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Chairman: Mr. George J. TOMEH (Syria).

AGENDA ITEM 23

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Territories not considered separately (continued) (A/6661, A/6662, A/6700/Rev.1, chaps. VIII-XII and XIV-XXIII; A/6802, A/6845, A/6876, A/6882, A/C.4/L.876 and Add.1-6, A/C.4/L.877, A/C.4/L.884, A/C.4/L.887 and Add.1, A/C.4/L.888-890)

GENERAL DEBATE AND CONSIDERATION OF DRAFT RESOLUTIONS (continued) (A/C.4/L.876 AND ADD.1-6, A/C.4/L.877, A/C.4/L.884)

1. Mr. ALLIMADI (Uganda), referring to the question of Gibraltar; observed that unanimity had always characterized the Committee's deliberations concerning that Territory and that such unanimity was absolutely essential if the Committee was to discharge its responsibilities under General Assembly resolution 1514 (XV). His delegation, which had always deplored any attempt to sow dissension, had persistently tried to rally all the Members of the United Nations to the cause of decolonization, for it was convinced that the effectiveness of the work undertaken depended on unanimity. Thus, on the question of Gibraltar, it was by an overwhelming majority that the United Nations, recognizing the special character of the problem, had recommended that the parties concerned, the United Kingdom and Spain, should enter into negotiations. In so doing, it had embarked on the right course, and it must not be diverted from that course by permitting itself to be influenced by more recent developments.

2. The Committee should on no account go back on its expressed intention and desire to assist the two countries in settling their dispute by negotiation and must do everything possible to prevent the disagreement from becoming still greater. He appealed to the members of the Committee to act in that manner, although he deplored the fact that the United Kingdom, acting in defiance of the recommendations of the Special Committee, had held a referendum at Gibraltar which could only prejudice the negotiations and jeopardize the efforts of the two countries to settle their dispute, and although he regarded the criticism levelled at the Special Committee as out of place and uncalled for. The Special Committee, on the contrary, deserved to be praised for its efforts to achieve decolonization. The Fourth Committee would be accomplishing something constructive if it succeeded in drafting a resolution which both Spain and the United Kingdom could accept, i.e. if it was able to narrow the differences and find common ground. That would unquestionably be possible if any reference to the referendum was omitted from the resolution to be adopted, since it was on that point that the Committee was divided and that was one of the main differences between the draft resolutions introduced by the United Kingdom (A/C.4/L.877) and, on behalf of a group of countries, by Ecuador (A/C.4/L.876 and Add.1-6). Such a step would surely advance the negotiations and thus bring the parties closer to a solution of the problem which divided them.

3. The Committee now had before it three draft resolutions. His delegation could not vote for the United Kingdom draft (A/C.4/L.877). Draft resolution A/C.4/L.876 and Add.1-6 appeared to be acceptable, but his delegation had some doubts concerning operative paragraph 2, in which the sponsors deplored the holding of the referendum and declared it to be a contravention of the provisions of resolution 2231 (XXI) and of the Special Committee's resolution of 1 September 1967 (A/6700/Rev.1, chap. X, para. 215); it would have preferred to see the paragraph reproduce the Special Committee's views on the subject. As for draft resolution A/C.4/L.884, which did not mention the referendum, his delegation considered it satisfactory although it would have thought it preferable if the second preambular paragraph did not merely note, but noted "with approval", the resolution adopted by the Special Committee on 1 September.

4. Mr. LUARD (United Kingdom) said that there had been substantial progress towards self-government in most of the smaller Territories still administered by his country. The process of decolonization in the small island Territories was a difficult one, as the Committee was aware, owing to the fact that the Territories had limited resources, were located far from the main lines of communication and had peculiar problems which demanded special

attention. It should be pointed out, nevertheless, that two Territories, with a total population of more than 1 million, were due to become independent before the next session of the General Assembly.

5. Swaziland was to attain independence on 6 September 1968 in accordance with the wish expressed by the elected representatives of the Territory, which had, since April 1967, attained internal self-government and at the same time become a Protected State. Talks concerning a conference on independence were now under way, and such a conference would probably be held before long.

6. Mauritius, which had a population of 750,000 would attain independence on 12 March 1968; the decision to that effect had been taken after consultations between the United Kingdom Government and the Government of Mauritius, which had requested independence following the election at new Legislative Assembly. The general elections which had resulted in the formation of the Assembly had been held in the presence of a team of observers from Commonwealth countries—Canada, India, Malta, Trinidad and Tobago, and the United Kingdom—who had been unanimous in finding that the elections had been properly conducted and that the results reflected the true aspirations of the Mauritian people.

7. In the Seychelles, a new constitution would soon enter into force. The constitution provided for the establishment of a single Governing Council of twelve to fifteen members, which would have both executive and legislative functions. Elections to the new Council on the basis of universal adult suffrage had taken place on 12 December. That represented a major step towards internal self-government for the island.

8. Important constitutional progress had also been achieved in St. Helena. On 1 January, the former Advisory Council had been replaced by a Legislative Council with a majority of elected members. A system of committees giving members of the Legislative Council departmental responsibilities had been established at the beginning of the year. The Executive Council had also been reformed to include the chairmen of the Legislative Council committees in place of six former nominated official members. The elections to the new Legislative Council would be held on the basis of universal adult suffrage and would take place not later than the beginning of January 1968.

9. Advances had also been made in the Pacific Territories. On 1 April a new constitution had entered into force in the Solomon Islands, providing for a substantial increase in the number of elected members of the Legislative Council. The constitution also established an Executive Council composed of eight members—up to five non-official members and not more than four official members—who would advise the High Commissioner. The constitution provided for general elections, which had taken place in May and June and had, in thirteen electoral districts, been held on the basis of universal adult suffrage; in one of the outlying districts, it had been necessary to hold indirect elections on the basis of electoral colleges because of transport and administrative difficulties.

10. The Gilbert and Ellice Islands also had a new constitution. Previously the legislative power had been entirely in the hands of the Resident Commissioner, who had nominated the members of the Executive Council and the Advisory Council. The new constitution, which had been approved in August, provided for the establishment of two new bodies: first, a Governing Council, which would be a legislative body consisting of five official members, including the Resident Commissioner, and five elected members and would advise the Resident Commissioner on all executive matters; secondly, a House of Representatives, which would consist of not more than thirty members, twenty-three of them elected on the basis of universal adult suffrage, and would advise the Governing Council on proposed legislation and on other matters referred to it by the Council or raised by members of the House. In addition, the House of Representatives would appoint from among its members the five non-official members of the Governing Council. Elections to the new House had been held in October.

11. In the Anglo-French Condominium of the New Hebrides, the two administering Powers were continuing their joint efforts to promote economic and social development. The question of progress in the New Hebrides had been and continued to be the subject of ministerial talks, which were gradually bearing fruit. Even in tiny Pitcairn, with its eighty-eight inhabitants, there had been appreciable changes in the system of administration and the islanders managed their own affairs.

12. In the British Virgin Islands, there had been considerable progress during the past year. The new constitution had been in force for six months. The new Legislative Council had seven elected members; it had only two official members, the Attorney-General and the Financial Secretary, and one nominated member who was appointed by the Administrator after consultation with the Chief Minister. The seven elected members represented seven constituencies, approximately equal in population, the boundaries of which had been established by a Commissioner from outside the Territory. In the elections held in April, four seats had been won by the United Party, two by the Democratic Party and one by the People's Own Party. Under the new arrangements, the Executive Council consisted of three ministers—one of them the Chief Minister—appointed from among the elected members of the Legislative Council. The Executive Council had only two ex officio members, i.e. the Attorney-General and the Financial Secretary.

13. In Montserrat, the new constitution had created an Executive Council, headed by the Chief Minister, and a Legislative Council of seven elected members, two ex officio members and one nominated member. Although constitutional questions had not been an issue in the elections held in 1966, his Government was prepared to convene a conference to consider constitutional changes in the Territory whenever the local political parties indicated a wish for it.

14. With regard to the Cayman Islands, his Government had been informed after detailed consultation of the electorate by the elected members of the legislature that at the present time the people of the Terri-

tory did not desire any substantial constitutional changes.

