AGENDA ITEM 67

Question of Southern Rhodesia (*continued*)* (A/9623/Add.2, A/9809, A/C.4/777, A/C.4/L.1067, A/C.4/L.1068)

CONSIDERATION OF DRAFT RESOLUTIONS

* Resumed from the 2100th meeting.

31. The Chairman drew the attention of the Committee to two draft resolutions on the question of Southern Rhodesia, contained in documents A/C.4/L.1067 and A/C.4/L.1068, which, he understood, would be introduced formally at the following meeting.

The meeting rose at 4.10 p.m.

2117th meeting

Monday, 25 November 1974, at 10.50 a.m.

Chairman: Mr. Buyantyn DASHTSEREN (Mongolia).

A/C.4/SR.2117

AGENDA ITEM 67

Question of Southern Rhodesia (*continued*) (A/9623/Add.2, A/9809, A/C.4/777, A/C.4/L.1067 and Corr.1, A/C.4/L.1068 and Corr.1)

CONSIDERATION OF DRAFT RESOLUTIONS (*continued*)

1. Mr. ARAIM (Iraq) introduced on behalf of the sponsors the two draft resolutions on the question of Southern Rhodesia (A/C.4/L.1067 and Corr.1 and A/C.4/L.1068 and Corr.1).

2. The situation in Rhodesia constituted a threat to international peace and security; accordingly, it was stated in the sixth preambular paragraph of draft resolution A/C.4/L.1067 and Corr.1 that the Assembly strongly deplored the fact that the United Kingdom Government had so far failed to discharge its responsibilities in that respect; in the seventh preambular paragraph, the Assembly would reaffirm the fact that any attempt to negotiate the future of Zimbabwe with the illegal régime on the basis of independence before majority rule would be in contravention of the inalienable rights of the people of the Territory and contrary to the provisions of the Charter of the United Nations and of General Assembly resolution 1514 (XV).

3. The illegal minority régime was continuing its campaign of oppression and terror, counting on the support of the racist Government of South Africa. Those acts deserved the strongest condemnation, as was stressed in the eighth, ninth and tenth preambular paragraphs. In the twelfth preambular paragraph of the draft resolution note was taken with satisfaction of the progress recently achieved by the liberation movements of Zimbabwe despite the intensified military and police repression, but in the eleventh preambular paragraph deep concern was expressed about the negative attitude of the United Kingdom Government towards those liberation movements.

4. In its various resolutions on Southern Rhodesia, the General Assembly had affirmed the right of the people of Zimbabwe to self-determination, freedom and independence, and it had stated that there could be no settlement relating to the future of the Territory without the participation of the genuine political leaders and the leaders of the national liberation movements; in that connexion, operative paragraph 3 referred to the Reverend Ndabaningi Sithole, President of the Zimbabwe African National Union (ZANU) and Mr. Joshua Nkomo, President of the Zimbabwe African People's Union (ZAPU). In operative paragraph 4, the Assembly would call upon the United Kingdom, in the discharge of its primary responsibility, to take all effective measures to terminate the rebellion of the Ian Smith régime. In paragraph 5, the Assembly would call upon the United Kingdom to bring about the conditions necessary to enable the people of Zimbabwe to exercise their rights freely and fully, and in particular, to convene as soon as possible a national constitutional conference where the genuine political representatives of the people of Zimbabwe would be able to work out a settlement relating to the future of the Territory for subsequent endorsement by the people through free and democratic processes. In paragraph 9 the Assembly would request all States to extend to the people of Zimbabwe all the moral and material assistance necessary in their struggle.

5. Turning to draft resolution A/C.4/L.1068 and Corr.1, he stressed yet again the importance of strictly enforcing the sanctions imposed on the illegal régime. To be effective the sanctions must be comprehensive, mandatory, effectively supervised, enforced and complied with by all countries, particularly by South Africa. The cessation of any collaboration with the illegal régime of Ian Smith was one of the obligations of States under the United Nations Charter. In operative paragraph 5, the Assembly would request all Governments to take strict measures to that end. The invalidation of passports and other documents for travel to Southern Rhodesia was of particular importance, and any action that might confer a semblance of legitimacy on the illegal régime must be discontinued. In paragraph 6, the Assembly would stress the need to widen the scope of the sanctions and would request the Security Council to consider taking action to apply all the measures envisaged under Article 41 of the Charter. In paragraph 7, the Assembly would appeal to those members of the Security Council whose negative votes continued to prevent the Council from discharging its responsibilities effectively to reconsider their negative attitude.

6. The sponsors of the two draft resolutions hoped that they would gain the unanimous support of all the peace-loving members of the Committee, for it was high time for the United Nations to unite its forces to liberate the people of Zimbabwe from the yoke forced upon them by the Smith régime. Everyone realized that the situation in Southern Rhodesia constituted a threat to peace and security in Africa and the world as a whole. It was essential that the provisions of the Charter should be implemented in order to safeguard the principles embodied in the Charter, and the Security Council should assume fully its responsibilities in that regard. The sponsors of the draft resolutions hoped that the States which, by their negative votes in the Security Council, were attempting to impede the progress of peoples towards freedom and equality of rights would reconsider their attitude. Their acts did not serve the cause of peace and prosperity in the world.

7. He announced that Romania had become a sponsor of both the draft resolutions.

8. Mr. RUPIA (United Republic of Tanzania) said that no one could deny that the situation in southern Africa, especially in Zimbabwe, was highly explosive. The United Nations must support the people of Zimbabwe in their struggle and must appeal to all peace-loving peoples to bring pressure to bear on the régime of Ian Smith. He hoped that the international community and the United Nations would play their proper role in the elimination of the rebel régime and would render all possible assistance to the liberation movements to enable them to intensify their armed struggle. The administering Power asserted that it did not have the means to settle the situation; it must none the less make the necessary arrangements to convene a constitutional conference and put an end to the rebel régime. If they faithfully carried out the decisions and resolutions of the United Nations, Member States could subject the illegal régime to extremely strong pressure. In operative paragraph 6 of draft resolution A/C.4/L.1068 and Corr.1, the General Assembly would, therefore, request that the scope of the sanctions should be widened; the sponsors hoped thereby to ensure that the régime of Ian Smith would really feel the pinch.

9. The domination of Portugal over its African colonies had recently collapsed. It was to be hoped that the Southern Rhodesian régime would also collapse very soon. He hoped that the members of the Committee would have no difficulty in supporting both draft resolutions.

10. He announced that Chad, the Congo, Cuba, Democratic Yemen, the Gambia, Guyana, Jamaica, Mali, Mauritania, Niger, Rwanda, Togo, Trinidad and Tobago, the United Republic of Cameroon and Yemen had become sponsors of draft resolutions A/C.4/L.1067 and Corr.1 and A/C.4/L.1068 and Corr.1. Jordan had become a sponsor of draft resolution A/C.4/L.1068 and Corr.1.

AGENDA ITEMS 13, 23, 64, 69 AND 12, 70 AND 71*

Agenda item 13 (*continued*) (A/9604, A/9727)

Agenda item 23 (Territories not covered under other agenda items) (*continued*) (A/9623 (parts I-IV and VI), A/9623/Add.4 (parts I and II), A/9623/Add.5 (parts I, II and V), A/9623/Add.6 (parts I and II), A/9654, A/9655, A/9714, A/9715, A/9736, A/9771, A/9802, A/9814, A/9821, A/9824, A/9861)

Agenda item 64 (*continued*) (A/9623/Add.7, A/9867)

Agenda items 69 and 12 (*continued*) (A/9603 (chap. VI, sect. F), A/9623 (part VII), A/9638 and Add.1 and Add.1/Corr.1, A/9638/Add.2-5, A/9830)

Agenda item 70 (*continued*) (A/9845)

Agenda item 71 (*continued*)

GENERAL DEBATE (*continued*)

11. Mr. SLAOUI (Morocco), referring to agenda item 23, said that the historic Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly on 14 December 1960, had at the time raised great hopes in all the peoples still subject to colonial domination in all its forms. Since then, some peoples had been able, thanks to their determination and sacrifices, to throw off the colonial yoke. They had been supported in their legitimate struggle by the Organization of African Unity (OAU) and the United Nations.

