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

Summary record of the 5th meeting

Held at Headquarters, New York, on Friday, 15 June 2012, at 10 a.m.

Chair: Mr. Morejón (Ecuador)

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The meeting was called to order at 10.20 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Question of the Falkland Islands (Malvinas)

(continued) (A/AC.109/2012/12; A/AC.109/2012/L.6)

2. **Mr. Archondo** (Plurinational State of Bolivia) said that, at the previous meeting, President Fernández of Argentina had described Latin America's historical ties with Europe. The Latin American countries had welcomed immigrants from all over the world to help build their free and sovereign States. Thirty years after the Malvinas war, it was time for the United Kingdom to reconcile with Latin America by establishing a dialogue with Argentina to settle their territorial dispute.

3. Latin America was united in its support for Argentina and for a continent free of colonialism. In the context of the joint declaration adopted by the Council of Ministers for Foreign Affairs of the Union of South American Nations (UNASUR), the Plurinational State of Bolivia had expressed its strong support for Argentina's legitimate claim to sovereignty over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas. In June 2012, the General Assembly of the Organization of American States (OAS) had adopted a Declaration on the question of the Malvinas Islands at its forty-second regular session.

4. The Government of the Plurinational State of Bolivia rejected any British military presence in the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas, as well as any unilateral British activities in the disputed area, including the exploration and exploitation of Argentina's renewable and non-renewable natural resources and the conduct of military activities.

5. **Ms. Tambunan** (Indonesia) said that it was impossible to apply uniform criteria to all situations of decolonization because each was unique. Negotiations should be based on the principle of territorial integrity and full acknowledgement of the interests of the population, in order to reach a peaceful solution to the question of the Falkland Islands (Malvinas).

6. **Mr. Bamba** (Côte d'Ivoire) reiterated his Government's support for the right to self-determination of the inhabitants of the Falkland Islands, in full accordance with the Charter of the United Nations. In General Assembly resolution 637 (VII), Member States had declared that they upheld the principle of self-determination of all peoples and nations and recognized that self-determination was a prerequisite to the full enjoyment of all fundamental human rights. Côte d'Ivoire was committed to a peaceful and negotiated settlement of the question of the Falkland Islands and believed that, pursuant to Article 1, paragraph 2, and Article 73 *b* of the Charter, any solution must take the aspirations of the inhabitants into account.

7. **Ms. Lalama** (Ecuador) said that, pursuant to resolution 2065 (XX), the Governments of Argentina and the United Kingdom should proceed without delay with the negotiations recommended by the Special Committee. The principles of territorial integrity, respect for State sovereignty and the peaceful settlement of disputes were essential concepts in international relations. She therefore reiterated her country's support for the legitimate rights of Argentina in the sovereignty dispute over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.

8. Ecuador had rejected the United Kingdom's militarization of the South Atlantic, including its deployment of nuclear submarines, and any unilateral activities, including exploration and exploitation of renewable and non-renewable natural resources in the area in dispute, because both parties had been called upon to refrain from taking decisions that would imply introducing unilateral modifications in the situation. The British militarization and unilateral activities had been rejected by several regional organizations of which Ecuador was a member.

9. **Mr. Briz Gutiérrez** (Observer for Guatemala) said that the question of the Malvinas Islands was a special and particular colonial situation. When the United Kingdom had occupied the Islands by force, expelling the inhabitants and authorities and later transplanting its own population, it had colonized a territory, not a people, and the principle of self-determination was therefore not applicable to that case. The General Assembly had declared, in its resolution 1514 (XV), 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.

10. Guatemala, together with Latin America and the Caribbean, as well as the Group of 77 and China, agreed that the parties must resume the negotiations and refrain from taking decisions that would imply introducing unilateral modifications in the situation. Argentina had always indicated its willingness to resolve the dispute through negotiation and the United Kingdom should comply with the calls for a peaceful settlement of the sovereignty dispute.