15. In Bermuda, there had been some very important political and constitutional advances during the past year. The Territory, which had long been self-governing, was soon to have a new written constitution. There was to be an upper house, the Legislative Council, with a majority of elected members, and a lower house, the House of Assembly, with forty members elected by universal adult suffrage. The Legislative Council would have limited powers similar to those of the House of Lords in the United Kingdom. Once the House of Assembly was elected, a new Executive Council composed of members of both houses would be appointed on the advice of the member of the House of Assembly best able to command the confidence of his fellow members. The Government would be required by the constitution to seek the advice of the Executive Council on all matters except external affairs, defence, internal security and the police. The new constitution also contained safeguards for fundamental rights and freedoms and secured the independence of the judiciary and the public service.

16. In the Bahamas, general elections had been held on the basis of universal adult suffrage for the first time. The purpose had been to fill new seats in the House of Assembly, which had been enlarged. The elections had given a majority to the Progressive Liberal Party, which had formed a government.

17. With reference to the question of gambling establishments in the Bahamas, which had been mentioned in the Special Committee, he wished to inform the members of the Committee that in November the commission of inquiry set up by the new Government of the Bahamas had submitted its report to that Government, which had announced that it would study the commission's recommendations and present a policy statement to the Legislature.

18. With regard to the Falkland Islands, which were in a special category in that they were the subject of a dispute between Argentina and the United Kingdom, interim reports from the Governments of the two countries on the present stage of the discussions would shortly be addressed to the Secretary-General and would be circulated as Fourth Committee documents.[1] The two Governments would at the appropriate time inform the United Nations of the outcome of the talks.

19. On the question of British Honduras, as the Committee was aware, mediation was at present taking place by agreement between the Government of the United Kingdom and Guatemala.

20. Mr. McDOWELL (New Zealand) noted that the Committee had debated the situation in Gibraltar, a tiny Territory with 28,000 inhabitants and no natural resources of any great value, for seven successive days. He would not quarrel with the Committee's order of priority but felt obliged to observe that consideration of the question of Papua and New Guinea, a large Territory with a total population of two and a quarter million facing formidable problems, had unfortunately received less time and thought as a result.

[1] Subsequently circulated as documents A/C.4/703 and A/C.4/704.

21. Nevertheless, the deep interest aroused in Spain, the United Kingdom and not least in Gibraltar itself by the question of the future of the Rock and its inhabitants was understandable.

22. His delegation acknowledged that a Gibraltar separated permanently from the hinterland under Spanish sovereignty would face problems of political and economic viability in the long term. But it felt that the current dispute had tended to cloud rational consideration of the question of viability and how that might be achieved.

23. His delegation had always thought that the Declaration on the Granting of Independence to Colonial Countries and Peoples was directed above all towards helping to free the people of a Territory, not its inanimate soil, from unwelcome foreign domination. If the people of Gibraltar wished to break their ties with the United Kingdom but could not do so, that situation would certainly call for a firm invocation of the central principle of the Declaration. However, the people of Gibraltar had made known their wishes both at the United Nations through their elected representatives and in the referendum held on 10 September.

24. His delegation would not accept the contention in one of the draft resolutions that it was wrong to consult the people of a colonial Territory about where they felt their interests lay. Nor could it agree that the referendum had not been conducted fairly, inasmuch as it had been observed by a team drawn from four Commonwealth countries. There could be no doubting the feelings of the Gibraltarians at the present time.

25. The suggestion had been made that by adopting a resolution which suggested that the aspirations of the people should be taken into account, the Committee would be acting in conflict with the actions of the Special Committee. The present situation, however, was different from that faced by the Special Committee because the two Member States concerned were agreed on a resumption of negotiations. A date had been set for the talks, and the Committee should not risk disrupting them by adopting a position obviously favouring one side.

26. The choice just made by the Gibraltarians certainly did not in any way affect their right to modify their status in the future by joining Spain. In its letter to the Secretary-General of 13 June 1967 (see A/6700/Rev.1, chap. X, annex I, para. 15), the United Kingdom Government had given a solemn undertaking that the people of Gibraltar would retain that very right. That undertaking might point a way out of the present dispute.

27. Spain's desire to take over Gibraltar could not be brought closer by antagonizing the people of the Territory. That might not have been the intention, but it had certainly been the result—as the petitions of the people's elected representatives had testified—of what Spain had said and done in recent years. The attacks against their freely elected leaders and the attempts to sever their trade and communications with Spain could not fail to have aroused the hostility of the inhabitants. Only actions of another kind by Spain could pave the way for reconciliation and ensure the

unanimous approval of the international community for any settlement.

28. His delegation would cast its vote on the draft resolutions before the Committee in accordance with the consideration which he had just outlined. It had reservations about certain aspects of the compromise draft resolution, but, since the latter was the most balanced the constructive of the resolutions and the one which would most surely help to promote an amicable settlement, his delegation would vote for it.

29. Referring to an earlier exchange between his delegation and that of Spain, he said that he had consulted Jane's Fighting Ships, a publication containing information on the world's naval forces which he would commend to the Spanish delegation. It confirmed that the four naval auxiliaries which the Spanish representative had alleged were in Gibraltar at the time of the referendum were not those of his country. That research might well have been undertaken by the delegation of Spain itself.

30. Mr. PEREZ GUERRERO (Venezuela) said that the position of his delegation on the question of Gibraltar which had been stated on various occasions, remained unchanged. It had criticized in the Special Committee the United Kingdom's behaviour on 10 September 1967. It was surely inadmissible that the inhabitants of a Territory used for military purposes should regard themselves as indigenous inhabitants in the sense in which the term was used in other colonial Territories.

31. The consensus adopted by the Special Committee on 16 October 1964[2/] and the subsequent resolutions of the Assembly and the Special Committee had clearly indicated that the only way to solve the colonial problem now under consideration was to restore Spanish sovereignty over the Territory. The principle of territorial integrity embodied in the United Nations Charter and in paragraph 6 of resolution 1514 (XV) surely applied to Gibraltar. The interests of the Territory's inhabitants must be respected. Nevertheless, while it was natural that those interests should be taken into account, the arbitrary interpretation of them by certain parties could not be permitted to prevent the application of the principle of territorial integrity.

32. His delegation had voted for the Special Committee's resolution of 1 September 1967 declaring that the referendum would contradict the provisions of resolution 2231 (XXI). The General Assembly had recommended that the decolonization of Gibraltar should be carried out in consultation with the Government of Spain and "taking into account the interests of the people", thus distinguishing between the people of Gibraltar and those of other colonial Territories.

33. His country, like many other Member States, had taken that fundamental position and would continue to do so until Spain exercised sovereignty over Gibraltar. He hoped that Gibraltar would soon become once more a part of Spain's territory, from which it should never have been separated.

2/ Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 8 (part I), document A/5800/Rev.1, chap. X, para. 209.

34. Mr. BISWAS (Pakistan) said that his country had always espoused the cause of peoples struggling to achieve independence and supported the efforts of the United Nations to bring about speedy decolonization.

35. Speaking on the question of French Somaliland the previous year (1664th meeting), his delegation had warmly welcomed the French Government's decision to hold a referendum so that the people of the Territory could freely determine their political future. While paying tribute to that decision of the administering Power, his delegation had underlined the importance of a United Nations presence in the Territory before and during the referendum in order to dispel doubts abouts its impartiality. Moreover, whenever consultations were held with a people in the form of a referendum or elections, the Organization had invariably called upon the administering Power concerned to allow a United Nations presence in the Territory to supervise the conduct of the operations. The United Nations had invariably urged that procedure, not because Member States doubted the bona fides of the administering Power or the fairness of the consultations, but because they believed that a United Nations presence to supervise such consultations would serve to make it difficult for anyone to challenge the validity of the results.

36. Operative paragraph 4 of General Assembly resolution 2228 (XXI) had requested the administering Power, in consultation with the Secretary-General, to make appropriate arrangements for a United Nations presence before, and supervision during, the holding of the referendum. Operative paragraph 5 of that resolution had requested the Secretary-General to transmit the text of the resolution to the administering Power and to report on its implementation to the Special Committee. The administering Power, however, had not responded to the Secretary-General's communication and had not made any arrangements for a United Nations presence during the referendum of 19 March 1967. Consequently, doubts as to the objectivity of the referendum persisted in certain quarters.

