refusal of the Government of Morocco to halt the march of invasion of the Territory" then announced for 4 November and asked the Council "to consider the appropriate measures to be taken in conformity with the Charter to oblige the Government of Morocco to desist from the march". 114/

On 2 November, the Council again by consensus, adopted a resolution which, after "noting that the situation in the area remains grave", reaffirming resolution 1514 (XV) and noting that the question of Western Sahara was before the session of the General Assembly then in process, went on to urge "all the parties concerned and interested to avoid any unilateral or other action which might further escalate the tension in the area", and requested the Secretary-General to continue and intensify his consultations with the parties concerned and interested and to report as soon as possible to the Council in order to enable the Security Council to adopt any further measures which might be necessary. 115/

During the discussion in the Security Council following the adoption of resolution 379 (1975), 116/ two members 117/ expressed regret that the text did not contain a more direct reference to the immediate cause of the crisis situation, namely the proclaimed march into Western Sahara. Other representatives emphasized the need to avoid any unilateral action that might alter the status of the Western Sahara or hamper the right of the people of the Territory to exercise their right to self-determination.

114/ S/11864.

115/ Res. 379 (1975).

116/ S/PV.1852.

117/ Costa Rica and Sweden.

118/ Byelorussian Soviet Socialist Republic, Union of Soviet Socialist Republics; United Republic of Tanzania.

The representative of Spain stated his country's determination, should Morocco not halt the march, to repel it by every means at its disposal, including armed force. This statement led the representative of Morocco, after thanking the Council for its "prudence", to state that this "change of attitude" by Spain towards the "Green March" should have prompted the Council to adopt a resolution "addressed more directly, and even exclusively, to the administering Power". The statement by the representative of Spain seemed to the representative of Morocco at variance with the proposal conveyed to King Hassan II by a member of the Spanish Government, Mr. Solis Ruiz, "that the King undertake with Spain a process of decolonization in order to find a way to solve the problem of the decolonization of the Sahara that would take into account Morocco's right to respect for its national unity". In the light of such a proposal, he went on, the Moroccan and Mauritanian Governments had agreed to send to Madrid "an important delegation to discuss all the aspects of the question".

In his intervention the representative of Algeria said that his delegation would have preferred that the resolution was couched in more precise language, even though its object was quite clear. After stressing that the sovereignty over Western Sahara belonged to the people inhabiting the Territory he issued a clear warning that Algeria would regard any attempt by Spain to dispose of its alleged sovereignty over Western Sahara through negotiations at a bilateral or trilateral level as null and void. The Algerian representative added that the Moroccan initiative regarding the Sahara had transformed relations between the two countries, which had been hitherto marked by friendship, "into something marked by extreme hostility". Should the Moroccan initiative continue, it would constitute one of the most serious precedents for the various border and territorial problems on the African continent.

Further meetings of the Security Council

As the "Green March" was about to begin, the Security Council met during the night of 5 to 6 November and authorized the President of the Council to issue an "urgent request" to the King of Morocco "to put an end forthwith to the declared march into Western Sahara". 119/ In reply to the appeal, King Hassan II sent a cable informing the President

119/ S/11868. See also S/PV. 1853.

of the Council that the march into "our Sahara" had already begun and renewing the assurance that "the march will at no time deviate from the peaceful character which underlies this action". 120/

The Security Council met again on the evening of 6 November at the request of Spain which informed the Council that the frontier of Western Sahara had been violated "by large contingents of Moroccan nationals including elements of the armed forces and official authorities". 121/

Before hearing any public statements, the Council on the basis of informal consultations among its members, adopted by consensus a resolution which, after "noting with regret" that the "Green March" had taken place, "deplored" the holding of the march, called upon Morocco "immediately to withdraw" from Western Sahara all participants in the march and called upon Morocco and all parties concerned and interested, "without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) or any negotiations which the parties concerned and interested might undertake under Article 33 of the Charter", to cooperate fully with the Secretary-General in the fulfilment of the mandate entrusted to him by the Security Council. 122/

During the discussion that followed, 123/ the representative of Spain deplored that he had not been able to address the Council prior to the adoption of the resolution and that the resolution failed to condemn the march or to state clearly that an unlawful act had been committed. He reiterated however that Spain's position on the question of the Sahara had not changed nor could it change in the future. He called on Morocco not to insist on solutions for the decolonization of the Territory which were objectively impossible for Spain to implement.