11. **Mr. Dos Santos** (Observer for Paraguay), in his capacity as President pro tempore of UNASUR, read out the Union's Declaration on the deployment of the frigate *HMS Montrose* to the Malvinas Islands (A/66/548, annex).

12. **Mr. Cancela** (Observer for Uruguay) reiterated his delegation's consistent position regarding the legitimate claim of Argentina to sovereignty over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas. The question of the Malvinas Islands was an issue of territorial integrity and was a special and particular colonial situation, as Argentina had clearly inherited Spain's rights over the Islands and had occupied them until 1833. The two States concerned should resolve the conflict peacefully and should implement the relevant General Assembly resolutions concerning negotiations on all aspects of the future of the Malvinas Islands.

13. **Mr. Weisleder** (Observer for Costa Rica) reiterated his Government's position that the Malvinas Islands, South Georgia Islands and South Sandwich Islands had been an integral part of the territory of the Argentine Republic since that country had achieved independence. He read out the Special communiqué on the question of the Malvinas Islands adopted at the twenty-first Ibero-American Summit of Heads of State and Government, held in Asunción on 28 and 29 October 2011 (A/66/549, annex).

14. **Mr. Maza Martelli** (Observer for El Salvador) reiterated his Government's position that the question of the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas should be resolved in line with the principle of territorial integrity. By law, geography and history, the

full exercise of sovereignty over the Islands should be restored to the Argentine Republic.

15. The OAS General Assembly, in its June 2012 Declaration on the Question of the Malvinas Islands, had reaffirmed that the question was a matter of enduring hemispheric concern. El Salvador joined the international community in calling upon the United Kingdom to resume negotiations with the Argentine Republic to find a just, peaceful and definitive solution to the dispute as soon as possible.

16. **Ms. Miranda** (Observer for Peru) said that the presence of President Fernández at the previous meeting had demonstrated Argentina's interest in finding a peaceful and definitive solution to the dispute. Peru's consistent position had been reiterated bilaterally in a letter dated 8 February 2012 addressed by President Humala Tasso to President Fernández, and regionally in the country's full endorsement of recent declarations by States members of MERCOSUR and associated States, the Community of Latin American and Caribbean States (CELAC), UNASUR and OAS.

17. The General Assembly, in its resolution 37/9, had requested the Secretary-General to undertake a renewed mission of good offices in order to assist the parties to find as soon as possible a peaceful solution to the sovereignty dispute. Argentina had often reiterated its willingness to negotiate and the United Kingdom should also take a constructive attitude to negotiation in order to finally close that fateful chapter of colonialism.

18. **Mr. Alzate** (Observer for Colombia) reiterated his Government's support for the Argentine Republic in its sovereignty dispute over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas. It was regrettable that the dispute had not yet been resolved, despite the time that had elapsed since the adoption of the relevant General Assembly resolutions.

Question of Gibraltar (A/AC.109/2012/14)

19. **The Chair** informed the Committee that the delegation of Spain had indicated its wish to participate in the Committee's consideration of the item. He drew attention to the working paper on the question of Gibraltar prepared by the Secretariat (A/AC.109/2012/14).

Hearing of representatives of the Non-Self-Governing Territory

20. *At the invitation of the Chairman, Mr. Picardo (Chief Minister, Gibraltar), took a seat at the petitioners' table.*

21. **Mr. Picardo** (Chief Minister, Gibraltar) said that successive Chief Ministers had addressed the United Nations since the 1960s to say that there could only be progress with decolonization if the people of Gibraltar could exercise their inalienable right to self-determination, a right that could not be curtailed. It was clear that Spain had not and never would acknowledge the international legal status of the current inhabitants of Gibraltar, or their right to decide the future of their land. Such a position was anti-democratic and contrary to the provisions of Article 73 of the Charter of the United Nations. He wondered how modern-day Spain could adopt such an eighteenth-century attitude, which also contradicted statements made by previous Spanish foreign ministers. A prominent former Spanish diplomat had recently acknowledged that all of Spain's strategies had failed and that Gibraltar would never be Spanish.

