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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Summary record of the 4th meeting

Held at Headquarters, New York, on Thursday, 6 June 2002, at 10 a.m.

Temporary Chairman: Mr. Huntley. (Saint Lucia)

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The meeting was called to order at 10.25 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Organization of work

2. **The Chairman** drew the Special Committee's attention to its methods of work and referred in particular to its decision of 21 June 2001 concerning Puerto Rico, and also to the 28 requests it had received for hearings on that question (aide-memoire 8/02). If there were no objections, he would take it that the Special Committee agreed to accede to those requests.

3. *It was so decided.*

Question of Gibraltar (A/AC.109/2002/11)

4. **The Chairman** said that the delegation of Spain had indicated its wish to participate in the Committee's deliberations on the agenda item. If there were no objections, he would take it that the Committee wished to accede to that request.

5. *At the invitation of the Chairman, Ms. Menendez (Spain) took a place at the Committee table.*

Hearing of a representative of the Territory

6. **The Chairman** drew attention to the working paper prepared by the Secretariat (A/AC.109/2002/11). He also said that he had received a communication from the Chief Minister of Gibraltar asking to address the Committee on the question of Gibraltar. If there were no objection, he would take it that the Committee wished to accede to that request, in accordance with standing procedure.

7. *It was so decided.*

8. **Mr. Caruana** (Chief Minister, Gibraltar) said that despite annual addresses by the Chief Minister of Gibraltar since 1993, its support for the work of the Committee and repeated exposition of its arguments, Gibraltar had not managed to prevail on the Committee openly to declare its right to self-determination. On the one hand, the Committee upheld Gibraltar's right to self-determination, stating that in the process of decolonization there was no alternative to the principle of self-determination, but, on the other hand, the United Nations, year in, year out, urged the United

Kingdom of Great Britain and Northern Ireland and Spain to hold bilateral negotiations to resolve their differences over Gibraltar. The right of colonial peoples to self-determination could not be displaced by a competing territorial sovereignty claim, since a territorial claim was a unilateral claim of a right, while the right to self-determination was an inalienable and sacred right under the Charter of the United Nations.

9. Spain claimed that Gibraltar did not have the right to self-determination, firstly because the people of Gibraltar was not an indigenous people, secondly because Gibraltar was an enclave, and thirdly because a clause in the Treaty of Utrecht of 1713 had the effect of denying Gibraltar the right to decolonization by self-determination. Spain also stated that it was the doctrine of the United Nations that the decolonization of Gibraltar must be brought about not by the principle of self-determination of its people but by the application of the principle of territorial integrity. It was Gibraltar's belief that the principle of territorial integrity was not applicable to the decolonization process, as stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970). That Declaration made clear how the principle of territorial integrity interacted with the right to self-determination. Specifically, reference was made in one of its paragraphs to States "possessed of a Government representing the whole people belonging to the territory without distinction as to race, creed or colour", which was not the case of Spain.

10. Perhaps the Special Committee would agree with the proposition that the existence or not of the right to self-determination in favour of the people of Gibraltar was ultimately a legal question, that should be decided as a matter of international law. Gibraltar must not be denied its right under the Charter simply on the basis that the United Kingdom and Spain had reached a consensus which, in effect, deprived Gibraltar of that right.

11. It was precisely to break out of that vicious circle that Gibraltar was seeking the help of the Special Committee. If, for whatever reason, the Committee was not willing unambiguously to support Gibraltar's right to self-determination, at least the Committee could ensure consideration of the matter in the International Court of Justice. Gibraltar was once again calling upon

the Special Committee to recommend to the Fourth Committee that it should refer the question to the International Court of Justice for an advisory opinion, and that it should urge the United Kingdom and Spain to agree to do the same.

12. The Declaration adopted by General Assembly resolution 2625 (XXV) provided for the so-called “fourth option” for decolonization, in other words “the emergence into any other political status freely determined by a people”. The United Kingdom and Spain had begun negotiations with the aim of reaching agreement concerning the future constitutional and political structure of Gibraltar and its sovereignty. They were allegedly guided in so doing by considerations of bringing about a stable, prosperous and secure future for Gibraltar. However, the people of Gibraltar did not believe that bringing about its stability and prosperity required the administering Power to do a sovereignty deal with the party making territorial claims. At the heart of the proposed British-Spanish agreement was the concept of joint sovereignty, which in political and legal terms was an unworkable nonsense.

