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Reply of the kingdom of Morocco to the request for information contained in the operative part of Resolution 2 D (XXIX) of the Sub-Commission on Prevention of Discrimination dated 31 August 1976 (U.N.Doc. : Commission on Human Rights: E/CN.4 Sub 2/391 15 June 1977)

In its resolution 2 D (XXIX), entitled "Question of the violation of human rights and fundamental freedoms", the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested "the parties concerned to use all means to ensure to the refugee population of 'Western Sahara' the effective enjoyment or human rights".

Recalling certain Security Council resolutions on the question, the Sub-Commission called upon "all parties interested and concerned to adhere to the principles of the Charter of the United Nations, international instruments in the field of human rights, and the relevant resolutions of the General Assembly and 'the Security Council, and to work towards the full restoration of human rights to the population of the 'Territory of Western Sahara'".

Before giving the information requested by that resolution, the Kingdom of Morocco wishes to put forward a preliminary consideration which largely conditions its response; this relates to the applicability to the particular case of the definition of the concept of "minority" which seems to be the partial basis for the Sub-Commission's competence.

In the light and on the basis of that classification, the Kingdom of Morocco will endeavour to show in what follows that, if the rights of certain Moroccan nationals who are natives of the Sahara formerly under Spanish domination are being violated, that violation is attributable to a foreign country which, ever since the territory of the Sahara entered the final phase of decolonization, has stubbornly and maliciously opposed all initiatives of the Kingdom of Morocco to bring about a final peaceful settlement, in accordance with the rules of international humanitarian law and international law, of a situation which has at all times been imposed" on it. It will be for international humanitarian organizations after having obtained a clear idea of the development. It of the situation, to assist the Kingdom of Morocco

and the Islamic Republic of Mauritania in putting an end to this state of affairs, by working with the two countries, in full awareness of the facts, towards the full restoration of human rights to the population of the former Territory of Western Sahara".

The concept of minority. The Larousse Dictionary defines minorities as "groups which, being 'historically established in a particular territory, are traditionally opposed by race, language and religion to the mass of nationals of the States into which they have been incorporated".

According to the Permanent Court of International Justice:

"The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a state, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time, preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs."(P.C:I.J., Series A/B,No. 64, p.17).

All these elements are to be found in the definition of this concept contained in the statement-by-the Sub Commission that "Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population, The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language. In order to qualify for protection, a minority must owe undivided allegiance

to the Government of the State in which it lives. Its members must also be nationals of that State". (E/CN 4/367,p. 20).

This definition brings out the main elements which identify a minority:

It must be a distinct and non-dominant group: the minority may be quantitative (a minority as opposed to a majority) or relational (an oppressed group as against a dominant group. For instance, the whites of southern Africa are not a minority because they are the dominant group).

It must have objective characteristics which distinguish it from the majority of the population: these are race, language and religion; to these are sometimes added ethnic origin or national character, but these two characteristics are covered by the first three;

Finally, there must be a psychological element: the desire to be treated differently from the majority so as to preserve these objective characteristics.

If these criteria are applied to the population of the Moroccan Saharan provinces formerly under Spanish domination, it can be seen that none of these conditions is fulfilled and that in fact the Moroccan people, both in the northern provinces and in the recently recovered Saharan provinces, forms a whole whose unity was merely strengthened during the period of French and Spanish colonial domination.

I- THE NATIONAL UNITY OF THE MOROCCAN PEOPLE

This unity of the Moroccan people, which dates back over 1,000 years and has been forged and strengthened through the centuries, has been subjected to many attempts to destroy it, based on the claim of linguistic or at least dialectal diversity, ethnic diversity or, in the absence of any better expedient, geographic diversity. But on each occasion, foreign machinations have been thwarted.

Thus, the colonial partition of Morocco between Spain and France provoked the first popular uprising of the twentieth century against colonial occupation the Rif war of 1921-1926.

Similarly, on 16 May 1930, the whole of Morocco rose up against the "Berber Dahir" prepared by the Protectorate administration with a view to separating the so-called Berber regions from the other regions of Morocco in their administrative, political and judicial organization and setting up in the so-called Berber regions a number of evangelization groups. This groundswell leading to the uprising or the Moroccan masses undoubtedly marked the start of the resurgence of the Moroccan nationalist movement which, following the armed insurrection in the Rif and in the south Was 25 years later to win the fight for the national unity and independence of the Kingdom of Morocco.

In addition, the unity of the Moroccan people can easily be demonstrated by a brief description of the genealogy of the original tribes of Moroccan Atlantic Sahara, which have remained attached to Moroccan national institutions by the tie of allegiance which is the basis of nationality under Moroccan Islamic law and which was solemnly recognized as such at the international level by the Madrid Multilateral Convention of 3 July 1880.

(A) The Ethnic element. An examination of the genealogy of the tribes of the Moroccan Atlantic Sahara shows that this region is not only an integral part of Morocco but has been and still is one of

the most important ethno-cultural centres of the whole Moroccan nation. This fact has been brought out by a number of historians and researchers, including H. Terrasse, G. Ayache and Galo Bullon diaz.

After acknowledging the existence of an “inner Morocco”, both Mediterranean and Atlantic, to the north and west of the Atlas and an “outer Morocco” comprising all the regions beyond the Atlas, the French historian H. Terrasse states that because of climatic conditions, “the periodic conquest of inner Morocco by outer Morocco has taken diverse forms. Most often, a dynasty originating beyond the Atlas has conquered Atlantic Morocco” (H. Terrasse, **Histoire du Maroc, des origines à l’établissement du protectorat**, Paris, Ed. Plan, 1949-1950).

This is the case of Youssef Ibn Tachfine, the first ruler of the Almoravid dynasty, “the most outstanding personality of the western Muslim world in his time, whose work, more than that of any other ruler, was to determine the destiny of Morocco”. This monarch was a direct descendant of a sept of the Lemtouna tribe, who had their dynastic origins in western Atlantic Sahara.

It should be noted for the record that, in the eleventh century, Morocco was inhabited by two large tribal groups: the Masmouda in the western part, and also, and above all, the Sanhaja who, being spread out over an area ranging from the Mediterranean coast to Atlantic Sahara, were already a powerful element of human unification. H. Terrasse has written that “the Sanhaja of Morocco, who were widely distributed throughout the oases, formed a sort of north-south flow, although one which doubtless dwindled in time and culminated in an isolated and expanding group in the Rif. But in the Atlantic plains there were only a few pockets of them, Yacoub¹ indicates their presence at Aghnat, in present-day Haouz”.

The fifteenth and sixteenth centuries saw the Emergence of illustrious **marabouts (saints) who originated in Morocco and were**

the ancestors of the present main Moroccan Atlantic Sahara tribes, particularly Sidi Ahmed Rguibi (Rguibat tribe) Sidi Ahmed Laroussi (Laroussiyyine), Sidi Ahmed Ben Ghanbour (Ouled Tidrarin), and Sidi Ou Hassoun (Yaggount).

At the present time, the various tribes are distributed in the north and south Atlantic region of Morocco,

They are grouped into two large confederations: the Rguibat confederation and the Tekna confederation, which are distributed, as the attached map shows, in the north and south of Morocco:

1 - The Rguibat confederation comprises the descendants of Sidi Mohammed Rguibi, one of the nephews of Moulay Abdeslem Ben M'Chich, whose tomb is situated at Jbel El Alam in the Tétouan region. The Rguibat, who are the descendants of the Idrissid Moroccan **chorfas**, now live in the Sakiat El Hamra, but are also found among the populations of the town of Marrakesh, and of the Haouz and eastern Souss.

Among the tribes belonging to this confederation are the Ouled Moussa, the Souaéd, the Oulad Daoud, and the Ouled Tales.

Describing their life-style, the Lebanese journalist Mohamed Abou Anane has stated that "the Rguibat retain in family organization the same customs and traditions inspired by the spirit of Islam as the rest of Morocco" and that "no difference could be found between those living around the town of Smara or Laâyoune and the inhabitants of Goulimine, Tiznit or Tarfaya: people, traditions and life-styles are the same" (**Le Sahara marocain, Vérité et Histoire, 1975**).

2 - The Tekna confederation is composed of 12 tribes of Arab origin (Aït Jmel) and Berber origin (Aït Bla). The main ones are:

The Izarguiyyine, who originate in the Arab-speaking tribes of the western coastal plains of central Morocco and are found in

the populations of Tarfaya and Ifni (Moroccan Atlantic provinces recovered from Spain in 1958 and 1959, respectively) and even in the town of Fez;

The Ouled Tidrarin, whose founder, Sidi Ahmed Ben Gharbour, came from the mountain region of northern Morocco (Ouazzane region), are found in the provinces of Tarfaya, Marrakesh, Es Saouira and Agadir;

The Laroussiyyine, whose founder was a native of the Marrakesh region and many of whom now live in the Mediterranean province of Tetouan;

The ouled Dlim, who also have affinities with the Moroccan population; one branch of this tribe has settled in the region of Sidi Kacem (a town between Rabat and Meknès) and another in the regions of Marrakesh and Es Saouira;

The Filalas, who are chorfas originating in Tafilalet, are found both in Tarfaya and Sakiat El Hamra.

As well as these two confederations there are other tribes such as:

The Ahl Maâ El Aïnin, who are also Idrisside chorfas and whose patronymic comes from Sheikh Maâ Afninj, a famous religious leader and resolute defender of Morocco's national unity and territorial integrity in the late nineteenth and early twentieth centuries;

The Ouled Bousbae, some of whom live at Chichaoua in the Es Saouira region.

Galo Bullon Diaz wrote the following about this tribe in the January/February 1945 issue of **Revista Africa** : "Sidi Ahmed Ould Hamel, the founder of the Ouled Bousbae, is buried in the mountain of the Chtouka tribe. His son, Noumer, settled in Oued Massa and died there. His descendants have formed a group known as the Ouled

Noumer" who live 20 km to the north of Tiznit. His other sons, Amar and Amara, went to the Haouz of Marrakesh and settled in the valley of Marrakesh and Mogador to the south or Chichaoua, where a group of their descendants live under the name of ouled Bousbae.

"At that time; Sultan Moulay Ismaël Ben Moulay Abdallah was reigning' in Morocco and, granted them vast expanses of land to settle in. Later, the tribe divided into two groups and emigrated: the, first group, formed by the Ouled El Haj made for northern Morocco and the second group for the Sahara".

Still today, this unity is symbolized perfectly by the fact that the royal family of Morocco is directly descended from a Sahrawi woman from the Moroccan Atlantic Sahara, Khenata Bent Cheikh Bekkar El Maghfiri, whom King Moulay Ismaël (1646-1727), himself the son of a Filali Sahrawi, married in about 1680 and who was the mother of his successor.

This mobility of the population of the Sahara is due to the fact that the territory has always been a place of passage. The June/ July 1945 issue of *Revista Africa* had the following to say about the population of the Sahara:

Inhabitants: in this area, too, no fixed tribes can be allocated to a particular Office, as the mobility of its groups and even of its families does not permit it. It is an area of transition, a meeting-point of races, a question on which we shall not digress by speaking, of the Berbers and the Arabs. We will, however, say that it is a region of passage in its alternations of nomadic tribes, which come and go across the river Drâa at intervals dictated by the rainy seasons.

"Thus we find that the Ait-Oussa and the Aït-Lahcen, Tekna tribes which are normally settled and some groups in process of settling in French-protected southern Morocco go down to the Sahara in search

of pasturage ; reciprocal hospitality is given to the Izarguien, Yaggout and Rguibat tribes which travel north of the Draa also looking for pasturage for their cattle ; the first two of these tribes are the most important of those normally populating the Protectorate zone whose delegation we are studying.

H. Terrasse wrote that "the Moroccan -oases which were a hallway and a secondary entrance to Morocco, were also the ports of the desert. The caravans which crossed the Western Sahara reached the Draâ and the Tafilalet. There it was that Mediterranean Barbary joined up with the real Africa. It was through this channel that Morocco entered into trade and sometimes political relations across the Sahara with Senegal and the Sudan. In fact that was the only direction where Morocco could claim to represent civilization (H. Terrasse op. cit., vol. I, pp. 9 and 10).

Hence there arose the phenomenon of "north-south ethnic flow" and the mobility of the Moroccan population of the Sahara, which constitutes a real sampling of the peoples of the vast areas of Morocco, reflect the tangible reality of the Economic, cultural and social symbiosis which has existed since time immemorial between the valley of the Draa, the southern Souss and the Atlantic Sahara.

But the Moroccan Atlantic Sahara is not only one of the centres of the Moroccan nation; particularly for the last 50 years, it has been the very mainspring of Moroccan resistance and struggle against foreign penetration and domination.

(B) Resistance to foreign designs and foreign occupation.

Throughout Morocco's history, external dangers have been a strong catalyst to Moroccan unity: "Four centuries of national defence (from the fifteenth to the nineteenth centuries) against the same invaders (the Spaniards and the Portuguese) are certainly calculated to build up the moral national unity of a people and to perpetuate it even without the more modern factors which have played their part in the formation of nations", G. Ayache

"Le sentiment national dans le Maroc du 19^e siècle" in *Revue historique*, 1968, p. 395.

This unity was particularly strikingly illustrated in the twentieth century, even before the popular uprising of 1956, by the resistance led by Maâ El Aïnin and his sons against both Spanish and French penetration in the Saharan provinces and on the other side of the Atlas mountains, in the regions of Marrakesh, the Tadla and the Souss.

From 1890 to 1900 Sheikh Maâ El Aïnin caused all sorts of difficulties to the Spanish political mission and to English commercial enterprises of Cape Juby, but from 1904 on the Sheikh devoted all his activities to the struggle against French penetration.

The signing of the Act of Algeciras, in 1906, sparked off an internal political crisis which caused concern to the religious leader, Sheikh Maâ El Aïnin. According to Colonel Angel Domenech Lafuente, "All social classes, especially the politicians and the nationalists sent letters and messages to the Sheikh asking him to intervene in order to avoid the chaos which they feared would result. The marabout advised everyone that no effort should be spared to achieve unity and eliminate injustices".

As danger mounted, Maâ El Aïnin moved northwards. He left Smara and at the end of 1909 settled in the Sherifian city of Tiznit, From there, he prepared to intervene in the north. Heading the Tekna and Rguibat contingents, he advanced on Fez, but was defeated in the Tadla in June-July by French army units. Sheikh Maâ Aïnin died in Tiznit at the end of October 1910. His son Sheikh Ahmed El Hiba also attempted to fight French penetration, but he was defeated in 1913 in the Marrakesh region.

In 1912, Morocco was subjected to the partition imposed by the Protectorate regime. A zone in the north of the country and another in the south (Tarfaya), together with the Ifni enclave, were

ceded to Spain and the earlier secret Franco-Spanish agreements concerning the occupation by Spain of the Sakiet El Hamra were recognized; in addition, Tangier was made into an international city. For this reason, the Moroccan national liberation movement, unlike that of several other countries, was unable to concentrate all its efforts against a single occupier and in a single territory under the same colonial regime.

Consequently, in 1953-1954, two liberation armies were formed, one in the north and the other in the south (at Sakiet El Hamra and Tindouf).

Attacks against Spanish military posts began at the end of 1954 in southern Morocco at Tarfaya, Sakiet El Hamra and Rio de Oro. The Tekna and Rguibat tribes formed the bulk of the Saharan contingent in the liberation army. The harrying actions in 1956-1957 forced the Spaniards to draw back and contract their military forces, The foreign region units, the "banderas", evacuated Smara and Aoucert. At the end of August 1956, the Spanish forces withdrawn from the interior of the provinces were quartered at Villa Cisneros, El Aïoun and Cape Juby. Apart from these three pockets, the entire territory of the Saharan provinces was practically liberated. The Moroccan Sahara liberation army Was so firmly established that It had to set up administrative and judicial structures, and its authority extended up to the southern boundary of the Rio de Oro, opposite Port Etienne,

At the same time, the Ait Ba Amrane resumed the struggle for the liberation of the Ifni enclave.

Since Sakiet El Hamra and Rio de Oro had been liberated, and El Aïoun was under siege, the liberation army continued its inroads into the south, Gutting off the French posts at Fort Trinquet (Bir Mogrein). The French military authorities called in the air force, and there was fierce fighting in the Adrar.

Under the onslaught of the liberation army, Spain granted the French troops the "right of pursuit" to a distance of 100 km beyond the Rio de Oro boundary. Towards the end of 1957, military parleys between General Burgaud and the Spanish command resulted in the adoption of the so-called "Hurricane" plan which envisaged two military operations -one by the French troops termed "Ecouvillon" and the other by the Spanish troops called "Teide".

In its issue NO 4136 of 11-12 May 1958, **Le Monde** made the following comments on this development: "The vacillations in Madrid's policy during 1957 resulted in our neighbours' evacuating the inland posts, From October onwards, Franco's Army held only three positions on the Atlantic coast: Villa Cisneros, El Ayoun and Cape Juby, From November, members of the liberation army forged ahead into no man's land; took control of the tribes in Sakiat El Hamra and rio de Oro and established an embryonic administrative structure everywhere, even opposite Port Etienne. Our intelligence services estimated that in 1957 there were approximately 3000 men in the liberation army installed south of parallel 27° 40, including 400 to 500 in Rio de Oro responsible for supervising the tribes".

The numerical and technical superiority of the French and Spanish troops forced the Moroccan liberation army to retreat towards Tarfaya. After the military operations, repressive operations against the population of the Sahara began and more than 30,000 Sahrawi refugees were obliged to join the liberation army troops beyond parallel 27°40.