12. He wished to say that his country, which was a member of the Co-ordinating Committee for the Liberation of Africa of OAU, was proud to be among the African countries that had always given their active support to the national liberation movements. In addition, his country, which had always shown solidarity for all the peoples oppressed by colonialism and racism, could only rejoice to see peoples free themselves from foreign domination, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples and with its relevant provisions, which solemnly proclaimed the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations and, at the same time, declared that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country was incompatible with the purposes and principles of the Charter of the United Nations. His delegation would like once again to pay a special tribute to the Chairman and members 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 for their valuable contribution to the work of decolonization and for their tireless efforts to help the peoples under foreign domination to throw off the colonial and racist yoke and, as the Administrative Secretary-General of OAU had said at the 2080th meeting, to "shake off centuries of stagnation, obscurantism and alienation". His delegation would also like to express its gratitude to the Rapporteur of the Special Committee for having produced the chapters of the Special Committee's report dealing with the agenda items currently before the Committee, which related to the decolonization of certain Territories. His delegation had studied with care the various chapters of the report and would like to express its conviction that the correct and faithful application of the principles of decolonization would enable the peoples concerned to realize their profound aspirations and would put an end to the injustices that some sovereign countries, such as his own, had suffered in the past.

13. He wished to refer to the particular case of Western Sahara and to begin by stating his country's position regarding that problem. Ever since the problem of the decolonization of so-called Spanish Sahara had been raised, regardless of what action had been contemplated, his country had always maintained that the problem was interwoven with that of the return to the Moroccan State of the territories and populations seized by colonial usurpation.

14. That claim had been made perfectly clear by His Majesty, the King of Morocco in his press conference on 17 September 1974 (see A/9771). The King had explained that it was crucial to determine whether the Spanish colonization of Sahara had been the colonization of a land without an owner—*terra nullius*—or whether, on the contrary, as Morocco maintained, part of Morocco's territory had been usurped. According to the circumstances, as would be shown later, the conditions for decolonization could be affected one way or the other. As far as the settlement of a question of law was concerned, the wisest and also the most appropriate solution was to place the matter before the International Court of Justice. There were two ways in which that could be done. The ideal way would have been for Spain to accept recourse to the International Court of Justice and the Court could then have been seized of the matter by the parties concerned themselves. However, if Spain did not think it could associate itself with the proposal put forward by King Hassan II at his press conference, the alternative was for the United Nations to refer the matter to the Court by asking for an advisory opinion. Morocco, certain of the rightness of its case, as was clearly shown by its proposal to refer the matter to the International Court of Justice for an opinion, was convinced that the establishment of its right would result in an appropriate, simple and rapid decolonization procedure, namely negotiation between the parties concerned under the auspices of the United Nations. That was why the settlement of the question

* For the title of each item, see "Agenda" in page ix.

of so-called Spanish Sahara—which had been postponed for too long—was being made a priority through the intervention of the International Court of Justice.

15. That theme had been taken up again and developed on 30 September 1974 by the Moroccan Minister of State in Charge of Foreign Affairs in his statement to the General Assembly (2249th plenary meeting). Naturally it would not have been appropriate for him, in the course of his statement, to demonstrate in detail the historical and legal foundation for the Moroccan case. However, Morocco was in a position to present a massive and convincing body of evidence, otherwise how would it dare to call for the intervention of the Court? In addition to the favourable evidence based on territorial contiguity and continuity and on the nature of the settlement of the territories in question, it could be established that, prior to Spanish colonization, Morocco had exercised sovereignty over those territories in accordance with the conditions laid down by public international law; it could be established that Morocco had, without interruption, regarded those territories as an integral part of itself and had in effect unequivocally assumed the administration of the territories; it could also be proved that the position of Spain, for its part, in no way contradicted that point of view, since it was only recently, and moreover not in a completely coherent manner, that it had dissociated the nature of its occupation of Sahara from that of its occupation of other Moroccan territories; the international instruments would strengthen the Moroccan case, if it needed strengthening. The Fourth Committee was not the proper forum in which to discuss those various matters. He mentioned them only to show that Morocco could produce serious evidence the very nature of which called for juridical examination, a fact which, by itself, would justify the intervention of the International Court of Justice.

16. In his statement to the General Assembly on 1 October 1974 (2251st plenary meeting), the Minister for Foreign Affairs of Mauritania had stated that his country accepted recourse to the International Court of Justice.

17. Without going into detail, it should be noted that the Moroccan point of view had been favourably received by many other countries, in particular by the African and Arab countries.

18. He went on to discuss the position adopted by Spain in the General Assembly.

19. On 2 October, speaking in the General Assembly (2253rd plenary meeting), the representative of Spain had defined his country's position, which could be summarized in the following way.

20. Spain had no dispute with any country with regard to the Sahara, since it was a question of carrying out a process of decolonization which was of concern to the entire international community. He had also clarified his country's position in the following terms:

> "Accordingly, the Government of Spain is pleased today to say to the General Assembly that the preparation of the referendum will be carried out in accordance with the directives contained in General Assembly resolutions, since we consider them to be the most suitable to ensure that the Saharan population may express its will independently."

21. The representative of Spain had had occasion to reaffirm that position in other statements, such as his reply (2257th plenary meeting) to the statement of the representative of the Central African Republic (at the 2256th plenary meeting). He had repeated the statement that, since Spain had no dispute with other countries in connexion with the Sahara, it had no other rule of conduct than to implement United Nations resolutions concerned, *inter alia*, with the holding of a referendum. He had also rejected the idea that any similarity existed between the problem of Western Sahara and that of Gibraltar.

22. The Spanish case must be refuted.

23. After having, for years, responded with silence and inertia to the General Assembly's urgent appeals for decolonization, Spain, by a rapid and truly surprising *volte-face*, claimed that it would purely and simply—and in the near future—implement decisions of which it had thus far taken no account. Undoubtedly, from the legal standpoint, the fact that, for the past five years, Spain had failed to vote for any one of the resolutions which it now claimed to be implementing faithfully could not be held against it. In reality, however, that point might lead one to wonder what had caused such a sudden conversion. As would be seen, there were serious reasons for thinking that the cause lay elsewhere than in an impulse of goodwill. Undoubtedly more significant was the fact that, contrary to the repeated assertions made from the rostrum, the administering Power had gone its own way and had refrained from entering into any consultation concerning the decolonization of the Sahara with "the Governments of Morocco and Mauritania and any other interested party", a formula which was repeated in all the resolutions to which Spain claimed to refer. Apparently, the repeated affirmation that the administering Power had no dispute with any country whatever concerning the Sahara, was simply an attempt to excuse its disregard for the obligation of consulting with Morocco and Mauritania as called for in the General Assembly resolutions. On 7 October 1974 (2259th plenary meeting), speaking in exercise of the right of reply, he himself had formally denied that the so-called consultations cited by the administering Power had ever taken place.

24. In fact, as he had already shown, not only had the administering Power failed to consult the countries concerned but—although it was now boasting that it faithfully implemented United Nations resolutions—it had not even embarked on the briefest dialogue with the United Nations. In every case, Spain did no more than "inform" either the Moroccan and Mauritanian Governments, or the Secretary-General of the measures it had decided on unilaterally in its own time and on its own terms.

25. In fact, it was a very simple matter to clear up once and for all the administering Power's claim that it had complied with the General Assembly resolutions. On 20 December 1966, in its resolution 2229 (XXI), the General Assembly had requested the Secretary-General, in consultation with the administering Power and the Special Committee, to

> "appoint immediately a special mission to be sent to Spanish Sahara for the purpose of recommending practical steps for the full implementation of the relevant resolutions of the General Assembly, and in particular for determining the extent of United Nations participation in the preparation and supervision of the referendum and submitting a report to him as soon as possible for transmission to the Special Committee".

26. Despite the urgent nature of that measure, which was stressed in the resolution, despite the reiteration of that recommendation in subsequent resolutions, and despite the efforts of the Secretary-General, no mission had been authorized to enter Sahara. An examination of the correspondence between the Secretary-General and the administering Power was very instructive. For years, when it had not remained silent, Spain had replied to all the Secretary-General's communications asking it to agree to the implementation of the provisions of resolution 2229 (XXI), reproduced in subsequent resolutions relating to the "special mission" which was to vist the Sahara, saying either that "external factors" had unsettled the situation in the Territory and that it was necessary to wait for a more appropriate time, or that in any event the composition and function of such a mission would have to

be in accordance with Spain's conception of the matters in question. In Spain's view, it was not a question of a mission sent by the United Nations, but of visitors approved, if not chosen, by Spain. In short, the whole affair was a glaring demonstration of the administering Power's determination to confine itself to actions on which it had decided unilaterally. Consequently, although the measure had been decided on eight years previously and was regarded as a prerequisite for carrying out the decolonization process, not even a preliminary effort had been made to prepare for its implementation.