13. The United Kingdom and Spain had repeatedly invited him to take part in those negotiations, but he had refused because the terms upon which he was invited were unacceptable. As he had told the Committee on many occasions, he would happily take part in talks in which the Government of Gibraltar was able fully to represent and protect the political rights and interests of the people of Gibraltar. That required the Government of Gibraltar to be not merely a witness of the process in which a deal was struck between the United Kingdom and Spain but to be a genuine and equal participant.

14. On 18 March 2002 practically the entire population of Gibraltar had taken part in a demonstration against concessions on points of principle against their wishes and in favour of reasonable dialogue.

15. The intention of the United Kingdom and Spain, once agreement had been reached on the principles, which, in their opinion, should govern the future of Gibraltar, was that the proposals based on those principles would be put to a referendum of the people of Gibraltar. Gibraltar did not believe in a dialogue whose outcome would be predetermined at the very outset by a bilateral deal between the United Kingdom

and Spain. The United Kingdom had promised that nothing it agreed with Spain would be implemented in practice if the people of Gibraltar rejected it in a referendum. But that approach suffered from two important flaws: firstly, striking an agreement on principles would necessarily predetermine any process of dialogue, designed to draft detailed proposals, which might occur between the agreement of principles and the referendum. Secondly, the promised referendum would only be about questions of the practical implementation of whatever proposals emerged. In other words, the United Kingdom would respect the right of Gibraltar to reject Spanish sovereignty in practice, in that it would not implement in practice any agreements against the will of the people of Gibraltar, but it would not respect the political rights of the people of Gibraltar to decide their own future. That amounted to a violation of the right to self-determination.

16. As an alternative, the United Kingdom and Spain might conclude an agreement on the principles affecting the sovereignty of Gibraltar, its political rights and constitutional future, but delay putting proposals based on those principles to a referendum for several years, until they thought the people might accept them. Such threats had already been issued by the Spanish Prime Minister and, in more veiled terms, from London. As confirmation of that, he referred to a letter from the Ambassador of Spain to the United States which had been published in the “Wall Street Journal”.

17. An alternative, more balanced formulation of the draft seminar conclusions had been put forward at the seminar in Fiji, in which it had been proposed that in the description of the process of dialogue the reference should be not to “the United Kingdom and Spain”, but to “the interested parties”, which of course would include the Government of Gibraltar. It had also been proposed that a reference should be included to the final outcome having to be in accordance with the freely expressed wishes of the people of Gibraltar. Spain had opposed that variant. However, he urged the Committee, in the interests of reaching a consensus, to consider the proposal Gibraltar had made at the Fiji seminar.

18. **Mr. Stanislaus** (Grenada) asked Mr. Caruana to explain what was meant by the “fourth option” for implementing the principle of self-determination, and

enquired when the people of Gibraltar were last given the opportunity to hold a referendum.

19. **Mr. Caruana** (Chief Minister, Gibraltar) said that it was stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance of the Charter of the United Nations that the right of self-determination could be implemented through “the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into another political status freely determined by a people”. The very last part of that formulation was the fourth option of self-determination.

20. As to the second question, the people of Gibraltar had not had the opportunity to conduct a referendum since 1967. The options proposed then were restricted to a choice between keeping the link with the United Kingdom and integration with Spain. Those options had not suited the people of Gibraltar. Furthermore, Spain was essentially against any referendum in Gibraltar, considering that holding one would be an act of self-determination unacceptable to Spain. One of the factors preventing agreements being reached in the negotiations between the United Kingdom and Spain on the question of Gibraltar was that Spain was opposed to the United Kingdom putting questions to a referendum of the people of Gibraltar. The previous week, the Minister for Foreign Affairs of Spain had stated that there was no place for a referendum on sovereignty in Gibraltar and that the views of the people of Gibraltar on that question were of no significance.

21. **Mr. Mahmoud** (Iraq) said that his country supported the principle of negotiations between the United Kingdom and Spain, as well as the Brussels process, aimed at resolving all outstanding questions regarding Gibraltar, including the question of the Territory’s sovereignty, on the grounds that the process met the requirements of United Nations resolutions. He was opposed to introducing any changes to it.

22. **Mr. Lewis** (Antigua and Barbuda) asked whether the invitation made by the Government of Gibraltar to the Special Committee to visit the territory was still open, whether Gibraltar was prepared to pay for the visit if the United Nations were unable to provide funding, and whether the proposal extended to

members of the Committee in their individual capacities.