But for the Moroccan people, and especially for the fighters in the liberation army, this was a temporary withdrawal until more effective material means became available to them.

This Franco-Spanish alliance to crush the liberation army was not the first such alliance but rather a repetition of the 1925-1928 campaign which enabled Spain to obtain the surrender of Abdelkrim El Khattabi in northern Morocco.

What must be stressed with respect to the Moroccan Atlantic Sahara is that, when Moroccan independence was proclaimed in 1956, the resistance sprang up again under the impetus of the same men who had led it 30 years before. In his work "Sahara espagnol fin d'un mythe colonial" (page 14), Attilio Gaudio wrote that "under its pressure, the small, lightly-manned, badly-armed Spanish garrisons which were holding the posts in the interior were forced to withdraw to the coast. Within a few months, the whole of Spanish West Africa was under the exclusive authority of the Moroccan liberation army".

On page 175 of the same work, Attilio Gaudio describes the origins of that uprising:

"After the return of H.M. Mohamed V to Morocco, Mohamed El Aghdaf convened, in mid-March 1956, the historic Congress of Southern Saguiet El Hamra, his native province. Five thousand representatives from the 13 Saharan tribes were present at this meeting ... The Congress, whose theme was national unity, was presided over by Mohamed Al Aghdaf as official representative of the Sultan and as spiritual leader. The following decisions were taken:

- (1) The Moroccan flag must fly over the whole of Western Sahara;
- (2) Taxes were not to be paid to the colonial authorities until a Sherifian Dahir gave the order to do so;
- (3) The colonialist policy aimed at dividing Morocco must be fought against;
- (4) The Saharans were urged to rebel against Spanish colonialism if Spain delayed the independence of the territories under its occupation;
- (5) A delegation was to be sent to Rabat as a demonstration of loyalty to H. M. Mohamed V, the only authority recognized by the Sahrawis,

"The two colonial powers, Spain and France, then launched a vast campaign of repression in February 1958 against the aspirations of the Saharans.

"Sheikh Mohamed Al Aghdaf and his retinue were bombed from the air. After some time on the move, he arrived at Goulimine, where he had his historic meeting with King Hassan II, who was then Crown Prince, On 27 July 1956, Mohamed Lagdaf was received in Rabat by H.M. Mohamed V..."

Thus the process of national resistance and colonialist repression in the Western Atlantic Sahara were brought to a conclusion, the present illuminating the past and the past explaining the present.

To recall these historic facts enables it once again to be seen that the Moroccan people, from Tangier to El Aïoun, were motivated by the same feeling of national awareness in their struggle against foreign powers since, without the support of the local populations which provided supplies for them, the liberation army would never have had the freedom of manoeuvre and movement which enabled it to reach Sakiat El Hamra and Rio de Oro. All the fighting against the occupying forces and all the sacrifices were made for the liberation of the Saharan provinces and their reintegration into the motherland.

Thus, Morocco and its people have historically privileged roots in the sub-tropical region of Atlantic Sahara, roots which have never been severed from the stem which they have given spiritual enrichment over the centuries and which the late foreign occupation was not able and did not dare to cut off. This emotional attachment was all the stronger throughout the period of colonial domination in that it was reinforced in the deep-seated consciousness of a population renowned for its unceasing resistance to foreign attempts to obliterate its national identity, by the firmly established legal and political principle of perpetual allegiance underlying the bond of nationality in Islamic law and even, as we shall see, in international law,

(C) Legal ties of allegiance, the basis of nationality in Moroccan law

In recognizing, in its advisory opinion of 16 October 1975, "the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara", the International Court of Justice sought to place the problem in two complementary contexts -the theoretical context of Islamic law and the specific and practical context of Morocco at the time of the colonization of the Sahara- without overlooking the general context of decolonization,

(1) Theoretical context : Islamic law

In Islamic law, sovereignty belongs to God alone and earthly sovereignty is no more than a delegation of powers subject to an election by consensus on the part of the community, an election known as the "Baïa", or act of allegiance. This act is carried out by the representatives of tribes or regions and is often given physical expression in a written document called "Acte de Baïa",

The mandate which the sovereign holds by reason of his investiture (Baïa) is a veritable contract. Once having given his free consent, he is irrevocably bound by the law which it is his duty to apply and he must be obeyed, provided that he orders nothing prohibited by the law.

In return, individuals have the right to protection of their persons and property within the framework of the law. Sovereignty is thus grounded in the classic concept -that is a sovereignty based on a social contract- and, consequently, the two concepts of sovereignty and of the tie of allegiance (nowadays we would say nationality) are interwoven.

In 1933, Professor Milliot, an Islamic scholar, wrote the following in an article entitled "l'organisation française de l'Afrique du Nord":

"In modern Western European thinking, the concept of sovereignty has two elements: a material, external and visible element expressed by force and symbolized by the sword and the scales, and a non-material element, represented by the express or tacit consent of a particular group: sovereignty is a power which is not suffered but accepted.

"Under the Muslim way of thinking, the Koran is the basis, of political and social organization. The religious law, or chraâ, encompasses all private law: the law of property (property, obligations and contracts), family law (marriage, filiation, incapacity) and the law of family property (marriage contracts and succession). The Prince, or Caliph, is essentially the depositary and guardian of religion. He is the Imam, the leader of prayers and of worship the Khotba, or Friday sermon, is delivered in his name in the mosques. He is generally responsible for leading and keeping Muslims in the path of Allah; he, as the chief servant of Islam, cannot evade the obligations laid down by the chraâ or release his subjects from them.

"There is no doubt that the Muslim sovereign, vested with such broad powers and assisted by viziers and high officials, has been able to exercise considerable influence over his subjects, an influence backed up by force, it is true, but also grounded in moral authority and prestige".

This concept of allegiance has been and still is in very large measure one of the bases of nationality in European law and especially in Anglo-Saxon; law in that connexion, reference may be made to the following entry in Encyclopédie de Droit international privé (quoted in Dictionnaire Larousse XXè) :

"Allegiance: obligation of an individual to be loyal and obedient to the nation to which he belongs or to the sovereign to whom he is subject.

"Some countries espouse the theory of perpetual allegiance, under which the subjects of such countries cannot, either by their personal acts or even by swearing loyalty to another sovereign, rid them selves of the natural allegiance which they owe to their original sovereign. This bond can be dissolved only with the consent of the sovereign. **In England, perpetual allegiance was recognized until the Act of 12 March 1870. It is still admitted in legal practice in the United States.** Under the Delbrück Act of 22 July 1913, Germany authorized the retention of German nationality Even in cases of naturalization in another country. The Treaty of Versailles (article 278) obliged it to abandon this theory of allegiance".

If it is considered that the principle of perpetual allegiance is characterized by the authority belonging exclusively or at least principally, to a state to break the tie of nationality of its citizens, the practice of the socialist States of Eastern Europe with respect to nationality is indicative of the durability of the principle of perpetual allegiance under different socio-political systems.

This tie of allegiance is not merely formal in nature but has a specific and effective legal character recognized by the International court of Justice, a contrario, as a normal basis of the tie of nationality in its advisory opinion of 11 April 1949 regarding reparation for injuries suffered in the service of the United Nations:

"Nor does the analogy of the ... rule of diplomatic protection of nationals abroad justify in itself an affirmative reply. **It is not possible, by a strained use of the concept of, allegiance, to assimilate the legal bond which exists, under Article 100 of the Charter, between the Organization on the one hand, and the Secretary-General and the staff on the other, to the bond of nationality existing between a State and its nationals"** (Reports of Judgments, Advisory Opinions and Orders, 1949, page 182).

Furthermore, the concise definition of the concept of allegiance given by the Dictionnaire Robert demonstrates the evolution of this concept and the legally objective Character which it has acquired:

"Allegiance: (1) Hist. Loyalty, vassalage of the liege man ('Oath of allegiance');

(2) Obligation of loyalty and obedience to a nation; nationality ('Perpetual allegiance' . Dual allegiance')".

(2) The Specific context of Morocco at the time of colonization

Replying to the second question, the International Court of Justice referred to Morocco "at the time of Spanish colonization" that is to say, a time when rivalry between the European powers created a balance of forces which temporally favoured the safeguarding of Morocco's national independence. The conflicting aspirations of the European powers with regard to Morocco were to be checked by the elaboration, willingly or unwillingly, of an international statute for Morocco, recognized by the Madrid Convention of 3 July 1880 and the Act of Algeciras of 7 April 1906, and to condition the later partition of Moroccan territory into a number of zones, on the basis of various geopolitical considerations, but still within the framework of the international statute.

Hence the establishment of the regime of individual protection which, after being denounced by Morocco, was to result in the conclusion of the Madrid Convention of 1880 and later the Act of Algeciras.

The regime of protection. In the face of the Moroccan people's resistance to foreign penetration attempts, the European powers decided to adopt a new approach consisting of removing Moroccan nationals from national jurisdiction. Since they had no immediate possibility of assailing the territorial integrity of Morocco, the European powers considered it simpler to begin by undermining the national unity of the Moroccan people under cover of-the-practice of "capitulations".

The first provision to this effect is contained in the treaty of 28 May 1767 concluded between Morocco and France, article 11 of which stipulates that "Those who are in the service of consuls, secretaries, interpreters, courtiers or others, in the consular service or the business sector, shall not be hampered in their functions, and shall be exempt from any personal "taxes or duties".

The same provision was contained in the Anglo-Moroccan agreement of 9 December 1856 and the Spanish-Moroccan agreement of 20 November 1861. However, "Following difficulties caused by lack of precision (as to the abject and scope of this right to protection)... and on the basis of claims submitted by the Mekhzen to representatives of the powers, a conference convened at the initiative of the London Cabinet was held in Madrid from 19 May to 15 June 1880 ... The text elaborated by this conference regulated, inter alia, the question of protection. **Since then, Spain has been unsuccessful in its efforts to have the text revised**" (Louis Rivière, *Traité, codes et lois du Maroc*, vol. 1, 1924, op. 6 and 7)

This new multilateral text thus acceded to Morocco's request by limiting the number of beneficiaries of the right of protection, including exemption from certain taxes and duties. With respect to the privilege of jurisdiction, neither the text of 1880 nor previous texts conceded it expressly. However, it had been created by custom, in addition, under article 5 of the 1880 Treaty "it is understood that civil suits commenced before protection shall be terminated before the courts which have initiated such proceeding" It can be concluded from this ... that in ordinary cases, the Consular Court is competent ..." (op. cit., p. 8).

This right of protection was to be subjected to a further restriction requested and obtained by Morocco just before the Madrid Conference of July 1880.

The Madrid Convention of 3 July 1880

Drawing the necessary Inferences from the abuses to which exercise of the right of protection had given rise, particularly the manifest violation of the principle of the equality of citizens before the law and in the matter of taxation, Morocco secured the convening of the Madrid Conference which resulted in the signature of the Convention of 3 July 1880 (between Morocco, Germany, Austria-Hungary, Belgium Denmark, Spain, the United States of .America, France, the United Kingdom, Italy, the Nethelands, Portugal, Norway and Sweden).

This international instrument recognizes, in various provisions, the need to respect Moroccan sovereignty. This is the case with article 11, but more particularly with article 15, on naturalization.

Article 11 reads: "The right to own property in Morocco shall extend to all Foreigners.

"The purchase of property must be effected with **the prior consent of the Government** and the title-deeds to such property shall be subject to the forms prescribed by **the laws of the country**.

"Any question that may arise concerning this right shall be settled **in conformity with** the same laws ... ".

In the introductory note to this Agreement, Louis Rivière explained the tenor of the article by saying: "We may be astonished to see the Draconian requirement of prior authorization maintained in an instrument which, on other points, wrested important concessions from the Makhzen ...

"On the other hand, the application of national laws to property matters -in this instance, Koranic chraâ law is in conformity with the general rules of lax, on which article 3 of our civil code is also based. It is by virtue of the principle *Locus regit actum* that titles to property are subject to local forms"(op. cit. , p. 60).

The reasons which prompted Morocco to request the inclusion of article 15, relating to naturalization, were explained by Louis Rivi re. "In the second half of the last century, the Makhzen was distressed to see Moroccan subjects who had been naturalized abroad returning to Morocco and benefiting, vis- -vis their compatriots, from advantages conferred on them by a European nationality. It had on several occasions, and not without reason, protested against this abuse. The question was brought up for discussion at the international conference convened at Madrid in May 1880 to settle the right of protection in Morocco".

This request formed the subject of a special provision of the Madrid Convention of 3 July 1880, which stipulates in article 15 that:

"Any Moroccan national naturalized abroad who returns to Morocco shall, after having remained for a length of time equal to that ordinarily required to obtain such naturalization, choose between complete submission to the laws of Europe and the obligation to leave Morocco, unless it can be shown that his foreign naturalization has been obtained with the consent of the Government".

Thus, Morocco seems to be the only Muslim State to have had its nationality dealt with in an international multilateral agreement and to have obtained acknowledgement of the principles on which it is based by the European Powers, including France and Spain after the establishment of the Protectorate.

France made a point of excluding Moroccan nationals from the scope of the Decree of 29 April 1920 relating to French naturalization of foreigners residing in Morocco, **without however excluding Algerian and Tunisian nationals from it:**

"Article 1. After the age of 21, foreigners who are not subjects of the Sultan of Morocco and who can provide proof of three years'

residence in either Morocco, with the exception of the Spanish zone of the Sherifian Empire, or France, Algeria or Tunisia, may be naturalized provided that their most recent period of residence was in Morocco".

Similarly, article 1 of the French Nationality Act of 10 August 1927 provides that "Young persons who were born in France of a foreigner not a subject of the Sultan of Morocco and who are domiciled in Morocco shall acquire French nationality ...

The wording of these two articles shows clearly that article 15 of the Madrid Convention was not merely a declaration of intent but a multilateral obligation scrupulously assumed, on the same footing as the other Contracting Powers, by France and also by Spain in the "Spanish zone of the Sherifian Empire".

Article 3 of the Caliphan Dahir of 12 February 1941 regulating fishing between the mouth of the Oued Draâ and the 26th parallel north (an area which at present corresponds to the Moroccan provinces of Smara and Laayoune and part of Boujdor province) provides that:

"The penalties imposed by the order of 26 September 1939 of the Minister of Industry and Commerce shall be applicable to nationals guilty of offences ...".

This Dahir, which legislates for Moroccan nationals of Atlantic Sahara by extending the territorial application of a Spanish text from the Oued Draâ to the 26th parallel north, reflects the fact that although at the time Spain exerted territorial influence on the Atlantic coast of the Sahara, such "influence was limited "ratione personae" in such a manner that a Spanish legislative or regulatory provision could only be applied to the non-Spanish inhabitants of the territory by virtue of a similar text imposed by the Moroccan Government in its "zone", as we shall see below.

Moreover, although at one time Spain was tempted to breach

the obligation deriving from article 15 of the 1880 Convention by envisaging a so called "Sahrawi nationality" project, it later had to acknowledge the failure of its scheme and, hence, the permanence of Moroccan nationality in the major part of Atlantic Western Sahara

It will be recalled that on 20 November 1974 the Spanish press reported that the Governor General was about to submit to the Jemaâ for consideration a proposal entitled "Sahrawi nationality legally defined".

This proposal purported to establish the conditions for the granting, acquisition and loss of "Sahrawi nationality". Because it was rejected by the population, as we shall see, it was to remain a dead letter. By its action, however, **Spain nonetheless acknowledged that the inhabitants of Atlantic Sahara were not Spanish nationals.** Belatedly, of course -from 1965- they had been represented in the Cortes, but they were never assimilated to **Spanish citizens** even after the 1958 "provincialization" of Atlantic Sahara. "

The population reacted sharply to this Spanish attempt to fabricate a "Sahrawi nationality". It is very significant that the inhabitants regarded this so-called territorial nationality merely as a derivative of that Spanish nationality which they did not consider themselves to possess, any more than the administering Power considered them to be Spanish nationals.

It was reported from Tarfaya that on 27 November "there was a large demonstration of Sahrawi women at Laâyoune in front of the Jemaâ building" and "since the Spanish authorities had manhandled the demonstrators who were trying to enter the building", despite the intervention of families, the detainees "who had shouted slogans against the Spanish occupation and in favour of the return of the Sahara to Morocco refused to leave the prison against any bail required by the occupying Spanish authorities".

At the same time, the Cadi (senior Judge) of Laâyoune, Sheike Ibrahim Al Layli, took refuge with a number of Sahrawi scholars in the liberated part of the Sahara. On 4 November 1974, the Cadi of Laâyoune held a press conference at Rabat, which the, Maghreb Arab Press Agency reported in the following words: "He then emphasized the rejection of the Spanish nationality imposed on the inhabitants of the usurped Sahara, stressing the fact that our Sahrawi brothers are indefectibly attached to His Majesty Hassan II despite all colonialist manœuvres and that the tribal chiefs have documents drawn up in the reign of Moulay Hassan I testifying to their Moroccanness and their attachment to the motherland".

Following these reactions and the refusal of the Jemaâ to endorse its proposal, Spain had to abandon it and content itself with issuing simple "territorial identity cards" to the inhabitants, as in the past.

Although Spain did not consider the Sahrawis as Spanish nationals and although the inhabitants of Moroccan Atlantic Sahara had strenuously objected to the "Sahrawi nationality" proposal, were they, for all that, Stateless persons on their own soil during the period of Spanish domination and at the time of the decolonization of the territory by Spain?