37. His delegation did not doubt that the people of France and their Government were fully committed to decolonization. It would therefore have been appropriate for the French Government to consult the people of French Somaliland in co-operation with the United Nations, pursuant to resolution 2228 (XXI).

38. His delegation's comments had been made in a constructive and friendly spirit in harmony with the United Nations resolutions on the Territory. He hoped that France, in keeping with its traditions, would honour its obligations as the administering Power in the Territory and facilitate the early achievement of self-determination and independence.

39. Mr. BERRO (Uruguay) said that his delegation had decided to be a sponsor of the amendment contained in document A/C.4/L.887 and Add.1. He wished to make it clear that his delegation had taken that decision independently and that, in so doing, it had not sought either to serve or to injure the interests of anyone. The deplorable incident occasioned a few days previously by the draft submitted by a large and representative group of Latin American States

gave him an opportunity to indicate the position his country took on the question of decolonization both in the Fourth Committee and in all other United Nations bodies. That position was in keeping with the clear-cut and unshakable legal tradition which, transcending all questions of interest, expediency, hostility or ambition, had always guided Uruguay in the various organs of the United Nations as well as in the regional orgaization of which it was a member.

40. When Uruguay took a stand it did not do so in order to attack or support the position of any other Power. It sought merely to press for the application of rules of law and principles of justice without ignoring the political realities and the sets of circumstances which were compatible with those rules and principles; it thus tried to harmonize theoretical legal thought and intellectual speculation with the interests of world peace and collective security. Uruguay was not motivated, directly or indirectly, by any consideration of an economic, political, racial or other nature in that intricate web of ambitions, national vanities, financial hegemonies and racial struggles as well as legitimate aspirations to independence, freedom, self-government, equal rights, etc., which constituted the vast and complex problem of an outmoded colonialism whose death-warrant had already been signed and of a decolonization inspired by the vigorous and irresistible force of all the great historical movements which had altered the course and the destiny of mankind.

41. Consequently, to support the principles of the Charter and a clear-cut interpretation of the principles contained in resolution 1514 (XV) and was not to plead the case of a specific Territory against the colonial Power which still administered it but rather to defend the ideal of freedom and to apply the principles of the new law that was now emerging. Now that mankind had given its verdict, it was useless to cling to old institutions and antiquated concepts.

42. The wave of present-day human concepts based on the liberation of man was stronger than the fury of a raging sea. Confirming that fact, he recalled the statement which Ambassador C. M. Velázquez, his predecessor, had made on that subject in his paper entitled "Las Naciones Unidas y la descolonización", published in Montevideo in 1964:

> "Although it may be an exaggeration to state that the great colonial empires have met their end in New York (Raymond Aron, Paix et guerre entre les nations, Paris, 1962, p. 547), no impartial observer can fail to recognize the decisive role that the United Nations is playing in the matter of decolonization. Not only has its action helped to speed up a process which, initiated in the last stages of the Second World War, has become for many people the irreversible sign of our era, but it seems difficult at this stage to imagine that the situations of a colonial type that still survive can resist the powerful dual impact of the weight of world public opinion voiced by the United Nations and the action, often intelligently concerted, of its principal organs."

43. To demonstrate that his country did not improvise its opinions to fit each specific case (following some interest, sympathy or animosity which it did not in fact have), he wished to recall the statement which he had made at the 1287th meeting of the Security Council on 21 June 1966 during the Council's consideration of Guyana's request for admission:

> "It is obvious that by adopting resolution 1514 (XV) on 14 December 1960, the General Assembly helped to bring about an abrupt change in the geography of the world, transforming at once judicial, political and economic principles which had maintained mankind on a balanced footing, while there suddenly appeared dozens of free and independent countries where once had been territories subjugated by colonialism.
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> "I am, of course, not saying this in any spirit of hostility or offence towards the administering Powers. When civilization progresses, destroying and creating, there can be no offence in our simply noting the accomplishments of progress, as ideas and realities disappear with the fulfilment and completion, in due course, of the mission corresponding to the period and ideologies prevalent at the time.
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> "Referring to the resolution mentioned above, Mr. Velázquez very aptly pointed out: '...although we did not want to depart from the field of judicial exegesis, we cannot fail to recognize that, as a political document, the Declaration constitutes a radical innovation both in methods and in objectives. Perhaps, as is generally the case at moments when history changes its course, not even its authors were aware of the highly explosive force of the document. We have already seen some of its fruits and we shall undoubtedly see others in the not too distant future. Although we can go on debating whether the Declaration is strictly in keeping with the Charter, it seems difficult to deny that it conforms at least to the political philosophy of the Charter. Although the letter of the Charter may have been exceeded, the Declaration would ensure that these texts would serve the purposes which, in the final analysis, constitute their raison d'être. The countries which voted in favour of the Declaration were undoubtedly on the side of the angels, for the letter killeth but the spirit giveth life' ".[3]

He had gone on to say on that occasion:

> "I myself side with those who believe that the letter and the spirit identify and complement one another.
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> "Apart from these juridical distinctions however, which have already been left behind by historical facts, it is appropriate to point out that those to whom the Declaration was of the greatest and most direct benefit were the colonial territories of Africa and Asia, territories whose entry in great numbers into the United Nations constitutes the most significant international phenomenon of recent years.
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> "My delegation supported this powerful independence movement, not out of any self-interest, but prompted by ideas, principles and feelings of affinity which perhaps had their deep roots in the events that took place when, a century and a half

[3] Official Records of the Security Council, Twenty-first Year, 1287th meeting, paras. 43-45.

ago, were struggling to establish our position in the world as a free and sovereign people, lords and masters of our own destiny."[4]

44. That was and had always been Uruguay's policy. If it had occasionally rejected certain solutions because it considered them incompatible with its legal tradition, it had never repudiated the cardinal principle of decolonization, nor had it shown hostility towards administering Powers. It had always been guided by ideas and principles, striving to maintain a quality of objectivity and rationalism in its position.

45. Since Uruguay had laid such stress on its unshakable attachment to legal solutions, it might be asked why it had not agreed to the United Kingdom proposal to submit the Gibraltar dispute to the International Court of Justice. Although he saw no need for an explanation, it would give his delegation an opportunity to answer a question which it had not been asked, and that would enable it, in return, to state its views with complete clarity on the substance of the problem under consideration.

46. In the first place, before a case could be referred to the principal judicial organ of the United Nations it was necessary not only that the dispute should be essentially legal in character but also that the parties should agree to refer it to the Court (Article 36 of Chapter II of the Statute of the International Court of Justice, which dealt with the competence of the Court). Consequently, the opinion of his country or that of the Special Committee carried no weight if the two parties did not agree to submit the case to the jurisdiction of the Court.

47. Secondly, the historical, political, geo-political, economic, demographic, social and other aspects of the question of Gibraltar went beyond the specifically legal purview of the Court, which therefore could not consider the case thoroughly and render an adequate decision on it.

48. Thirdly, the unfortunate Judgment delivered by the Court in the case of South West Africa had left unpleasant memories. His country was the first to deplore that judgment, but it was not in a position to find the means of restoring to international justice and prestige it needed and the credence it had lost. The book recently published at Geneva by the International Commission of Jurists under the title South West Africa: the Court's Judgment revealed many of the less widely known features of that important case which had stirred so much emotion at the United Nations during the twenty-first session of the General Assembly and the fifth special session in April 1967. The opinions of a number of the Judges who had taken the correct position were now known, and the tie vote in the Court (it should be recalled that the Judgment had been delivered on the basis of a statutory majority as a result of the casting vote which the President had in the event of a tie) had shown that it had the legal, political and moral support not only of the experts in international law but also of world opinion, that shapeless and nameless thing which bound men of all races and convictions together in their thoughts and feelings. It was sufficient to quote a few of the explanations of vote, since the others were so similar that there was no need to refer to them. Judge Jessup had said:

> "...[the] Respondent...[alleged] that it had a title to South West Africa based on conquest. On 27 May 1965, counsel for Respondent stated (C.R.65/39, p. 37): 'The Respondent says...that the legal nature of its rights is such as is recognized in international law as flowing from military conquest'. It is doubtful whether Respondent relied heavily on this argument which is in any case devoid of legal foundation.
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> "It is a commonplace that international law does not recognize military conquest as a source of title. It will suffice to quote from Lauterpacht's Oppenheim (8th ed., vol. I, p. 567):..."[5]

49. He recalled that he had already quoted from the opinion of the Cambridge professor in his lengthy statement of 28 August 1967 (A/AC.109/SR.546).