23. **Mr. Caruana** (Chief Minister, Gibraltar) expressed surprise and disappointment at Iraq’s radical change of position, especially in view of the fact in the past Iraq had supported the wish of the people of Gibraltar to determine their own future. Replying to the representative of Antigua and Barbuda, he said that the proposal which had been made to Committee members to visit Gibraltar was still open, and included financing the visit. Gibraltar was interested in arranging such a visit for the same reason that the United Kingdom and Spain were opposed to the idea: a visit to Gibraltar would enable members of the Special Committee to get to know the real situation for themselves and to satisfy themselves as to the falseness of statements to the effect that the people of Gibraltar were in no position to realize their right to self-determination. Gibraltar was also prepared to accept Committee members in their personal capacities.

Hearing of petitioners

24. **The Chairman** reminded the Committee that at its third meeting it had decided to hear petitioners on the agenda item.

25. *At the invitation of the Chairman, Mr. Bossano (Leader of the Opposition) took a seat at the petitioners’ table.*

26. **Mr. Bossano** (Leader of the Opposition) said that in the past 12 months an extremely dangerous attempt had been made to undermine the process of decolonization of Gibraltar.

27. In 1964, the Committee had confirmed that the provisions on the granting of independence to colonial countries and peoples were fully applicable to Gibraltar, merely noting the differences in the positions of the United Kingdom and Spain regarding the status of that Territory and inviting the two parties to enter into negotiations on the basis of the principles of the Charter of the United Nations.

28. Since then Spain had been seeking to present the position taken by the Committee as a ruling that, uniquely in the case of Gibraltar, the principle of self-determination did not apply, and that the invitation to the two parties to hold talks was an alternative to decolonization.

29. Such an interpretation was absolutely unacceptable. Indeed, in its resolution 56/74 of 10 December 2001, the General Assembly had referred to the need to examine ways to ascertain the wishes of the peoples of the relevant Territories, called upon the administering Powers to take all necessary steps to enable the peoples of the Non-Self-Governing Territories fully to exercise their right to self-determination, reaffirmed that the existence of colonialism in any form was incompatible with the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights, and reaffirmed its determination to ensure the faithful observance of the relevant provisions of those three international instruments, which were fully applicable to Gibraltar and its people, and also declared once again its support for the aspirations of peoples under colonial rule to exercise their right to self-determination and requested the Committee to seek suitable means for the full implementation of the Declaration in all Territories that had not yet exercised their right to self-determination.

30. The administering Power should not be allowed to use the relaunched Brussels negotiations to find a way of settling its differences with Spain so as to perpetuate colonial dependence with Spain and the United Kingdom acting as administering Powers, so depriving the people of Gibraltar of the opportunity to exercise their rights under the Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights.

31. Members of the Committee had always lacked the political courage collectively to stand up in defence of the rights of Gibraltarians, although they undoubtedly had a duty to support the aspirations of the people of Gibraltar and not to permit the national interests of the two Member States to take precedence over the inalienable human rights of Gibraltarians.

32. He recalled that when he had first appeared before the Committee in 1992 he had made clear that his party rejected the Brussels process and was firmly committed to achieving self-determination and the completion of decolonization before the end of the First International Decade for the Eradication of Colonialism.

33. Since then the General Assembly had declared the Second Decade and its latest resolution had requested that work on a constructive programme of work for each specific Territory be finalized before the end of 2002.

34. Gibraltar's Parliament had unanimously approved the texts of a draft decolonization constitution which provided for the exercise of self-determination and granted a new status between that of "free association" and the "fourth option" which he had formulated seven years previously. The Committee must give its assessment as to how constructive in its view the draft was from the point of view of securing the maximum possible level of self-government and to what extent they met its criteria for decolonization. Since the draft constitution fell short of independence it therefore satisfied the demand of the United Kingdom that it should not be in breach of the provisions of article X of the Treaty of Utrecht of 1713, which both the United Kingdom and Spain claimed denied the population of Gibraltar the right to independence.

35. The United Kingdom was publicly committed to considering any constitutional proposal meeting that condition, which was the only route to decolonization that was compatible with the Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights.

36. The second route, proposed by the United Kingdom in July 2001, envisaged the completion of the negotiation process initiated in 1985, the securing of maximum self-government, the protection of the way of life of the population of Gibraltar and the removal of the sanctions imposed by Spain in exchange for a shared sovereignty over Gibraltar in perpetuity by the United Kingdom and Spain. Spain was apparently prepared to agree to that on condition that the United Kingdom undertook to transfer its rights to it at some future date if it should decide to give up the Territory.