The representative of Morocco made it clear that the "Green March" would continue while reaffirming that it had "absolutely no aggressive character". The purpose of the march was the restoration of Morocco's territorial integrity and cited the precedents of Ifni and West Irian in support of Morocco's position that a referendum was not the only means of bringing about the decolonization of a Territory under resolution 1514 (XV). The Declaration on decolonization could be implemented either by a referendum "or by a transfer of power", while taking into account the aspirations of the population, expressed in the case of the Sahara, through

120/ S/11868.

121/ S/11867.

122/ Res. 380(1975).

123/ S/PV.1854.

the Yema'a and the traditional chiefs. 124/ It was through this course that the spirit and the letter of resolution 1514 (XV) would be carried out, thus preventing "the perversion and mystification of the law of decolonization". The Court's opinion and resolution 3292 (XXIX) by which the General Assembly had reserved to itself the right to indicate the procedure to be followed to speed up the decolonization of the Territory called for "the choice of the technique of transfer of power by negotiation between the administering Power and the States concerned".

In his intervention the representative of Algeria expressed amazement at the method followed by the Council of adopting a resolution without first hearing the views of the concerned and interested parties. He deplored the "timidity" of previous resolutions of the Security Council which, by not condemning the march, had been taken by Morocco as encouragement and recognition of its legitimacy. Though the Council had "negotiated" the language of the resolution just adopted by replacing the words "condemns" by "deplores" and "demands" by "requests", the Council had already been coldly rebuffed, and he wondered about "the meaning of this masquerade which has already been repeated several times". He noted with concern the development of "certain very dangerous new customs". "These customs are those of the triumph of might over right", and the utilization of the technique of the fait accompli. "The law is violated, a fait accompli is perpetuated and thereafter it is negotiated".

VII. The Madrid Agreement and subsequent action by the United Nations

Further Reports of the Secretary-General

In his second report to the Security Council of 8 November 1975, 125/ the Secretary-General informed that he had sent a special envoy to Spain, Morocco, Mauritania and Algeria to continue his earlier consultations on the basis of certain suggestions which had emerged during his earlier discussions, including the withdrawal by Spain from the Sahara on a given date and the temporary administration of the Territory by the United Nations until such time as the wishes of the population could be ascertained. In his conversations with the governments of those four countries, the Special Envoy had found agreement in principle to such an idea on the part of

124/ It will be recalled that just as the "Green March" was about to commence, the head of the Yema'a, Khatri Ould Joumaini, fled to Agadir and paid homage to King Hassan II.

125/ S/11874.

Algeria and Spain. On the other hand in his discussion with the King of Morocco the Special Envoy had been told by the King that the Secretary-General's suggestions had "been overtaken by events" and were not acceptable to Morocco, which instead insisted on "a trilateral solution" among Spain, Morocco and Mauritania. Mauritania basically shared Morocco's approach. The Secretary-General concluded that the entry of the "Green March" into Western Sahara had seriously increased the tension in the area, and that were the situation to deteriorate further, the chances for a satisfactory settlement would be increasingly jeopardized.

In his third report of 12 November 1975, 126/ the Secretary-General informed the Security Council of the end of the "Green March" and of the opening of high level negotiations in Madrid among Spain, Morocco and Mauritania. A week later the Secretary-General formally notified the Security Council of the "Declaration of Principles" under which Spain was transferring immediately temporary administration over the Sahara to a tripartite body consisting of the Spanish Governor-General and two deputy Governors nominated by Morocco and Mauritania, pending the termination of the Spanish presence in the Territory by 28 February 1976 at the latest. 127/ The declaration by the three parties added that the views of the Saharan population, expressed through the Yema'a would be respected. The Secretary-General stated that Algeria had notified him that the relevant Security Council resolutions called for negotiations among all parties concerned and "interested" (i.e. Algeria) and that the tripartite agreement went beyond the scope of the situation created by the "Green March", and dealt with the substantive question of the decolonization of Western Sahara. Neither Spain, Morocco or Mauritania had the right to dispose of the Western Sahara and consequently Algeria regarded the Madrid Agreement as null and void. 128/

126/ S/11876.

