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IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

Question of Western Sahara

Report of the Secretary-General

1. At its thirty-sixth session, the General Assembly adopted, on 24 November 1981, resolution 36/46 and decision 36/406 concerning the question of Western Sahara. The operative paragraphs of resolution 36/46 read as follows:

"The General Assembly,

"...

"1. Reaffirms the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations, the Charter of the Organization of African Unity and the objectives of General Assembly resolution 1514 (XV), as well as the relevant resolutions of the General Assembly and the Organization of African Unity;

"2. Welcomes the efforts made by the Organization of African Unity and its Implementation Committee on Western Sahara with a view to promoting a just and definitive solution to the question of Western Sahara;

"3. Takes note of the decision of the Assembly of Heads of State and Government of the Organization of African Unity at its eighteenth ordinary session to organize throughout the Territory of Western Sahara a general and free referendum of the people of Western Sahara on self-determination;

* This document incorporates material previously issued in document A/37/570 and Add.1.

"4. Welcomes the steps taken by the Implementation Committee with a view to organizing and conducting the referendum;

"5. Appeals to the two parties to the conflict, Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro, to observe a cease-fire in accordance with the decisions of the Organization of African Unity and its Implementation Committee;

"6. Urges, to that end, Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro to enter into negotiations with a view to establishing an immediate cease-fire and concluding a peace agreement permitting the fair conduct of a general and free referendum on self-determination in Western Sahara;

"7. Reaffirms the determination of the United Nations to co-operate fully with the Organization of African Unity in the fair and impartial organization of the referendum;

"8. Requests to that end the Secretary-General to take the necessary steps to ensure that the United Nations participates in the organization and conduct of the referendum, and to report to the General Assembly and the Security Council on this subject and on the measures requiring a decision by the Council;

"9. Urgently requests the Secretary-General to co-operate closely with the Secretary-General of the Organization of African Unity with a view to the implementation of the decisions of the Assembly of Heads of State and Government of the Organization of African Unity and of its Implementation Committee, and of the present resolution;

"10. Requests the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara as a matter of priority and to report thereon to the General Assembly at its thirty-seventh session."

Decision 36/406 reads as follows:

"... the General Assembly, ... decided, taking account of the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its eighteenth ordinary session, held at Nairobi from 24 to 27 June 1981, 1/ by which it was decided, inter alia, to establish an Implementation Committee on Western Sahara, and the decision adopted by the Implementation Committee at its first ordinary session, held at Nairobi from 24 to 26 August 1981, 2/ to request the Secretary-General to give assistance, in consultation and co-operation with the Organization of African Unity, to the Implementation Committee in the discharge of its mandate regarding the question of Western Sahara arising from the above resolution and decision and to report thereon to the Assembly and the Security Council as appropriate."

2. On 17 December 1981, the Secretary-General addressed a letter to the Secretary-General of the Organization of African Unity (OAU), in which he stated, inter alia:

"You may be assured that the United Nations remains ready to co-operate with the Organization of African Unity and to render to it the necessary assistance, in view of the application of the relevant decisions adopted by the Assembly of Heads of State and Government and of its Implementation Committee on Western Sahara."

3. In response to an invitation from the Secretary-General of OAU, a United Nations team travelled to Nairobi early in February 1982 to be available for consultation with the OAU Ministerial Consultative Committee on technical questions relating to the proposed cease-fire and referendum. Thereafter, the Committee was to report to the Implementation Committee. The team was led by Mr. A. A. Farah, Under-Secretary-General for Special Political Questions, and consisted of Brigadier-General Timothy E. Dibwane (for the cease-fire and logistical questions), Mr. Ralph Zacklin (for legal questions), Mr. Myles F. Minchin (for questions relating to the organization of a referendum), Mr. Antoine Noel (for refugee questions), Mr. Chuong Buivan (for budgetary questions) and Mr. Knud Muller (for communications).

4. The Ministerial Consultative Committee, composed of the Ministers for Foreign Affairs of Guinea, Kenya, Mali, Nigeria, Sierra Leone, Sudan and the United Republic of Tanzania, met under the chairmanship of the Minister for Foreign Affairs of Kenya on 6 and 7 February 1982.