37. When faced with a choice between exercising the right to self-determination while continuing to have an unfriendly State as their neighbour, and buying the friendship of their neighbour by sacrificing their self-determination and recognizing the neighbouring State's power over them, the overwhelming majority of Gibraltarians would undoubtedly reject the second option. Nevertheless, the Government of the United Kingdom, taking no account of the views of the

majority of Gibraltarians, seemed determined to proceed down that path and was not prepared to consider any other proposals.

38. In spite of the fact that the majority of Members of Parliament, public opinion and the media in the United Kingdom fully agreed that Gibraltar's future was a matter for its people, and its people alone, and that constitutional experts at British and Spanish universities confirmed that the principle of self-determination was applicable to Gibraltar, and that there was a growing body of public opinion in Spain which accepted that, the Government of Spain obstinately refused to accept the obvious.

39. His message to the Government of Spain was that Gibraltar would never become a part of Spain, that decolonization of the Territory would be undertaken in accordance with the wishes of its people and that there was nothing that Spain could do about it.

40. The Committee must not take any action that could be interpreted as tending to legitimize Spain's position or supporting proposals concerning joint sovereignty.

41. The United Nations had the obligation to apply the only acceptable formula to the decolonization of the remaining dependent Territories, including Gibraltar, which was to comply with the wishes of their people.

42. In the Gibraltar Parliament, the opposition would be prepared to support any appropriations that would enable all members of the Committee and of the General Assembly to visit Gibraltar if the Government agreed to include such allocations in the current year's budget.

43. **Mr. Stanislaus** (Grenada) said that in view of the impressive unanimity between the ruling party and the opposition, the Special Committee must take heed of that attempt to work out some new ideas on the question of Gibraltar.

44. Judging from the statements, Spain's position was perceived more negatively in Gibraltar than that of the United Kingdom. Accordingly, the Committee must, in the spirit of new thinking, draw the attention of the two administering Powers to that factor.

45. **Mr. Lewis** (Antigua and Barbuda) agreeing with the representative of Grenada that the positions of the Government and opposition in Gibraltar were very

similar, said that it was, nevertheless, not entirely clear to him to what extent they had managed to make joint statements.

46. Without wishing to interfere in the internal affairs of other States or Territories, he asked the representative of the opposition whether the Government and the opposition had adopted any joint statements which set out agreed principles concerning Gibraltar.

47. **Mr. Bossano** (Leader of the Opposition) said that such statements would be incorporated in the new Constitution that was being worked out by a special committee consisting of three representatives of the Government and two representatives of the opposition, and which had asked the Gibraltarian public and the electorate to make written and oral observations and proposals. Thus the new decolonization Constitution, which was being modelled on the constitutions of other countries, was the result of consensus. Although it did not envisage the granting of independence, since the United Kingdom had refused to consider that option, it aimed at ensuring a maximum self-government, thereby enabling the Committee to remove Gibraltar from the list of Non-Self-Governing Territories.

48. That Constitution had been unanimously adopted by the Parliament of Gibraltar and was an official document signed by all members of Parliament, both of the ruling party and of the opposition.

49. With a view to the finalization of a constructive programme of work on Gibraltar, as set out in the General Assembly resolution, the Committee should set aside the wishes of the United Kingdom and consider the position of the elected representatives of the administration of the colonial Territory of Gibraltar, since the Constitution was designed to ensure the recognition of Gibraltar as a fully Self-Governing Territory and its removal from the list.

50. He called on members of the Committee who were familiar with the document to submit their proposed amendments to the Parliament of Gibraltar, even prior to agreement with the administering Power, if they saw any possibility of bringing it into closer correspondence with international standards.

51. *Mr. Bossano (Leader of the Opposition) withdrew.*

52. **Ms. Menendez** (Spain) said that her country was following the Committee's work with great interest, and was sure that it would be able to make an

important contribution to the eradication of colonialism. She noted with satisfaction the resumption of negotiations between Spain and the United Kingdom aimed at achieving a comprehensive settlement of the dispute over Gibraltar in accordance with the repeatedly reaffirmed mandates of the United Nations over a period of 20 years. The resumption of negotiations gave grounds for hoping that the question would be resolved, and the Government of Spain declared its determination to conduct those negotiations in a constructive spirit with the aim of reaching an acceptable settlement that would ensure a secure, prosperous and stable future for Gibraltar.