127/ S/11880. The text of the published clauses of the Madrid Agreement is reproduced in annex VII below.

128/ See also document A/10373 and S/11881 outlining the position of the Government of Algeria.

The discussion at the Thirtieth Session of the General Assembly

The annual discussion of the question of the Sahara opened in the Fourth Committee a few days after the publication of the Madrid Agreement. 129/ Giving the reasons that had prompted his government to conclude the tripartite agreement, the representative of Spain referred to the failure of the Security Council to prevent the "Green March" from violating the frontier of the Western Sahara as well as what he described as the Security Council's recommendation that the dispute be settled by negotiation under Article 33 of the Charter. Under those circumstances Spain had had no alternative but to negotiate. After setting forth the terms of the "Declaration of Principles", he noted that the temporary administration being established in the Territory had made it possible to avoid all reference to problems of sovereignty and the final destiny of the Territory. The principles of the Charter concerning self-determination of peoples and the principles applicable to Non-Self-Governing Territories remained valid as well as the General Assembly resolutions on the Sahara. 130/ He also quoted from an official declaration to the "Cortes" by the Minister attached to the Presidency to the effect that "the Spanish Government is bound by no official commitment concerning the destiny of the Territory and its population. From the standpoint of legal effect the Act (on the decolonization of the Sahara)... is a preliminary measure which prejudices neither the direction nor the orientation of measures which may be taken subsequently... The negotiations", the Minister had added, "(were) aimed at reducing tension but entail no commitment to the future of the Territory". 131/ In a subsequent intervention 132/ the representative of Spain added that, while the temporary administration lasted, the international legal status of the Territory remained that of a Non-Self-Governing Territory for which Spain was responsible. It was up to the Fourth Committee to adopt the necessary measures to uphold the principle of self-determination through a referendum or to adapt it to the circumstances of the case. If the composition of the temporary administration gave rise to objections or if the need was felt to introduce corrections for a better guarantee of the rights of all concerned in the decolonization process, the Committee should indicate the extent of those changes with a view to harmonizing the interests involved. While the joint declaration of principles provided

129/ See Official Records of the General Assembly, Thirtieth Session Fourth Committee, meetings 2170, 2171, 2173-2182.

130/ Ibid., A/C.4/SR.2170.

131/ Ibid., SR.2171.

132/ Ibid., SR.2177.

for the views of the Saharan population to be expressed through the Yema'a, "that did not mean that other possibilities for the expression of their will were excluded".

In his interventions 133/ the representative of Morocco referred to the decision by King Hassan II, "drawing the obvious conclusions from the latest General Assembly resolution [3292 (XXIX)] and from the Advisory Opinion of the International Court of Justice" to call upon the Moroccan people to join in a peaceful march "as a practical illustration of their unanimous wish to rejoin their compatriots whom an artificial line drawn by the colonizer had tried to isolate and separate from them". The Security Council by refusing to condemn the "Green March" had been forced to admit its peaceful nature and had recommended that Morocco engage in negotiations "in order to find a definitive solution to the problem of the decolonization of the Sahara". The Madrid Agreement was the successful outcome of the negotiations undertaken by virtue of Article 33 of the United Nations Charter and fully conformed to the "spirit and the letter" of the relevant United Nations resolutions. His delegation was convinced that Member States would react "most favourably" to an agreement which settled the dispute noted by the General Assembly in resolution 3292 (XXIX) and of which the agreement was the logical consequence. The representative of Morocco added that the agreement was fully in conformity with resolution 1514 (XV) which provided for the necessary balance between the right of peoples to determine their own future and the need to safeguard the national unity and territorial integrity of States. Citing in support the precedents of Ifni and West Irian, the representative of Morocco stressed that the decolonization of a Territory did not have to follow blindly a prescribed process in order to conform to resolution 1514 (XV). The views of the Saharan population had already been made known before the conclusion of the Madrid Agreement, as shown by the act of allegiance to the King of Morocco made by the former Secretary-General of PUNS at the time of the visit of the United Nations Mission and more recently by the President of the Yema'a. Consequently the views of the Saharan population had been expressed unanimously and could not be disregarded "through the expedient of resorting to a vague formalism, consisting in the application of one particular procedure, especially if that procedure was clearly ill-suited to the specific conditions of Western Sahara".