27. However, the vital consideration was not the inertia displayed by the administering Power, which had delayed the decolonization process, but the fact that the administering Power had systematically destroyed the conditions which were to govern the process envisaged in the relevant resolutions and which controlled that process. Spain had thus created a new situation which, as would be shown, called for a new examination of the question, in which the General Assembly would not be bound by the modalities that it had previously envisaged, the conditions for which could no longer be established because of the deliberate acts of the administering Power. By its conduct, Spain turned its back on any preparation for a process leading to self-determination. To be specific, the past years had been used to condition the populations concerned so that consultation with them, which would take place at a time chosen by the administering Power alone, would in some way be in the hands of the administering Power.

28. The question was first and foremost one of a military occupation, which, in all probability, had raised the strength of the Spanish forces to a level greater than, and in any event comparable to, that of the population of the Territory.

29. Secondly, the colonialists' procedure of establishing alleged representation of the people through vague administrative councils was so familiar in colonial history that people were no longer deceived as to its significance and real objectives. In reality, that procedure had the clearly defined aim of ensuring that such assemblies endorsed decisions which were in fact adopted by the administering Power and presented them as representing the wishes of the people.

30. Thirdly, the General Assembly resolutions kept sight of the fact that the process of decolonization should not ignore the natives of the Sahara, who had been exiled from their country and forced to live as refugees in Morocco and Mauritania during the colonial period. However, the administering Power had done nothing to allow those exiles, who represented a very large proportion—perhaps as much as half—of the population, to return. On the contrary, the representative of the administering Power had clearly stated in the Committee at the twenty-eighth session (2066th meeting) that his country would be prepared to engage in consultations only with the indigenous population born and resident in the Territory.

31. Those facts could not be put aside just by denying them; they prompted one to conclude with a picture that represented the present situation reasonably well: the past years had been not only years of inaction and delay; they had been used to set the stage and write a scenario. The administering Power felt that now the curtain could be raised and the carefully constructed play could be presented.

32. The United Nations should reject that situation on moral, legal and political grounds.

33. It should do so, first of all, for moral reasons, because, with all due restraint, it must be said that the colonial Power's activities aimed at using the process of decolonization as a means of making its policy prevail, disregarding the decisions of the Organization whenever and in whatever respect it was convenient to do so, and its subsequent sudden pretense of implementing some parts of those decisions at the suitable moment, in other words, when the legitimate and legal conditions for their implementation had been destroyed, were unacceptable.

34. There were also clear legal reasons for rejecting the thesis of the administering Power. The resolutions which it now claimed it wished to implement formed an indivisible whole. They placed on the administering Power a coherent set of obligations which could not be broken up. When the administering Power tried to take refuge behind General Assembly resolutions in order to carry out an operation which it considered well prepared, the Organization was fully within its rights in regarding the so-called implementation of its decisions as invalid so long as other elements of those decisions, indivisibly interrelated and linked to the envisaged consultations, were totally ignored and in fact destroyed. Legally, the attempt of the administering Power to give a semblance of United Nations authority to the measures it was preparing was inadmissible.

35. Lastly, on political grounds, the administering Power should not be allowed to pursue the regrettable course of action it had embarked on. The United Nations could not accept what was really a process of recolonization as a precondition for a referendum on decolonization. What country could acknowledge the legitimacy of a territorial settlement obtained under such conditions? How could the "parties concerned" under the resolutions, namely, Mauritania and Morocco, be convinced that the situation thus created was consistent with the rights of peoples to self-determination, to the necessity of decolonization and to respect for their own rights? Unilateral settlement of the question by the administering Power must not be encouraged, not even when that Power covered its action by a purely formal reference to the United Nations. It would be a strange policy that gave preference to that attitude over the Moroccan and Mauritanian approach, which envisaged action on the basis of a legal opinion of the International Court of Justice, to be followed by the establishment, under United Nations auspices, of negotiations with Spain which would take due account of all the rights involved.

36. He then proceeded to outline the principles that the General Assembly might take into account in seeking a solution.

37. The two dominant facts in the current situation were that the conditions for decolonization laid down in previous resolutions had been destroyed by the administering Power and that Morocco and Mauritania had raised a serious and fundamental legal question to which they were willing to seek an answer, if necessary, by requesting the opinion of the International Court of Justice.

38. The General Assembly must find the solution that was appropriate in the light of those two facts.

39. The assertion that the General Assembly could only reiterate its previous decisions was irrelevant. The Assembly was a political body which had the right, and even the duty, to resolve problems as they arose and as they evolved. It might not be appropriate to solve a given situation in 1974 by the same methods as had been previously decided upon in another context. The administering Power's claim to a kind of "acquired right" to such a procedure when it had made genuine implementation of the procedure impossible and destroyed the bases for it was legally and politically unacceptable.

40. Nor did it make sense to allege that Morocco's acceptance of the referendum procedure was permanently binding and prevented it from asserting its rights. Such an allegation ignored three important factors. First, his country had never renounced its contention that Western Sahara had been snatched from it by colonial usurpation; it had always main-

tained its position consistently and clearly, as demonstrated by numerous documents and facts. The only new factor in that connexion was the proposal it had already referred to concerning verification of its claims by the highest international legal body. Secondly, Morocco had endorsed previous resolutions only when taken as a whole, establishing a certain decolonization procedure. The fact that, having ignored the demands of the United Nations and having made it impossible to hold a genuine free referendum, the administering Power's wish to organize bogus consultations was not sufficient to place an obligation on Morocco, which had agreed to something entirely different from what the administering Power was preparing. Lastly, his country had agreed to decolonization and not to some specific arrangement which might, at a pinch, appear acceptable in a certain context but which was contrary to the very objective of decolonization when viewed in the context of the situation created by the activities of the administering Power.

41. Thus, neither the United Nations nor Morocco was deprived of the right, or excused from the duty, of giving specific consideration to the situation as it actually existed and finding appropriate solutions, even if such solutions involved abandoning in certain respects a previous arrangement which was no longer feasible because of the attitude of the administering Power.

42. For that reason, the United Nations, treating the principle of decolonization as a true and living code of law instead of an empty formality, had adopted appropriate measures in cases where decolonization took the form of the restitution of territory to a sovereign State which had been deprived of it.

43. Gibraltar naturally came to mind as an example, and he gave a brief outline of that case. General Assembly resolutions 2070 (XX) and 2231 (XXI) recommended a negotiated solution. In 1967, the occupying Power had, in defiance of the declared wishes of the United Nations, decided to organize a referendum to determine whether the population wished to continue the *status quo* or whether it wished to have the Rock restored to Spain. The Special Committee had condemned that initiative as manifestly violating its directives and, furthermore, hindering the most normal process of terminating a colonial situation. The General Assembly had reiterated that condemnation in resolution 2353 (XXII) of 19 December 1967, after the occupying Power had organized the referendum.

44. The General Assembly had rightly decided that the question of Gibraltar revolved round the restoration of the national unity and territorial integrity of Spain and had clearly distinguished between the essential and necessary objective, namely, termination of the colonial situation, and the obstruction of that process, which in the case of Gibraltar consisted in the fallacious solution of a referendum.

45. If it was established that, as Morocco and Mauritania maintained and as they requested the International Court of Justice to confirm, the Sahara had not been *terra nullius* at the time of the Spanish occupation, the legal and political analogy with the case of Gibraltar became obvious.

46. In his address to the General Assembly on 2 October (2253rd plenary meeting), the Minister for Foreign Affairs of Spain had endeavoured to prove that the case of the Western Sahara was completely different from that of Gibraltar by stating that, unlike the question of the Sahara, in regard to which the United Nations advocated self-determination for the decolonization of the Territory, the question of Gibraltar had always been considered, in the relevant resolutions of the Organization, as a dispute between two States, Spain and the United Kingdom, which must clarify the problem of Spanish sovereignty and territorial integrity that was implicit in the decolonization of the Rock. That statement did not stand up well to reading or analysis, however. It implied, perhaps unintentionally, that the Gibraltar issue could be solved without raising the problem of self-determination for the people of Gibraltar. He did not see how the United Nations could agree that self-determination was not a factor in the settlement of the question. Spain itself would not admit such an allegation. What the attitude of the United Nations and Spain concerning Gibraltar actually meant was that the process of self-determination was not necessarily arranged through the formal procedure of a referendum and, in fact, ran counter to it when the conditions for holding a genuine referendum had been destroyed by the occuping Power. At the same time, the representative of Spain had stated that the decolonization of the Rock implied the solution of the problem of Spanish sovereignty and territorial integrity. How, then, could one maintain that, if the Sahara had not been *terra nullius* at the time of occupation, its decolonization did not imply the solution of the problem of the sovereignty and territorial integrity of the State or States that had been deprived of territory by that occupation? Could the sovereignty and territorial integrity of Morocco and Mauritania be of a lesser degree than those the Spanish State ascribed to itself in support of its claim to Gibraltar? That would be inadmissible; yet that would be the only possible explanation for not applying to the Sahara what the representative of Spain had said concerning Gibraltar.