The reply can only be in the negative if account is taken of the fact that the Convention relating to the Status of Stateless Persons of 28 September 1964 stipulates, in article 1, that "the term 'Stateless person' means **a person who is not considered as a national by any State under operation for its law**".

Now, as we have seen, neither French nationality laws nor Spanish legislation in the "Spanish Zone of the Sherifian Empire", still less Moroccan positive law, severed this legal tie of allegiance between the Moroccan State and its citizens in former Spanish Sahara .

The Spanish Government's decision, by decree of September 1976, to grant the inhabitants of Atlantic Sahara the right to

opt for Spanish nationality subject to the possession of certain documents (namely, identity documents identifying them as really originating from the Sahara) provides further material proof of the Moroccanness of those inhabitants.

By giving the "Sahrawis" the right to opt for Spanish nationality, (which already presupposes a choice **between at least two situations**), the decree implicitly acknowledges that they possessed a **nationality other than Spanish nationality**, which confirms What was said above concerning the abortive "Sahrawi nationality" proposal.

This conclusion is borne out by the use of the term "**naturalization**" in the decree. This term denotes the acquisition of another nationality; it differs from the attribution of primary nationality, which is attached to "**jus sanguinis**" or "**jus soli**" and from reintegration, which constitutes a return to Moroccan nationality. **Naturalization presupposes the acquisition of a secondary nationality and 'implies that there is a principal nationality.**

If the inhabitants of Atlantic Sahara are not Stateless persons, if they possess a principal nationality other than Spanish nationality and if the international Court of Justice has expressly recognized that there were ties of allegiance between certain tribes of former Spanish Sahara and the Sovereign of Morocco, the only nationality the members of such tribes could have in the context of private and international law Which we have outlined, is Moroccan nationality.

Although certain provisions of the Madrid Convention of 3 July 1880 have obviously lapsed (fiscal advantages, rights of protection, etc ...), article 15, which relates to the fundamental criterion of Moroccan nationality, is still in force, as Paul Decroux emphasizes in his work, *Droit Privé* (vol. II, 1970, p. 16).

"For the study of Moroccan nationality, account must also be taken of the provisions of article 15 of the 1880 Madrid Convention

which, so far at least as they constitute rules of international conventional origin are still in force, despite promulgation of the code (of Moroccan Nationality), particularly With regard to the status of Moroccans who return to Morocco after obtaining foreign naturalization in a country benefiting under the Convention.

"Moreover, article 1 of the Code recalls under the title 'Sources of Law in the Matter of Nationality 'that' the provisions of international treaties or agreements which have been ratified and published shall prevail over those of domestic law'." (P. Decraux, op.cit.,p.16).

In explaining the scope of this article, the same author draws the following conclusion in a footnote :

"Moroccans who have obtained foreign naturalization without the consent of "the Moroccan Government in a country which does not benefit under the Convention are regarded as Moroccans immediately, upon their return to Morocco".

Such a provision assumes its full importance in its historical context, for in 1880 the European Powers were not, in their relations with Morocco, confronted by a problem of nationalities (In the plural) -as had been the case with the Ottoman Empire which, from the sixteenth century, had extended its influence in North Africa except in Morocco, which had remained an independent and sovereign State - but rather by the problem of Moroccan nationality as such, i.e. the nationality of a State which was negotiating on an equal footing with the concert of European States. The insertion of an article on Moroccan nationality in a multilateral international convention was to prove beneficial for the preservation of Morocco's national unity, for four years later, in November 1884, the Spanish landed on the Atlantic shores of Western Sahara.

Moroccan nationality was particularly stable and permanent

because foreigners in Morocco already had a conventional status deriving from Morocco's geographical position, which is particularly favourable to sustained trade contacts, and because the guarantee of Moroccan sovereignty had remained a constant feature of international instruments binding Morocco, such as the Act of Algeciras.

The Act of Algeciras: this Act resulted from the Conference held from 16 January to 7 April 1906, which was attended by the same Powers as had signed the Madrid Convention, including, obviously, Spain.

In its preamble, the General Act of the international Conference of Algeciras of 7 April 1906 states: "Guided by the importance of ensuring that order, peace and prosperity reign in Morocco, and recognizing that this estimable goal can only be achieved by means of the introduction of reforms based **on the triple principle of the sovereignty of His Majesty the Sultan, the integrity of his States and economic liberty without any inequality ...** "

This concern to preserve Morocco's sovereignty was also to be reflected in special provisions in the Protectorate Treaty of 30 March 1912 concluded with France. Article 6 of that instrument stipulates that:

"His Majesty the Sultan undertakes not to conclude any instrument of an international character without the consent of the French Republic".

This formula enabled France and Morocco concurrently to conclude international conventions on behalf of Morocco. Between 1912 and 1955, for instance, many Dahirs were promulgated and issued with the counter-signature of the President General. It is clear, therefore, as the French Court of Cassation has always maintained, that the Treaty of Fez of 30 March 1912 "did not have the effect of causing Morocco to lose its autonomy" (see, in particular, C.

Cassation Criminelle, 27 June 1936 -Re 1935, p. 559) and that any accession by France to a multilateral international instrument could be extended to Moroccan territory only by express declaration of the protecting Power, which was generally endorsed by a Moroccan legal instrument.

The International Court of Justice had occasion to pronounce on the scope of the Act of Algeciras in its Judgment, of 27 August 1952 on the rights of United States nationals in Morocco. "The United States had claimed that Moroccan Laws were not applicable to United States nationals, unless they had received its prior assent".

According to the Court, the claim was linked with the regime of capitulations, and no treaty conferred upon the United States the so-called "right of assent", which was merely a corollary of the system of consular jurisdiction.

Now, what is sovereignty except the "power to establish one's legislation without any foreign intervention" (Fauchille, p. 164, quoted in Dictionnaire Juridique de droit international) ?

A comparison of the Judgement of 1952, which recognized the permanence of Moroccan sovereignty even under the French Protectorate, and of the Advisory Opinion on Western Sahara of 16 October 1975, which acknowledges the existence between certain Saharan tribes and the Sultan of Morocco of legal ties of allegiance, and hence ties of rationality, the establishment of which is "an attribute of sovereignty" (Nottebohm Decision, ICJ, 1955), leads to the conclusion that Moroccan sovereignty always existed despite the conclusion of the Protectorate Treaty .

On 18 November 1920, in a still-famous report entitled "**Le Coup de Barre**", Marshal Lyautey wrote, inter alia:

"Claims concerning the right of peoples to self-determination and ideas of emancipation and revolutionary change have been launched throughout the world, but not with impunity.

“What we have here is a State and a people. It is true that it suffered a crisis of anarchy, but it was a relatively recent crisis and one that was more governmental than social. Although the Makhzen was no more than a facade, at least it was still more or less holding up and one only had to go back a few years to **find a government-effectively playing the role of a State in the world**, with distinguished ministers and ambassadors who had associated with European statesmen, several of whom were and still are alive.

"Below the Makhzen, however, most institutions were still intact, differing from region to region but genuinely representing realities".

(Lyautey l'Africain, texts and letters of Marshal Lyautey, presented by Pierre Lyautey vol. IV, 1919-19925, Plon, Paris, 1957, pp. 25 and 26).

By acknowledging, in its Judgement of 1952, that Morocco had remained a sovereign State and, in its advisory opinion of 1975, that legal ties of allegiance existed between that sovereign State and some of the tribes of Western Sahara, the Court recognized ipso facto that the inhabitants of the Atlantic Sahara region, members of these tribes, are Moroccan whose ties of nationality withstood foreign occupation.

"Moroccan nationality", writes Paul Decroux, linked to the existence of the Moroccan state, is very old, the regime of the protectorate recognizing Morocco as State was no obstacle to recognition of that nationality; it even caused many Moroccans to become aware of their Moroccan identity.

"The essential, as it were almost unique, principle in the matter was that one was born Moroccan and one died Moroccan ; in other words, one became Moroccan only through filiation and could not lose that quality" (Paul Decroux, op. cit.: p. 13).

Nevertheless, the Moroccan legislature, at the time of the

codification of the nationality law in 1958, within the framework of the progressive development of that law, gave an objective content to the notion of allegiance by providing for the acquisition or nationality other than through "jus sanguinis" (acquisition through marriage, through birth in Morocco naturalization, reintegration and communication).

Along the same lines, in an attempt to give Moroccan nationality an objective reference, the Moroccan legislature provided for loss of Moroccan nationality through acquisition of a foreign nationality, in the event of dual nationality provided that the foreign nationality is a nationality of origin - or, in the case of children aged 16, in the event of their father's naturalization.

Finally, the Moroccan Code provides for two cases of forfeiture (which is a sort of loss and penalty combined), namely the case of a Moroccan woman marrying a foreigner and that of a Moroccan employed in the public service of another State.

What must be emphasized, however, is that both in cases of loss and in cases of forfeiture, relinquishment of Moroccan nationality requires a Government decree.

Promulgation of the Moroccan Nationality Code of 6 September 1958 did not mean **"Abandonment of the principle of perpetual allegiance; henceforth, however, the severance of ties was a matter for the Government, not the Sovereign, a fact which confirms the objective character of Moroccan nationality"** (Paul Decroux, *op. cit.*, p. 17).

The clearest possible definition of the principle of allegiance, whereby a Moroccan is always bound to the Moroccan State unless he requests, and obtains, permission to renounce Moroccan nationality, was given by His Majesty Hassan II when, in November 75 he received Haj Khatri Ould Sidi Said Joumani, President of the Sahrawi Jemaa :

"Allegiance is a free and voluntary act supposing perfect symbiosis ... Destiny has willed that we should not be the only ones to invoke this act of allegiance, which binds us and which implies heavy responsibilities and obligations for us all ...

"Philosophically and spiritually, the allegiance which characterizes the nature of our relationship has remained intact., which means that we have remained united and that the act of allegiance which binds us all is for ever valid".

It should be noted, moreover, that the principle of perpetual allegiance served as a backcloth for the settlement of all territorial disputes between Morocco and Spain following independence. In the Protocol annexed to the Ifni Retro-cession Agreement concluded on 4 January 1969 between Morocco and Spain, the Contracting Parties established procedures for the exercise of the option allowed to inhabitants having acquired Spanish nationality at the date of the Agreement in these terms

"Those persons who exercise the option provided for in article 3 of the Agreement **must renounce their Moroccan nationality** before their names are entered in the Spanish nationality register prepared for the purpose.

"Such renunciation must **be made in writing in the presence of the competent Moroccan authorities**, who shall issue a certificate to the persons concerned ... ".

Article 3 of the Agreement to which the Protocol refers reads as follows:

"Persons who are natives of Ifni and have Spanish nationality on the date of the transfer of power to the Moroccan Government may retain that nationality by means of a declaration made before the Spanish authorities within a period of three months from the date mentioned above ...

"The Moroccan authorities shall recognize the rights and obligations resulting from the choice of Spanish nationality immediately after the beneficiary's name has been entered in the Spanish register intended for that purpose",

The tie of Moroccan nationality, which successfully withstood the test of foreign domination, stands out, therefore, as one of the principal elements of the legal framework defining, in this case the practical scope of the principle of self-determination to which the International Court of Justice referred when placing the problem in the general framework of decolonization.

It should be borne in mind that Spanish colonization in Atlantic Western Sahara was itself carried out under a legal regime the experiences of which are rich in lessons.

(3) General framework of decolonization

(a) Lessons to be drawn from the legal regime of the Sahara under Spanish domination Following consideration of all the legislative and regulatory instruments concerning the Sahara enacted by the Spanish authorities, it can be stated that for a long time what reigned in those provinces was less Spanish sovereignty than the utter confusion which, whenever an attempt was made to apply it, clashed with the factual situation.

That being said, there is scarcely any need to dwell on the character of that legislation or regulation, which for a long time was a pure fiction.

Morocco, with which the Saharan territory had had economic and human ties since time immemorial and which had exercised political sovereignty over it since the foundation of the Almoravid dynasty in the middle of the eleventh century, directly exercised its "State authority" in the territory at the end of the nineteenth century and even in the twentieth century; it did so, notably, in 1885 and 1887 to repulse United Kingdom attempts at occupation,

in 1892, at the request of Spain, to secure the liberation of foreign nationals during the "Yood Affair" and in 1903, at the request of France during the "Lebaudy affair", that is to say at a time when Spanish colonial claims had long been internationally declared.

If it is desired, however, to try to detect some dialectical order in this tissue of contradiction -for Spain, according to Domenech-Lafuente, "und id today what it had swen yesterday" - some key dates leading to the fait accompli of 1946 can be noted : this information is taken from Professor Cordero Torres's *Traité élémentaire de Droit colonial* (1941) :

Page 319 : "On 26 December 1834, a Royal Order had declared the territory of the Western Sahara subject to the Spanish protectorate".

Page 324 : "Starting from 1900, and by virtue of a series of provisions which were not inserted in the *Gaceta de Madrid*, official documents use the expression "colony of Rio de Oro" when referring to the territory which had formerly been called 'Protectorate' and which was later to be known as "Spanish Colony of the Western Sahara";

Page 321 : "Initially, by Royal Order of 1 June 1916, the Governor of Rio de Oro was appointed Representative of the High Commissioner in the zone known as the Southern Zone of the Protectorate, with powers equal to those of the High Commissioner himself", thus reflecting a tendency to "bring management of Saharan affairs into line with that of our Protectorate zone".

Further on, Professor Cordera Torres continues;

"The temporary nature of this provision meant that it subsequently had to be extended by Royal Order of 1 July 1917 and supplemented by a Dahir of 22 December 1927 appointing Saleh Ben Abdullah as representative of the Caliph in the Southern Zone of the protectorate. This system was maintained, thanks to

a series of Dahirs, whenever it was necessary to appoint another representative, the latest, of whom is Sidi Mohamed Laghdaf, who parades under the title 'Representative of the Grand Vizier'".

Page 320 : "Saharan affairs underwent an administrative change when the General Department for Morocco and Colonies was established by Royal Decree of 15 December 1925, for they became the responsibility of the Department, and particularly of the Morocco, not the Colonies, section".

* 19 July 1934: Suppression of the General Department for Morocco and Colonies, the Spanish High Commissioner in Morocco becoming directly responsible for all Spanish territories in Morocco and the southernmost coast of Morocco.

* 29 August 1934; Confirmation of the attachment of the "territories" of Ifni, "Spanish Sahara" (Tarfaya and Sakiat El Hamra) and Rio de Oro to the Spanish High Commissioner's Office.

Referring to This "unification", Domenech-Lafuente wrote with admirable frankness in an article published on page 20 of the June-July 1945 issue of Revista Africa: "This unification was to lead to what we have come to call the **'Makhzenization' of the colony**, which brought no advantage to the colony but a **danger, however faint of a more or less imminent awakening of nationalism in Morocco**".

* 15 February 1935 : Reorganization of the Spanish High Commissioner's Office in Morocco, abrogation of previous provisions, all territories in the extreme south henceforth constituting the Southern Zone of the Protectorate, with the capital at Cape Juby .

* 31 December 1935: Re-establishment of the "General Department 'for Morocco and Colonies", corresponding to the Office of the High Commissioner for Moroccan affairs.

* 8 November 1941 : Further reorganization of the Spanish High Commissioner's Office in Morocco, return to the system of sub delegation or Protectorate administrative authority for the "sovereign territory" of Ifni and the "colony of Rio de Oro", annexation of Sakiat El Hamra, a "territory by right of occupation", to the "colony" of Rio de Oro.

* 20 July 1946 : The "**fait accompli**" abrogating yet again the provisions of 29 August 1934, the territories of Ifni and the Sahara being formed into a special governorate known as the "Government of Spanish West Africa".

* 14 January 1958: Division of the province of "Spanish West Africa" into two by means of a decree of the Head of State "separating the provinces of Ifni and the Sahara".

It should be recalled that at the time Spain enacted this decree, which would, it believed, bring about a rupture between Morocco and the Western Sahara which was under Spanish domination, the Western Sahara had already been in a state of insurrection for two years and Spain had lost all control there except over the coastal ports.

These successive changes in the juridical status of the Atlantic Saharan province clearly show the effectiveness of Moroccan resistance to the occupation of those provinces, for although the rupture, which had been prepared in two stages, from 1946 to 1958, was embodied in the texts enacted at Madrid, it in no way formed part of the thinking of the inhabitants.

An additional factor is the continuity, until after the transformation of the Sahara into a Spanish province, in the application or Moroccan laws of Caliphan origin in those regions.

Up to 1934, the Saharan regions and the former Northern Zone had a de facto joint administrative regime (which was to be institutionalized by the decree of 29 August 1934) but had no

special legal regime. The legal regime in force was, in fact, no more exclusively F. Sherifian than that of the Northern Zone where the instruments enacted at Madrid were applied as directly as in Ifni or the Sahara; as is clearly shown by article 2 of the decree of 5 January 1933 which, with a view to putting an end to such inconsistencies or abuses, provides that **"... the provisions of any order whatsoever to be applicable in the Spanish Protectorate Zone in Morocco, a Caliphan provision of the same order shall be necessary and shall be published in the official gazette of the zone. This shall in all cases be brought to the attention of His Imperial Highness the Caliph by the High Commissioner's Office with the prior consent of the President of the Council or Ministers .In no case, however, may Spanish legislative provisions or ministerial orders be applied in the Spanish Protectorate Zone in Morocco"**.