The representative of Mauritania, 134/ agreeing with the views expressed by the representative of Morocco, stated that the principle of self-determination could not legitimately be invoked to endanger the territorial integrity of an independent state as shown by paragraph 6 of resolution 1514 (XV) as well as by the General Assembly actions in the cases of Goa, Gibraltar, Ifni, Hong Kong and Macao. Furthermore, those who favoured the independence of the Sahara did not constitute a political movement but rather a tribal movement which knew no frontier and which represented a political danger to Morocco and Mauritania. The representative of Mauritania added that the principle of the inviolability of frontiers which was a cardinal rule of the OAU Charter referred only to borders between States which had already attained independence and did not apply to the "reconstruction" of borders prior to the achievement of independence.

The representative of Algeria 135/ asserted that the Madrid Agreement constituted a repudiation by the Spanish Government of its solemn commitments to the people of the Sahara as well as a denial on the part of Morocco and Mauritania of the obligations they had freely accepted in adhering to the resolutions adopted by the General Assembly over the previous 10 years. The negotiations referred to in the Security Council resolutions were clearly negotiations among "all the parties concerned and interested" and were intended to deal exclusively with the specific question of the "Green March" and not with the problem of the decolonization of the Sahara. Spain could not negotiate away the sovereignty, which did not belong to it, over a Territory for whose administration it was responsible under Chapter XI of the Charter. No one could be deceived by the lip service paid in the Agreement to the principle of self-determination with its reference to the views of the Yema'a. He found the sudden attribution by Morocco and Mauritania of representativeness to the Yema'a highly suspicious when only a year before the Moroccan Foreign Minister had excoriated the Yema'a before the General Assembly as an organ purely and simply nominated by the Spanish authorities. Contempt for the law and challenge to the freedom and interests of the weakest had characterized the period of colonial expansion and it was of extremely grave concern to his delegation that a similar tendency could be discerned now in the political attitudes of the countries of the Third World which had been victims of foreign domination and had known to their detriment the injustice introduced by the use of force against their legitimate rights. The General Assembly was now facing a test in which it should demonstrate its ability to impose its authority and its fidelity to the mission entrusted to it of ensuring respect for the rights and freedoms of the peoples still under colonial rule.

134/ Ibid., SR.2173.

135/ Ibid., SR.2170 and 2177.

The representatives of various Saharan political movements, including the Frente POLISARIO, appeared as petitioners before the Fourth Committee. Those appearing on behalf of movements based in Morocco and Mauritania, as well as of PUNS and the President of the Yema'a, who stated that he was speaking on behalf of that body, declared their support for the Madrid Agreement. 136/ On the other hand the representative of the Frente POLISARIO, called the Agreement a "manoeuvre" between "the colonialist Power and the expansionists to frustrate the process of decolonization of the Sahara under United Nations auspices" and expressed his movement's determination to carry on an armed struggle to achieve independence for the Territory. 137/