47. In fact, Morocco could find no better advocate for its own cause than Spain itself. It could only repeat the very same argument which Spain had successfully used in the United Nations and which its representative had concisely summed up in the passage from his speech of 2 October, which deserved repeating: it was necessary to clarify the problem of Spanish—and therefore Moroccan—sovereignty and territorial integrity, which was implicit in the decolonization of the Rock—and therefore of the Sahara.

48. The only real difference between the two cases was that there was no legal challenge to the existence of Spanish sovereignty over the Rock prior to the English occupation, whereas Spain maintained that the Sahara had been *terra nullius* when Spain had occupied it. But the very point of the dispute was that Morocco and Mauritania maintained the contrary view. Morocco was already in a position to produce documentary evidence which demonstrated at the very least that its claims deserved serious consideration. The intervention of the International Court of Justice would make it possible to ascertain whether the Moroccan thesis was well-founded. If it was not, that would mean that Spain had been right to seek to distinguish the case of Gibraltar from that of the Sahara. However, if the Moroccan and Mauritanian thesis was confirmed before the Court, there would be no valid reason to treat the two situations differently.

49. His previous remarks had been designed to demonstrate that the question that Mauritania and Morocco intended to submit to the Court was essentially relevant, which meant that the answer to that question could have a fundamental impact on the process of decolonization applicable to the Sahara.

50. Having said that, he wished to point out that in order to decide that the matter should be submitted to the International Court of Justice, it was not necessary for the General Assembly to have already taken a definitive decision on the attitude it would adopt, at the appropriate time, on the decolonization process, depending on the nature of the reply given by the Court. It was sufficient for it to deem it possible that the court's reply might have an effect on the decision it would have to take. In other words, the General Assembly could scarcely deprive itself of a criterion of undoubted importance for assessing the matter, even if it refused to commit itself at that time with regard to the consequences that it might draw from a given reply by the Court.

51. The ideal arrangement would undoubtedly be for Morocco, Mauritania and Spain to submit the matter to the International Court of Justice by common consent. The latter would then hand down a jurisdictional ruling. Morocco, which was always prepared to believe in the goodwill and spirit of conciliation of those concerned, could not exclude the possibility that Spain might adopt that course of action. If, however, it was definitively disappointed in that hope, Morocco would then propose that the General Assembly should request an advisory opinion from the International Court of Justice.

52. Without becoming involved in lengthy juridical explanations, it must be said that the admissibility of such a request for an advisory opinion should not be disputed. Indeed, unlike the Court's jurisdictional competence, which was based solely on agreement by the parties, its advisory competence could be exercised upon the initiative of one of the competent organs of the United Nations. It involved not arriving at a judicial decision *stricto sensu* but a consultation intended to clarify the action to be taken by the Organization. It was necessary, but also sufficient, that the body submitting the case to the Court should deem it necessary to be enlightened upon a point of law.

53. And a point of law was precisely what was involved: essentially, whether the Sahara had been *terra nullius* at the time of colonization. That was not a purely historical or factual question: the Court would in fact have to decide whether, in the light of the documents, facts and arguments advanced by the parties, one or several States had exercised, in the legal sense of the term, rights of sovereignty over the Sahara prior to the Spanish colonization. Nor was the question a political one: the Court would not be requested to say what procedures should be used in effecting the decolonization of the Sahara. That question, which was political in nature, was reserved for the General Assembly.

54. Combined with the jurisdiction of the Court in respect of advisory opinions, those facts established the admissibility of a request for an advisory opinion which would be submitted to the Court by the General Assembly along the lines proposed by Morocco and Mauritania.

55. Needless to say, the General Assembly decision to submit such a request to the Court should be accompanied by an invitation to the administering Power to defer the holding of any referendum; such a referendum could take place only if, having regard to the opinion of the Court, the Assembly decided on one and specified the procedures for it.

56. In conclusion, Morocco hoped that it had thus clearly expressed its point of view on the question of Western Sahara.

57. While agreeing that the problem of the decolonization of the Sahara was not merely a dispute between Morocco and Spain but concerned another country and came within the competence of the entire United Nations, guardian of the rights of its Members, his country had had to say why it believed that the course unilaterally taken by the administering Power was in no way consistent with the implementation of resolutions which, after they had been ignored by it, that Power sought to use as a cover, even though it had undermined their foundations.

58. Morocco had also clearly shown the way in which the claims it had possessed over Western Sahara prior to the Spanish colonization should be taken into consideration in order to define the decolonization process, in respect of which a new examination had been made necessary by the attitude of the administering Power. It believed it had demonstrated that verification of those claims was a necessary precondition to a decision by the General Assembly. Certain of its rights, Morocco asked that they should be verified by the International Court of Justice. What it wished essentially was that the decolonization of the Sahara should not be dependent on unilateral decisions contrary to the very notion of decolonization. It felt that, as indicated in previous resolutions, and as the situation required more than ever, negotiations between the administering Power and the "interested parties", were highly desirable and should be conducted on a basis of equality, bearing in mind the opinion of the Court on an essential point of the problem. However, it was held that any decolonization process should remain within the purview of the United Nations and should be carried out under its auspices.

59. Lastly, Morocco made an appeal to law, to international jurisdiction, to peaceful negotiations and to the United Nations. In spite of the strong national feelings expressed by His Majesty Hassan II and the demand of the entire Moroccan people for the recognition of its rights, and in spite of its resolute will, Morocco intended to maintain an attitude of moderation and of wisdom. In so doing, the Moroccan people, with its Sovereign at its head, felt it was serving not only its own cause but that of fraternal and friendly countries and of peace and freedom in general.

60. Mr. DE PINIÉS (Spain) said that he was particularly gratified at having been given the opportunity to express his Government's position. While he had noted the efforts made by the distinguished representative of Morocco, he would speak on behalf of his Government and, in the course of his statement—and having regard to circumstances with which everyone was familiar, to which he would have occasion to refer—the Committee would naturally see how the doctrine relating both to the principle of the exercise of self-determination by the Sahara and to the principle of the observance of the territorial integrity of Gibraltar had been elaborated. He hoped that there would be no misunderstanding in the Committee and if he could contribute towards dispelling any doubts, he would be particularly satisfied.

61. During the general debate, at the 2253rd plenary meeting, his country's Minister for Foreign Affairs had set out the Spanish position regarding the two Territories currently being considered by the Fourth Committee under item 23. They were the Sahara, a Territory administered by Spain, and Gibraltar, a Territory which, while situated on Spanish soil, was administered by a foreign Power. Those two Territories should be treated differently, since the first was a vast Territory covering 280,000 square kilometres, with an indigenous population of about 70,000. The Committee would note that the figure was much higher than the one that had been transmitted earlier. Those inhabitants had to come from somewhere and he was referring exclusively to the indigenous inhabitants of African ancestry. The second Territory was an enclave within Spain, with an area of about 1.8 square miles, since the part of the isthmus where the military airport of that stronghold was located had never been ceded to the British Crown. According to the United Kingdom's census figures, the Territory of Gibraltar had a population of 19,007, who were non-indigenous inhabitants, since the Spanish population that had lived in Gibraltar had been expelled from it.

62. He would consider first the Sahara and then Gibraltar. He would also refer to the Falkland Islands (Malvinas), which were likewise being considered under agenda item 23.

63. The Spanish presence in the Sahara dated from the fifteenth century and had continued through the vicissitudes of the various ages. In the nineteenth century, it had been consolidated and had assumed a more permanent nature, and he wished to remind members that his country, in its statements, had never referred to the question of whether or not the Territory had been *res nullius*.

64. Then, in the second half of the twentieth century, General Assembly resolution 1514 (XV) called, in accordance

with the Charter of the United Nations, for the decolonization of the Territory, and, as had been stated by the Spanish Minister for Foreign Affairs at the 2253rd plenary meeting,

> "In the process of the self-determination of peoples, which brings the United Nations closer to its objective of universality, the indigenous inhabitants of Non-Self-Governing Territories are the undoubted protagonists, while the administering Powers have a dual responsibility, not only to the population but also to the international community as a whole. To the peoples under their administration they have an obligation to create the material conditions and the conditions of political development which will enable those populations to exercise their right to self-determination and independence and an obligation to guarantee the free exercise of that right. Their responsibility to the international community is to ensure that the process is carried out in accordance with the rules embodied in the Charter and in General Assembly resolutions and with the participation of this Organization."