*** From 1934 to 1940 :** During this period, which roughly coincided with the Spanish Civil War, the zones of Ifni and the Sahara were subject, on the same footing as the Northern Zone of the Spanish Protectorate, to the same administrative regime and the same legal regime or exclusively Caliphan origin.

*** From 1940 to 1945 :** Although the administrative regime codified in 1934 was not thereby called in question, exceptions began to be made to the legal regime of Caliphan origin in keeping with the Spanish authorities' concern, foreshadowing the unilateral decision of 1946, that there should be distinct zones in the Saharan regions, namely a Southern Protectorate Zone (Tarfaya), a so called Occupation Zone (Sakiat El Hamra) still assimilated to the "Protectorate Zone", a zone of colonial status (Rio de Oro) and a "possession" (Ifni).

The phenomenon or "parallelism of texts" or "complementarity of texts" became a characteristic of the period. For instance, the previously mentioned Caliphan Dahir of 12 February 1941, which was applicable to fisheries as far as south 07 Cape Bojador, was to

extend to those regions the effects of Spanish laws and regulations governing the same subject-matter.

*** From 1946 to 1958 :** The administrative regime of the Saharan regions was modified so that the colonial status of the "Territory of Spanish West Africa" was henceforth applied to all "zones", including Ifni. Extension of the effects of legislation of Caliphan origin meant that there was once more a joint legal regime as there had been before 1934.

"From 1958 : Date of the "provincialization" of Atlantic Sahara; the administrative regime was once more modified, but without resulting, immediately at least, in modification of the legal regime which had been applicable up to 1958. This is proved by the fact that **the decree of 12 November 1958 extended former legislation, including that of Caliphan origin, until further notice.** It was only after promulgation of the Act of 19 April 1961 establishing the "legal regime" of the "Province of Sahara" that the break with the former legislation became clear and the Spanish administration began to prepare a compilation of what was henceforth to be exclusively Spanish legislation which was to be applied within the "Province of Sahara".

The new regime could not, however, ignore the special characteristics of the Saharan territory and its objective socio-cultural realities. That is why, throughout the 1961 Act; the Spanish legislator emphasized respect for this particularism compared with Spanish legislation- which is specific to the population of the region.

This solemn recognition was not, moreover, the first of its kind, for the aforementioned decree of 29 August 1934 also emphasized this specificity:

"The populations of the territories of North-West Africa where Spain exercises rights of occupation protection, possession or

sovereignty are characterized by an affinity of race, language and custom which in itself, makes it advisable to unify the command and the policy to be followed in those territories".

By referring to social, historical and, above all, human characteristics, by emphasizing the "need to maintain the creative impetus of local customs and traditions", by affirming the "unquestionable nature of these particularities" and by insisting on the maintenance of "traditional Koranic justice in its present field of application", **the Act of 19 April 61 recognized, as officially and solemnly as possible, the foundations of those particularities and traditions which are none other, as the Spanish legislator himself admits, than those of the socio-cultural heritage of the Moroccan nation.**

Consequently, by rejoining the Moroccan nation, of which they had never ceased to form part from the affective and legal point of view, the populations of the Moroccan provinces of Atlantic Sahara exercised one of the forms of self-determination provided for by the Decolonization Charter constituted by resolutions 1514 (XV) and '1541 (XV) of the United Nations General Assembly.

(b) Content and scope or the principle of self-determination

In its resolution 1514 (XV), the United Nations General Assembly determined, simultaneously, the meaning and limits of the principle of self-determination.

The principle of the right of peoples to self-determination affirms the existence of a subjective right of all peoples subject to foreign domination to free themselves. However, in order to counter any abuses, the Declaration fitted the scope of the principle into a clearly defined framework, that of respect for territorial integrity and national unity,

Resolution 1514, although adequate within its own limits, acquires its full significance only when taken in conjunction with the

measures established by the United Nations to free the former colonized countries from domination, particularly resolution 1541 (XV) and, in addition, resolution 2625 (XX), of 15 December 1960 and 24 October 1970 respectively.

In resolution 1541, whose adoption only one day after that of resolution 1514 is indicative of its supplementary and interpretative character, the following paragraphs can be noted :

"Principle IV: Prima facie there is an obligation to transmit information in respect of a **territory which is geographically separate and is distinct ethnically and/or culturally** from the country administering it.

"Principle V: Once it has been established that such a prima facie case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, inter alia, of an **administrative, political, juridical, economic or historical nature ...**".

"Principle VI: A Non-self-governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State ;
- (b) Free association with an independent State ; or
- (c) Integration with an independent state."

Resolution 2625 further clarifies the meaning of the first two resolutions :

"The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes or implementing the right of self-determination by that people".

A number of facts can therefore be adduced concerning the scope of the principle. It is a legal principle, but it is also political in that it expresses values which the United Nations should achieve without all the juridical consequences of the principle being specified from the outset.

This principle establishes the fact that colonial or foreign domination is not justified on any grounds and that **the right to self-determination is exercised not in regard to the national State but solely in regard to the colonial and hence foreign State.**

Reference to the preparatory work resolution 1514 shows that paragraph 6 meant that no partial decolonization was possible and, more generally, that secessions are not admissible.

In their final comments to the United Nations Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, certain delegations explained the significance of the reservation relating to territorial integrity in these words .:

"The right to self-determination does not apply to sovereign independent States, to integral parts of their territories or to a segment of an independent people or of a nation. Construed thus, the principle of self-determination would lead to the fragmentation, disintegration and dismemberment of sovereign States and States Members of the United Nations.

"In this respect, the danger would be particularly great for States whose population may be characterized by a diversity of races or languages".

It was precisely in this sense that the Secretary-General of the United Nations, the late U Thant, spoke in 1970. On 4 January he stated at Dakar;

" ... when a Member State is admitted to the United Nations,

there is the implied acceptance by the entire membership of the principle of territorial integrity, independence, and sovereignty of that particular State" (United Nations Monthly Chronicle, vol. VII, 1970,p.36).

At Accra, in 1970, he confirmed that interpretation in the following words:

"Regarding the second question of self-determination, I think this concept is not properly understood in many parts of the world. Self- determination or the peoples does not imply self-determination of a section of a population of a particular Member State. If the principle of self-determination is applied to 10 different areas of a Member State, or five different areas of a Member State, or 20 different areas of a Member State, then I am afraid there will be no end to the problems" (op.cit., p. 39).

Legal theory also attaches the same meaning to this principle, through the voice of professor Emerson, from North America, who is the author of many studies on the right of people to self-determination:

"Any examination of self-determination runs promptly into the difficulty that while the concept lends itself to simple formulation in words which have a ring of universal applicability and perhaps of revolutionary slogans, when the time comes to put it into operation it turns out to be a complex matter hedged in by limitations and caveats ...

"Because of the great variety of situations, problems and claims, the decisions would undoubtedly have frequently to be of an ad hoc 'political nature' ... " (pp. 459 and 474).

Among practical cases which have served as test cases for application of the principle of self-determination, mention could be made of the case of Portuguese establishments in India, the case of West Irian and also the case of Algeria.

Only a few months after the adoption of resolution 1514 (XV), 31 countries of Africa and Asia requested, by letter dated 11 August 1961, that the Algerian question be included in the agenda of the sixteenth session of the United Nations General Assembly,

The explanatory memorandum attached to the request indicated that the LUGRIN negotiations had been broken off on 21 July 1961 at the request of the Algerian delegation because the French Government refused to recognize the fundamental principles of Algeria's territorial integrity and of the unity of the Algerian people. In conclusion, it drew attention to the fact that at its fifteenth session the United Nations General Assembly had acknowledged its responsibility to contribute to the successful and just implementation of the principle of self-determination on the basis of Algeria's unity and territorial integrity.

On 20 December 1961, the United Nations General Assembly adopted resolution 1724 (XVI) on the question of Algeria and called upon the two parties (France and Algeria) to resume negotiations with a view to implementing the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria.

It was in the name of territorial-integrity and not of the right of peoples to self-determination that the territory known under the name of Hoggar was incorporated in Algeria. Throughout the period of French colonization, however, the territory had been politically, militarily and institutionally administered in accordance with a special Statute which took account of the autonomy of the Touareg population. It had even been represented separately in the French Parliament.

Is it possible, in the case of Morocco's Atlantic Saharan Provinces, to apply the principle of self-determination in disregard of Morocco's territorial integrity and the national unity of its people? A simple description of the geographical and cultural characteristics

of these provinces (the ethnic element having already been expounded provides convincing evidence that this is a case which does indeed call for application of the principle of the right to self-determination, but in the light of the criteria established by resolution 1541 (XV) which as it were, provide instructions for the use of resolution 1514 (XV) End is hence inseparable from it.

Let us, therefore, examine in particular the geographical and cultural element referred to in resolution 1541 (XV).

Geographical element: the artificial and purely geographic character of the colonial division of the Sahara is obvious.

Nevertheless, in its oral statement to the International Court of Justice, the Moroccan delegation insisted on proving, with supporting evidence, that the Atlantic Saharan provinces are, from any point of view, the natural extension of Morocco's other southern provinces, quoting, in particular, a passage from the speech of the late Generalissimo Franco of 3 June 1961 in which he recognized the geographical continuity of the Sahara with Morocco ... ".

Language: in a work published in Madrid in 1946 by the Spanish High Commissioner's Office in Morocco, Angel Flores Morales wrote the following about the dialect spoken at Tarfaya and in the rest of Atlantic Sahara: "Hassania is an Arabic dialect. It is a language formed by alluvion, with strata borrowed from Berber and Arabic, mostly Arabic ... ". **He added later: "I can definitely state, as a result of my practical experience, that anyone speaking dialectal Arabic can understand the Sahrawis perfectly, just as the Moorish soldiers of northern Morocco when stationed in the Sahara easily understand the indigenous inhabitants".**

So far as religion is concerned, the Moroccans of Atlantic Sahara are, like their compatriots in the north, Muslims of the Malekite rite.

As to the additional elements referred to in resolution 1541, namely **administrative political, juridical, economic and historical** elements, although they are presented in the resolution as being alternatives to the geographical, ethnic and cultural elements, in the case of Moroccan Atlantic Sahara they are cumulative, as has been shown by our study of the international statutes of Moroccan nationality and the legal regime of the Sahara under Spanish occupation.

No reference to the principle of the right of peoples to self-determination in relation to the case of Morocco's Saharan provinces can disregard the process of colonization and, later, of decolonization in Morocco. The establishment of the Protectorate in Morocco and the political and economic context in which it operated led to the division of Morocco into several zones, namely the Northern Zone, Tarfaya, Ifni, and Atlantic Sahara under Spanish administration, on the one hand, and the Southern Zone under French protection on the other, in addition to the free zone of Tangier.

Was the application of the principle of self-determination to have the extremely absurd effect between 1956 and 1969, of creating in Morocco:

A state in the Northern Zone;

Another State in the Southern Zone;

The free State of Tangier;

The State of Ifni;

The State of Tarfaya, etc ... ?

Neither of the administering Powers could contemplate such a possibility. When Morocco regained its independence, Morocco and Spain signed at Madrid on 7 April 1956 a Joint Declaration stating, *inter alia* :

"The Spanish Government and His Majesty Mohamed V, Sultan of Morocco ... have decided to publish the following declaration:

"2 - ... the Spanish Government recognizes the independence of Morocco proclaimed by His Majesty Mohamed V...

It reaffirms its willingness to respect the territorial unity of the Empire which is guaranteed by international treaties. It undertakes to take all necessary steps to render it effective ... ".

Since then, Morocco has- affirmed the need to respect the territorial integrity of States and their national unity whenever the United Nations General Assembly has discussed the question of the decolonization of Atlantic Western Sahara.

Moreover, when signing the Charter of the Organization of African Unity on 25 May 1963, Morocco stated: "In thus subscribing to all the objectives and principles of the Charter of the Organization, principles which it has always faithfully and resolutely upheld, the Government of His Majesty the King in no way **intended to renounce its legitimate rights in regard to the achievement and preservation of the territorial integrity of the Kingdom within its rightful frontiers**".

It is therefore, in accordance with commitments it had entered into in 1956 that Spain agreed, after Morocco's independence, to negotiate with it with a view to the retrocession of Tarfaya in 1958, of the Ifni enclave in 1969 and of the Atlantic Saharan provinces in 1975.

Although, however, the process of decolonizing the last-named provinces was internationally lawful and was consistent with the legitimate aspirations of Morocco, the unity of its people and its territorial integrity, the rulers in Algiers have by their illegal machinations maintained artificial tension in the region and, in order. to serve their own aims, have unscrupulously created a distressing humanitarian problem, namely, that of the

native Moroccans of former Spanish Sahara uprooted from their homeland and held in veritable concentration camps at Tindouf.

II - THE SITUATION OF THE MOROCCAN SAHRAWIS DETAINED AT TINDOUF:

In order to dispel all misunderstanding concerning the implications of Sub-Commission resolution 2 D (XXIX), the Kingdom of Morocco wishes to draw a distinction between : (a) the case of the great majority of Moroccans who are natives of the recovered Saharan provinces and continue to live their normal life in their territory, henceforth enjoying rights and freedoms solemnly recognized and guaranteed by the Constitution of 10 March 1972 on an equal footing with their fellow-citizens in other regions of Morocco; and (b) the plight of those Moroccans originating from the Sahara and who, at the time of the collapse of the Algerian adventure in Atlantic Sahara, were carried off manu militari and confined at Tindouf under the surveillance of the Algerian army, hence being deprived of the most elementary freedom, namely the right to freedom of movement and to leave any country, recognized by article 13 of the Universal Declaration of Human Rights of 10 December 1948.

(A) The Origin of the Problem

The decolonization of former Spanish Sahara took place in conformity with the recommendations of the United Nations General Assembly, the decisions of the Security Council and United Nations principles regarding the peaceful settlement of differences. This process, which in 1975 culminated in the reintegration of the Saharan provinces into the Moroccan or Mauritanian motherland, was ratified by the local Assembly (the Saharan Jemaâ), thereby reflecting the general wishes of the Moroccans and Mauritians indigenous to those provinces.

Yet, although the case has been finally closed from the legal point of view, the rulers in Algiers have resorted to the most blatant and persistent interference, without shrinking from perverting the meaning of the terms "national liberation",

"self-determination" and "refugees", in order, quite justifiably, to rig up and stage a show in the vain hope of persuading the international community to legitimize an act of sustained aggression that would permit them, with the necessary "ideological" complaisance, to achieve their aim of establishing geopolitical hegemony in the western Maghreb region and extending it to the whole African continent.

(1) The pro cess of decolonization of Atlantic Western Sahara

The first United Nations resolution on the question of Ifni 'and Spanish Sahara (No. 2072 (XX) of 16 December 1965) recalls the declaration contained in General Assembly resolution 1514 (XV) and "urgently requests the Government of Spain, as the administering Power, to take immediately all necessary measures for the liberation of **the territories of Ifni and Spanish Sahara from colonial domination and, to this end, to enter into negotiations on the problems relating to sovereignty presented by these two Territories**".

There could be no more explicit statement of the overriding nature of the principle of territorial integrity in certain decolonization processes; moreover, the General Assembly adopted the same standpoint at the time-with regard to the Portuguese territories in India and the case of Gibraltar.

By treating the decolonization of the two Territories, pre-Saharan and Saharan, in the context of sovereignty and by stipulating the form of decolonization, which in this case was to be direct negotiation and not necessarily application of the referendum procedure, the United Nations General Assembly in effect recognized the need to respect the territorial integrity of Morocco, which had placed the question of the decolonization of these provinces on the agenda of the United Nations.

Subsequently, under pressure from the Spanish Government, the General Assembly adopted resolution 2229(XXI) of 20 December 1966, which separated the case of Ifni from that of the Sahara by recommending negotiation for the former and a referendum for the latter. The content of this resolution was, moreover, reproduced by the General Assembly in its subsequent recommendations up to 1974.

The main reason for this volte-face by the former Administering Power Was economic: between 1964 and 1965 phosphate had been discovered at Boucraâ and foreign capital was involved in the mining operations.

Spain wished to gain control of this new source of wealth and guarantee foreign investment, it therefore altered its attitude on the decolonization question, declaring its willingness to decolonize the Saharan territories without, however, accepting any supervision on the part of the United Nations.

In 1973, Spain addressed a note to the local Assembly (Jemaâ) stating that it was prepared to grant internal autonomy to the territory in order to prepare for the referendum, in accordance with the United Nations request, and was giving the Sahara a new political status and forming a Government.

It was clear that the former administering Power thereby intended to take advantage of this "grace period" for the purpose of creating the necessary conditions for maintaining the territory under its domination, the first step being to pursue a population settlement policy. This is what caused Morocco to deliver a series of protest notes to Spain during 1974, condemning all unilateral action which would have the effect of jeopardizing its territorial integrity, which Spain itself had recognized.

During the tripartite meetings at Nouadibou (1970) and Agadir (1973), Algiers displayed an attitude that was, to say the least,

restrained with regard to the claims put forward by Morocco and Mauritania. This attitude encouraged the two countries directly concerned by decolonization of the territory to bury their dissensions in 1974 and agree on a plan that would make the Saharan regions, once recovered, into an outstanding example of inter-Maghreb co-operation.

This agreement was made all the more necessary by the fact that the Spanish Government had already begun to prepare its "decolonization plan".