50. Judge Padilla Nervo had stated in explaining his vote:

> "...the international community has enacted important instruments which the Court, of course, must keep in mind, the Charter of the United Nations, the Constitution of the International Labour Organisation, the Universal Declaration of Human Rights, the Declaration on the Elimination of All Forms of Racial Discrimination, and numerous resolutions of the General Assembly and the Security Council, having all a bearing on the present case for the interpretation and application of the provisions of the Mandate....
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> "All this must be taken into account by the Court in determining whether it has been a breach of international law or of the obligation of the Respondent under the Mandate, as interpreted by the Court.
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> "There are cases where—in the absence of customary laws—it is permissible to apply rules and standards arising from certain principles of law above controversy. The principles enacted in the Charter of the United Nations are—beyond dispute—of this nature.
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> "The resolutions of the General Assembly are the consequence of the universal recognition of the principles consecrated in the Charter and of the international need to give those principles their intended and legitimate application in the practices of States."[6]

51. Judge Azevedo had stated: "The General Assembly has retained a right to watch over all matters concerning the United Nations." He had also recognized that:

> "The Court must co-operate in the attainment of the aims of the Organization and strive to give effect to the decisions of other principal organs, and not achieve results which would render them nugatory."[7]

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[4] Ibid., paras. 45-47.

[5] South West Africa, Second Phase, Judgment, I.C.J. Reports 1966, p. 418.

[6] Ibid., pp. 467-468.

[7] Ibid., p. 468.

52. Judge Padilla Nervo had gone on to say, with reference to the case before the Court, that it was "a sociological fact which has to be measured and interpreted by the current principles, rules and standards generally accepted by the overwhelming majority of States Members of the United Nations, as they were continuously expressed, through a great number of years, in the relevant resolutions and declarations of the General Assembly and other organs of the international community, in accordance with the binding treaty provisions of the Charter". [8]

53. It was apparent that, according to eminent authorities on international law serving on the International Court of Justice, whose views coincided with those of Oppenheim and Lauterpacht, the learned Cambridge professors, contemporary international law did not recognize any title based on military conquest and thus implicitly or tacitly invalidated—no less effectively than if it had done so explicitly—all the colonial treaties which, like the Treaty of Utrecht, had served at the time to validate or legitimate acts of war by which possession had been taken of land belonging to other peoples.

54. In his statement of 28 August 1967, he had been very explicit on that point. In accordance with the Covenant of the League of Nations (Articles 10 to 15), the Briand-Kellogg Pact of 27 August 1928, the Charter of the United Nations and the Treaty for the Renunciation of War as an Instrument of National Policy, all the treaties which, by a legal subterfuge, had justified the conquest of land by force were no longer valid. Indeed, they could not be valid in the light of the new international law, which had condemned war by declaring it illegal and thus incapable of creating any kind of title which could be invoked for the purpose of keeping land that had been obtained by perpetrating acts which were illegal and therefore null and void. Such was the opinion of the great legal scholars of international repute in the United Kingdom universities and the opinion of the eminent international jurists who composed the International Court of Justice at The Hague. Such was also the opinion of the international community, as expressed in the Charter of the United Nations, and that held by the Organization of American States, the statutes of which constituted an imposing body of legal doctrine. Furthermore, contrary to the present standpoint of the United Kingdom concerning Gibraltar, he pointed out that in the face of the demands by the African and Asian Territories, the colonial treaties which had been drawn up to confirm or legalize the armed conquests which had established the ties of dependence between the conquered colonies and the British Empire had been no obtacle to the process of decolonization in so far as those Territories had been concerned. In that case, the provisions of the Charter of the United Nations, as interpreted in the light of the instrument adopted by the General Assembly on 14 December 1960, had been fully and smoothly implemented. Even before the proclamation of the Declaration contained in resolution 1514 (XV), several United Kingdom colonies had achieved independence under the influence of the political philosophy and the new conception of international law which had emerged at San Francisco. The thought had not entered anyone's mind at that time of submitting to the International Court of Justice the question of the validity or authority of the treaties which had given effect to the systems of colonialism and war which were now universally repudiated.

55. To sum up: (a) the legal instrument applicable to Gibraltar was the Charter of the United Nations; (b) The General Assembly was the only organ competent to adopt resolutions leading to the decolonization of that Territory; (c) the ways and means of restoring the occupied Territory to those who were lawfully entitled to exercise sovereignty over it were provided for in paragraphs 6 and 7 of General Assembly resolution 1514 (XV); (d) the "modus operandi" for the decolonization of Gibraltar had been set out in General Assembly resolution 2231 (XXI), which had been adopted at the 1500th plenary meeting by 101 votes (including those of the United Kingdom and Spain) to none—there had been no mention of the International Court of Justice or of a referendum but only of bilateral negotiations between the administering Power and those who had sovereign rights to the Territory, "taking into account the interests of the people", and that had been the decision of the international community accepted by both parties; (e) the legal considerations affecting the interpretation of the anachronistic and dusty Treaty of Utrecht had no bearing on the new law which was applicable to the decolonization of Gibraltar; (f) in the event that the United Kingdom's acceptance of the system provided for in resolution 2231 (XXI)—which system was incompatible with the submission of the case to the International Court (against the express wish of the Assembly)—was not adequate and definite, it would be necessary, taking into account the views of the most eminent treaty specialists in the United Kingdom, to determine why the case of Gibraltar was the only one to which the norms and principles which had been and still were valid for the other United Kingdom colonies were not applicable. He was unwilling to believe that the United Kingdom wanted to apply discriminatory treatment to Spain.

56. Any idea of the intervention of the International Court of Justice in that colonial matter should immediately be discarded, for the political, legal, economic, geographical, geo-political, demographic, social, religious and other problems involved could and must be solved by the United Nations organs in accordance with the Charter and the relevant General Assembly resolutions. To depart from that natural course of procedure would be a serious error and would create a dangerous precedent.

57. That point having been clarified, he resumed his review of that United Kingdom colony on Spanish soil, which constituted the last rampart of a system incompatible with European civilization and with the history and culture of the two nations implicated in a painful and interminable dispute.

58. He did not wish to repeat in full the arguments which he had set out in the Special Committee with regard to the United Kingdom referendum (A/AC.109/SR.546). He would merely recall that he had made a careful analysis of that referendum, which had been organized unilaterally by the United Kingdom without

[8] Ibid., pp. 468-469.

consulting Spain, as it should have done according to the provisions of resolution 2231 (XXI), and without the participation of the United Nations as required by resolution 1514 (XV). That analysis had been divided into three parts: (a) the referendum in the light of the Treaty of Utrecht, (b) the referendum in the light of resolution 1514 (XV), and (c) the referendum in the light of resolution 2231 (XXI). He would confine himself to a summary of each of those points.

59. With regard to the Treaty of Utrecht, it should be pointed out that: first of all, the King of Spain had retained one essential principle in connexion with the sovereignty of the ceded territory. Article X stated: "...that the above-named propriety be yielded to Great Britain without any territorial jurisdiction, and without any open communication by land with the country round about". Another passage of the same article added: "And in case it shall hereafter seem meet to the Crown of Great Britain to grant, sell or by any means to alienate therefrom the propriety of the said Town of Gibraltar, it is hereby agreed and concluded, that the preference of having the same shall always be given to the Crown of Spain before any others".

60. Those two contractual stipulations removed the absolute nature of the cession by establishing that the "propriety" was ceded "without any territorial jurisdiction" and that Spain retained a preferential right to recover the ceded property if the United Kingdom should wish to dispose of it in any way.