In the course of the ensuing discussion, 138/ while virtually all speakers expressed themselves in support of the right to self-determination of the people of Western Sahara, opinions were divided concerning the Madrid Agreement, a majority of the speakers stating their opposition to it 139/ with a minority supporting it. 140/ Those opposing the Agreement were unanimous that it constituted a denial of the right of self-determination of the people of the Territory, did not conform to the principles set out in resolution 1514 (XV), nor to the United Nations resolutions on the question and ran counter to the views expressed by the United Nations Visiting Mission and to the advisory opinion of the International Court of Justice. The same delegations stressed the need to hold a referendum in the Spanish Sahara under United Nations auspices to enable the people of the Territory to decide their own future. The view was expressed that Morocco and Mauritania should have nothing to fear in that regard if their claims to the Sahara were just and coincided with the wishes of the inhabitants, though their reluctance to allow genuine self-determination to the people of the Territory suggested a realization on the part of those two countries that the people would opt for independence. The right to self-determination, it was also said, could not be affected or limited by the interests of other States or by essentially political contingencies which were both alien to the principles of the Charter and of the Declaration on decolonization. The United Nations resolutions on the Sahara,

136/ A/C.4/SR.2170 and 2173.

137/ A/C.4/SR.2170 and 2178.

138/ A/C.4/SR.2171 - 2182.

139/ e.g. Botswana, Congo, Cuba, Cyprus, Dahomey, Democratic Yemen, Ghana, Guyana, Kenya, Jamaica, Madagascar, Mali, Niger, Nigeria, Sierra Leone, Somalia, Sri Lanka, Sweden, Trinidad and Tobago, United Republic of Tanzania, Yugoslavia, Zambia.

140/ e.g. Central African Republic, France, Gabon, Gambia, Iraq, Jordan, Kuwait, Oman, Senegal, Tunisia.

it was stressed, did not recognize the precedence of territorial claims over the right to self-determination and this stand had been reaffirmed by the International Court in its advisory opinion. Most of the delegates opposing the tripartite agreement were critical of Spain for its failure to comply with its obligations under Chapter XI of the Charter, for its procrastination during the years prior to 1974, and for renegeing on its solemn pledges to the people of the Sahara regarding their right to determine their own future. Some countries also condemned what they called the expansionist aims of Morocco and Mauritania. It was further stressed by the representatives of two countries members of the Security Council that the resolutions of the Council on the Sahara were only aimed at defusing tension in the area and did not deal with the decolonization process to be followed which was for the General Assembly to decide. It was also noted that the principle of territorial integrity had no relevance in that instance since the United Nations had always treated the Western Sahara as a non-self-governing territory and all parties had accepted the right to self-determination and independence by the people of the Territory. The view was also put forward that the provisions in the Declaration on decolonization regarding dismemberment referred to the need to preserve the territorial integrity of colonial territories and not of independent states. Reference was also made to the provisions in the OAU Charter regarding the sanctity of colonial boundaries, and to the number of boundary disputes that would arise in Africa if that principle was ignored. Several delegations warned against the United Nations accepting faits accomplis or sanctioning intervention, in disregard of resolutions and decisions of the United Nations and the opinion of the International Court whose prestige and authority would otherwise be irreparably damaged. Failure to uphold the principles relating to self-determination of peoples for the sake of expediency would set a dangerous precedent which could have serious consequences for the future.

Those delegations which expressed support for the tripartite agreement argued that it ensured the end of foreign domination over the Sahara, and the return of the Territory to its rightful owners and that it was the logical outcome of Security Council resolutions on the question. The agreement would strengthen peace and security in the region, put an end to a dispute, and could be a factor for stability and harmony in the region. It was denied that Morocco and Mauritania had expansionist ambitions or that the agreement was contrary to resolution 1514 (XV) which was not a dogmatic text, as shown by the precedents of Ifni, Goa and West Irian. Stress was also laid on the need to balance the right to self-determination and the right to territorial integrity and on the importance of geopolitics in what was a unique case which required "novel, untried methods" such as those proposed in the Madrid Agreement. Morocco and Mauritania should not be deprived of their Saharan provinces just as Algeria had not been deprived of its Sahara by France. The advisory opinion of the International Court of Justice was also cited in support of the agreement, some stating that the Court had recognized that the peoples of Western Sahara had always been and

were still either Moroccans or Mauritians, others maintaining that the Court had recognized the legitimacy of the claims by Mauritania and Morocco. It was also explained that under Islamic law ties of allegiance, as accepted by the Court, and ties of sovereignty were synonymous. The agreement, it was also said, respected the right of self-determination of the people of the Sahara and was indeed in accordance with their wishes, mention being made in support of that thesis to the act of allegiance by the President of the Yema'a. The view was also advanced that the people of the Territory had never manifested any desire for independence and that, given the nomadic characteristics of the population, the idea of consulting them for the purpose of establishing an independent state should simply be ruled out.