In the face of the firm resolve of Morocco and Mauritania not to endorse its neo-colonialist scheme, Spain had no alternative but to give way and accept the decision by the United Nations General Assembly that the matter should be brought before the International Court of Justice.

In its resolution 3292 (XXIX) of 17 December 1974, the United Nations General Assembly:

"1 - **Decides** to request the International Court of Justice, without prejudice to the application of the principles embodied in General Assembly resolution 1514 (XV), to give an advisory opinion at an early date on the following questions:

I - Was Western Sahara (Rio de Oro and Sakiet El Hamm) at the time of colonization by Spain a territory belonging to no one (**terra nullius**)?

If the answer to the first question is in the negative,

II- What were the legal ties between this territory and the kingdom of Morocco and the Mauritanian entity?;

"2 - **Calls upon** Spain, in its capacity as administering power in particular, as well as **Morocco and Mauritania**, in their capacity as interested parties, to submit to the International Court or Justice all

such information and documents as may be needed to clarify those questions;

“3 - **Urges** the administering Power to **postpone the referendum ...**”.

The United Nations General Assembly thus asked the International Court of Justice to give an opinion, without prejudice to the application of the principles embodied in resolution 1514 (XV), and, consequently, envisaging application of the principle of self-determination without infringement of the right of the States concerned to national unity and integrity of their national territory.

Moreover, resolution 3292 (XXIX) expressly named the only two parties concerned. On the one hand Spain, vis-à-vis whom the right to self-determination was to be exercised, and, on the other, Morocco and Mauritania, in favour of whom legal ties would or would not be established by the advisory opinion of the International Court of Justice.

The same resolution also called upon Spain to postpone **any consultation by referendum**.

In its advisory opinion of 16 October 1975, the International Court of Justice replied in the negative to the first question, and recognized "the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara", and "the existence of rights ... relating to the land, which constituted legal ties between the Mauritanian entity ... and the territory of Western Sahara".

The advisory opinion did not, however, confine itself to recognizing these legal ties of allegiance, but made clear the importance of this recognition by stating in paragraph 72:

"In general, an opinion given by the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara".

Basing itself on this opinion given by the International Court of Justice, Morocco was bound to draw the necessary inferences from what had been recognized by international law and jurisprudence, in pursuance of Article 33, of the United Nations Charter.

It will be recalled that this article provides that:

“1 - The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, 'seek a solution by negotiation, enquiry, mediation conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

“2 - The Security Council shall, when it deems necessary, **call upon the parties to settle their dispute by such means”.**

Article 33 therefore applies to any dispute, regardless of its juridical or political nature. It lists seven forms of settlement on an indicative basis and leaves the parties to a dispute free to have recourse to "other peaceful means of their own choice".

These various means of settlement have one feature in common, i.e. they are peaceful, and this accords with one of the fundamental objectives of the United Nations Charter, namely, the maintenance of international peace and security.

Morocco has used three of these means: arbitration, to secure recognition of the nature of the legal ties existing between Morocco and the majority of the population in Saharan territory; the negotiations called for by the Security Council in its resolution 380 (1975) and the Green March, which comes into the category of "other peaceful means of their own choice".

It should also be recalled that Article 2, paragraph 3 of the United Nations Charter stipulates: “All Members shall settle their

international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

Moreover, Morocco's decision to organize the Green March (which was not, incidentally, a one-way march, because several hundred Sahrawis took part in it, and while it was taking place several prominent figures representing the Sahrawi population were able to reach Morocco) had the object of ensuring that the verdict of the International Court of Justice was respected. When, after the Court's decision, Algerian troops were stationed in various places with the connivance of some elements within the Spanish army in the Sahara (a process which had in fact begun even before the case was brought before the Court), Morocco was compelled to defend its legitimate rights. This March was not only the most impressive non-violent demonstration ever staged in the third world against colonial occupation forces, it was a demonstration by the whole Moroccan people in the conviction that their cause was a just one and out of a determination to spare no sacrifice to resist the creation of a "Spanish Rhodesia" on the north-western flank of Africa and prevent Algiers from occupying abandoned territory and fairly rapidly transforming it into one more Algerian "Wilaya" on the Atlantic sea board.

In Its resolution 380 (1975) of 6 November 1975, the Security Council called upon "Morocco and all other parties concerned and interested, without prejudice to any action which the General Assembly might take under the terms of its resolution 3292 (XXIX) of 13 December 1974 or any negotiations which the parties concerned and interested might undertake under Article 33 of the Charter of the United Nations, to cooperate fully with the secretary-General in the fulfilment of the mandate entrusted to him in Security Council resolutions 377 (1975) and 379 (1975)".

This marked a return to the point of departure in 1965, when the General Assembly had called for negotiations to bring about the decolonization of the Sahara.

Pursuant to these resolutions, Morocco and Mauritania on one side and Spain on the other signed the Madrid Agreement of 14 November 1975 providing for the establishment of an interim tripartite administration, an end to the Spanish presence in the territory before 28 February 1976 and respect for the wishes of the population as expressed through the **Jemaâ**.

The text of this Agreement was transmitted to the Secretary-General of the United Nations the same month, and the General Assembly took note of it in resolution 3458 B (XXX) of 10 December 1975.

In this resolution the General Assembly "takes note of the tripartite agreement concluded at Madrid on 14 November 1975 by the Governments of Mauritania, Morocco and Spain, the text of which was transmitted to the Secretary-General of the United Nations on 18 November 1975".

It should be noted that resolution 3458 A (XXX) was addressed solely and specifically to Spain, as the administering Power vis-à-vis which the Sahrawi population was to exercise its right to self-determination. Since a document with legal effect can only be interpreted in its context and primarily in its "intrinsic context", it is obvious that by taking note of the tripartite Madrid Agreement in resolution 3458 B the General Assembly made it quite clear that it was within the framework of that Agreement concluded, following the advisory opinion of the International Court of Justice, between the "parties concerned and interested" that resolution 3458, with its two necessarily complementary parts, was **operational**.

At an extraordinary meeting held at Laâyoune on 26 February 1976, the **Jemaâ decided** after discussion to endorse the Madrid Agreement, in the motion unanimously approved by the members present, which is recorded in the minutes of the meeting the local Assembly declared, **inter alia**: "In registering its complete satisfaction and full concurrence with the decolonization of this

territory and its reintegration with Morocco and Mauritania, which has led to the normalization of the situation taking into account the realities and the rights of its inhabitants, the Jemaâ is giving expression to the unanimous opinion of the Sahrawi populations and of all the tribes of which it is the emanation and true and legitimate representative”.

The consultation of the **Jemaâ**, a local Assembly the representative nature of which has been recognized by the United Nations, enabled the Sahrawi populations to exercise their right to self-determination, which was reflected in their reintegration into the Moroccan and Mauritanian motherland.

After settling the problem of decolonization procedures with Spain, Morocco and Mauritania acting on the basis of the findings of the advisory opinion and conformity with the wishes of the population as expressed by its representatives in the Jemaâ proceeded to demarcate their frontiers in an Agreement dated 14 April 1976 which was registered with the Secretariat of the United Nations.

When demarcating these frontiers, Morocco and Mauritania also took pains to respect the freedom of each individual inhabitant to choose his nationality. Notwithstanding this, and contrary to the Spanish decision to set a one year deadline for choice of Spanish nationality, the Governments of Morocco and Mauritania took a decision by which the population of "Sakiat El Hamra" and "Rio de Oro" may, at any time and in accordance with highly simplified administrative procedures, declare and obtain recognition of their decision to assume either Moroccan or Mauritanian nationality.

This decision, which-as it were individualizes the right to self-determination, does not, however, prevent Sahrawis who have opted for Mauritanian nationality from continuing to reside in the province of Moroccan Atlantic Sahara and vice versa, should they so desire.

It was in this spirit that an "Agreement on Economic co-operation to develop the recovered Saharan territories" was concluded between Morocco and Mauritania at the same time as the agreement demarcating the frontiers.

The main purpose of the economic agreement was to turn this recovered region into an **area of Maghreb co-operation**. But instead of supporting this well-intentioned initiative on the part of Morocco and Mauritania, the Algerian Government, having been excluded by the advisory opinion of the International Court of Justice from participation in the decolonization process and having vainly attempted to sow discord between Morocco and Mauritania, did not hesitate to resort to every possible means, including the most ignoble methods, to create the impression that the decolonization of "Western Sahara" could still be called in question.

(2) The attitude of Algiers

This hostile attitude to the reintegration of the Saharian provinces into Morocco and Mauritania can be traced back well before 1975. Acting in connivance with the Spanish colonial authorities, the Algiers Government did everything it could to thwart the legitimate claims of Morocco and Mauritania, either by using its influence within the non-aligned movement over which it presided at the time, by exerting economic and other forms of pressure, or by resorting to sheer subterfuge. The signature of the Madrid Agreement of 14 November 1975 marked the turning-point. After that the schemes of the Algiers rulers gradually began to emerge into the light of day.

(a) Before November 1975: This period reveals the double-dealing of the Algiers Government, which proclaimed that it had no territorial or economic designs on the region while at the same time concluding secret agreements with the Spanish colonial authorities

Welcoming the September 1974 agreement between Morocco and Mauritania, the Algerian President made the following Statement to the heads of State and Government who attended the summit conference of Arab countries held at Rabat in October 1974:

"From now on the matter concerns Morocco and Mauritania. I can say I am in agreement and that there is no problem ... If our brother Presidents and Kings endorse this formula for agreement between the two countries and to set on foot the liberation and demarcation of what is to be the Moroccan zone and what is to be the Mauritanian zone, then I will be among those to subscribe to this formula..."

And he went on: **"I should like my brothers and friends, His Majesty the King and the Mauritanian President, clearly to understand the intentions of Algeria with regard to this problem. And I should like to see this issue closed once and for all. We, like Morocco and Mauritania are for the liberation of every patch of ground still under Spanish domination, not only Western Sahara but also Ceuta, Melilla and the islands under Spanish rule".**

Parallel with this official, solemn and totally unambiguous position, the Algerian regime was to pursue a secret policy which contradicted those statements. Two political and military agreements were signed with the Spanish authorities in 1973 and 1975.

From 1972 onwards Algeria began to draw the attention of the Spanish leaders to the position which it held within the non-aligned movement and to the influence which it exerted over certain liberation movements. In the light of this, the then Spanish Foreign Minister proposed to the Algiers Government that Spain should become its partner in its design to permanently detach the Atlantic Saharan provinces from Morocco, holding out the prospect of the numerous advantages their two countries could both derive, including participation by Algiers in exploitation of the rich mineral

resources in the Sahara, the rich fishing grounds, and above all the opening of a corridor to the Atlantic for the use of Algiers.

In return, Algiers would back Spanish policy at meetings of the United Nations, the non-aligned countries and the OAU. The Algerian Government also undertook to "contain" Spanish separatist movements based in Algiers. It was during this period that the world was surprised to hear no word of criticism from Algiers when the five Basque militants were executed, although Algiers considers itself "the Mecca of liberation movements".

The main points of the Hispano-Algerian agreement signed in July 1973 may be summarized as follows :

Development in Spain of a sympathetic attitude to the Algerian position regarding decolonization of the Sahara;

The Algerian rulers would undertake the task of creating an atmosphere of insecurity in Morocco in order to "demonstrate" to the world that the Moroccan people was disunited.

Concessions by the former administering Power to Algiers for the exploitation of the mineral wealth of the Sahara;

The Algerian special services would undertake to pass on to their Spanish counterparts all information gathered in Algiers and elsewhere in the world about anti-Franco organizations particularly the UGTE, the PSOE, the Communist Party and the Basque ETA.

As Morocco's diplomatic and political action began to increase in scale and score successes the rulers in Algiers felt that their moves against Morocco must be made more effective, even if that entailed collaboration with a partner whose ideology and positions differed from their own. Thus, one month before the conclusion of the tripartite Madrid Agreement, the Algiers Government signed a second agreement with the former administering Power. This agreement was of a more distinctly political and military nature

than the first, and its broad outline was as follows:

Designation of zones within Rio de Oro and Sakiet El Hamra from which members of the “Frente Polisario” (which apparently owes its name to some Spanish officer in the colonial administration whose facetiousness outweighed his convictions) were permitted to operate pending the arrival of the United Nations Visiting Mission which was to visit the area a few months later;

The zones of Mahbes, Smara, Boukraâ, Boujdour and El Ayoun and all the military forts , in that region were declared out of bounds to all armed elements with the exception of the Spanish occupation forces;

The Spanish administration was to permit personnel responsible for conducting indoctrination campaigns among the Sahrawi population to move to and fro between Tindouf and the Sahara;

Organization of daily radio programmes and bulletins broadcast from Tindouf and directed against Morocco.

In application of these agreements, Algerian armed units (bath before and during the Green March undertaken by 350,000 volunteer representatives of the Moroccan people speaking a peaceful link-up with their brothers in the Sahara) had been able to occupy several localities such as Güera, Aïn Bentalli, Amgala, Mahbes and Guelta Zemmour and set up arms and munition dumps there. This occupation of Moroccan and Mauritanian soil was the cause of the clashes which occurred after these two countries took over administration of their recovered provinces in accordance with the tripartite Madrid Agreement.

The visit made in May-June 1975 by the United Nations Visiting Mission to the Sahara before its liberation and to the capitals of Morocco and Mauritania, provided Algiers with be opportunity to pass to a new stage in its policy of interference.

Algiers took advantage both of the Mouggarr gathering (the Saharan Fair), which draws nomads from southern Morocco, northern Mauritania and the Sahel, and of the draught which had afflicted the latter region to deprive these nomads of their national identity cards and make them wear the garb of the Rguibat tribes, forbidding them to wear any car distinctive insignia such as the crosses worn in the south, and the Touareg necklaces, This was done in order to pass them off as "Sahrawis originating from the former Spanish was Sahara".

The Algerian military authorities subsequently distributed over 4,000 Sahrawi identity cards from El Ayoun which were handed out by the Spanish liaison officer appointed as a result of the above mentioned political and-military agreements.

The Algerian Touaregs were removed in the direction of Tindouf in 150 land rovers allocated to the Tindouf military area and registered as follows:

50 jeeps registered at Villa Cisneros (Dakhla) and bearing plates with the numbers 19300 to 19350;

100 jeeps registered at El Ayoun and bearing plates numbered from 21500 to 21600.

It was these 4,000 Touaregs and few hundred Sahrawis who had earlier fled in the direction or the nearest neighbouring country from their Spanish-occupied homeland whom the rulers in Algiers presented to the United Nations Visiting Mission as being their, contingent of "refugees" from Western Sahara.

At a press conference held on 20 May 1975, Me. Khali Hanna Ould Rachid, Secretary General of the Sahrawi National Union Party, stated that: "before the United Nations mission arrived, the Spanish authorities attempted to form several parties with the aim of disguising the truth. For example, the Spanish military administration authorized the formation of the "popular front",

at the same time bringing various forms of pressure to bear in order to thwart any action to establish contact between Sahrawis and the members of the United Nations mission. That is why we decided at an extraordinary emergency meeting to send to Rabat this delegation of three members of the Executive Committee led by the Secretary-General of the party, in order to meet the United Nations mission in the liberated section of Moroccan territory".

The arrival in Agadir on 3 November 1975 of the President of the Sahrawi Jernaâ, Haj Khatri Ould Sidi Saïd Joumani, dealt a serious blow to the policy of those who were hoping to use the members of this Assembly against their own country. Mr. Khatri had the following to say to the Sovereign:

"I have come to Agadir on behalf of all the inhabitants and tribes of the Sahara in order to remind your Majesty of the allegiance of our ancestors to your forebears. I have come in the name of patriotism, because the Sahara is an Integral part of Morocco and we have never ceased to be Moroccans. It is true that we have been separated, but the time has now come to tell you that we are you and you are we".

Commenting on this event, the Associated Press Agency stated that "by his sudden and spectacular move, the President of the Saharan Territorial Assembly throws fresh light on the interpretation of ties of allegiance",

The statement in fact did no more than confirm the one made by the President of the Jemaâ to the Lebanese journalist Jalal Kachk for his article in the daily Al Anouar, published in issues 5007 and 5008 of 15 and 16 October 1975.

Confronted by these rapid developments in the situation, Algiers chose to escalate its intervention in an effort to checkmate at any cost, even by force of arms, the aspirations of the Moroccan people, which were coming increasingly to be realized after the Green March.

(b) After the Madrid Agreement of 14 November 1975. With the conclusion of this agreement Algiers lost vital trump cards in its interventionist policy-namely, the misunderstanding between Morocco and Mauritania which it had skilfully exploited, and the reluctance on the part of the Spanish Government to negotiate directly with Morocco and Mauritania.

Algiers therefore had to search for other pretexts with which to mask its hostile policy with regard to the recovery by its two neighbours of their territorial integrity. It was tempting on more than one count to uphold the principle of the right of peoples to self-determination, by virtue of which almost all the African countries had won their freedom. This would, Algiers felt, bring it support from the continent as a whole.

For the first time Algiers began to refer to the existence of a "Sahrawi people" and a so-called liberation movement (the "Polisario") of which no one had previously heard and which Algiers elevated to a Status of the "government" of a phantom-"Sahrawi Republic" with its capital in the Hotel St. Georges in Algiers.

In order to give this imaginary entity a vaguely credible facade as a respectable organization fighting for the rights of an "oppressed population", Algiers wasted no time in bringing in Malians, Chadians, and Touaregs from the Algerian Sahara, whom the chronic drought in the Sahel had driven from their homes a few months before, and settling these people in the Tindouf region side by side with Moroccans or Mauriticians from the Atlantic Sahara who had themselves been brought in either by trickery or force during the critical moments of decolonization.