53. Since the situation of each dependent Territory was unique, there was no single recipe for eliminating colonial status. In the case of Gibraltar, unlike the majority of other situations related to decolonization, there was a dispute over sovereignty between two States: the United Kingdom as the colonial Power and Spain, since the establishment of the colony had been to the detriment of Spain's territorial integrity. Spain's demands in terms of sovereignty applied equally to the Rock of Gibraltar which Spain had ceded to Great Britain under article X of the Treaty of Utrecht, and to the isthmus whose occupation by the United Kingdom, Spain had never recognized.

54. With regard to Gibraltar's sovereignty, there was a long-standing fully defined and unambiguous concept based on three principles: it was essential to put an end to the colonial presence in Gibraltar; the decolonization of Gibraltar must be undertaken in accordance with the principle of territorial integrity and not in accordance with the principle of self-determination; and the question of Gibraltar must be resolved through negotiations between Spain and the United Kingdom in accordance with the terms of reference reaffirmed repeatedly by the United Nations since 1964.

55. In accordance with that concept, the General Assembly had since 1973 consistently called on the Governments of Spain and the United Kingdom to begin bilateral negotiations aimed at eliminating the colonial status of Gibraltar. In accordance with that mandate, Spain and the United Kingdom, in a joint declaration adopted in Brussels in 1984, had begun the process of negotiations concerning the future of Gibraltar. On that basis the two sides had agreed to consider the questions of sovereignty and cooperation on the basis of mutual advantage.

56. On 26 July 2001, Spain and the United Kingdom had decided to resume the negotiating process, known as the "Brussels process", and had invited the Chief Minister of Gibraltar, Mr. Caruana, to join in those negotiations. Since then, the negotiations had been proceeding in a positive and constructive spirit. At the conclusion of the ministerial-level meeting between Spain and the United Kingdom held in London in July 2001, a communiqué had been issued in which the two Ministers for Foreign Affairs had underlined their determination and political will to overcome all differences concerning Gibraltar and to make every effort to bring the negotiations to a successful and speedy conclusion. In spite of repeated invitations, the representatives of the Gibraltar authorities had refused to take part in those meetings.

57. The meeting between the Ministers for Foreign Affairs of the two States, held in Barcelona on 20 November 2001, was a new step in the negotiation process which had resulted in a declared intention to conclude a comprehensive agreement on the question of Gibraltar by the summer of 2002. That agreement was to cover all important issues, including questions of cooperation and sovereignty. In the joint communiqué issued after the meeting it had been noted that the common aim of Spain and the United Kingdom was to establish conditions in which Gibraltar would have the greatest degree of self-government and derive all the benefits of coexistence within a wider region. The basic principle was to establish in future a secure, stable and flourishing Gibraltar with a modern and sustainable status. In the joint communiqué the two sides had once again invited the Chief Minister of Gibraltar to take part in future meetings within the Brussels process. The most recent meeting between the Ministers had been held on 4 February 2002. At that meeting the Ministers had noted that there had been significant progress in the negotiations on the question of Gibraltar, which were proceeding in an atmosphere of friendship and mutual understanding, and confirmed the extensive list of commitments entered into at the previous meetings in London and Barcelona, and the intention to conclude a comprehensive agreement by the summer of 2002. The Ministers also declared their desire to resolve serious differences of opinion concerning Gibraltar and to guarantee the Territory a secure future which would enable Gibraltarians to preserve their way of life and traditions and to achieve the greatest degree of self-government, enhance their well-being and enjoy all the benefits of mutually

advantageous cooperation with all territories adjacent to Gibraltar. Following that meeting, talks between the two sides on the question of Gibraltar had continued at various levels, and the intention to convene the next meeting of Ministers in the context of the Brussels process at the end of June or the beginning of July 2002 had recently been announced.

58. The question of Gibraltar had also been considered at meetings between the heads of Government of Spain and the United Kingdom in November 2001 and May 2002. At the latter meeting, held in London, the heads of Government had stated that talks between Spain and the United Kingdom about Gibraltar were developing in “a positive and constructive spirit”.