61. There were also other limitations based on military considerations which contributed to depriving that anachronistic Treaty of the character and scope which an attempt had been made to give it. Even if, moreover, its validity were accepted by contemporary international law, the United Kingdom could not change the status of Gibraltar unilaterally to conform with its own wishes because, according to article X, before granting, selling or by any means alienating the property referred to in the Treaty, it should first allow Spain to exercise its option to recover the Territory which had been seized from it by force in 1704.

62. It had already been seen, however, that the dominant theme of modern international law, even apart from the guidelines for decolonization laid down by the United Nations, was diametrically opposed to the outmoded interpretations of the eighteenth century principles which had formed the basis of the Treaty of Utrecht.

63. It was not the obsolete claims and age-old national interests dating from 260 years ago which should determine the interpretation of legal instruments drafted in that remote era—an era full of prejudices, animosities and obscure alliances when armed conflict had served as a legitimate instrument in relations between States and peace had been regarded as a mere truce between wars. That was the view held by Oppenheim and Lauterpacht, distinguished professors at Cambridge.

64. It was obvious that in the case of Gibraltar it was inappropriate to invoke any claim in favour of the territorial dismemberment of Spain on the grounds either of the conquest by violence in 1704 or of the Treaty of 1713 which had been designed to confirm that conquest.

65. Lastly, there was the referendum's invalidity in the light of the Treaty, and in particular of article X, which gave Spain a preferential option to regain the Territory and thus took away all legal and practical value from a referendum conducted for British subjects who resided in that Territory. According to the Treaty—on the assumption that it had any value, and it had been demonstrated that it did not—the final work in the matter would have rested with Spain. Consequently, the referendum was incompatible with the thesis, which was moreover unacceptable, that the colonial Treaty of 1713 was still in force.

66. He then proceeded to the second point: the plebiscite in the light of the historic Declaration of 14 December 1960. It should be pointed out, first of all, that according to that Declaration there were two major criteria, which were based on different principles but which had the same objective. Both criteria combined to promote and facilitate the freedom and independence of the colonial countries and peoples.

67. It had been incorrectly argued that any decolonization undertaking was based on the principle of self-determination. Without denying that that premise constituted the most powerful lever for the liberation of peoples, it would be a mistake to ignore the existence of typically colonial situations whose very special characteristics did not admit of solutions based on self-determination and to which the criterion of the territorial integrity and national unity of States must be applied instead, since any other course would be contrary to the very clear objectives of resolution 1514 (XV). What was even more important, the holding of a referendum in certain cases of that kind might actually lead to anomalies by serving as an instrument for the perpetuation of the system whose abolition was sought. A referendum in such circumstances would leave it to the colonial Power to control a territory which belonged to some other country and whose fate should be determined by those who were really entitled to the exercise of sovereignty.

68. The Uruguayan delegation did not need to improvise in order to give its views on that problem. From the very first hour, at the time of the vote on resolution 1514 (XV), his delegation, free from any ties or commitments, had stated its position clearly, without having any specific situation in mind. Uruguay was not a colonial Power. It had won its independence through a heroic struggle a century and a half previously. It was not motivated by any interest; its conduct was determined by principle. It could be forgiven, in view of its devotion to right and to justice, for the mistakes it might make and the harm it might unwittingly cause to certain interests whose existence was irreconcilable with the principles it upheld.

69. Uruguay had always maintained that the principle of self-determination should be applied to the large majority of colonial problems, but that the only way to settle certain situations, such as those of the Malvinas and Gibraltar, was that provided in paragraph 6 of resolution 1514 (XV) and in other de-

cisions adopted by the General Assembly. The meaning and scope of paragraph 6 had been debated in the Committee. The literal meaning of the principle set out in that paragraph was crystal clear, and its interpretation, in the light of the accompanying provisions, did not present any difficulty. However, even if it was assumed for the sake of argument that the text of the paragraph was obscure and that it was not logically compatible with the other provisions of resolution 1514 (XV), it would be sufficient to refer to the proceedings leading up to its adoption to dispel anyone's doubts on the paragraph's meaning.

70. He recalled that in his statement of 28 August 1967 in the Special Committee he had analysed that provision. He felt that he had at that time fully demonstrated the true and authentic meaning that should be given to that paragraph according to its own authors. Nevertheless, in the course of the current discussion certain of the views which had been heard on that point had been advanced at the time to challenge the meaning and scope which the authors of the Declaration contained in resolution 1514 (XV) had wished to give, and had given, to the essential provision which enshrined the principle of the national unity and territorial integrity of States.

71. It would be pointless to make a detailed study of the systems of legal interpretation. It was obvious that when a text was clear, its literal sense must not be neglected on the pretext of being faithful to its spirit. It was similarly obvious that when a text was ambiguous, reference must be made to the record of the proceedings leading up to its adoption. As a final point, it was likewise obvious that a rational and genuine interpretation should not contradict the letter of the text and that it should, in case of doubt, respect the intention which emerged from the entire body of the logical and psychological elements to which the authors of the provision in question had given expression at the actual time of its preparation. Views expressed subsequently deserved no more than the intellectual respect due to those who had expressed them, but they had no value whatever in so far as an authoritative criterion for interpretation from the legal viewpoint was concerned. In the last resort, the General Assembly itself would be the sole body competent to impose a general and compulsory criterion for interpretation.

72. With regard to paragraph 6 of resolution 1514 (XV), it was truly extraordinary and astonishing that there could be any disagreement concerning its meaning. The clarity of the text precluded recourse to any other subsidiary method of interpretation. Anyone who read that paragraph could unhesitatingly form a complete and definitive idea of the thought and intention of its authors. The text of that paragraph was as follows:

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

73. Ambassador Velázquez, whom he had quoted in full on 28 August, had shown, in his paper entitled "Las Naciones Unidas y la descolonización", that that provision could be interpreted in only one way. He nevertheless felt that his statement would be incomplete if he failed to quote the following passage of that important work by his compatriot:

> "The meaning of this paragraph emerges clearly against the background of certain prior debates in the Assembly. Indeed, during discussion on the draft resolution of the forty-three Afro-Asian countries (A/L.323), Guatemala introduced an amendment (A/L.325) for the addition of a new paragraph at the end of paragraph 6 as follows:
>
> "'7. The principle of the self-determination of peoples may in no case impair the right of territorial integrity of any State or its right to the recovery of territory.'
>
> "Speaking in explanation of vote, the Guatemalan representative explained that, although the statement in paragraph 6 was very explicit, his delegation wished its views to be stated even more clearly. In his opinion, that safeguard was absolutely necessary since many Territories, unlawfully possessed by colonial Powers, were in dispute or claimed by other States as an integral part of their own territory and the solution of such disputes could not be found through the application of the principle of self-determination, since that would be to jeopardize another equally important principle, namely, that of the territorial integrity of States.
>
> "That amendment was later withdrawn in view of statements by several of the sponsors with regard to the interpretation of paragraph 6, stressing that the rights to be safeguarded were duly protected in the said paragraph 6.
>
> "Among the statements preceding the Guatemalan representative's withdrawal of his amendment were those of the Indonesian representative at the same meeting. The latter had said that, in requesting the inclusion of the paragraph in question in the draft resolution, his delegation had taken account of the fact that the continuation of Netherlands colonialism in West Irian was a partial violation of his country's national unity and territorial integrity and that the idea expressed in the Guatemalan amendment was already fully expressed in the draft resolution, inasmuch as paragraph 6 of that resolution took due account of the peoples and Territories to which the Guatemalan delegation had referred.
>
> "Although it would obviously exceed the scope of this commentary to attempt to analyse the sense or the interpretation to be given to the principle of the self-determination of peoples—which, as we are aware, has already given rise to much controversy—we cannot fail to recognize the political wisdom of this interpretation of paragraph 6, particularly for those countries which, by reason of their small size or weakness, have been forcibly deprived of a part—sometimes very large—of their national territory.
>
> "The strict application of the principle of the self-determination of peoples would place the future of these territories in the hands of restricted groups of settlers installed in them by the administering Powers, usually after the indigenous

population had had to withdraw. As there can be no doubt regarding the outcome of 'plebiscites' held in such conditions, such procedures would only serve to legalize situations brought about by force which can only be regarded as contrary to international law."