22. The Spanish Guardia Civil continued to trespass in Gibraltar's territorial waters in an effort to assert jurisdiction by escorting Spanish fishing boats operating there in breach of Gibraltar's environmental protection laws and the good neighbourliness provisions of Article 74 of the Charter. Spain claimed that no territorial waters had been ceded under the Treaty of Utrecht, although Gibraltar's waters had been recognized by the United Nations Convention on the Law of the Sea. Chief Ministers of Gibraltar had challenged Spain, to no avail, to seek an advisory opinion on the matter before the International Court of Justice or the International Tribunal for the Law of the Sea. The Spanish Government's position was untenable in law.

23. He formally challenged Spain to act in the spirit of the Charter and agree to settle the matters of territorial waters and self-determination for the people of Gibraltar before the relevant international courts. Refusal would be an indication that Spain was afraid to test its feeble claims in court.

24. On behalf of the Government of Gibraltar, he formally invited the Committee to visit the Territory to engage directly with the people of Gibraltar and see that the reality was very different to the situation

described by Spain. That invitation, together with the Government of Gibraltar's repeated requests for the issues to be resolved in the relevant international legal forums, showed that Gibraltar was confident of the facts of the case.

25. Current and past generations of Gibraltarians alike felt strongly about the issues and they were not an imported population, as claimed. The powers of the Government of Gibraltar had increased substantially in the time elapsed since the Territory had first been listed, since the first referendum in 1967 and since the adoption of the new Constitution in 2006. The Government asked the Committee whether or not that Constitution delivered the maximum possible level of self-government short of independence and, if not, what changes to the Constitution were required for it to do so. The Government would offer that solution to the people as the fourth option for a referendum in exercise of the right of self-determination.

26. Following the new Spanish Government's regrettable suspension of the trilateral talks, both the United Kingdom and his Government had repeatedly informed Spain of their strong commitment to the dialogue established in 2006. He invited Spain to return to that process, which had been supported by the previous Spanish Government. The issues between the two States should be resolved in the international courts, and Spain should at long last move into the twenty-first century and drop its claim to Gibraltar.

27. *Mr. Picardo withdrew.*

28. **Mr. de Laiglesia** (Observer for Spain) said that the need for progress on decolonization had been emphasized at the regional seminar on decolonization. However, that task was more complex in some Territories because of disputes concerning the legitimacy of the exercise of sovereignty by the administering Power. Any new formulas for attaining the Committee's objectives must take into account the principles of the United Nations and the resolutions relevant to each case.

29. The Committee must consider, on a case-by-case basis, whether local authorities were capable of presiding over their territories responsibly and independently. Where there was no dispute regarding the rights of another State, the opinion of the population was an important factor in the path to decolonization. The administering Powers and the

residents of such territories must initiate a dialogue aimed at transferring colonial ties without delay.

30. However, there were cases of "colonialism by consent", in which inhabitants of the Territory forwent their political independence, without regard for the Committee's criteria and sometimes at the expense of the legitimate rights of a third party, as in the case of Gibraltar. The United Nations had recognized that that colonial situation undermined the unity and territorial integrity of Spain, and the administering Power itself had acknowledged that the independence of its colony, against the will of Spain, was not a possibility. Those two factors alone were sufficient reason to demand a negotiated solution. It was unrealistic to believe that his Government would accept the continuing disregard for the legitimate rights of Spain, which were protected under the Treaty of Utrecht and United Nations doctrine.

31. The Committee should be guided by the mandate of the United Nations. For three decades, the General Assembly had been urging the United Kingdom and Spain to reach a solution through dialogue and the Brussels process. Spain called for the resumption of the bilateral dialogue, which had lapsed as a result of the administering Power's refusal to discuss the future of Gibraltar. Spain was convinced that the two States could find an intelligent solution without neglecting the interests of the residents of the colony.