59. She noted also that the talks on Gibraltar had received the support of the heads of Government of the member States of the European Union and the European Parliament. Following its session in Barcelona in March 2002 the European Council had welcomed the decision of the United Kingdom and Spain to resume the Brussels process on Gibraltar and expressed its support for the efforts of the two Governments to overcome their differences and conclude a comprehensive agreement by the summer of 2002. The European Parliament, in its resolution of 20 March 2001, had fully supported those conclusions concerning Gibraltar.

60. Spain was making every effort to achieve an acceptable comprehensive settlement and had no doubts regarding the determination of the Government of the United Kingdom to ensure progress in the negotiations with Spain. The Government of Spain was convinced that it was possible soon to reach a comprehensive settlement in the interests of all the inhabitants of Gibraltar and the adjacent territories.

61. In conclusion, she said that the seminar held in Fiji in May 2002 had confirmed the approach of the United Nations and the Special Committee regarding decolonization in general and Gibraltar in particular. Spain was categorically opposed to attempts to review the outcomes of that seminar, which confirmed the position expressed at previous seminars and which was in accordance with the relevant United Nations resolutions on Gibraltar. It would be particularly inappropriate now that Spain and the United Kingdom were conscientiously implementing the recommendations of the Special Committee and the General Assembly and were

making every effort to seek a solution on the question of Gibraltar through bilateral negotiations.

Question of Western Sahara (A/AC.109/2002/10)

62. **The Chairman** drew the Committee’s attention to the working paper prepared by the Secretariat on the question of Western Sahara (A/AC.109/2002/10).

Hearing of petitioners

63. **The Chairman** recalled that at its third meeting the Special Committee had decided to grant the request for a hearing received from the representative of the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO).

64. *At the invitation of the Chairman, Mr. Boukhari (Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO)) took a place at the petitioners’ table.*

65. **Mr. Boukhari** (Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO)) said that the question of Western Sahara was a problem of decolonization which should be resolved on the basis of the application of the principle of self-determination. The Saharan people and the international community had never recognized the military occupation of the Territory by Moroccan forces in violation of the resolutions of the General Assembly and the ruling of the International Court of Justice. The armed conflict had been continuing for over 16 years pending agreement by both sides — the Frente POLISARIO and Morocco — to the settlement plan worked out in 1990 by the United Nations and the Organization of African Unity (OAU) with a view to resolving the conflict peacefully through the holding of a referendum on the issue of self-determination. The Security Council had accordingly sent the United Nations Mission for the Referendum in Western Sahara (MINURSO) to the region. Under the settlement plan, the ceasefire had come into force on 6 September 1991 so that the referendum could be held in February 1992. However, in December 1991, Morocco had proposed an amendment to the provision concerning the electoral lists, as a result of which the process was delayed for several years. In September 1997, under the aegis of the Personal Envoy of the Secretary-General, Mr. James A. Baker III, the parties signed the Houston agreements, a fact that was welcomed as a successful step on the road to resolving the situation and was

noted by the Secretary-General in his report (S/1997/742).

66. In early 1998, MINURSO restarted the process which had been brought to a conclusion in February 2000 by the publication of a preliminary list of persons qualified to vote. It only remained to complete the implementation of the remaining stages of the settlement plan on the basis of the Houston agreements and to fix a firm date for the holding of the referendum in autumn 2000. However, that did not take place because the Moroccans had submitted 130,000 appeals disputing the reliability of the electoral list. Fearing that the referendum on self-determination would lead to the independence of Western Sahara, Morocco had decided to delay the process of implementing the settlement plan and the Houston agreements.

67. As a result, the subsequent reports of the Secretary-General contained pessimistic assessments which presaged a gradual departure from the settlement plan. What happened at the meeting of the two sides mediated by Mr. Baker in Berlin was therefore hardly surprising. Morocco, on the one hand, stated its commitment to the settlement plan and on the other, indicated its willingness to agree only to a "political solution" that would ensure its sovereignty over Western Sahara (S/2000/1029, paras. 15 and 28). Consequently, the Secretary-General, together with his Personal Envoy, indicated in the report published in February 2002 Morocco's "unwillingness to go forward with the settlement plan" (S/2002/178, para. 48).