Two draft resolutions were introduced in the Committee: one introduced by Tanzania and Madagascar 141/ and which was eventually sponsored by 27 Member States, 142/ the key provision of which was the request to Spain to hold an act of self-determination in the Sahara "in accordance with all the parties concerned and interested", under United Nations supervision "in accordance with the observations and conclusions of the Visiting Mission and with the advisory opinion of the International Court of Justice" so that all Saharans originating in the Territory could exercise freely and fully their inalienable right to self-determination. The draft resolution made no direct reference to the Madrid Agreement but urged "all the parties concerned and interested to exercise restraint and to desist from any unilateral or other action outside the decisions of the General Assembly on the Territory". The draft also recalled all previous Assembly resolutions on the Sahara and reaffirmed the right of the people of the Sahara to self-determination in accordance with resolution 1514 (XV), and requested the Secretary-General, in consultation with the Government of Spain and the Special Committee on Decolonization, to make the necessary arrangements for the supervision of the act of self-determination.

141/ A/C.4/SR.2178.

142/ A/C.4/L.1121 sponsored by Barbados, Benin, Botswana, Chad, Congo, Cuba, Cyprus, Democratic Yemen, Equatorial Guinea, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Jamaica, Kenya, Liberia, Madagascar, Mali, Mozambique, Nigeria, Rwanda, Sierra Leone, Swaziland, Trinidad and Tobago, United Republic of Tanzania, and Zambia.

The other draft resolution, which was introduced by Senegal and Tunisia, 143/ and was sponsored by eight Member States, 144/ took note of the tripartite agreement, reaffirmed the inalienable right to self-determination, in accordance with resolution 1514 (XV), of "all the Saharan populations originating in the Territory", and requested the interim administration to take all necessary measures to ensure that "all the Saharan populations originating in the Territory" would be able to exercise the right to self-determination "through full consultations organized with the assistance of a representative of the United Nations appointed by the Secretary-General". The draft reaffirmed resolutions 1514 (XV) and 1541 (XV) 145/ and other relevant United Nations resolutions, specifically singling out resolutions 2072 (XX) 146/ and 3292 (XXIX) 147/ relating to the Sahara.

143/ A/C.4/SR.2177 and 2179.

144/ A/C.4/L.1120/Rev.1 sponsored by the Central African Republic, Gabon, Gambia, Jordan, Oman, Senegal, Togo and Tunisia.

145/ Resolution 1541 (XV) lays down three options open to a non-self-governing Territory for it to cease to be non-self-governing: independence, free association and integration. Principle IX lays down the following conditions under which integration should come about:

"(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the Territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

146/ See page 4 above.

147/ See annex IV below.

At the proposal of the representative of Ghana, the Committee decided by 44 votes to 40 with 48 abstentions to vote first on the 27-power draft resolution. 148/ The Committee then proceeded to

148/ The result of the procedural vote on the proposal by Ghana was as follows:

In favour: Afghanistan, Algeria, Barbados, Benin, Botswana, Burundi, Chad, Comoros, Congo, Cuba, Cyprus, Democratic Yemen, Equatorial Guinea, Ethiopia, Fiji, Finland, Ghana, Greece, Grenada, Guinea, Guinea-Bissau, Guyana, Iceland, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mali, Mexico, Mozambique, Nigeria, Norway, Peru, Rwanda, Sierra Leone, Somalia, Sri Lanka, Swaziland, Sweden, Trinidad and Tobago, United Republic of Tanzania, Yugoslavia, Zambia.