32. Despite the stalling of the Brussels process, Spain continued to cooperate with the United Kingdom and the Government of Gibraltar within the separate framework of the Forum for Dialogue on Gibraltar, with the goal of creating a constructive atmosphere of mutual trust that would benefit Gibraltar and the region as a whole, particularly the Campo de Gibraltar. However, progress on the Forum process was being hindered by the Gibraltar local government's insistence on addressing sovereignty issues that were within the exclusive competence of the United Kingdom and Spain. Issues of sovereignty and jurisdiction must be resolved through bilateral negotiations between the two Governments, as called for by the mandate of the United Nations, which was based on the work of the Special Committee. He therefore urged the Committee not to remove from the list of Non-Self-Governing Territories any Territories that had not been decolonized pursuant to its own criteria.

33. **The Chairman** suggested that the Committee should continue its consideration of the question of Gibraltar at its next session, subject to any directives to be given by the General Assembly at its sixty-seventh session.

34. *It was so decided.*

Question of Western Sahara (A/AC.109/2012/16)

35. **Ms. Comesaña Perdomo** (Cuba) said that the people of Western Sahara had the sovereign right to decide their future without being subject to pressure or conditions of any kind. Despite the stalemate in negotiations in recent years, the parties had confirmed their commitment to continue the talks and Cuba hoped that sustained efforts to find a solution would result in self-determination for the Sahrawi people. Despite its modest resources, Cuba was contributing to development in the area of education; over 300 Sahrawi students were currently enrolled in Cuban educational institutions.

36. **Ms. Anzola** (Bolivarian Republic of Venezuela) said that her Government was firmly committed to the principle of self-determination for Western Sahara and, like many Latin American, Caribbean and African countries, had granted diplomatic recognition to the Sahrawi Arab Democratic Republic. Venezuela reaffirmed its wish that the Sahrawi people should be able to exercise their inalienable right to self-determination, with respect and protection of their human rights, in a just and lasting solution to the conflict.

37. Calling for strict application of General Assembly resolution 1514 (XV), she expressed concern about the lack of in-depth discussion of the current situation or progress made in the Territory and urgently called on the Committee to give greater impetus to consideration of the question of Western Sahara at its future meetings. The Special Committee should also appoint a commission to conduct a second visit to Western Sahara as soon as possible.

38. **Ms. Lalama-Fernandez** (Ecuador) reaffirmed her Government's support for the aspirations of the people of Western Sahara to exercise their right to self-determination by means of a referendum, in accordance with the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO). The April 2012 report of the Secretary-General on the question of Western Sahara to the Security Council (S/2012/197)

had sought the Council's support to sustain MINURSO. The Security Council had responded in its resolution 2204 (2012), calling upon all parties to cooperate fully with the operations of MINURSO and reaffirming the Security Council's strong support for the work of the Secretary-General and his Personal Envoy. Both parties had accepted the Personal Envoy's requests following the last round of negotiations, but Morocco's subsequent decision to cease cooperation with the Personal Envoy meant that it had not met any of those commitments. Such inaction was a dangerous obstruction of the Organization's efforts to complete the last remaining decolonization process in Africa. Meanwhile, violations of human rights and exploitation of natural resources were continuing. It was incumbent on the Special Committee to ensure the right to self-determination for the Sahrawi people.

39. **Mr. Govender** (Observer for South Africa) said that the Sahrawi people's quest for self-determination was supported by legal opinions from the International Court of Justice and the United Nations Office of Legal Affairs. Given the duty of the United Nations to safeguard the interests, concerns and well-being of peoples living in Non-Self-Governing Territories and the well-defined obligations of the administering Power, the Committee should inform the membership of the United Nations of the steps taken to improve the social, economic, political and educational conditions of the Sahrawi people. With the Third International Decade for the Eradication of Colonialism already under way, provision of that information should take on added urgency.