74. In his view, that was the only interpretation which could be given to paragraph 6. It had not been contemporary men, involved in current disputes, who had given it that meaning but the pioneers of decolonization who, in 1960, had forged the historic instrument which had transformed the map of the world and created a new kind of man. None had challenged Indonesia's unequivocal interpretation of paragraph 6—which had led to the withdrawal of the Guatemalan amendment—when resolution 1514 (XV) had been put to the vote.

75. It was relevant that that same interpretation had been endorsed by his delegation on 12 September 1963, [9] when it "had analysed paragraph 6 of resolution 1514 (XV) and had demonstrated that the purpose of that paragraph had been to avoid the unconditional and indiscriminate application of the principle of self-determination, which might, in exceptional cases, be prejudicial to the principle of the territorial integrity of States established in the United Nations Charter." [10]

76. His delegation had also explained the criteria on which any interpretation of paragraph 6 should be based, when the question of Gibraltar had been taken up for the first time. With his characteristic clarity as a lawyer, Mr. Velázquez had contended that paragraph 6 was "addressed not only to States administering colonical Territories but to the Special Committee as well. It was the specific obligation of the Committee to ensure the full implementation of resolution 1514 (XV), taking into account the prohibition in paragraph 6. In other words, no recommendation or resolution adopted by the Committee in application of the Declaration should contribute, directly or indirectly, to the disruption of the national unity or territorial integrity of a country. Consequently, if the Committee, by taking a hasty decision which failed to take into account the particular circumstances, were to do anything which might jeopardize the national unity of a country, it would have failed to carry out its mandate by helping to perpetuate a colonial situation." [11]

77. Mr. Velázquez had thus sounded a warning to remind Member States of their responsibilities. If, as he had pointed out, the latter, through negligence or haste, allowed the organization of a referendum prejudicial to the national unity of a country, they would be gravely at fault in carrying out their mandate by helping to perpetuate a colonial situation. Resolution 1514 (XV) must be applied without creating a conflict between the two essential principles underlying it, namely, the principle of self-determination and the principle of respect for territorial integrity and national unity.

78. He pointed out that Uruguay had not been alone in supporting the interpretation which he had outlined. In their statements in the Special Committee, [12] the delegations of Venezuela, Tunisia, Iraq and Syria had shown definitively that, in the application of paragraph 6, there should be no need to establish whether the dispute in question was between colonial Territories and Powers or between independent States.

79. Venezuela's arguments opposing the application of the referendum formula to the town of Gibraltar had been very clear and precise. The representative of Venezuela, concluding his erudite statement in the Special Committee, had said that:

"The principle of self-determination could not be distorted to support a de facto situation which ignored the fundamental principle of respect for the territorial integrity of a State. The only form of decolonization that could be applied to colonial Territories that had been wrested from other States was reintegration into the State from which they had been taken. The General Assembly had already sounded a warning on the subject in resolution 1654 (XVI), in whose sixth preambular paragraph the Assembly had expressed its concern that 'contrary to the provisions of paragraph 6 of the Declaration, acts aimed at the partial or social disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonization'." [13]

80. The referendum organized by the United Kingdom was incompatible not only with General Assembly resolution 1514 (XV) but also with the purposes and principles of the Charter. It must be pointed out that that referendum, decided upon unilaterally, without any agreement between the two parties as called for by the General Assembly, had had and was still having, to say the least, unfortunate repercussions on the unresolved problem of territorial and political sovereignty over Gibraltar. What was actually involved was a breach of the principle of non-interference in respect of an internal matter within Spain's jurisdiction. Since the question of Gibraltar was the subject of negotiations initiated under the auspices and within the framework of the United Nations by the London and Madrid Governments, any unilateral act which would prejudice the territorial sovereignty and political future of the Territory in dispute was a violation of the agreed procedure and took on the nature of an illegitimate intervention in a matter within the domestic jurisdiction of the other party. The concept of "non-interference", in the sphere of decolonization, was enunciated in paragraph 7 of resolution 1514 (XV) in clear and precise terms which left no room for specious or ambiguous interpretations.

81. Uruguay therefore wished to reaffirm its traditional position and declare that the referendum of 10 September had violated the principle of territorial integrity and national unity set forth in the Charter and resolutions 1514 (XV) and 1654 (XVI). In other

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[9] Official Records of the General Assembly, Eighteenth Session, Annexes, addendum to agenda item 23, document A/5446/Rev.1, chap. XII, paras. 70-72.

[10] Ibid., Nineteenth Session, Annexes, annex No. 8 (part I), document A/5800/Rev.1, chap. X, para. 132.

[11] Ibid., para. 135.

[12] Ibid., paras. 168 et seq.

[13] Ibid., para. 176.

words, in the light of those resolutions, the referendum lacked any value as an instrument of decolonization.

82. He would like now to analyse General Assembly resolution 2231 (XXI), which had been flagrantly violated by the administering Power in the holding of the referendum of 10 September, a violation still more serious in view of another resolution adopted on the same subject by the Special Committee on 1 September.

83. The Uruguayan delegation had repeatedly stated that the situation of the inhabitants of Gibraltar, in the circumstances, raised no legal problems from the point of view of decolonization; it did raise a particular human problem which naturally deserved to be taken seriously but which could not obstruct the application of the provisions of paragraph 6 of resolution 1514 (XV). The United Kingdom subjects residing in Gibraltar were not the people of the Territory in the specific sense in which that term was used in the resolution and the legal status offered by that resolution was not applicable to them, since it was clearly intended to refer to the indigenous or autochthonous inhabitants of the colonial Territories.

84. In the case of Gibraltar, what was in question was a human group, a civilian community, in the service of a military base. They were not indigenous inhabitants of the Territory: they were Britons or descendants of Britons who were serving the interests of the administering Power.

85. It was obvious that the referendum held on 10 September was prejudicial to the special procedure established for the decolonization of Gibraltar and contradicted the letter and spirit of resolution 2231 (XXI). The wise statements made in the Special Committee by the representatives of Iraq, Venezuela, Chile and Syria were decisive on that point.

86. The Assembly's intentions regarding the problem of Gibraltar were quite clear. In the resolutions on Gibraltar (resolutions 2070 (XX) and 2231 (XXI)), it was not through an oversight that the reference to the principle of self-determination included in practically all other cases of decolonization had been omitted.

87. It should be pointed out in that regard that, in the two resolutions adopted at its twentieth and twenty-first sessions, the General Assembly had referred to "the interests of the people of the Territory" and not to "the wishes of the people", thus avoiding the language customarily used; that was obviously because the applicable principle was that of "national unity and territorial integrity" reflected in paragraph 6 of resolution 1514 (XV), and not the principle of "self-determination", which was applicable in general to ordinary cases of decolonization. A particularly striking passage of the letter dated 20 December 1966 from the then Chairman of the Fourth Committee, the Ambassador of the Sudan, Mr. Fakhreddine Mohamed, addressed to the President of the General Assembly, provided conclusive evidence of the fact that the Assembly, in resolution 2231 (XXI), had wished to safeguard the human, economic, social and similar interests of the inhabitants of Gibraltar without in any way according them the right to express their political wishes by means of a colonial referendum organized by the administering Power. The passage to which he referred read as follows:

> "Another category of problems with which the Committee was concerned related to Territories which were the subject either of conflicting claims to sovereignty or of special interest to some Governments by reason of geographical, historical, economic or other circumstances. Among these Territories were the Falkland Islands (Malvinas), French Somaliland, Gibraltar and Ifni and Spanish Sahara. While the objectives of the Committee in relation to these Territories were the same, namely decolonization, the specific measures recommended took into consideration the peculiarities of each, with a view to the peaceful solution of divergent claims and interests within the context of the implementation of the Declaration." 14/

88. It was the Chairman of the Fourth Committee at the General Assembly's twenty-first session who had thus stated, with all the weight of his authority, that the general principle of self-determination did not apply to such cases as those of Gibraltar, the Malvinas and others, which should be considered and settled on the basis of the opposing claims with regard to territorial sovereignty involving geographical, historical, economic and other factors, bearing always in mind the objectives of decolonization in accordance with the rules applicable to each particular case.