65. It was interesting to note that it was Spain that had taken the initiative in that decolonization process. At the fifteenth session of the Assembly, on 11 November 1960, the representative of Spain had announced in the Fourth Committee (1048th meeting) that his Government had decided to transmit to the Secretary-General information pertaining to the Territories under its administration, in accordance with the provisions of Chapter XI of the Charter, and the General Assembly had taken note of that fact with satisfaction in its resolution 1542 (XV) of 15 December 1960. Subsequently, on 18 May 1961, he himself had personally had the honour to speak before the Committee on Information from Non-Self-Governing Territories and had made a full report to it on the situation in the Non-Self-Governing Territories administered by Spain, including the Sahara.[1]

66. It would be recalled that, following the adoption of resolution 1514 (XV), a Special Committee of 17 members had been established, whose memberhip had subsequently been enlarged to 24 by General Assembly resolution 1810 (XVII) of 17 December 1962. In the summer of 1963, the Special Committee of 24 had decided to complete the consideration of the Territories on the list of African Territories and those which were administered by Spain had thus been automatically included. In September 1963, he had provided the Special Committee with detailed information on the Territory of the Sahara. There had not been enough time to complete the consideration of the Territories on the agenda, and the Chairman had stated on 18 October 1963, at the 215th meeting of the Special Committee, that the Special Committee took note of the fact that in his statement the representative of Spain had recalled the declaration by which his Government had undertaken to respect the principle of the self-determination of the peoples under its administration. At the same meeting, the Chairman had added that the Mauritanian Government was holding discussions with the Spanish Government in order to find a solution to the problem by amicable means; at a previous meeting, he had made the same statement about Morocco. It was therefore clear that Spain had been committed from the very outset to observing the principle of self-determination in the Sahara. Contrary to what others had stated, it was the Spanish Government which, of its own free will and in the opinion that the Charter of the United Nations so required, had transmitted information on the Sahara since 1961, thus initiating the process of decolonization.

67. The United Nations had adopted a series of resolutions on Western Sahara, which constituted a clear and coherent doctrine that was beyond question. In the first decision which the Special Committee had taken on the questions of Ifni and Spanish Sahara, on 16 October 1964,[2] it had recalled General Assembly resolution 1514 (XV), requesting that it be implemented and urging the Government of Spain to take measures towards implementing it fully and unconditionally. No reference had been made in that decision to the principle of territorial integrity, which implied that Spain had no other interlocutor than the population referred to in the "Charter of decolonization", namely the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV).

68. In its resolution 2072 (XX) of 16 December 1965, the General Assembly had recalled its resolution 1514 (XV) and had requested the Government of Spain to take all necessary measures for the liberation of Ifni and of the Sahara and, to that end, to enter into negotiations on the problems relating to sovereignty presented by those two Territories. It was noteworthy that the General Assembly continued not to mention specifically the principle of territorial integrity. Consequently, until that date, the sole interlocutor naturally continued to be the population. Reservations were usually noted in the summary records; the summary record of the 1583rd meeting of the Fourth Committee showed that the representative of Mauritania had stated that the Territories of Ifni and Spanish Sahara were completely different and that the sole link between them was the fact that they were under the same administering Power.[3]

69. In the following year, the Special Committee had considered the question of Ifni and the Sahara. That consideration had been necessary in order to complete the doctrine concerning the decolonization of the Sahara. Paragraph 1 of the resolution adopted by the Special Committee on 16 November 1966[4] had invited the administering Power "to expedite the process of decolonization of the Territory of Ifni and, in collaboration with the Government of Morocco, to make arrangements for the transfer of powers". Paragraph 2 of the same resolution had requested the administering Power "to establish without delay appropriate conditions which will ensure that the indigenous population of Spanish Sahara is able to exercise its rights to self-determination and independence".

70. In its resolution 2229 (XXI) of 20 December 1966, the General Assembly recalled its resolution 1514 (XV) and, in paragraph 3, requested the administering Power "to take immediately the necessary steps to accelerate the decolonization of Ifni and to determine with the Government of Morocco, bearing in mind the aspirations of the indigenous population, procedures for the transfer of powers". On the other hand, in paragraph 4, it invited the administering Power "to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination".

71. The Assembly therefore established that, with regard to the decolonization of Ifni, Spain's interlocutor was the Moroccan Government. In the case of the Sahara, the indigenous population was to exercise its right to self-determination.

72. In 1967, the Special Committee had not had time to consider the question of the Sahara, but in the case of Ifni it

[1] See A/4785, part I, annex V.

[2] See *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 8 (part I) (A/5800/Rev.1), chap. IX, para. 112.

[3] *Ibid., Twentieth Session, Fourth Committee*, 1583rd meeting, para. 65.

[4] *Ibid., Twenty-first Session, Annexes*, addendum to agenda item 23 (A/6300/Rev.1), chap. X, para. 243.

had, in the consensus adopted on 14 September 1967, requested Spain to take the necessary steps to accelerate the process of decolonization and to determine with the Government of Morocco procedures for the transfer of powers.[5]

73. On 19 December 1967, the Assembly had adopted resolution 2354 (XXII), which consisted of two separate parts. In the first part, which referred to Ifni, the Assembly reaffirmed that the procedures for the transfer of powers were to be determined with the Moroccan Government. In the second part, referring to the Sahara, it reaffirmed the need to hold a referendum under United Nations auspices with a view to enabling the indigenous population to exercise freely its right to self-determination.

74. In the first part of resolution 2428 (XXIII) of 18 December 1968, the General Assembly invited Spain to continue the dialogue which had begun with the Government of Morocco with a view to accelerating the decolonization of Ifni and determining the procedures for the transfer of powers. In the second part, concerning the Sahara, it reaffirmed the inalienable right of the people of the Sahara to self-determination. Thus the United Nations again drew a complete and absolute distinction between the Territory of Ifni and the Territory of the Sahara. In fact, in the last preambular paragraph of resolution 2428 (XXIII), it noted "the difference in nature of the legal status of these two Territories, as well as the processes of decolonization envisaged by General Assembly resolution 2354 (XXII) for these Territories".

75. In accordance with that doctrine, the Government of Spain had transferred sovereignty over Ifni to Morocco, scrupulously observing the guidelines given by the Organization. The transfer had taken place on 30 June 1969, in accordance with the provisions of the Treaty of Fez of 4 January 1969.

76. In those circumstances, it was difficult to see how Spain could be accused of not implementing the resolutions of the United Nations. The General Assembly had then continued to consider the question of the Sahara at its various sessions. On 16 December 1969, it had adopted resolution 2591 (XXIV), which in paragraph 1 reaffirmed the inalienable right of the people of the Sahara to self-determination in accordance with General Assembly resolution 1514 (XV). Paragraph 4 mentioned the holding of a referendum under United Nations auspices with a view to enabling the indigenous population to exercise freely its right to self-determination.

77. In resolution 2711 (XXV) of 14 December 1970, the inalienable right of the people of the Sahara to self-determination was reaffirmed in paragraph 1. In paragraph 6, there was again mention of the holding of a referendum and of the right of the people of the Sahara to self-determination. Paragraph 7 referred again to the self-determination of the people of the Sahara. Paragraph 8 concerned the exercise of the right to self-determination and to freedom of choice, and paragraph 9 again dealt with self-determination.

78. In paragraph 1 of resolution 2983 (XXVII) of 14 December 1972, the Assembly reaffirmed the inalienable right of the people of the Sahara to self-determination and independence. In paragraph 2, it reaffirmed its support for the people of the Sahara in the struggle they were waging in order to exercise their right to self-determination and independence. Paragraph 4 referred to self-determination and independence. In paragraph 5, which dealt with the holding of a referendum under United Nations auspices, the Assembly repeated that the indigenous population of the Sahara must be permitted to exercise freely its right to self-determination and independence. In paragraph 5 (*b*), it invited the administering Power to take all the necessary steps to ensure that only the indigenous inhabitants exercised their right to self-determination and independence with a view to the decolonization of the Territory. Finally, in paragraph 7 it reaffirmed the responsibility of the United Nations in all consultations intended to lead to the free expression of the wishes of the people.