5. The Committee had before it a report by the Secretary-General of OAU on the action taken to follow up the decision of the Implementation Committee of August 1981. The report summarized the information obtained from the United Nations Secretariat and, in particular, reproduced information obtained from the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding Saharawi refugees and a note concerning the establishment of a United Nations peace-keeping force prepared by the United Nations Secretariat.

6. The Committee decided that it would focus on three principal issues: the question of a cease-fire, the modalities and organizational framework of a referendum and the question of linkage between the United Nations and OAU in regard to peace-keeping and/or the referendum. The United Nations team was invited to give assistance and advice to the General Secretariat of OAU, where appropriate, in the drafting of three working documents on these issues. It also took part in the discussions of the Committee and replied to questions raised by the members of the Committee. The United Nations delegation was invited to make a general statement to the Committee setting out United Nations principles and practices regarding referenda and peace-keeping.

7. In his statement to the Committee on 6 February 1982, the Under-Secretary-General stated, inter alia, that the team had already made available to the General Secretariat of OAU technical information relating to the United Nations experience in various situations where it had participated in the

organization of peace-keeping operations and in the supervision and observation of referenda. It had also made available the results of the census carried out by the Spanish authorities in 1974 and a map of the Territory.

8. In regard to the United Nations experience in supervising and observing referenda, the Under-Secretary-General emphasized that although each situation had been treated on its own merits, in its preliminary consultations, the United Nations had nevertheless endeavoured to identify the minimum conditions for an internationally acceptable act of self-determination, namely, that the people as a whole should exercise their right to self-determination, that they should be made fully aware of the issues involved and that the procedures should be such as to ensure that they might exercise that right freely and fairly.

9. The Under-Secretary-General stressed that, in the various instances where the United Nations had been called upon to supervise or observe a popular vote, its role had been limited to observation and monitoring. The responsibility for the organization and conduct of the vote had, in every case, been left to the existing trusteeship or colonial administration. What was envisaged for Western Sahara went considerably beyond that, as it called for the referendum to be organized and conducted by the Implementation Committee in collaboration with the United Nations. That would entail a much greater scale of involvement in the administrative and legislative procedures for the organization and conduct of the referendum. Whereas, in previous operations, a comparatively small group of observers had been sufficient for the task of observation and monitoring, which in many instances had been limited to spot checks, it was evident that the exercise which was presently envisaged would require a much larger staff. At the conclusion of his statement, the Under-Secretary-General said that the actual requirements would have to be determined on the basis of a detailed survey in the Territory.

10. Three documents were referred by the Ministerial Consultative Committee to the Implementation Committee, which adopted decisions on a cease-fire in Western Sahara and on modalities and organizational framework for the referendum in Western Sahara (see annex). No decision was taken on the question of linkage.

11. On 15 October 1982, the Secretary-General of OAU transmitted to the Secretary-General of the United Nations the text of decision AHG/IMP.C/WS/DEC.1 (II)/Rev.2, adopted by the Implementation Committee at its second session, held at Nairobi on 8 and 9 February 1982 (see annex I). On 2 November, the Executive Secretary of OAU to the United Nations transmitted the text of decision AHG/IMP.C/WS/DEC.2 (II)/Rev.2, adopted by the Implementation Committee at the same session (see annex II).

12. In his letter dated 2 November, the Executive Secretary of OAU to the United Nations stated:

"The decisions of the Implementation Committee will be submitted to the forthcoming Assembly of Heads of State and Government of OAU which will take place at Tripoli, Libyan Arab Jamahiriya."

Notes

1/ A/36/534, annex II, resolution AHG/Res.103 (XVIII).

2/ A/36/512-S/14692, annex. For the printed text, see Official Records of the Security Council, Thirty-sixth Year, Supplement for July, August and September 1981.