89. He wished to repeat what his delegation had already said, namely that the decolonization problem in the case of Gibraltar concerned, however paradoxical it might seem, not the British inhabitants of the Rock, but the territory itself, that piece of land which had been detached from Spain in violation of the latter's national unity and territorial integrity. In short, the British referendum openly contravened resolution 2231 (XXI), which outlined the only viable solution to that complex problem. Nevertheless, bilateral negotiations should proceed until an agreement was reached which would guarantee and protect the "interests of the people of the Territory", without neglecting any of those interests but also without confusing them with political motives aimed at perpetuating a colonial situation.

90. His delegation had expressed its views for the last time on the subject of Gibraltar thirteen days before the date fixed by the United Kingdom for the plebiscite; it had not then believed that it would be the fate of the resolution adopted on 1 September 1967 by the Special Committee to be ignored and disregarded by the administering Power. Nor had it thought that the British Secretary of State for Foreign Affairs would utter in the plenary Assembly words which were humiliating to and, to some extent, contemptuous of not only those who were doing their utmost with idealism and impartiality, to carry out the great enterprise of decolonizing the world, but also the very organ which had been set up for that purpose by the General Assembly.

91. However, his delegation could overlook all that; it would continue to act with the same respectful

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consideration it had always felt for the United Kingdom and its illustrious leaders, and in the same spirit of justice and objectivity as it had always sought to show in all its acts and statements in the international community.

92. Nevertheless, it might be useful, in reply to the United Kingdom Foreign Secretary, Mr. Brown, to recall some passages of the penetrating and eloquent statement made in the General Assembly by Mr. Ulloa, the representative of Peru and a distinguished internationalist who, taking the cases of Gibraltar and the Malvinas together, had said:

"The problem of Gibraltar is neither a political nor a legal problem according to the accepted meaning of those words in current usage. It is a problem of decolonization with certain special features. Gibraltar was unjustly appropriated, as the result of certain political and military circumstances, with a view to future strategic geographical advantage. There was also an appropriation of a part of the territory whose status was not disputed and which did not at the outset belong in any way to the United Kingdom; there was also a transfer of the original population and an extension of the territorial occupation beyond the precise limits of the original concession.

"In entering this new phase of the problem of Gibraltar Spain is supported both by history and the simple logical and moral reasoning deriving from the background of the problem; also it seeks a solution in the light of present realities and principles, because the political and military objectives which accounted for the original success have now disappeared and because the modern desire for decolonization should prompt and encourage it to raise its flag again over the once merely historical but now symbolic Rock of Gibraltar.

"Another case of the survival into the present time of great Power domination in international affairs is that of the Malvinas; Great Britain took advantage of existing circumstances to extend its dominion over those islands, which rightly belonged to the Argentine Republic as the lawful heir to the legal title of Spain to the islands and to the adjoining coastline. In that case, as in the case of Gibraltar, there is no point in examining the diplomatic dialectic used by the dominant Power because the principles and current realities of law and international politics show that that is a case of decolonization, and clearly the historical antecedents justify neither autonomy nor local independence for the islands but their return and the recognition of the lawful sovereign authority. The strategic reasons which, in the case of both the Malvinas and Gibraltar, led Great Britain to take possession have no validity today.

"Nor in the case of both Gibraltar and the Malvinas is there any justification for a misguided application of the principle of self-determination, which is invalidated by two fundamental facts that constitute the very negation of the idea that the original population should express its will. Since the indigenous population has been directly or indirectly expelled, since over a long period of time economic and social conditions had become such as to make settlement on a barren soil unsuitable for working or for human welfare impossible, and since the population which would be lawfully entitled to exercise the right of self-determination no longer exists, that principle ceases to be of high moral and legal value and becomes an instrument designed to disguise the truth by meaningless and hypocritical formulas." 15/

93. The erroneous application of the principle of self-determination, of which Mr. Ulloa had spoken, could have been avoided if the Special Committee's resolution had been implemented. The referendum of 10 September did not involve a principle "of high moral and legal value" but "an instrument designed to disguise the truth by meaningless and hypocritical formulas". Gibraltar had no indigenous population which could exercise its right to self-determination. That was the true fact. Moreover, what value could be attached to a plebiscite held exclusively for the loyal subjects of the British Crown, which possessed and dominated the Spanish soil it had occupied and had kept by force since 1704?

94. The statement and proposals presented by Spain to the United Kingdom Government initiating the bilateral negotiations envisaged by the United Nations contained informative material which gave a clear picture of the demographic characteristics of the Rock. Unfortunately, however, the referendum held on 10 September presented the problem in a false light. As the statement put it:

"Gibraltar is also a human aggregate, and this is another aspect of the problem. Great Britain's pretension is today that the inhabitants of the Rock should decide upon its future, thus linking by the method of self-determination the territory with its inhabitants; this basically alters the original terms of the situation, which was that of a bilateral relationship between England and Spain, but from which, however, Spain has been ousted for the benefit of a third party. But this third party is not valid because, firstly, Gibraltar is merely a military base and a base can only belong either to the country that occupies it or to the country in whose territory it stands. Anything else would be as absurd as, for instance, to maintain that the American base at Guatánamo, in Cuba, should stop being American, without reverting to Cuba either, but should have its fate decided by an alleged population residing there. Hong Kong presents a similar, though not formally identical, situation. The Observer expressed the opinion, on 10 July 1949, that there could be no question of preparing the island for independence, as Hong Kong should either continue being British, or else revert to China.

"Secondly, there is no real or profound link between the inhabitants of Gibraltar and the territory, because, apart from the fact that the authentic population of the Rock was obliged to abandon it by reason of the military occupation, the later inhabitants are a product of a British political operation aimed at successively fabricating and refabri-

15/ Official Records of the General Assembly, Twenty-second Session, Plenary Meetings, 1583rd meeting, paras. 18-21.

cating the so-called population with ethnical groups uprooted from their original countries; they are inhabitants without any real political identity of their own or any real autonomy as such, and they constitute a demographic group which is entirely subsidiary to a base enclosed in a territory of two square miles, almost all of it a military zone and Crown property. How can this group be considered a true population capable of political self-determination and with a right to dispose of a territory which belongs to it neither historically nor legally?...

"Thirdly, the problem of Gibraltar consists of an economy which sprang up under the shadow of a British force planted on Spanish soil, and which in itself is inevitably bound to raise problems, for there can be no normal economy in a military base with a small area and which has no resources of its own, no agriculture or industry and whose trade is principally contraband.....

"The objective description we have given is the true anatomy of the problem of Gibraltar, a military base with an essentially unsound legal foundation, an artificial population without any genuine autonomy, and an economy partly sustained by unnatural and illegal means; all of which reveals the importance of the question of Gibraltar and the urgent need for a solution." 16/

95. Gibraltar did not have, and could not have, a call to nationhood. It would never be an independent and autonomous unit, neither could it fulfil the requirements of an associated free State. It did not even meet the conditions necessary for existence as a colony capable of making a living. It was devoid of everything. According to the working paper prepared by the Secretariat:

"The Territory has no agriculture or other primary resources. Local industry is mainly confined to a fruit and fish canning factory, tobacco processing, coffee blending and garment manufacture.

"The value of imports during 1964 amounted to £14,928,148 of which £2,894,419 were foodstuffs. Dutiable re-exports during the same year totalled £4,710,478. Exports of goods of local origin are negligible.

"The main sources of government revenue are customs duties, licences and excise duties, court fees, rents of government property and government lotteries. Income tax accounts for some 14 per cent of revenue. In 1964, total revenue amounted to £2,086,556 and expenditure to £2,407,298, of which £1,913,298 was recurrent expenditure....

"Manpower statistics relate only to persons engaged in manual labour and to other workers whose remuneration does not exceed £500 a year. At the end of 1964, there were 5,641 workers of British nationality and 9,600 alien workers; most of the latter lived in Spain and entered Gibraltar daily. Some 43 per cent of the total labour force is employed by the Government of Gibraltar, the departments of the Armed Services, the Ministry of Public Buildings and Works and the City Council." 17/

96. The authoritative picture drawn by the Secretariat was not very brilliant: no agriculture or primary resources, budget deficit, short-fall of exports, absence of indigenous industries, low wages, alien workers, main employer the United Kingdom Government and in particular its armed forces.