79. Lastly, in resolution 3162 (XXVIII) of 14 December 1973, the most recent one to be adopted, the right of the people of the Sahara to self-determination was once again proclaimed in the preamble, and in operative paragraph 4 the Assembly repeated its invitation to the administering Power to determine the procedures for the holding of a referendum to enable the indigenous population of the Sahara to exercise freely its right to self-determination. In paragraph 4 (*b*), the right of the indigenous inhabitants to self-determination was reaffirmed yet again.

80. That was the background to the principles laid down by the United Nations to govern the decolonization of the Sahara. He noted that he had personally taken part in all the discussions of the question with the exception of those held at the twenty-seventh session of the General Assembly, and he could therefore state that his delegation had never been specifically consulted with regard to the drafting of the resolutions relating to the Sahara. Those resolutions had been presented to his delegation as the product of efforts made by various delegations, and Spain, like any other Member of the United Nations, had exercised its right to take a position on them.

81. Although Spain was prepared to consider all proposals concerning means of achieving the decolonization of Western Sahara in a peaceful, amicable manner, it felt that its first duty was to respect the personality and wishes of the Saharan people. The people of the Sahara had a personality of their own of which they were proud, and they regarded with concern any proposal that might impair their inalienable right to self-determination and independence or pose a threat to their identity. The representatives of the United Nations would have an opportunity to see that for themselves when they visited the Territory during the process of self-determination.

82. The people of the Sahara, who were slightly more than 70,000 in number according to the latest data, were unquestionably conscious of their national personality. They spoke their own language and had defended their independence proudly and steadfastly against foreign Powers that had tried to subjugate them, and they had even undertaken vigorous military expeditions. Of nomadic origin, they were rapidly adopting a more settled way of life—a fact attributable not only to natural causes but also to the work of cultural and economic development being carried out by Spain. The latter country had recognized that the Territory's natural wealth and resources belonged to its people, as was demonstrated by the repeated statements of the Spanish Government set out in the reply which the Head of State of Spain had addressed to the representative General Assembly of the Sahara on 21 September 1973 and which had been communicated to the Secretary-General[6] and reiterated in the letter dated 10 July from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General (A/9655). Having an awareness of their own identity, the people of the Sahara felt that it was for them to decide on their future.

83. Down through the years, Spain had based its policies on two principles: respect for the wishes of the indigenous population and adherence to the principles of the United Nations regarding decolonization. In 1974, in the belief that the necessary conditions now existed, his Government had decided to go on to the final phase in the process of self-determination. He recalled in that connexion that the Spanish Minister for

[5] *Ibid., Twenty-second Session, Annexes*, addendum to agenda item 23 (part II) (A/6700/Rev.1), chap. IX, para. 38.

[6] A/9176, annex IV.

Foreign Affairs had stated at the 2253rd plenary meeting, on 2 October 1974, that his Government, after conducting the necessary consultations with representatives of the indigenous population, had announced that a referendum would be held during the first half of 1975 under the auspices of the United Nations, with a United Nations guarantee and in accordance with the procedures set out in resolution 3162 (XXVIII) and the previous General Assembly resolutions on the question of the Sahara. The Spanish Minister for Foreign Affairs had also said that his Government was pleased to inform the General Assembly that the preparations for the referendum would be carried out in conformity with the guidelines laid down in the United Nations resolutions, which provided the best means for the people of the Sahara to express their wishes in a completely independent manner. The United Nations and the Spanish Government thus agreed that the decolonization of the Sahara must involve self-determination on the part of its indigenous population. A few years earlier, it would have been possible to proclaim the independence of the Territory on the basis of General Assembly resolution 1514 (XV), which proclaimed that all peoples had the right to self-determination and to determine freely their political status. However, Spain had preferred to adhere to the principles laid down by the General Assembly regarding the Sahara. It was prepared to decolonize the Territory. It would do so with all the guarantees that the international community might require, and if the inhabitants of the Sahara should some day wish to join their destiny with that of a neighbouring country, they would be entitled to take a decision to that effect. His Government could not ignore the concern of the Arab countries with solving the problem of decolonizing the Sahara. The ties of friendship between Spain and the Arab countries were well known, and Spain had amply demonstrated that friendship at critical moments in those countries' history. Its relations with all the Arab countries could not be better. It was for that reason that his delegation had noted with satisfaction that Morocco, Mauritania and Algeria—which, under paragraph 4 of General Assembly resolution 3162 (XXVIII), were interested parties for purposes of consulting with Spain on the procedures for holding a referendum—agreed that the principles of the United Nations regarding the decolonization of the Sahara were fully applicable and should hold good. He recalled the Algerian representative's statement that the wishes of the people directly concerned would always be the primary and decisive element in any settlement. That was the principle which, in the final analysis, was set forth by resolution 3162 (XXVIII), which had been adopted by an overwhelming majority, and Spain declared once again that it was prepared to apply that resolution, acting at all times in agreement with the United Nations.

84. His delegation had studied with special attention the statements made on the question of Spanish Sahara during the general debate at the plenary meetings and would carefully consider any constructive proposal made on that question. It was for that reason that it was reserving its position on the matter for the time being and would explain it after reviewing such proposals. His delegation reserved the right to reply at a later stage to the statement of the representative of Morocco.

85. With regard to the question of Gibraltar, he pointed out that it had been before the Committee for many years. Since the Special Committee had made its first decision on the question, in its consensus of 16 October 1964,[7] the General Assembly had adopted some important resolutions, which together formed the doctrine of the United Nations concerning the decolonization of Gibraltar. In that connexion, he referred members to his statement in the Committee at the preceding session, on 26 November 1973, in which he had given a chronological account of the consideration of that question by the United Nations (2066th meeting).

86. It was deplorable that the Government of the United Kingdom should continue stubbornly to maintain the last surviving colony in Europe, against all justice and all law, openly rejecting the United Nations doctrine and the continual offers made by Spain, which had repeatedly reaffirmed that it had no intention of depriving some 19,000 inhabitants of Gibraltar of their British nationality if they wanted to keep it and that its only interest was in regaining sovereignty over a part of its territory which, small though it was—about 1.8 square miles—was extremely important simply because it was a part of the soil of Spain and because of other reasons which he would later explain.

87. The United Kingdom continually tried to obscure the issue by saying that it would not consent to having the people of Gibraltar become subject to the sovereignty of another State against their freely and democratically expressed wishes. He reaffirmed that Spain would be most solicitous for the interests of the inhabitants of Gibraltar and would, in particular, permit them, if they wished, to choose Spanish nationality, to keep British nationality or to have both nationalities. What was inadmissible was that every time the United Nations asked for negotiations to be held with Spain, the United Kingdom, instead of initiating the process of decolonizing the last colony in Europe, should claim that such negotiations could lead only to a reaffirmation of the existence of a colonial situation and should try to extend and strengthen its position—which, after all, was not surprising since Gibraltar was a military fortress. The United Kingdom always tried, by invoking the pretext of that "prefabricated" population which served a military base, to assert that the wishes of the current inhabitants should prevail over any other. It had never said whether in 1704, when it established itself in Gibraltar by trickery, it had asked the legitimate inhabitants whether they were pleased with the forcible presence of the British Crown in Gibraltar. The population had not been consulted. It had been expelled.

88. His Government had believed that the consensus adopted by the General Assembly on 14 December 1973 would serve as the basis for the opening of serious and constructive negotiations between the British Government and the Spanish Government. In chapter XIII, paragraph 10, of the report of the Special Committee covering its work in 1974, mention was made of further talks which had been held on 30 and 31 May in Madrid between officials of the two Governments (see A/9623/Add.4 (part II)). He pointed out, in order to obviate any misunderstanding, that the United Kingdom Government had in fact proposed that talks should be held at the level of diplomatic officials on the problem of Gibraltar, bearing in mind the said consensus. The consensus itself referred to negotiations which were at that time due to be held between the United Kingdom and Spanish Governments with a view to the final solution of the problem, in accordance with the provisions of General Assembly resolutions 1514 (XV) and 2429 (XXIII). The Spanish Government, as a demonstration of its goodwill, had established preliminary contact in preparation for the opening of real negotiations. It had found, once those contacts were established, that the problem being raised by the United Kingdom was that of extending access facilities to the military airport of Gibraltar, which was built on the isthmus separating "the Rock" from the remainder of Spain's territory; that isthmus had never been ceded by Spain but had been occupied illegally by the British. The airport had been built in 1938 during the Spanish Civil War. Because more powerful aircraft were being used, which needed more room for approaching the landing strip and for landing, it seemed that United Kingdom pilots sometimes found it difficult to carry out the landing procedure in accordance with the universally accepted rules of international aviation. For reasons

[7] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 8 (part I), chap. X, para. 209.

of national security Spain had established in the Bay of Algeciras a zone in which flying was prohibited. During the talks he had mentioned, the United Kingdom representatives had claimed that whenever an aircraft needed, for the purpose of the landing procedures, to violate the prohibited zone, it should be able to do so automatically by informing the control tower at Seville. That was a further example of the artificial character of Gibraltar and of stubborn intrusion at all costs into a territory which geographically belonged to Spain.