But the Algerian special services ended by giving themselves away in an unfortunate display of excessive zeal, to the great embarrassment of their sympathizers. From day to day they announced figures for the population of the "Sahrawi State" which first doubled in number and then even became five times and

six times higher and bore no relation to the official census figure recognized by the United Nations for the population on the eve of decolonization in that part of the Sahara formerly ruled by Spain. It was in addition common knowledge that the bulk of the population in question had not moved from their homes.

As a "retaliatory measure" against the Green March, Algiers simultaneously called upon Moroccans who had been living in Algeria for decades to take a stand against their country of origin and to assume Algerian nationality in these cases where either the husband or wife was an Algerian.

When they refused, Algiers began to expel them without notice, not even allowing them to take their savings or personal belongings with them. Forty thousand Moroccans were thus affected, some of whom had fought in the ranks of the FLN for Algerian.

Independence. This mass expulsion took place under inhuman conditions because Even the disabled and sick were included and a number of families were broken up.

This behaviour by Algeria aroused indignation throughout the word, and threw a luridly revealing light on what the rulers in Algiers understood by the "Maghreb of the peoples" which they were boasting about. The indignation was reflected in the report by Jean François Held published in No. 585 (26 January 1976) of the *Nouvel Observateur*, the organ of the French Socialist Party. Held wrote:

"Still more tents. Greyish-brown military tents. This time all next to one another in endless rows. Still more refugees. Small children, old people squatting on the ground, women refusing to give up trying to rebuild their daily life from nothing. But it was no longer the desert of a forthright before. This camp was at Oujda, near the Mediterranean and the Algerian frontier. It contained Moroccans not quite like the rest the ones whom the Algerian President had

thought fit to throw out. Will my testimony be published in that Socialist Algeria which is so dear to us? In any Event, here it is.

"I reached Oujda almost by chance, and, I must confess, without really having been pressed to go there by the Moroccan authorities. It was strange to go off so far to the north-east when I had come with the intention of visiting the far south. But for some days I had been waiting in Rabat for a flight to Villa Cisneros, Jdiria and Smara.

"It was fascinating to see what was going on 'on the other side, to be able to find out whether what one had been told by other people was true or not. But there is no doubt that something is happening on the Moroccan side.

"This affair or the expelled Moroccans is not the key to the Maghreb crisis, in which Western Sahara is nothing more than the fuse. But nevertheless, the matter does deserve to go on record, if only because it illustrates the extreme enthusiasm shown by 'brothers' when it comes to tearing each other to pieces .. Here at Oujda I have seen the results of an Algerian move, and not a very imaginative one at that.

"The forced exodus began a month ago. According to the Moroccans, who have detailed lists, of the 300,000 Moroccan citizens, many of whom have been living in Algeria for generations, 30,000 have been thrown out. Initially, there were massive movements across the frontier - as many as 5,000 people crossed every day. Now the flow has almost dried up. Some of those expelled have been taken in by their families, others are scattered in camps in various places, depending on the frontier post they were sent to by the Algerian police. At Oujda we visited two camps on the outskirts of the town, containing over 9,000 deportees. They are adequately fed, and treated as well as can be expected in the circumstances while waiting to settle down normally in the country. After all, these people have been pushed into a country

which is theirs, at least in theory, and at the moment Morocco is most anxious to show the reception it gives to the victims of Algerian spleen. This does not make the motives and circumstances behind the expulsion any less hard to understand.

"Nothing to do, waiting about, gloomy incredulity after the incomprehensible blow ... Just as in all camps the world over, groups of idlers form and surround the visitor.

" Why did the Algerians do It ?

'Nobody knows:

'Yes they do. It's because of the Sahara ...

"A student of electronics is the first to speak. 'They picked me off the street, tore up my residence permit and put me in a cell at the police station, without allowing me to go home first. When there were 50 of us they put us in a coach and we were off to the frontier! Just like that. With just the clothes we stood up in: Those who protested were beaten up ...

"This boy, like most of the others, had never set foot in Morocco. His rather had come to Algeria as a young man and had died fighting with the FLN.

"More and more evidence accumulated, all straight from the cuff and irrefutable. The deportees had been picked up at their place of work,. in cafés, in the street, from their homes, as chance directed. Except in a few cases they were unable to take anything with them. At the frontier the police confiscated the savings of those whose home had been raided - 15,000, 25,000 dinars. Often all the money saved up after a lifetime at work. I saw the ludicrous receipts signed-by an Algerian official. The little house owned by the elderly worker or farmer, the shop, or in the case of the better-off, the car - all gone, gone for good.

"More stories in the twilight. More tents. One young man had been unable to see his wife when she gave birth in hospital. Many of these Moroccans had married Algerian women.

"There is no point in giving any more examples. At Oujda I had the impression that the Algerian Consul, for whom life is no fun at the moment, was a bit embarrassed: 'Perhaps there have been some cases of excessive zeal and some mistakes'. No Just one mistake. A shocking and absolute mistake and by socialist Algeria, which is so fond of talking about the Maghreb of the peoples".

(B) The international responsibility of Algiers: This responsibility derives from the violation by the Algiers Government or its bilateral and multilateral international undertakings, and its failure to respect declarations by the United Nations.

Ever since the Saharan provinces were reintegrated into Morocco, Algiers has been painstakingly carrying out its plan for interference, beginning by uprooting several thousand inhabitants of the Sahara from their homes in areas evacuated by its troops when they were in retreat after the recapture of Mahbes, Amgala, and Guelta Zemmour ; subsequently by training, equipping and indoctrinating certain Sahrawi elements among the Spanish colonial troops who were nervous about their future after the withdrawal by Spain; and finally by military intervention under the cover of a fake "liberation movement" formed behind the 1960 frontiers of the Islamic Republic of Mauritania by Moroccans and Mauriticians who do not originate from the former Spanish Sahara.

1- Violation of international obligations

These obligations are contained in bilateral and multilateral instruments.

(a) Bilateral agreements : In the Treaty of Fraternity, Good-Neighbourliness and Cooperation concluded between Morocco and Algeria on 15 January 1969 "on the basis of mutual respect for national sovereignty, territorial integrity, non-interference by one of the parties in the domestic affairs of the other", the two Countries agreed to "resist aggression in all its forms" and that permanent peace, firm friendship and fruitful neighbourliness "shall prevail between Morocco and Algeria".

In addition, an agreement between the Moroccan Red Crescent and the Algerian Red Crescent was signed on 3 September 1964 and entered into force on the same date; it provides for mutual assistance in the humanitarian sphere.

Whatever the situation, this agreement should have been implemented in order to solve the question of the Moroccan and Mauritanian Sahrawis et Tindouf, given the nature of the work of the Algerian Red Crescent and the universally recognized principles to which it adheres.

Under paragraphs 4 and 10 of the conditions for the recognition of national Red Cross societies, approved by the seventeenth international Conference of the Red Cross at Stockholm in 1948, applicant societies must:

"Adhere to the basic principles of the Red Cross as established by the International Red Cross Conferences, namely the impartiality, political, religious and economic independence the universal character of the Red Cross, and the equality of national Societies, and in all their work ... be inspired by the Spirit of the Geneva Convention and the Conventions designed to supplement it".

Far from helping the Algerian Red Crescent to carry out its task, however, the ruling circles in Algiers have refused to implement any international instrument which might thwart their aims.

(b) Multilateral humanitarian conventions and protocols: Algeria refuses to heed the appeal of international organizations for the voluntary repatriation of the Moroccans and Mauritians detained at Tindouf, in accordance with international instruments on human rights, the Geneva Conventions and the legal instruments governing the problem of refugees.

The Universal Declaration of Human Rights, adopted on 10 December 1948 by the United Nations General Assembly, which forms part of **jus cogens**, states that "everyone has the right to life, liberty and the security of person" and stipulates in article 13 that:

"(1) Everyone has the right to freedom of movement and residence within the borders of each State.

"(2) Everyone has the right to leave any country, including his own".

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, which was signed on 12 August 1949, provides that "the following acts are and shall remain prohibited at any time and in any place whatsoever...

(a) Violence to life...

(b) Taking of hostages ".

Elements controlled by the ruling circles in Algiers have, however, continued to use both methods: violence to life by the massacre of 257 Moroccans and Mauritians who had tried to flee the concentration camps set up at Tindouf at the end of 1976 and the beginning of 1977, and taking of hostages by removing defenceless inhabitants from their homes and kidnapping French co-operation workers at Tarfaya and recently at Zouerate.

There is also the improper and tendentious use made by the Government of Algiers of the concept of "refugee", which it applies to Moroccans and Mauritians held under threat at Tindouf, although the meaning and limits of that term were laid down in article 1 of the Convention relating to the Status of Refugees of 28 July 1951, to which both Morocco and Algeria are parties:

" ... the term 'refugee' shall apply to any person who:

(2) ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.

"F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee,

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations".

None of the criteria listed above for defining a refugee applies, since Morocco is a country that has never known racial discrimination, which remains contrary to its convictions and to the precepts of Islam underlying its legislation and regulations ; it is a country which recognizes and guarantees freedom of worship, as it does the multi-party system.

The Moroccans now in Algeria who say they support the "Polisario"

are merely elements which have chosen to exercise "freedom of opinion" outside the legal framework and are compelled to act as fully-fledged agents in the pay of Algiers.

The Convention also states that "Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances".

Far from observing this provision, the rulers of Algiers have effectively placed these "refugees" under house arrest and arrange for what they call "Polisario officials" to be accompanied wherever they go by State security police officers in order to prevent any action which might undermine the policy so carefully built on pretence.

Tindouf, which should have remained a demilitarized zone as stipulated in the 1963 Agreement with Algeria, has been turned into an advance headquarters in which refugee camps are used as a shield. This situation violates all international instruments, including the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which binds both Morocco and Algeria.

After making a "distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside", the Convention provides in article 2, paragraph 6 that :

"For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin".

Algiers, flouting all the obligations deriving from its accession to these international instruments, is shamelessly using these "refugees" if there are any "refugees" in the meaning or the term recognized in international law - for hostile purposes which

jeopardize the security and territorial integrity of Morocco and Mauritania.

2 - A clear case of aggression :

Not content with violating the elementary principles of International law, Algiers has carried out a policy of subversion, under the banner of the so-called "Polisario", which - as is well-known and admitted - was established, armed, indoctrinated, given officers and financed by Algiers and has not been recognized either by the United Nations, the Organization of African Unity or the Arab League.

"Polisario" units are "overseen" by a special section set up in 1973 under the Director of Political Affairs in the Algerian Ministry of Foreign Affairs.

At the military level, one section of the Algerian Army Command has the task of training commando units for action against Moroccan and Mauritanian troops.

At the level of the President's Office, a department has been established under the direct-authority of the Head of State and the supervision of the Director of Studies. The activities of this service are carried out with the co-operation of Colonel Draïa (until recently in charge of military security and the national police).

Lastly, at the level of the sole political party, the FLN, another section directed by Captain Jelloul Malaïka has been established to lay down political guidelines and prepare "contacts" and "public statements".

As has been indicated, the so-called "Polisario" was merely a creation of Spain and a reflection of the Marxist leanings of the Spanish occupation army officers and administration in the Sahara.

It was later taken over and sponsored by Algiers, which had not succeeded in turning the "**Mouvement Révolutionnaire des**

hommes bleus" (MOREHOB), the first liberation movement in the Sahara to be recognized by the United Nations, into the docile instrument which it was seeking to attack the territorial integrity of Morocco and Mauritania.

Moreover, the President of MOREHOB later stated to the Fourth Committee in 1975:

"During the month of January 1975, in The Hague, an emissary of FLN met with some representatives of left-wing Moroccan movements and offered them, or rather requested from them, collaboration by promising them ... that they could use the Sahara as a point of departure against the internal regime of Morocco.

"A similar meeting had been held simultaneously in Paris, in the offices of a Mauritanian adversary and former high-ranking official well known at the United Nations."

Following the categorical refusal of the President of MOREHOB to join in the Algerian plans, Algiers decided to turn to the fast card which the colonial authorities were preparing to play in the Sahara, the "Polisario", whose ranks it swelled with mercenaries, Algerian Touaregs and other elements of uncertain nationality.

A glance at the membership of the so-called "Government of the RASD" is sufficient to discern the intentions behind Algiers' policy:

- Mohamed Lamine Ould Ahmed, "Prime Minister", real name Mahmoud Ould Ellayli, born in 1944 at Garfa in the Tarfaya region. His father and family are now living at Tan Tan (province of Tan Tan).
- Mohamed Salem Ould Salek, "Secretary-General of the Ministry of Information", real name Salah Mohamed Salem, known as "Franco", His father comes from Tarfaya and still lives there.

- Omar Ould Mohamed Ali, Secretary-General of the Ministry of Finance, Commerce and Supply". Comes from Tarfaya.

These three persons completed their primary and secondary studies in Morocco, and one of them even received a Moroccan scholarship to continue his studies in France.

- Ibrahim Ghali Ould Moustapha, "Minister of Defence", Comes from Smara, studied in Morocco.

- Brahim Hakim, alias Brahim ben Cheikh ben Derwich, "Minister for Foreign Affairs"...

- Mahfoud Laroussi, "Minister of the Interior". Also known as Mahfoud Ali Azergui. Of Mauritanian nationality, born in 1953 at Aoussard.

- M'hamed Ould Ziou, alias Boula Ould M'hamed Ould Ahmed Zein, "Minister of Justice" Of Mauritanian nationality, born at Barikallah. '

- Ahmed Baba Miské, "Polisario spokesman". Of Mauritanian nationality, former representative of Mauritania to the United Nations ...

- Moustapha Reghuibi El Ouali, "ex-Secretary-General of the Polisario" "ex President of RASD". After completing secondary and higher studies in Rabat, died in obscure circumstances in the commando operation against Nouakchott on 10 June 1976. Born in the province of Tan Tan, received 350 million old French francs, paid in pesetas in the Canary Isles.

He was active in the Moroccan Liberation and Socialism Party (formerly the Moroccan Communist Party and now known as the Progress and Socialism Party (PPS). In an editorial of 11 June 1976 in the newspaper Al Bayane, Ali Yata, leader of the PPS, revealed that "with El Ouali and other Sahrawi comrades, we prepared, in several meetings in Rabat, a working plan for the defence of our

national cause of recovering Western Sahara. This plan provided, in its first stage, for a domestic and foreign publicity campaign on the Sahrawi question, contacts with our Sahrawi compatriots and the organization of mass action against the occupying forces. In the second stage. It was planned to train militants for violent acts against the enemy. Under this programme, we carried out a study to which El Ouali was the main contributor, entitled 'The reality of our usurped Saharan province, first published in the May 1972 issue of Al Mabadi and subsequently in the form of a brochure.

"At no time did El Ouali or his friends question the Moroccan character of Western Sahara and the justness of the struggle for its recovery as part of Moroccan territorial

The "Polisario" is thus in fact merely a cloak for Algerian interventionism designed to gain all the support to be anticipated in the name of "revolutionary solidarity" and assistance due to "liberation movements".

"One need only describe oneself as a supporter of independence" writes the Spanish daily Informaciones of 2 February 1977, "in order to receive Algeria's stamp of approval and its support, and to boast on Radio Algiers of terrorist activities against a State friendly to Algeria".

In the report on its ninth regular session held at Addis Ababa on 9 February 1975(document CM/642 (XXIV), the OAU Tenth Committee on refugees recommended that States members of OAU should not help the training on their territories. Of subversive groups which might hamper the rehabilitation and reconstruction activities of newly independent countries; such groups would be hostile to reconstruction efforts and the process of reabsorbing the refugees returning home.

Algiers organization of such subversive terrorist activities has not been limited to the Maghreb but has extended to other countries

such as Spain, after its departure from the Sahara: in its daily bulletin of 16 February 1977 on Events in Spain, Radio France Inter stated: "The Spanish press states that Algeria has offered a haven to the Movement for the Independence of the Canary Islands, whose headquarters is situated in the same premises as those of the Polisario.

"According to the Spanish press, there are two reasons for the Algerian attitude: Colonel Boumedienne wants to have an outlet to the Atlantic at any price and to this end, since the plan for a vassal State in the Sahara has failed because of Moroccan determination, wishes to convert the Canaries; into a satellite and, at the same time, through active support for terrorism in Spain itself, to force the Royal Government of Madrid to change its attitude to the settlement in the Sahara".

In addition, Algeria has not hesitated to engage units of its regular army in the Moroccan and Mauritanian provinces of the Atlantic Sahara. Thus, on two occasions, the Royal Moroccan armed forces responsible for protecting their Sahrawi compatriots were confronted in January and February 1976 in Amgala with units of the Algerian army (ANP) which, according to the Algerian press agency, had been instructed to ensure that the Sahrawis were supplied with "provisions" and "medicaments", but were in fact equipped with artillery weapons and SAM 6 and 7 ground-to-air missiles as the as the fuel and water tanks and supplies which they were transporting.

When this township had been retaken and more than 130 Algerian officers, non-commissioned officers and soldiers captured, representatives of the international press were able to see for themselves the amounts of Algerian arms which had been seized.