40. Unfortunately, the people of Western Sahara were still awaiting action from two of the principal United Nations organs. South Africa remained hopeful that the Special Committee would take decisive steps to address the situation of the Sahrawi people and that the Security Council would ensure that MINURSO could complete its mandate as defined by the Secretary-General in paragraph 112 of his report to the Security Council of April 2012. The United Nations had an obligation to protect the rights of the Sahrawi people in the Non-Self-Governing Territories while the relevant parties worked towards a solution, as required by Security Council resolutions. The Security Council should continue its unbiased support for the political process under way and South Africa would continue to support efforts to achieve a solution which would provide for the self-determination of the people of

Western Sahara. South Africa had therefore supported the adoption of Security Council resolution 2044 (2012), extending the mandate of MINURSO.

41. The Sahrawi people had conveyed a clear vision for their State to the international community, and South Africa urged the Committee to take measures to address their interests and well-being. The Committee must ensure that proper safeguards were in place to prevent further transgressions of international law, as some States Members of the United Nations continued to exploit the Territory's natural resources under bilateral agreements, despite the concern as to their legality expressed within certain regional organizations.

42. The Sahrawi Arab Democratic Republic was a long-standing member of the African Union. Further prolongation of the status quo was a negation of the Constitutive Act of the African Union and was counter to the vision of a united Africa. Left unresolved, it was also a major impediment to the continent's socioeconomic development and to the promotion of peace, security and stability as a prerequisite for implementation of a development and integration agenda.

Hearing of petitioners

43. *At the invitation of the Chairman, Mr. Boukhari (Frente Polisario para la Liberación de Saguía y de Río de Oro (Frente Polisario)) took a seat at the petitioners' table.*

44. **Mr. Boukhari** (Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente Polisario)) said that the situation on the ground was rapidly deteriorating. Moroccan prisons were full of Sahrawi political prisoners, and many of them were still awaiting trial before military courts, a situation which revealed the true nature of Morocco's colonial presence in the Territory. The Committee against Torture had already urged Morocco to take substantive steps to end acts of violence and ill-treatment against Sahrawi prisoners and civilians.

45. Repression had gone beyond the horrific: the dismembered body of a missing Sahrawi citizen had recently been found while the body of another young Sahrawi, assassinated by a Moroccan policeman in 2010, had been kept in a morgue and only recently buried by the authorities, in violation of legal norms and religious practices; the whereabouts of more than

600 Sahrawi civilians captured by Moroccan forces remained unknown and more than 300 of them, including young children, had reportedly died in captivity; hidden graves of Sahrawis had been discovered in the south of Morocco; and there had been allegations of Sahrawi civilians being thrown out of helicopters or buried alive. Many international bodies had called on the Security Council to establish a mechanism to report on the human rights situation in the Territory, and France's opposition to that initiative was a clear example of double standards.

46. Citing the recent developments outlined in the Secretary-General's report to the Security Council and the text of Security Council resolution 2044 (2012), he recalled the failure to comply with any of the commitments stemming from the last round of negotiations. The credibility of the United Nations was damaged by its reluctance to upset Morocco, a country which aggressively opposed the right to self-determination. Morocco's lack of cooperation with the Secretary-General's mediators reflected an irresponsible attitude and called into question the international community's diplomatic approach to finding a peaceful solution to the colonial conflict in Western Sahara.

47. The issue of Western Sahara must be resolved by allowing its people to exercise their right to self-determination; the occupying Power's claim that the Sahrawi people could do so without the option of independence was contrary to international law. The Committee must conduct a second visit to the Territory and hold an in-depth debate on the current state of the decolonization process. Frente Polisario stood ready to support the Committee in that endeavour.

48. *Mr. Boukhari withdrew.*

49. **The Chairman** said he took it that the Committee wished to transmit all relevant documents under the agenda item to the General Assembly to facilitate the consideration of the item by the Special Political and Decolonization Committee (Fourth Committee).

50. *It was so decided.*

The meeting rose at 12.10 p.m.