89. He would not go into the details of the claim, in order not to prolong his statement unduly, but could state that the Spanish delegation had pointed out courteously but firmly to the United Kingdom delegation that, at the very time when the international community's decolonization policy was reaching its culmination, the mere fact of granting that privilege to United Kingdom aircraft seeking to land on the isthmus would be equivalent to consolidating and expanding the United Kingdom colonial presence in Gibraltar.

90. The problem of Gibraltar, as the Spanish delegation had pointed out to the United Kingdom delegation, should be considered as a whole, and it was not acceptable to reduce it to a series of items, discussion of which would not bring about the desired result of decolonization demanded in the United Nations consensus, but would instead prolong the colonial-type situation prevailing on the Rock of Gibraltar.

91. The problem of the decolonization of Gibraltar, since the consensus of 24 October 1964 and as a result of the adoption of resolutions 2070 (XX), 2231 (XXI) and 2353 (XXII) and, lastly, resolution 2429 (XXIII) of 18 December 1968, could be summarized in the following four statements. First, the situation in Gibraltar was a colonial situation; secondly, that situation must be terminated through negotiations between Spain and the United Kingdom; thirdly, General Assembly resolution 1514 (XV) on decolonization was applicable to the case, especially paragraph 6 thereof, which stated that the principle of national unity and territorial integrity must be respected; and fourthly, once the colonial situation had been terminated, the interests of the inhabitants of Gibraltar must be protected.

92. The United Kingdom continued to show no desire to negotiate. The latest United Kingdom decision on development aid to Gibraltar, approved on 13 November by the Minister of Overseas Development, was the most recent evidence of that country's unreceptive attitude. It should be stressed that that aid was planned for a period of three years, which could be extended, and that the United Kingdom was thus once again flouting the resolutions of the General Assembly. It was obvious that aid for a colony was not planned for a period of three years or more when it was intended to decolonize that territory. As the so-called Chief Minister of Gibraltar had stated in a letter published in *The Times* of London on 20 November, if the United Kingdom did not grant that aid to Gibraltar, it would be leaving it to a future of decline and isolation. That meant that Gibraltar, cut off from Spain, needed grants from the United Kingdom in order to survive.

93. If the United Kingdom was so concerned about the interests of the people of Gibraltar, who were living on a nuclear powder-keg, why did it not dismantle its military base, whose presence Spain had never accepted? If the United Kingdom did so, Spain would then begin to believe that it was genuinely concerned about the real interests of the population and not about its own imperialistic strategic interests. If it did not do so, that would mean the continuance of the danger created by the existence of the military base, which was used for nuclear purposes without the consent or even the knowledge of the Spanish authorities, entailing risks in the case of nuclear military reprisals, the danger of contaminating the waters and the neighbouring Spanish coasts and a lack of security in the case of an accident involving nuclear-powered ships and so on.

94. It was surprising that, although the decolonization process had been initiated following the United Nations consensus of 24 October 1964 and the series of resolutions adopted by the General Assembly and in particular resolution 2429 (XXIII), which stated that the colonial situation in Gibraltar must be terminated no later than 1 October 1969, the United Kingdom representative should refer to the text of a constitution dating from 1969, the very year in which Gibraltar should have been finally decolonized, in order to stress that the preamble to that constitution affirmed that Her Majesty's Government would never conclude agreements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes. That was a curious way of ignoring United Nations resolutions. The General Assembly had already condemned on lesser grounds Governments which had amended their internal legislation *a posteriori* so as to be able to justify themselves before the Assembly. In resorting to the same subterfuge, the United Kingdom had forgotten that at the international level all acts of the State, including acts of the legislative and executive powers, were equally liable to be assessed internationally, i.e., in the current case, by United Nations resolutions, with which the preamble to the aforementioned Gibraltar constitution was in flagrant contradiction.

95. The United Nations had considered that the principle of self-determination was not a determining factor in the decolonization of Gibraltar. It had, on the other hand, reaffirmed the principle of the territorial integrity of Spain. That had been specifically mentioned in the preambles of those resolutions. The one on the Sahara mentioned no such principle: it spoke of self-determination and independence. Moreover, by invoking the Treaty of Utrecht in the United Nations as the legal basis of its right to retain Gibraltar, the United Kingdom had failed to mention the basic provision according to which in the case of any change in sovereignty the latter should pass in priority to Spain. Consequently, according to the actual provisions of the treaty in question, the wishes of the current inhabitants had no decisive value with regard to sovereignty over Gibraltar.

96. Spain and the Spanish Government were prepared to begin serious and constructive negotiations with a view to the decolonization of Gibraltar, while ensuring respect at the time of decolonization for the interests of the population, which deserved the greatest respect but did not have the right to decide the matter of sovereignty over a part of Spanish territory.

97. His delegation requested the General Assembly to reiterate solemnly to the United Kingdom its obligation to negotiate with Spain the decolonization of Gibraltar, and to return that territory to the Spanish nation, which would take due account of the interests of the current inhabitants.

98. He hoped that the United Nations would not see its authority decline still further in 1974 because a permanent member of the Security Council failed to respect the provisions of the relevant General Assembly resolutions.

99. He wished to refer briefly to another territory that also came under agenda item 23, which was currently being considered by the Fourth Committee, namely the Falkland Islands (Malvinas) for the decolonization of which the General Assembly had laid down a clear and firm doctrine based on the principle of territorial integrity—another example of the principle of territorial integrity—in accordance with operative paragraph 6 of General Assembly resolution 1514 (XV).

100. Thus the General Assembly, in its resolutions 2065 (XX) and 3160 (XXVIII), had indicated that the way to termi-

nate that colonial situation was to find a peaceful solution to the conflict of sovereignty between the Governments of Argentina and the United Kingdom through negotiations. Despite those appeals by the General Assembly, however, the administering Power continued to demonstrate ill-will with regard to decolonization, resorting to a pretext totally irrelevant to the negotiations, such as the wishes of the inhabitants. United Nations doctrine in that regard required that the interests of the population of the Falkland Islands (Malvinas) should be taken duly into account, and the Argentinian Government had fully demonstrated its intention to fulfil that condition. It therefore remained only for the United Kingdom Government to agree to resume negotiations as a matter of urgency, with a view to restoring to the Argentine Republic its sovereignty over that portion of its national territory.

101. His delegation reserved the right to speak again on the question.

102. Mr. EL HASSEN (Mauritania) said he would like to convey again to the Chairman the congratulations that had already been voiced by his delegation. He was certain that the Chairman's task would be crowned with success because of his talents and qualities as a distinguished diplomat. He also congratulated the other officers of the Committee and the eminent representatives of the Secretariat and thanked them for their valuable contribution in discharging their difficult and important responsibilities.

103. He explained that his statement would be concerned essentially with the problem of so-called Spanish Sahara. It was not that Mauritania attached less importance to the decolonization of the other Territories considered under agenda item 23, but the problem of the Sahara was of particular concern to the Government and people of Mauritania. His delegation was therefore certain that its attitude would be understood if it dealt only with that issue at the current meeting.

104. His delegation could deal with the problem of the Sahara in several ways. It could, for example, review it in its historical, geographical and cultural context in order to demonstrate clearly the national character of the Territory. It could also engage in polemics with Spain, the administering Power, over the way in which it was conducting—or was proposing to conduct—the process of self-determination defined by the United Nations.

105. With regard to the first possibility, the pertinent United Nations documents had contained, since the admission of Mauritania to the United Nations, more than one statement and more than one explanation made by the responsible Mauritanian authorities on the past, the present and what should be humanly, geographically and culturally the future of the Territory. Several weeks ago, at the 2251st plenary meeting, all the aspects of the problem had been fully dealt with by the Mauritanian Minister for Foreign Affairs before the General Assembly. It sufficed to refer to that important statement to have a clearer picture of the living and permanent realities of the area and to become convinced of their incontestable force.

106. As for the criticism that could be made of the administering Power's interpretation of the process of self-determination, his delegation was unwilling at the present time to follow that path. Its reluctance to engage in polemics with Spain was prompted by very obvious reasons.