Following this clear aggression, which left no doubt about Algerian intentions, several Arab countries, including Saudi Arabia, Egypt, Iraq, the Sudan, Syria and Tunisia, as well as the Secretary-General

of the Arab League, undertook good-offices missions to try and bring Algeria to reason, but these diplomatic initiatives met with Algerian hostility,

The Egyptian daily **Al Ahram** wrote on this subject on 8 February 1976: "The proposal made to the Heads of State of Morocco and Algeria by the Egyptian President for a 'freeze' on military operations along the frontier has received **a discouraging reply from the Algerian president**".

The direct intervention of Algiers at Amgala, which is more than 200 km from the Algerian frontier, 80km south of Smara and, in any event, deep in recovered Moroccan territory, was an open violation of the provisions of the United Nations Charter concerning respect for the sovereignty and territorial integrity of Member State, a violation which Morocco brought to the attention of the permanent members of the Security Council on 28 January 1976.

This intervention provided further proof, if any were needed, of the failure of the Algiers Government to comply with its obligations - the same Government which earlier stated to a Moroccan emissary through its Head: "Tell the King of Morocco loud and clear that, whatever our differences on the problem of the Sahara and whatever the outcome of his dispute with Spain, I assure him that he will never see one Algerian soldier or one piece of Algerian military equipment on Saharan soil for the purpose of fighting a Moroccan brother" .

Faced with the determination of the royal armed forces to defend the provinces of Moroccan Atlantic Sahara, the rulers of Algiers changed their tactics and began to harass forward positions on the 1960 Mauritanian frontiers. During the clashes which ensued, a Moroccan F5 fighter was shot down in January 1976 by a SAM 6 missile, a weapon which is known to be highly sophisticated and capable of being operated only by specialists of an organized army and not by any "snipers".

Six months later, on the eve of the summit meeting of the Organization of African Unity in Mauritius, Algiers organized a suicide operation whose aim unmask its real designs. On 8 June 1976, the Mauritanian capital was attacked by units led by officers of the Algerian regular army and some members of the "Polisario", transported in 40 heavy lorries, 37 Land Rovers and 15 Jeeps, and accompanied by several tons of weapons, ammunition and fuel. This commando operation, which was patently intended to overthrow the Mauritanian regime, cost the lives of 150 members of the "Polisario", including their "Secretary-General", Moustapha Reghibi El Ouali, and his deputy, Laroussi.

The aim of the attack was clear, stated the Mauritanian Minister of State for Sovereignty : "To create a psychosis of fear in the country and ... perhaps to replace the present leaders by men more amenable to Algerian ideas".

In its broadcast on foreign politics of 14 June 1976, Radio France Inter had made the following observations about the attack on the Mauritanian capital:

"The attempt failed ... but the scope of the operation - a motorized raid across 700 km of desert with heavy arms and necessarily substantial logistic support - indicates that this was not the action of a few nomads but an attack prepared and orchestrated by the Algerian High Command".

It was a prepared attack not only in the forces and weapons deployed but also in the stages of its execution; as far back as February 1976, the French weekly, L'Express, in drawing conclusions from the Algerian débâcle at Amgala, had already foreseen this assault on Nouakchott:

"Military observers in Algiers believe that Mr. Houari Boumédiène's soldier; might intervene in Mauritania, either through subversive acts in Nouakchott to try and overthrow Mr.

Ould Paddah, or by a large-scale pinpoint operation, at the risk of putting the seal on a holy alliance against Algeria...

"Reservists and five classes of specialists have been called up since October. The Algerian Army, which only four months ago totalled 55,000 men and 15,000 gendarmes, now boasts 100,000 men".

These conjectures about the future were unfortunately to be confirmed not only in the attack on Nouakchott but again recently in the attack on Zouérate.

The attack on Nouakchott of June 1976 was definitely part of Algerian plans, as indeed was stated by President Mokhtar Ould Daddah in issue No. 1349 of L'Express, dated 16-22 May 1977. At the Béchar meeting of 10 November 1975, the Algerian Head of State had tried to dissuade Mauritania from "establishing solidarity" with Morocco;

"I ask you not to sign the Madrid Agreement (the document providing for Spanish withdrawal from the Sahara), as the Moroccans have done. You must withdraw from these negotiations. They will not succeed, because I have plenty of ways of applying pressure on Spain ..."

Faced with the firm attitude of the Mauritanian President, who stated that he would "not give up the Sahara in order to please Algeria", the Algerian Head of state then changed his tune and threatened" :

"Your country is weak and fragile and has long and difficult borders to defend. We have decided to support the Sahrawis against all-comers, in the name of revolutionary solidarity. We will put everything we possess at their disposal and, if necessary, we shall permit the engagement of Algerian volunteers: 50 or 100,000 to occupy the Sahara. They will thus be able to attack you within your borders, to destroy your economic installations and Even to reach your capital..."

"Less than a month later, on 5 December", concludes Mr. Ould Daddah, "we were to suffer the first Algerian attacks against Mauritania at three points in our territory".

In its issue No. 854 of 20 May 1917, the weekly *Jeune Afrique* provided additional information on the policy of diktat which the Algerian Government has tried to put into effect in the Maghreb region.

After describing the vicissitudes of the nationalization of MIFERMA on 28 November 76 and the assurances given at that time by the Mauritanian Government that "the employment, salary and dignity of all foreign technicians working at MIFERMA would be respected and that they could, if they so desired, remain under a new employer, the Mauritanian State, in the context of the country's economic independence", the weekly magazine states:

"The Mauritanian assurances therefore allayed fears and neutralized any ideas of intervention by France ... On the other hand, they irritated the Algerians, who were expecting a 'hard' nationalization with a strong political stamp. A nationalization of that kind would have involved Algerian intervention, and probably, an Algerian takeover of the administration of the mine, which would also have enabled a solution to be found to the Sahrawi problem by placing Western Sahara in an essentially Algerian sphere of influence. The Mauritians, however, did not see it that way. They considered the main point to be the preservation of the interests of their country. The Algerian-Mauritanian quarrel may have Started on that day"

"One year later, tension reached its climax when President Boumédiène asked to see President Ould Daddah on 9 November at Béchar. On 14 November, Mauritania signed in Madrid the tripartite agreement (Morocco, Spain, Mauritania) providing for the "Former Spanish colony to be handed over to the two States bordering on Western Sahara - an agreement legally justified by arbitration by the Hague Court ...

"In any event, the Béchar meeting led not to any agreement but to a worsening of tension... Some days later, Mauritania was subjected to the first attacks, which were concentrated not on that part of the Sahara which had come under Mauritanian administration, but within its 1960 borders. The attacks continued with varying degrees of severity and boldness for a year and a half ...

"Using a very old propaganda trick, the Polisario systematically inflates the adversary's losses and magnifies its own successes out of all proportion.

"These attacks, which are costly in terms of weapons, ammunition and men, had the advantage for Algiers and the Polisario of keeping on the bail a problem which they regard as still unsolved. Unlike events in the field, the political and diplomatic battle is not proceeding as they would wish".

During his recent visit to France from 2 to 4 July 1977, the Mauritanian President made a statement to the international press, in which he again expressed his view that "the Sahrawi underground does not exist ; instead, there is a neighbouring country called Algeria which engages mercenaries to fight against our country in circumstances which you know ; and the responsibility for everything that has happened lies with the Algerian Government, which, instead of acting through its regular Army, acts by means of the mercenaries which it organizes, arms and welcomes on its territory".

"Algeria, which calls for respect for great principles", continued President Ould Daddah, "seem³ to have scent respect for the territorial integrity of others, because it uses its territory as a refuge for mercenaries to attack neighbouring countries".

Asked whether he considered the "Polisario" as a creation of Algiers, the Mauritanian President replied that he did and added : "I have

said so and I repeat it. I am certain that Algiers is behind these mercenaries, and I am sure that if Algiers stops supporting them, they will cease to exist".

Lastly, asked whether the "mediation" of the Government of Algiers would be a positive act, the Mauritanian President replied: " I do not believe that you can be both party and mediator. I remain convinced that, when the Algerian Government decides to find a solution to the problem, it will be able to do so, because the decision rests with it and alone".

On 1 June 1977, Radio France Inter ended a commentary on the abduction of six French technicians during a raid on the Mauritanian mining town of Zouérate as follows:

" ... There can be no doubt that the gang which carried out the abduction came from Algeria. It is holding the six Frenchmen on Algerian territory and setting conditions for freeing them from Algerian territory.

"When Mr. de Guiringaud, the French Minister for Foreign Affairs, drew attention to these facts, the Algerian Minister, Mr. Bouteflika, repeated, apparently ironically, that **no great intellectual effort was needed to discover what was already known.**

" ... How can the Algerian Government reconcile its relations with France with its attitude of accepting on its territory nationals held by an organization whose activities are dependent on Algerian goodwill?

"Whatever political differences there might be between Algiers and Paris, there can be no justification for the Algerian authorities use of six hostages to apply pressure on France. And it is inconceivable that Mr. de Guiringaud said anything different when he received the ironical Mr. Bouteflika at the Quai d'Orsay".

In an interview published by Le Figaro on 25 May 1977, the French Minister for Foreign Affairs stated : " ... A leader of the 'Polisario Front' implicitly admitted in statements made on 20 May at Tindouf that our compatriots are being held, although he gave no specific details. I share the relief of the families of our six compatriots on learning that they are alive. But I protest against the shocking failure to differentiate in this case between the situation of innocent civilians employed by a Mauritanian mining company and contributing to the development of a friendly country and that of mercenaries.

"A diplomatic conference on humanitarian law meeting in Geneva has in fact just given a definition of the term 'mercenary': it applies exclusively to personnel recruited for combat in order to obtain material reward from a party to the conflict. Obviously, this definition cannot be applied to our compatriots.

"The Government contacted other Governments and international organizations the day after the events of Zouérate to inquire about the fate of our compatriots, to ascertain the conditions under which they were being held and to obtain their release. We are ready to enter into any humanitarian contacts which might attain these three aims. On the other hand, we cannot be involved in attempts to use for political ends the detention of innocent civilians seized as part of a conflict to which France is not a party. We refuse to accept such political blackmail".

During another interview, on the French television station "TF1", the French Minister for Foreign Affairs stated:

"The press conference given by Mohamed Lamine, Chief of the so-called Sahrawi Government, at which he showed off several hundred prisoners detained by the 'Polisario', was held at Tindouf, in Algeria.

"Algeria is therefore providing Mr. Lamine and the 'Polisario Front'

with logistic support and the means to organize such a conference. Some people say that the Algerian Government is also providing it with means of pursuing its struggle.

"That is why I call upon Algeria for the release of the Frenchmen who have been made prisoner by the 'Polisario' ".

Thus, by its constant aggression against two fraternal countries in the western Maghreb, Algeria continually demonstrates its designs for hegemony in the area, which "talk of revolution" can no longer hide.

It is extremely significant that the ruling circles of Algiers have, from the outset, been unable to obtain any support for their policy of hostility towards the rights of Morocco and Mauritania, either within the Arab world or among the African countries close to the Maghreb region, which are in the best position to know 'that the situation is and to understand the strength of the case put forward by Morocco and Mauritania in international bodies.

It is equally significant that the great majority of African countries are becoming daily more aware of the real motivations of the rulers of Algiers in this matter which derive wholly from a reason of State lacking any sense and which certainly have nothing to do with Algiers proclaimed attachment to the sacred right of peoples to self-determination or with respect for the noble principles of humanitarian law.

III- FOR A PERMANENT SOLUTION GUARANTEEING HUMAN RIGHTS

The solution of a human problem which is the direct consequence of a continuing violation of international law by a foreign State in the liquidation of a colonial situation can be found only in a return to legality and in respect for the principles proclaimed by the Charter of the United Nations.

Morocco and Mauritania have made every effort at all times to solve this question and it is for the international community, and more specifically the humanitarian organizations, to ensure that the Moroccan and Mauritanian victims of the policy of Algiers return as soon as possible and for good to their homes,

(A) Efforts by Morocco: Morocco's efforts to assume its obligations with regard to the Moroccan originating from the Atlantic Saharan provinces have been geared to bringing about a rapid improvement in the living conditions of the Moroccan Sahrawis who remained in their homes (and who now enjoy the same civil and political rights as their fellow citizens) as well as a durable solution of the tragic problem of these who are being held in the Tindouf camps.

1 - Participation by Moroccans residing in the recovered provinces in political, economic and social life:

Bearing in mind the purpose of Sub-Commission resolution 2D (XXIX) it is important to ascertain the extent to which the Moroccans of the Atlantic Sahara provinces enjoy political, Economic, social and cultural rights. Accordingly, it is appropriate to recall that the Moroccan Constitution of 10 March 1972 prescribes in its preamble that:

"Aware of the need to ensure conformity of its actions with the aims of the international organizations of which it is an active and dynamic member, the Kingdom of Morocco adheres to the

principles, rights and obligations deriving from the charters of those organizations".

Furthermore, Morocco is a party to the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, which it ratified on 18 December 70 and recently, on 19 January 1977, signed the Protocol to the International Covenant on Civil and Political Rights and the Protocol to the International Covenant on Economic, Social and Cultural Rights.

The principles enshrined in these international instruments are guaranteed by the Constitution which includes the following provisions, under the heading "Basic principles":

"Article 5 : All Moroccans are equal-before the law".

"Article 6 : Islam is the religion of the state, which shall guarantee freedom of worship to all".

"Article 8 : Men and women shall enjoy equal political rights.

"All citizens of either sex who are of full age and in possession of their civil and political rights shall be entitled to vote".

"Article 9: The Constitution guarantees to all citizens:

Freedom of movement and residence throughout the Kingdom;

Freedom of opinion, freedom of expression in all its forms and freedom of assembly ;

Freedom of association and freedom to join any trade union or political organization of their choice.

"No restriction may be placed on the exercise of these freedoms save by law".

"Article 12: All citizens shall have access to the public service and to public employment under the same conditions".

"Article 13: All citizens shall have-an equal right to education and to work".

"Article 15: The right to own property remains guaranteed".

"Article 16: All citizens shall contribute to the defence of the country".

"Article 17: All citizens shall be liable to taxation, according to their ability to contribute, to meet public expenditure, which can be authorized and allocated only by law and in the manner prescribed in this Constitution".

"Article 18: All citizens shall bear collectively expenditure resulting from national disasters".

Since the recovery of the Atlantic Saharan provinces, the Moroccans living in these regions have enjoyed all these rights and exercise them daily, as demonstrated by their participation in the municipal and communal elections of 12 November 1976 and the legislative elections of 3 June 1977 to select their representatives to the Parliament.

A question relating to the significance of the participation by the Moroccan of Atlantic Sahara in the elections of 12 November 1976 was put to H.M. Hassan II at the press conference of 25 November 1976 which marked the end of the official royal visit to France:

Question: "When we spoke on Saturday to President Mokhtar Ould Daddah during his stop-over in Abidjan, the Mauritanian Head of State told us that he considered the overwhelming participation by the Sahrawis in the 12 November election was a taken of their loyalty and attachment to Morocco and that this taken could be considered as a kind of referendum. Do you share the view of President Mokhtar Ould Daddah, your Majesty ? "

Reply: "I am in agreement with President Ould Daddah who held elections before we did, especially in view of the fact that seven or ten members (1 should not like to give incorrect figures) elected a few months ago to the Mauritanian Parliament were from a region of the Sahara which had reverted to Mauritania and he had viewed this election as further evidence of their Mauritanian citizenship. In our country, the population of our Sahara is much denser, and the participation was therefore greater. The register of voters showed as many as 19/000 persons registered out of a nomadic population which was electing its representatives for the first time.

"In questions of procedure, there is a saying which still holds: If there is involvement, there is no action. Accordingly, if the Sahrawis did not feel that they were concerned - because they were Moroccans - by the municipal council, by questions of protection, by the administration of their towns, they would not have participated in the vote, and the fact that they did participate is a further and more tangible, more juridical demonstration of the fact that they are Moroccans".

It is generally recognized that for every registered elector, there are at least two persons who are unable to vote, mainly for considerations of age. In the Moroccan population of Atlantic Sahara the percentage of young people under 21 years of age - the age at which they may vote - exceeds 50 per cent. Consequently, the population of the Moroccan provinces which have been recovered stands at approximately 54,000, without taking population increase into consideration.

If the number of Sahrawis inhabiting the Mauritanian part of the Sahara is also taken into account and if one recalls the results of the 1974 census operation carried out by the ex-administering Power which estimated the total number of Sahrawis at 73,497, a figure confirmed, at the time, by the United Nations, two main conclusions may be drawn :

The first is that, by voting, the Moroccan and Mauritanian population of the Sahara gave overwhelming popular support to the consultation of the "**Jemaâ**" on 26 February 1976, the date which marked the end of the decolonization process provided for in the Madrid Agreement of 14 November 1975 ;

The second is that the figures and allegations adduced by Algiers concerning the displaced persons originating from the former Spanish Sahara are highly unreliable, particularly since the overwhelming majority of these people, who are still in their homes and all of whom have family ties with the displaced persons in Tindouf, have expressed their opinion most unequivocally in the elections.

By voting heavily in the communal and legislative elections, the Moroccan population of Atlantic Sahara has also endorsed the efforts of the Moroccan Government to promote the accelerated economic and social development of the recovered provinces.

The Moroccan Government, desirous of making the benefits of independence and restored unity speedily available to the population, drew up and began to apply in the spring of 1976 an emergency plan for the Saharan provinces to provide them with, the same infrastructure as the other provinces of the north and to ensure their economic take-off.