ANNEX I

Decision AHG/IMP.C/WS/DEC.1 (II)/Rev.2

Decision of the Implementation Committee on the cease-fire
in Western Sahara

The OAU Implementation Committee on Western Sahara, meeting in its second session in Nairobi from 8 to 9 February 1982,

Considering it necessary and desirable to put an immediate end to the hostilities in Western Sahara,

Convinced that every effort must be made to avoid further loss of human life and of the need to create the right atmosphere to seek a just and lasting political solution to the Western Sahara problem and to facilitate and ensure the exercise of the right of self-determination by the people of Western Sahara,

Decides hereby that:

1. A comprehensive cease-fire shall come into force on a date to be fixed by the Implementation Committee on the advice of the Chairman after consultation with all the parties concerned;
2. All war-like acts and operations shall cease from the time of the cease-fire. These include tactical moves, cross-border movements and all acts of violence and intimidation. No movement of forces to reinforce a garrison or position shall be allowed. This prohibition applies to all means of warfare, arms and ammunition;
3. A peace-keeping force and/or a military observer group shall be stationed in Western Sahara, having necessary powers to supervise the implementation of the cease-fire. The force and/or military observer group shall include a civilian police component;
4. Troops of the parties to the conflict shall be free to carry out supply of provisions to their forces under the supervision of the peace-keeping force and/or military observer group;
5. One week prior to the commencement of the cease-fire, the parties to the conflict shall notify the Chairman of the Implementation Committee of the size of their forces in the Territory;
6. At cease-fire, the peace-keeping force and/or military observer group will fix the respective positions of each side's forces;
7. Troops of parties to the conflict shall be confined to bases, the number and locations of which shall be agreed upon with the Implementation Committee. These bases shall not be located in areas where their presence could constitute a psychological or any other hindrance to the conduct of a free and fair referendum in Western Sahara;

8. Withdrawal of troops from their locations at cease-fire and their confinement to agreed bases will be completed ... days after the date of the cease-fire under the supervision of the peace-keeping force and/or military observer group;
9. The exchange of prisoners of war shall be carried out at the direction of and under the supervision of the peace-keeping force commander or chief military observer;
10. The parties to the conflict are hereby called upon to extend full co-operation to the peace-keeping force and/or military observer group, and to undertake scrupulously to respect and adhere to the terms of the cease-fire;
11. The parties to the conflict are hereby called upon to confirm their acceptance of the terms of the cease-fire in writing to reach the Chairman of the Implementation Committee no less than 10 days before the commencement of the cease-fire. This period shall be used by each party to inform its troops of the cease-fire date and time of the commencement of the cease-fire;
12. The Committee invites the neighbouring States to co-operate with it for the implementation of this decision.

ANNEX II

Decision AHG/IMP.C/WS/DEC.2 (II)/Rev.2

Decision of the Implementation Committee on the modalities and organizational framework for the referendum in Western Sahara

(Meeting in its second session at Nairobi on 8 and 9 February 1982)

Introduction

In resolution AHG/Res.103 (XVIII) adopted by the Heads of State of OAU in August 1981, the Implementation Committee was entrusted with organizing and conducting a referendum. In turn, the Implementation Committee has decided to set up an Interim Administration for the organization of a fair and impartial referendum. In order that the Interim Administration should be able to begin implementing the decision as soon as the cease-fire is established, it will be essential for the Implementation Committee to draw up beforehand a plan setting out basic principles, the steps to be taken in the conduct of the referendum and a timetable governing the execution of each phase of the referendum process in consultation with the parties to the conflict. These basic principles shall include the inalienable rights of the people of Western Sahara to self-determination under conditions free from intimidation and pressure; that they are made fully aware of the issues involved and that the procedures governing the referendum be such as to ensure that they may exercise this right freely and without hindrance. On this basis, the Implementation Committee hereby decided that:

1. Interim Administration

- (a) The authority responsible for the organization and conduct of the referendum shall be the Interim Administration appointed by the Implementation Committee and which will be vested with the legislative and administration powers required for the conduct of the referendum;
- (b) The Interim Administration will be headed by a Commissioner appointed by the Implementation Committee with the consent of the parties to the conflict;
- (c) The Interim Administration must enjoy the full co-operation of the existing administrative structures and the full use of the existing facilities such as offices, communications, transport, etc.;
- (d) The decision of OAU has already set out the questions which will be put to the voters as the basis of the suffrage. What remains to be done as a matter of priority is to establish clearly the machinery necessary for drawing up lists of the persons eligible to vote. In view of the possible time-consuming nature of this task, it is recommended that it begins immediately following the establishment of the Interim Administration. The time required to prepare such lists will be the main determinant in establishing a timetable for the referendum;

/...