107. First, Mauritania had explained on numerous occasions to the Spanish authorities its views on their policy in the Sahara. As recently as the beginning of the current session, that policy had been criticized in a statement made before the General Assembly and in talks with the Spanish authorities. It was therefore not the intention of the Mauritanian delegation to repeat what was possibly still topical but which should, perhaps, be laid aside for the moment until the conclusion of the moves that were currently being made.

108. Moreover, as a proverb of the Saharan people stated, there was no point in saying "Your horse is faster than mine" when both riders were in the saddle. The International Court of Justice provided a forum for clarifying one of the aspects of the problem, namely, its legal aspect at the time of Spanish colonization. It would also make it possible to justify the respective positions of the countries concerned concerning the existence or non-existence at the time of any authority in the Sahara.

109. Finally, Mauritania was profoundly convinced that Spain, faithful to its age-old and constant friendship with the Arab world would be able to find, together with the States of the subregion and with Mauritania and Morocco in particular, a solution which would safeguard its own interests as well as the essential interests of the populations in such a way as to preserve that accumulation of esteem and friendship which time had only made richer and stronger. Mauritania was therefore sure that, whatever the difficulties and differences of the moment, Spain would remain true to itself and its past, as it would to the present and the future, and would initiate with Mauritania and Morocco that genuine dialogue which their peoples earnestly hoped for and to which it had been often invited by the United Nations.

110. In that spirit, Mauritania invited Spain to agree to bring the matter before the International Court of Justice, whose advisory opinion could clarify only one aspect, among so many others, of the problem.

111. What, in fact, were Morocco and Mauritania seeking by requesting the International Court of Justice, through the Committee, for an advisory opinion? Indeed, the reply to that question was the main theme of the present statement.

112. Mauritania wished to prove—and was sure of being able to prove—that there existed an authority in the Sahara at the time of its colonization by Spain and that that authority, or that territory, had specific links with Mauritania and Morocco. The aim of the recourse to the International Court was to make clear to the administering Power, which was both the partner and friend of Mauritania, that the interest in the Sahara was already justified on the juridical level and that the consultations arranged by the United Nations concerning the decolonization of the Sahara were intended to formulate a concerted policy which took into account the preoccupations of the respective countries and of the right of the populations. The task of the administering Power was therefore not merely to inform the interested countries of what it was doing or of what it intended to do in the Sahara but also to take into account his own comments and suggestions on certain aspects of the process of self-determination.

113. In that spirit, Mauritania and Morocco planned to submit specific questions to the International Court of Justice when asking for an advisory opinion. Admittedly, the Court's task would not be easy, because the concept of authority had varied and was still varying according to the time, place and social and political milieux considered. Although it was for the Court to decide as a sovereign body, his delegation wished to state what Mauritania understood by that authority and more specifically by the authority which was being exercised in the Sahara at the time of the Spanish colonization.

114. A few general considerations concerning colonization in Africa and concerning African societies at the time would make it easier to understand the problem and place it in its true historical context.

115. Pre-colonial African societies, contrary to a fairly widespread theory, were not without organizational structures. In all the African societies of the time, from the smallest

to the largest, there existed the fundamental categories peculiar to any social and political organization: the categories of "governors" and "governed", those who commanded and those who obeyed.

116. The political, social and administrative organization of those societies had in some cases reached a stage of development resembling that of a modern State, as that term was understood today. Many an Arab traveller or explorer, historian or sociologist from the western world had been surprised at the refinement of the administrative, social and political organization, the extent of the domains and the size of the populations of the kingdoms, emirates, principalities and large chiefdoms that had existed throughout Africa.

117. Those States which could be termed such, if only for convenience of language, were numerous throughout Africa. His delegation would not provide an exhaustive list nor would it describe in detail their structure or political philosophy, for that would take too long and would go beyond the scope of his statement.

118. He wished only to emphasize that such States or authorities had existed everywhere in Africa at the time when it was colonized. Thus Mauritania, at the time better known as Bilad Shinguit, consisted of the Emirates of Trarza, Brakna, Tagant and Adrar. Those Emirates, whose domains made up the whole of Mauritania, had fought, together or separately, against French and Spanish colonization. They had also had to conclude with the colonizer, jointly or separately, treaties of mutual interest or agreements imposed by infinitely superior and better equipped forces.

119. While in the whole Mauritanian area the Emirates of Trarza, Brakna, and Tagant had had to oppose French colonization in southern and eastern Mauritania, the Emirate of Adrar had had to oppose Spain in the Sahara as well. In the face of the superior forces of the colonizers and in the absence of any outside assistance, those Emirates had been compelled to lay down their arms. The treaties they signed at the time, which finally enabled the two European Powers to settle in that region, included treaties concluded by France with the Emirates of Trarza and Brakna and those concluded by Spain, in particular in 1884, with the Emirate of Adrar.

120. In other words Western Sahara—Río de Oro and Saguiet el Hamra—like all other African territories, was not without rulers at the time it was colonized. The term "free territory", as understood at the notorious Conference of Berlin on the partition of Africa, could hardly refer to a territory devoid of rulers. It meant rather a territory free from any colonization. Spain had occupied the territory of the Sahara under the partition plan drawn up by the European Powers in Berlin and in accordance with the misguided concept of "free territory". Thus the fact that Western Sahara had been declared a "free territory" at Berlin did not mean that the authority which had existed there had disappeared as if by magic. Whatever the criteria adopted to define an authority, the authority in the Sahara could decide, on behalf of the population, on peace as well as war and they could conclude treaties of an international character. They thus had some of the attributes of any State authority in the modern sense of the word.

121. That was how Mauritania regarded the authority existing in the Sahara when it had been colonized by Spain. What ties had that authority or territory had with the Kingdom of Morocco and the whole of Mauritania? Mauritania would also request the International Court of Justice to establish how strong those ties had been at the legal, human, geographical, ethnic and cultural levels.

122. He wished to stress the human, geographical, ethnic and cultural aspects, for the legal aspect of the problem was far from being the essential one. The legal aspect could, in any case, be properly appreciated only in the light of a number of fundamental facts ranging from the attachment of the people to the soil and a continuous life in common to the same concerns and way of life. While Mauritania did not have any Saharan complex, it was deeply attached to the Saharan land, which merged with its very existence. Most Mauritanians had lived there, their parents were living there still and their ancestors were buried there. It was true that in Moslem countries the ancestor cult did not exist, but in the heart of each Saharan there dwelt that old and respected African mentality. Even among the Moslems of the Malikite rite, respect of one's ancestors constituted an important element in material and spiritual life.

123. In short the Sahara could be viewed only as one problem. It might no doubt be possible to clarify one of its aspects, but the homogenous character of those regions and the overriding interests of the population concerned must in no case be questioned on account of a clarification. The essential aim of the countries concerned was complete decolonization of the Territory in accordance with the relevant United Nations resolutions. All that had to be done was to define more closely the practical means for achieving such decolonization. In seeking such a definition, what was of interest to the General Assembly was the advisory opinion requested from the Court. When the Court established that that Territory, at the time of its colonization had had definite ties with Morocco and Mauritania, one stage at any rate of that investigation would have been completed.

124. Consequently it seemed to Mauritania that the referendum provided for would have to be postponed until the conclusion of the consideration of the matter by the International Court of Justice. It went without saying that until then the administering Power would have to proceed with the economic and social advancement of the population, in accordance with the provisions of the Charter.

125. Such were in brief the few observations which his delegation wished to make on the problem of the Sahara.

126. Mr. CISSÉ (Mali), supported by the representatives of Argentina and Peru, proposed that the statements of the representatives of Morocco, Spain and Mauritania should be reproduced *in extenso*.

127. Mr. OUCIF (Algeria) said that his country's position on the question of the Sahara had been made clear in the course of the general debate at the 2265th plenary meeting, but his delegation reserved the right to revert to the matter in detail at a later meeting.

128. Mr. CISSÉ (Mali) said that his delegation awaited with keen interest the statement the representative of Algeria would make on the question of the Sahara and proposed that the full text should be included in the summary record.

129. The CHAIRMAN said that the reproduction in full of the speeches of the representatives of Morocco, Spain and Mauritania in the summary records would cost $225 per page of original text. If there were no objections, he would take it that the Committee wished to have those statements reproduced *in extenso*.

It was so decided.

130. Mr. MORETON (United Kingdom), speaking in exercise of his right of reply, said that his delegation could not accept the review made by the Spanish representative of the question of Gibraltar, and that it reserved the right to reply on that matter at a later meeting.

The meeting rose at 1.15 p.m.