Against: Austria, Bahrain, Belgium, Bolivia, Canada, Central African Republic, Costa Rica, Denmark, France, Gabon, Gambia, Germany (Federal Republic of), Guatemala, Haiti, Iraq, Ireland, Italy, Jordan, Luxembourg, Malaysia, Malta, Mauritania, Mauritius, Morocco, Netherlands, Oman, Pakistan, Paraguay, Qatar, Senegal, Spain, Sudan, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Argentina, Australia, Bahamas, Bangladesh, Bhutan, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Chile, Colombia, Czechoslovakia, Dominican Republic, Ecuador, Egypt, El Salvador, German Democratic Republic, Honduras, Hungary, India, Indonesia, Iran, Israel, Ivory Coast, Japan, Kuwait, Laos, Lebanon, Malawi, Mongolia, New Zealand, Nicaragua, Niger, Panama, Papua New Guinea, Philippines, Poland, Portugal, Saudi Arabia, Singapore, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Cameroon, Upper Volta, Venezuela, Yemen, Zaire.

adopt the 27-power draft resolution by 84 votes to 3 with 42 abstentions. 149/ After the vote, the representative of Kenya proposed that the eight-power draft resolution should not be put to the vote until the following session since its adoption "would only serve to confuse the situation and make the Committee unsure of its position and role". 150/ The Committee, however,

149/ The voting was as follows:

In favour: Afghanistan, Algeria, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Benin, Bhutan, Botswana, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Chad, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Equatorial Guinea, Ethiopia, Fiji, Finland, German Democratic Republic, Ghana, Greece, Grenada, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Kenya, Kuwait, Laos, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Malaysia, Mali, Mauritius, Mexico, Mongolia, Mozambique, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Rwanda, Sierra Leone, Singapore, Somalia, Sri Lanka, Swaziland, Sweden, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Yemen, Yugoslavia, Zambia.

Against: Central African Republic, Guatemala, Israel.

Abstaining: Argentina, Bahrain, Bolivia, Brazil, Burma, Canada, Chile, Colombia, Dominican Republic, Egypt, El Salvador, France, Gabon, Gambia, Germany (Federal Republic of), Haiti, Honduras, Iran, Iraq, Ivory Coast, Japan, Jordan, Luxembourg, Nicaragua, Oman, Papua New Guinea, Paraguay, Portugal, Qatar, Saudi Arabia, Senegal, Spain, Sudan, Togo, Tunisia, United Arab Emirates, United Republic of Cameroon, United States of America, Upper Volta, Uruguay, Venezuela, Zaire.

150/ A/C.4/SR.2182.

rejected the Kenyan proposal by 62 votes to 38 with 32 abstentions. 151/ The Committee therefore proceeded to vote on the eight-power draft. At the request of Benin two separate votes were taken: one on operative paragraph 2 which reaffirmed the right to self-determination of all the Saharan populations in accordance with resolution 1514 (XV), the second one on the other three operative paragraphs. Operative paragraph 2 was adopted

151/ The voting was as follows:

In favour:

Algeria, Benin, Bhutan, Botswana, Chad, Comoros, Congo, Cuba, Cyprus, Democratic Yemen, Equatorial Guinea, Ethiopia, Fiji, Finland, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Iceland, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mozambique, Nigeria, Norway, Rwanda, Sierra Leone, Somalia, Sri Lanka, Swaziland, Sweden, Trinidad and Tobago, United Republic of Tanzania, Yugoslavia, Zambia.

Against:

Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Bolivia, Canada, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominican Republic, El Salvador, France, Gabon, Gambia, Germany (Federal Republic of), Guatemala, Haiti, Honduras, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kuwait, Lebanon, Luxembourg, Malaysia, Malta, Mauritania, Mauritius, Morocco, Netherlands, Nicaragua, Oman, Pakistan, Panama, Paraguay, Philippines, Qatar, Saudi Arabia, Senegal, Spain, Sudan, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America, Uruguay, Venezuela, Yemen.

Abstaining:

Afghanistan, Bahamas, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ecuador, Egypt, German Democratic Republic, Greece, Hungary, India, Laos, Malawi, Mali, Mexico, Mongolia, New Zealand, Niger, Papua New Guinea, Peru, Poland, Portugal, Singapore, Thailand, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Zaire.