68. Early in May 2001, the Personal Envoy of the Secretary-General transmitted the Moroccan proposals to the Frente POLISARIO which, on account of their content and purposes, were found to be totally unacceptable. Those proposals were published as a draft framework agreement on the status of Western Sahara (S/2001/613, annex I) and envisaged that after a five-year period during which the occupying Power would maintain sovereignty over the territory, a referendum would be held on the issue of its final status in which all persons who had been full-time residents of Western Sahara during the year preceding the referendum could take part (S/2001/613, annex I, para. 5). Those proposals by Morocco reflected the idea of holding a referendum that would reinforce its occupation of the Territory. From the legal and political points of view, the draft framework agreement would not withstand the slightest criticism. It was contrary to the principles of international legality in that it

deprived the Saharan people of the right to self-determination and, at the same time, conferred that right on the civilian population of the occupying Power. As far as the political aspect of the matter was concerned, the draft had not received the support of both parties. Only Morocco had approved it. Neither the Security Council, which had considered those proposals in June 2001 and April 2002, nor the General Assembly, had approved the draft. In the absence of any legal basis, the agreement of the parties and the approval of the international community, the proposed alternative solution was therefore unacceptable.

69. There were three basic arguments underlying the efforts to ensure acceptance of the draft framework agreement as an alternative to the settlement plan. In the first place, it was assumed that the processing of 130,000 appeals submitted by the occupying Power in order to delay the process of preparing and holding the referendum would be very time-consuming and that it would not be possible to hold the referendum before 2002. At the same time, if the United Nations had undertaken that task it would probably already have succeeded in organizing the referendum. In the second place, there was doubt as to the "winner takes all" principle enshrined in the plan. That argument ran counter to the very concept of self-determination since, in the course of any referendum or democratic elections, the participants were at liberty to choose one out of a number of possible alternatives. In the case in point, it was a matter of independence or integration with the occupying Power and whatever the outcome of the referendum, the only winner would be the Saharan people. In the third place, Morocco and the few parties that supported the implementation of the framework agreement maintained that the settlement plan did not provide any machinery to ensure respect by the parties of the outcome of the referendum. At the same time the problem could be solved since the implementation of the settlement plan was within the competence of the Security Council which at any time might establish the machinery, including the taking of the measures envisaged in Chapter VII of the Charter in order to ensure respect by the parties of the outcome of the referendum.

70. It was obvious that the submission of the draft framework agreement reflected an attempt to divert the process of decolonization of Western Sahara along a path at variance with the concept of decolonization developed by the United Nations. Precisely for that

reason, the Frente POLISARIO categorically rejected the draft.

71. In February 2002 the Secretary-General and his Personal Envoy had submitted to the Security Council four alternative solutions to the problem: implementation of the settlement plan, adoption of the draft framework agreement, partition of the Territory and the disengagement of the United Nations. The last three alternatives entailed rejection of the settlement plan. That approach was a matter of concern since it entailed recognition of the legality of Morocco's efforts to block the process of implementing the settlement plan. He pointed out that the settlement plan, submitted jointly by the United Nations and OAU was the only solution that had been approved by the parties. It should not be regarded as just another alternative since it had already been confirmed by the Security Council in 1990. Consequently, rejection of the settlement plan simply because one of the parties, Morocco, had decided not to respect its obligations, provided no justification for efforts to look for other possible alternatives. Paradoxical as it might seem, at a time when the people of East Timor were celebrating their independence, certain circles were exerting pressure on the United Nations in an attempt to force it to seek alternative solutions to the problem which would enable Morocco to legitimize its aggression against the Saharan people.

72. Morocco had violated the principles of international law by occupying a Territory that did not belong to it where it was violating human rights in the presence of MINURSO which had been unable to carry out the task entrusted to it of organizing a referendum on the question of self-determination. Nevertheless, the Saharan people would not relinquish their right to independence and they asserted their desire to attain the objectives of decolonization by peaceful means. They were cooperating fully with the United Nations to enable it to accomplish its mission in Western Sahara, but at the same time the impression was gaining ground that such cooperation served no practical purpose. If the United Nations did not restore its gravely compromised authority with respect to resolving the situation in the Western Sahara, its activity might merely become a complicating factor. Now, as never before, the Special Committee should focus more closely on the issue. Morocco, which the United Nations did not regard as the governing Power, maintained its illegal presence in the Western Sahara

thus not only violating the Charter of the United Nations but also being a permanent source of instability throughout the region. Such a state of affairs was unacceptable and must be ended.

73. **Mr. Lewis** (Antigua and Barbuda) was very concerned that varying standards were apparently being applied to different territories: some with respect to the Falkland Islands (Malvinas), others to Gibraltar, others to Montserrat, and yet others to Western Sahara. It was incorrect to say that the whole of Africa was free while the people of Western Sahara had not attained their right to self-determination.