- (e) The existing administrative structure will be the machinery through which the Interim Administration shall exercise its responsibilities in maintaining law and order;
- (f) The Interim Administration may issue orders or regulations to ensure the freedom and impartiality of the referendum. Such orders may deal with matters such as campaigning, political meetings and propaganda, or the revocation of any restrictive laws in force which would impede the conduct of a free and fair referendum.

2. Appointment of the Commissioner

The Implementation Committee shall appoint a Commissioner after consultation with the parties to the conflict. The appointment should be made at least one month before the cease-fire so as to enable the administrative and personnel arrangements to be effected.

To facilitate the preparatory work of the Commissioner, it is suggested that a joint OAU/United Nations team be sent to the Territory to ascertain the administrative, logistical and other requirements.

3. Modalities for the organization of the referendum

- (i) The people of Western Sahara would be required to express themselves freely and democratically on whether they want independence or integration with Morocco;
- (ii) The voting shall be by secret ballot on the basis of one person one vote without discrimination on the ground of sex;
- (iii) The eligibility to vote would be established in the basic agreement. These qualifications would be incorporated in an order-in-council or decree to be promulgated by the Commissioner who would be responsible for the registration of voters, the drawing-up of electoral districts or boundaries, the provision for all military personnel of Saharawi origin to vote, including those confined to base, the establishment of local administrative bodies and the preparation of voting lists, and would be empowered to make regulations in this regard. Such regulations would also establish procedures for dealing with complaints regarding inclusions or omissions and detail any offences in connection with registration and the penalties which might be imposed;
- (iv) The first prerequisite for the referendum is to establish a register of eligible voters. In composing the register, account must be taken of the census figures of 1974. Once a preliminary list has been established, it must be made available for scrutiny and appropriate procedures must be provided to review the list and adjudicate any claims and challenges;
- (v) The voting procedure for the referendum would be established in regulations made by the Commissioner. These regulations would provide

or the actual method of voting, e.g. by placing a ballot in one or two boxes bearing symbols associated with alternatives - independence or integration with Morocco - between which the voters must choose;

- (vi) The voting regulations would also cover such matters as the duties of returning officers, presiding officers at polling stations and polling assistants and the rights of polling agents of parties supporting the alternative choices;
- (vii) The voting regulations should also describe in detail the procedures for tabulating the results: the delivery of ballot boxes by the presiding officers to the returning officers; the counting of votes in the presence of observers and agents;
- (viii) Additionally, regulations should set out the procedures to be followed at the polling stations, the method of counting votes and penalties for offences in connection with the voting procedures;
- (ix) Well in advance of the date set for voting, a campaign of public information should be undertaken to familiarize voters with the significance of the referendum, the issues involved and the procedures for voting. While this public information campaign is the responsibility of the Interim Administration, measures shall be taken to guarantee freedom of expression, assembly, publication and movement;
- (x) In connection with the voting procedures, provision must be made to prevent abuses, ensure the security of the polling stations and prevent any coercion or intimidation of voters. Measures must also be taken to ensure the security of the ballots following the vote and during the official count;
- (xi) The regulations concerning the referendum must also provide appropriate procedures for the adjudication of claims and petitions relating to the vote and offences in connection with the vote;
- (xii) The official results of the vote will be published in a Special Gazette prepared by the Commissioner who would testify that the referendum has been conducted fairly and impartially and that it faithfully recorded the wishes of the people;
- (xiii) The Commissioner would communicate the results to the Implementation Committee which would confirm and ratify them by an appropriate decision. This decision, in turn, would be approved by the OAU Assembly of Heads of State and Government and the General Assembly of the United Nations.