97. It was on that foundation that the United Kingdom had the pretention to construct a sovereign State associated with the Crown, keeping hold for that purpose of a piece of Spain which it had torn from it by force, for strategic ends. That inhospitable rock, which could only be regarded as the geographical tip of the Iberian Peninsula as it normally would be, possessed none of the attributes essential for use as a population centre, and could only serve as a military base. With regard to the latter point, he read out a passage from the Spanish statement and proposals already mentioned to illustrate his thesis:

"But besides all these detriments caused by the military base and its activity, Gibraltar has made a great void around itself. This began with the actual demographic void on the Rock, which owing to the forced exodus of its original Spanish population, declined from the 6,000 inhabitants it had before the occupation to only 900 in 1721, seventeen years later, and to 2,890 in 1791, almost a century later—a period in which it had not even suceeded in reaching half the population it possessed in the Spanish period. This brought about the mutilation of a Spanish population complex which formerly had its centre in Gibraltar and was thus profoundly altered." 18/

Then came a further passage which put the finishing touch to the picture:

"A human group which has not even been able to constitute a solid, rooted population with permanent interests, as an essentially autonomous political entity, was also incapable of creating its own labour force. This incapacity is bound up with the situation and has become typical, even nowadays, for the inhabitants of the Rock, of whom a British daily, the Manchester Guardian of 11 May 1950, said: 'The Gibraltarian has an innate objection to manual work. ...'

"At that time also, a labour population had to be imported. After an effort to provide one by the use of convicts had failed, it had to be looked for in Spain, because Spain is Gibraltar's natural space. The Rock became an absorption point for labour, not only from the immediate vicinity but also from the provinces of southern Spain.... Throughout long periods of time, this absorption went on attracting into the zone of the Campo groups of persons uprooted from the regions of their

16/ Gibraltar: Talks with Spain, Cmnd. 3131 (London, Her Majesty's Stationery Office, 1966), pp. 10 and 11.

17/ Official Records of the General Assembly, Twenty-first Session, Annexes, addendum to agenda item 23, document A/6300/Rev.1, chap. XI, paras. 9-11 and 13.

18/ Gibraltar: Talks with Spain, Cmnd, 3131 (London, Her Majesty's Stationery Office, 1966), p. 19.

birth, who approached the Rock in the hope of getting jobs there. This created a real colonial situation, since the Campo de Gibraltar was becoming peopled with workers who depended on employers across the frontier, and it was these employers who dictated the conditions of work....

"The development of works and installations on the Rock gradually increased the number of Spanish workers, and at the end of the nineteenth century the figure rose rapidly from about 2,500 or 3,000 to 6,500 or 7,000 when the great harbour works of the town and the installation of the modern base were carried out, and above all, when the tunnels that perforate the Rock were under construction. ... The other great increase of the Spanish labour force occurred with the Second World War, when the workers that went in from Spain every day reached 13,000. As we have seen, the vast majority—16,700—of the 18,000 resident Gibraltarians were evacuated, and thus the Spaniards, during those years, were the real population of the Rock, where they kept up its entire working activity under the difficulties and risks inherent in a war, and made a decisive contribution to British interests at that time....

"This labour force, the real muscle of Gibraltar's life, has worked under a régime for which 'colonial' is the only fitting word. Wages have been fixed at caprice, the working hours have reached ninety and more a week, holiday periods did not exist, social insurance and family care have been ignored and when the first trade unions were set up in Gibraltar, the Spanish workers were forbidden to belong to them on equal terms, so that even union protection was denied....

"But the Spanish workers, the real active population of Gibraltar, have never been able to reside in Gibraltar because the British laws forbid it. Every day they have had to go back across the border from the territory where they left the results of their daily effort. They are the exiles of Gibraltar, the historical pariahs of the town, who have had no voice in the affairs of Gibraltar; they are truly the 'other' Gibraltar population, whom nobody mentions, of whom nothing is said when the future of the Rock is discussed, but who are there just the same; and the daily life of Gibraltar, at least nowadays, depends upon them. Behind them, in the adjacent Spanish zone, are their families, forming a demographic group of as many as forty or fifty thousand, upon whom... a real colonialism has operated.

"These facts make it quite clear that in face of the vacuum created by the military presence of Great Britain on the Rock, a demographic reality has arisen—inhabitants of the Town, Spanish workers and families of the Campo—upon which a colonial situation has operated and which calls for consideration at the moment of examining the problem of Gibraltar and its future." 19/

98. There could certainly be no better framework, no more solid basis or suitable "raw material" for a referendum. In reply to the questions put by the Crown, those loyal subjects had answered every question in the affirmative. And what of the indigenous population of Gibraltar, the descendants of families expelled two and a half centuries earlier, and of the Spanish labour force which spent its days working on the Rock and had to leave the Territory at night so that there could be no suggestion that it was settled, resident or domiciled in Gibraltar?

99. The Order in Council of 1873, the Immigration and Aliens Order of 1885 and the Gibraltarian Status Ordinance of 1962 quite clearly formed the cornerstones of the referendum. In fact those orders, which had always prohibited Spaniards from residing in the occupied Territory, had facilitated the establishment of the electoral roll mentioned a few days earlier by Mr. de Piniés (1743rd meeting), the representative of Spain, and made it easy to anticipate the outcome of the referendum and to see through the designs of its sponsors.

100. In short, the way in which the plebiscite had been planned and carried out provided the best possible tribute that could be paid to the resolution adopted on 1 September by the Special Committee. The reaffirmation of the principles of national unity and territorial integrity set forth in the United Nations Charter had safeguarded the authority and prestige of the organs responsible for decolonization. It only remained for the Fourth Committee to adopt the amendment in document A/C.4/L.887 and Add.1.

101. The Uruguayan delegation had wished to be true to itself and fair to both Spain and the administering Power. Despite the traditional ties of friendship which Uruguay maintained with the United Kingdom and despite the admiration it had for that country, for many reasons, the Uruguayan delegation nevertheless felt bound, in all sincerity, to state its views on Gibraltar, which differed radically from the United Kingdom's position—a divergence which had a long history but which had been accentuated by recent events, despite the efforts made by the Uruguayan Government to find an amicable solution that would avert upheavals, errors and antagonisms. Uruguay had co-operated with the United Kingdom on various occasions in matters concerning decolonization. The same would occur again, when circumstances permitted. It was also probable that differences would arise again. The Uruguayan delegation had always felt that differences of opinion in the lofty realm of principles were a feature of the civilized, cultivated and democratic world. It harboured no feelings of hostility towards the participants in the referendum of 10 September, whose "interests" it understood and respected, and it had certainly not meant to hurt British feelings. However, it had to announce that it was one of the sponsors of document A/C.4/L.887 and that it would vote in favour of that text.

102. He wished to conclude by quoting a beautiful passage, full of wisdom, balance and moderation, from a Spanish book on Gibraltar and addressed to the Government of Her Britannic Majesty:

"This concatenation of problems which we have just described leads us to a conclusion whose validity is in no way impaired by its emotional content: Gibraltar is not just a base which presents certain problems but is, for Great Britain, a symbol: 'the proud fortress', a symbol of its power and

19/ Ibid., pp. 21-23.

glorious naval and military traditions. We know this and we realize that in broaching this subject we are touching a sore and sensitive spot. That is why we believe that we must come to an agreement that causes neither nation humiliation or resentment. It must be realized that, for Spain too, Gibraltar is a symbol: the symbol of a series of iniquities and affronts; the memory of how it was seized from us, of the humiliations suffered, of the intolerable political, military and economic exactions imposed, at a time of national stagnation, and which still persist. Gibraltar is the only foreign colony in the territory of a European nation. Lastly, we may say of Gibraltar what was recently said by the eminent British historian Arnold Toynbee: 'Gibraltar? It is a thorn in the flesh of Spain. How would the English like to see a Russian or a Chinese fortress at Land's End or in the Channel Islands?' "

Those words did not emanate from the Uruguayan delegation. They had been spoken by a distingushied English public figure.

103. Mr. GAMIL (Yemen) proposed that the statement made by the representative of Uruguay should be reproduced in extenso in the summary record.

It was so decided.

The meeting rose at 1.25 p.m.

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