74. Despite the fact that the Parties had long since agreed to hold a referendum some reason was always found to postpone it. Now what was being discussed was extending the right to participate in the referendum to anybody who had supposedly lived in the Territory for twelve months. He wondered what would prevent the governing Power from flooding the Territory with its own citizens. The Committee should take closely to heart the struggle of the people of Western Sahara and adopt a bolder position on matters of decolonization.

75. **Mr. Requeijo Gual** (Cuba) said that his country shared the concern expressed by the representative of Antigua and Barbuda. The situation with regard to Western Sahara called for a rapid settlement within the framework of a genuine process of decolonization on the only possible basis, namely through the holding of a free and fair referendum under United Nations auspices.

76. It was discouraging that over the course of many years the Organization had spent large sums without any results. Still more discouraging was the fact that, over the last few decades, the legitimate aspirations of the people of Western Sahara, who had continued to live in extremely difficult and inhumane conditions, had still not been realized. Whereas, in other regions of the world, concern at the situation with regard to human rights and the realization of the rights of peoples to self-determination was openly expressed, in the case of Western Sahara such issues were forgotten and marginalized. Little interest was shown in the fate of the people of that Territory or in the problems of their everyday existence.

77. The referendum envisaged two alternatives — integration or independence. He asked why the people of Western Sahara were not allowed independently to choose their own destiny, why a referendum was not

held and why so many obstacles had been created. It was beyond belief that one of the parties should continue to delay the process and manage to force the United Nations to stop doing its work. That was entirely unacceptable.

78. In recent months, a dangerous tendency had been taking shape in the Security Council. In particular, the statements of James A. Baker III, the Personal Envoy of the Secretary-General, implied the imposition of proposals from above without taking into account the opinions and history of the struggle of the people of Western Sahara whose inalienable right to self-determination had been flagrantly trampled on.

79. There were essentially three alternative forms of self-determination and it was ridiculous to speak of a "fourth alternative". If nothing at all were done, the colonial situation would be perpetuated and that was intolerable.

80. In resolving the matter, account had also to be taken of the fact that the Territory had been divided up, and subsequently occupied by one of the parties. As a result of many years of armed struggle, only certain parts had been liberated. The ceasefire that had been achieved ten years earlier was very precarious and was unlikely to continue if the present situation remained unchanged.

81. Cuba supported the statement by Antigua and Barbuda to the effect that the Committee should act more boldly. To maintain the existing situation was tantamount to perpetuating the colonial status of the Territory. It was unacceptable to sit idly by and wait until the Security Council took a decision on the future on Western Sahara.

82. His delegation expressed its full solidarity with the struggle of the people of Western Sahara for independence or, at the least, for the opportunity to vote on the question of self-determination. The fate of Western Sahara was in the hands not of an organ of the United Nations but of the people themselves.

83. At the seminar in Fiji the representative of the Frente POLISARIO had suggested that the Committee might send a delegation to ascertain the situation in the liberated areas of Western Sahara and in the refugee camps at Tindouf. He asked whether that suggestion was still current.

84. **Mr. Boukhari** (Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente

POLISARIO)) was confident of the Committee's determination to complete the process of decolonization before the end of the decade.

85. The proposals made in Fiji were not new: it was suggested that the Committee should visit the Territory in the framework of its ordinary work. Such a visit would enhance the interest of the international community in the matter and would give new impetus to the process of decolonization. More important still, it would prevent the process from being sidelined. However, the most important task was to clarify the existing situation. Morocco was not the governing Power of the Territory. That had been confirmed in the legal opinion submitted by the Legal Counsel of the United Nations on 29 January 2002 to the Security Council. It was the first time that the Committee had had to deal with such an unusual situation whereby the identity of the governing Power in the process of decolonization was not known. However, it was known for certain that the present authorities were occupiers. The unusual nature of the issue should serve as a further stimulus to strengthen the determination of the Committee to give a fresh impetus to the process of decolonization in the Territory. The Frente POLISARIO, for its part, would do everything in its power to ensure the visit took place.

86. *Mr. Boukhari (Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO)) withdrew.*

87. **The Chairman** suggested that the Committee might continue its consideration of the item at its next meeting, taking into account any guidance that might be given in that connection by the General Assembly at its fifty-seventh session, and that it should transmit all appropriate documentation to the Assembly in order to facilitate consideration of the item by the Fourth Committee.

The meeting rose at 12.40 p.m.