Accordingly, on the occasion of the first anniversary of the Green March" in November 1976, a national loan was floated for the development of the Sahara, amounting to 1 billion dirhams (approximately,\$ 220 million). This loan Was in addition to the appropriations earmarked by the Treasury and the specialized financial agencies for the execution of projects which have been approved by the Jemaâ in the following sectors:

Agricultural sector :

In this sector an extensive tillage campaign took place in the Saharan provinces during 1975-1976, when more than 600 ha were brought into cultivation for the first time in the history of this region at Daoura. The yields of these crops were highly encouraging since Wheat production ranged from 10 to 24 quintals per hectare and barley production from 25 to 35 quintals per hectare.

As a result of these harvests, each family in Daoura, Haggounia, Dcheira, and Boujdour received four quintals of barley and one quintal of wheat. In the Fom Louad region where 100 hectares came under cultivation, fertilizer and grain as well. As agricultural equipment were made available to the farmers during the years 1976 and 1977. This region has now begun to supply Laâyoune with vegetables and cattle-feed. In addition, 6,368 tons of cattle-feed, 4,000 quintals of fodder and 2,000 quintals of dry beetroot pulp were distributed to breeders in the three provinces of Boujdour, Laayouen and Smara.

Transport and communications sector:

The construction of a highway infrastructure has begun with the opening to traffic of the road between Tan Tan and Laâyoune pending the completion of a second "link road" similar to the first which had linked the former North Zone to the former South Zone between 1957 and 1958. This road will link Tan Tan and Smara and will continue as far as Mauritania and Senegal, connecting Amgala, Bir Mogrein and Atar.

The 1978-1982 Five-Year Plan has scheduled the construction of a port at Laâyoune and another at Boujdour. The cost of these ports is estimated at 220 million dirhams (about \$ 50 million).

An airport at Smara, equipped with a runway 3 kilometres long, has already been constructed at a cost of 30 million dirhams (approximately \$ 7 million).

The construction of a complete airport at Boujdour has been scheduled for the forthcoming 1978-1982 Five-Year Plan. A railway line is scheduled to link Marrakesh and Laâyoune via Agadir under the same Plan.

Hydraulic engineering sector:

Ten wells have been bored in the Fom Louad region, where a large deposit of fresh water has been found. This aquifer, which has a flow of 30 litres per second, currently supplies drinking water to the town of Laâyoune, which now has a new distribution network. In addition, there will be 20,000 metres of drilling before the end of 1977 at Sidi Ahmed Laroussi (Smara province) and in a zone of Boujdour province.

Two desalination plants have been in operation in Boujdour province since the beginning of 1977 and others are in the process of being installed. The first plant has a capacity of 250 m³ per day and the second of 75 m³ per day. In Smara, the National Drinking Water service (ONEP) constructed a desalination plant for brackish water in April 1977.

Fishing sector:

The National fisheries Services has set up fishing co-operatives at Laâyoune and Boujdour, furnishing them with needed equipment and material such as boats, engines, nets, etc.

To enable the fish products to be preserved, Laâyoune has been equipped with an ice-making plant with storage chambers and refrigerators.

Education sector:

After the Atlantic Sahara provinces reverted to the mother country, the total number of pupils and teachers increases sharply. During 1975-1976, 3,000 pupils were enrolled in the various schools in the three provinces, and in 1976-1977 their number rose

to 4,000 pupils in 100 classes, 75 of them at Laâyoune, 17 at Smara and 8 at Boujdour, with 116 national language and foreign language teachers. This increase brought the number of enrolled pupils to 131 per cent in comparison with the era of the Spanish administration.

It is also expected that the effort expended on building schools and training teachers as well as on settling the population will, in the next few years, make it possible to more than triple the number of children currently attending school. Several dozen pupils who have completed their primary studies have received scholarships to enable them to pursue their secondary studies in the provinces of the north pending the opening, next year, of lycées and colleges in the Saharan provinces.

Public health Sector:

Several campaigns for the treatment of tuberculosis and trachoma have been conducted in the various Saharan provinces. Two health centres at Laâyoune, a clinic in each district, as well as a nurses training school and a school health centre have been set up:

There are plans to build a 200 bed hospital at Laâyoune, a 60 bed hospital at Smara and a similar hospital at Boujdour in the near future.

Furthermore, mobile health units supervise the health of the entire population scattered throughout the Moroccan provinces of Atlantic Sahara.

Social sector:

The National Mutual Assistance Institution is working tirelessly to provide suitable training for the inhabitants. As a result of its permanent and diversified activities, the provincial delegation of the National Mutual Assistance Institution has begun to lessen the social impact of the wastage inherited from the school

system in the past, and is saving considerable numbers of people from debauchery, unemployment, begging and other social evils by arranging vocational training for them in the fields of sewing,embroidering, knitting and domestic science: Thus, and as a result of co-operation with the provincial authorities, three workshops have been set up in the three provinces, with a total of 400 pupils under the guidance of 20 instructors. The cost of equipping each workshop was of the order of 80,000 dirhams, and a grant of 25,000 dirhams was made to each centre for the purchase of basic materials. In order to ensure normal growth for all children who show signs of calorie deficiencies, three socio-educational centres (two at Laâyoune and one at Smara) have been established.

At present 1,500 families receive milk and various vitamin-enriched products in these centres. A children's home has also been set up at Laâyoune for orphans and needy children. This institution is looking after 113 boarders at the present time.

Side by side with these activities, the delegation of youth and Sports has made considerable progress and achieved noticeable results in the sphere of youth education. Thus, and with a view to improving the intellectual level of Sahrawi youth, in order to promote its social development, so as to meet the actual needs of these provinces, the youth section has selected an educational and cultural programme in Co-operation with the population designed to efface the after effects of colonialism. So that young people may benefit from continuing activities, several clubs have been formed including a youth centre consisting of a cinema club, a book club, a music club and a theatre club. Such is the diversity of its activities that the youth centre has undertaken several literacy campaigns among the population.

In addition to these various achievements, there is also the extensive afforestation campaign - a "Green March" in itself, since more than 100,000 trees have been planted by the

population with the assistance of volunteers and the Royal Armed Forces, around the town of Laâyoune alone. It has also been decided that a similar number of trees will be planted in the other Saharan provinces during the five years of the 1978-1982 Plan.

Issue No. 505 of the bi-monthly Belgian review *Remarques Africaines*, dated 15 May 1977, contains a frank eye-witness account by its special correspondent Francis Dessert, entitled "Sahara 1977 : Priority to development". He writes:

"According to certain propaganda sources, the regions which only recently comprised Spanish Western Sahara are now closer to foreigners and the main towns, and El Ayoun in particular are under martial law. The Algerian leaders of the Polisario Front persuade these who lend them a ready ear and pen that slogans in support of them are appearing on the walls and -that the Sahrawis are rejecting the 'Moroccan yoke' ... What is the truth of the matter?

"It would be edifying for a responsible observer to take the trouble to collect the Polisario statements and compare them with the actual facts. For instance, according to the Algerian radio, El Ayoun airport was recently destroyed by Polisario troops. Who can believe these allegations? Certainly not the inhabitants of El Ayoun who are perfectly aware that nothing happened in their town or foreigners who, like myself, have been able to see for themselves that El Ayoun airport is in a perfectly satisfactory state ...

"Needless to say, the officials responsible for the Saharan provinces have better things to do than to waste time arguing with people whose dishonesty is Equalled only by their hegemonic ambitions.

"There is an urgent problem in Western Sahara. There is an enemy to be fought ... and this main enemy is nothing less than underdevelopment.

"Although tribute must now be paid to the friendly co-operation between Spain and Morocco, one should in fairness stress that the presence of Spain in Western Sahara brought no benefits to the Sahrawis. Nothing at all was done to improve their well-being. The Moroccan authorities have even discovered colonial archives which state explicitly that all funds sent by Madrid during the era of the Spanish Sahara for development projects were used for other purposes by the colonial administration.

"Following the Green March, there was not a single mosque at El Ayoun. In fact, the Spanish colonial authorities had forbidden the building of mosques. At the present time there is a temporary mosque in El Ayoun and two others are being planned. One will be provided by the Moroccan Government and the other built at the expense of a rich and pious Sahrawi notable.

"Under the Spanish, El Ayoun was divided up into three completely different districts, reserved respectively for rich Spaniards, poorer Spaniards and, lastly, Sahrawis, the latter being required to show a pass in order to leave their area.

"In matters of education, the Moroccan administration has to start from scratch. At the present time, 116 Moroccan teachers are deployed in the Saharan regions to dispense tuition on a bilingual basis (the national language, plus French, but mainly Spanish). Four thousand young people are now attending primary school. Those who had completed their primary studies before the liberation (46 in all) have been sent at State expense to secondary schools in Tangier and Tétouan, where tuition is given in Spanish and Arabic. A collège and a lycée will be opened at El Ayoun only at the end of 1977 and in the course of 1978, respectively. However, it should be pointed out that a school where Spanish teachers give courses in their language and in Arabic is still in operation. Cultural co-operation agreements have been concluded between Morocco and Spain for the development of the Saharan provinces.

"Moreover, many Spaniards, including merchants and teachers, remained in the Sahara after the liberation and are proving extremely helpful and co-operative.

"The Saharan regions recovered by Morocco following the already legendary Green March have been subdivided into three provinces, each with its own administration: El Ayoun, Smara and Boujdour.

"In mid-April this year, a ministerial delegation visited the area to study the situation at first hand ... This imposing delegation - demonstrating the interest which the national authorities take in the recovered provinces - inaugurated, inter alia, the very first desalination plant at Boujdour. This plant already produces 250 m³ of drinking water per day.

"With a capacity of 750 m³ per day, it will enable the needs of the population to be met, in accordance' with demographic estimates and the gradual settlement of the population. Built in six months, this plant has replaced a mobile desalination unit which provided 75 m³ per day. There are also two other mobile units with the same capacity, one at Smara and the other at El Ayoun, for the desalination of brackish water.

Similarly, research work is continuing in order to assess total freshwater resources of the three Saharan provinces. There are also plans to inaugurate in the relatively near future a permanent destination unit at Smara (250m³ per day) and some 20 units with a capacity of 8000 litres per day to be brought into service in the various regions of the three provinces of western Sahara.

"All these activities give grounds for reasonable optimism with regard to the future of freshwater distribution in a part of the world renowned for its aridity.

"But the desert can bloom It is even blooming. already: trees are growing in Western Sahara. Crops are beginning to grow... Life is being resumed in this new country.

"While every communiqué, however fantastic, from the other side is printed in what is known as the international press, one sees with some annoyance, that the unquestionable efforts made by the Moroccan Government on behalf of the Saharan provinces go almost unnoticed ...

"A modicum of responsibility is called for; the Sahrawi population has no need of slogans.

"As far as the development of the regions in question is concerned, in addition to the activities of the National Drinking Water Service of which we have spoken, there are many projects whose completion would change the face of the Sahara.

"Let us mention, *inter alia*, the solar energy research projects, the development of the commercial and industrial fishing port of El Ayoun, the commercial port of Boujdour (where there is the most abundant offshore fishing in the world), the construction of local schools, the Marrakesh-El Ayoun railway line, etc ...

"One detail shows the cooperative spirit of the Sahrawi population. I was able to see for myself the enthusiasm of the Sahrawis who are working on the construction of new low-cost housing at El Ayoun. The reasons for this enthusiasm? Quite simply that they are building houses which will subsequently belong to them ...

"It would take too long to enumerate all the attractions which the former Spanish Western Sahara may hold for tourists. Let us draw attention to the existence of a specific tourism development programme for the three provinces.

"When I asked what was planned in that regard, Mr. Zemouri, the Minister for Housing, Town Planning, Tourism and the Environment, replied unequivocally: "Tourism is deemed to be a key factor for overall development in the Sahara". Tourism will create jobs, will necessitate the improvement or the establishment of communication infrastructures and, finally, will enable the general public to appreciate on-going projects at first hand,

"A company for property development and tourism in the Sahara is now in operation. It is also planned to organize excursions to the Sahara from other places in Morocco visited by tourists, as well as mobile tourism from El Ayoun, Smara and Boujdour. Special attention will be given to the future of the Saharan coast, which is of great beauty and has tremendous possibilities.

"Cultural and folk-lore festivals are scheduled in the chief towns of the three provinces. Since last year there has even been a Moussem at El Ayoun with participation by local troupes.

"At present the hotel infrastructure is still somewhat inadequate. For instance, at El Ayoun, in addition to the luxurious 'Parador' (with about 30 rooms), a hotel with 81 double rooms has just been opened in a converted building. However, many other hotels are planned and foreign to fear: they will be received with the reliability, comfort and kindness for which the Sahrawis are renowned.

"In conclusion, the case of Western Sahara is an outstanding example of a regional development effort by a country which itself is still in the process of development. It also demonstrates the public spirit of Moroccan youth, for many qualified young people have left the easy life of the large towns to place themselves at the disposal of their compatriots of the Sahara and to assist in the development of the recovered provinces.

"Better than any analysis of the official documents emanating from either side, a visit to the Sahara, however brief, makes it possible to appreciate the true situation in the liberated provinces, for which Morocco is ready to make the greatest sacrifices",

In line with all these achievements and all those plans designed to change living conditions and to bring about a marked and rapid improvement in the level of economic, social and cultural life of the entire population of the Moroccan provinces of Atlantic Sahara, the

Moroccan Government cannot fail to be particularly concerned at the fate of those people who are being kept in inhuman conditions by force of arms in Tindouf.

2 - Appeal for the return of Moroccans detained at Tindouf:

Since the entry into the final phase of the decolonization of the Saharan territory, Morocco has repeatedly appealed to the Moroccans who have allowed themselves to be taken in by foreign machinations, to return home. In his speech on 23 October 1975, His Majesty King Hassan II spoke on the radio to the Moroccans of Atlantic Sahara. The sovereign pledged "to forget, to pardon the mistakes of the past, to let bygones be bygones for events for which not all were entirely responsible but which were the results of colonialist machinations".

Following this appeal, Haj Khatri Ould Sidi Saïd El Joumani, President of the Sahrawi Jemaâ, returned to Morocco via Madrid in circumstances which are known to all. On that occasion, he said: **"When we saw that we had become a pawn, that our fate had literally been put up for auction by the ambitions and rapacity of certain parties, we decided to proclaim out loud what we had been thinking, namely that we are Moroccans ... "**

Also responding to the royal appeal, Sheikh Haj Ahmed Ould Bachir Ould Brahim Vice-President of the **Jemaâ**, returned to Morocco on 14 January 1976 after realizing that he had been misled by Algerian propaganda. The statements which he made shortly after his return concerning his "enrolment" into the ranks of the "leaders" of the "Polisario" and the stirring circumstances of his escape on the occasion of an "official visit" abroad, constituted for international public opinion, an eloquent revelation of the machinations of Algiers and the unscrupulous procedures of its rulers with regard to certain persons who are natives of the Sahara formerly under Spanish domination and whom they use as instruments of their hegemonic policy.

Sheikh Ould Bachir said, following the extraordinary meeting of the **Jemaâ** on 26 February 1976, that during his stay at Algiers, he had had occasion to read an official document of the Algerian Government proving in his own words that "the defence of the rights of the Sahrawi people' in fact conceals a plot against the Sahrawis" and that "seven months after the scheduled independence of the Sahara and the proclamation of a 'Democratic People's Republic' the Sahara was to become an integral part of Algeria".

Since then, a week has not passed without a group of Sahrawis of an entire family clandestinely returning to the provinces of the Moroccan Atlantic Sahara.

Thus, during the month of May alone, a Moroccan family, which had been detained for a year and a half at Tindouf, succeeded in fleeing and reaching Dakhla (formerly Villa Cisneros), the chief fown of the Mauritanian province of Tiris El Gharbia. In addition, a "group consisting of 14 persons who had held responsible positions within the military command and the executive committee of the Polisario escaped from Algiers and reached the port of Melilia in order to free themselves from the Algerian grip, as was announced by the Association of Person Natives of the Sahara Living in Europe in a communiqué issued in Paris and quoted by **Agence France Presse** in a dispatch dated 22 April 1977.

The same communiqué stated that "those persons succeeded in escaping .thanks to the assistance of certain Algerian nationals hostile to the regime". Immediately after their flight, these persons alerted African and international opinion to the "possible consequences of the sabotage plans which the Algerian special services aided by more than 600 mercenaries currently at Tindouf are preparing to carry out against neighbouring African countries and the Canary Islands".

However, while some have managed to escape safe and sound, others are ending their days tragically under fire from the Tindouf watch-towers or are executed in cold blood in some remote corner of the desert. For example, as we have mentioned above, a group of 257 persons were massacred by the Algerian special services at the end of last year and the beginning of the current year.

"These victims", states the Association of Persons Natives of the Sahara in a communiqué dated 14 February 1977, "were shot between 1 December 1976 and 15 January 1977 in concentration camps situated at Aouinet Bel Graâ, a village 253 km south of Tindouf.

"They had been captured as they were trying to pass through the security net surrounding the camp ... The fault of these martyrs was to have sought to return to their native land in Morocco or Mauritania".

But as the Sahrawis detained at Tindouf become aware of the proportions of the Algerian plot, the rulers of Algiers are reinforcing their controls and eliminating those who oppose them, going so far as to take infants away from their families on the pretext of giving them education or of sending them to vacation camps, but in reality, using what has become a classic "revolutionary" device since the Greek Civil War, to keep them as hostages against any undesirable inclination on the part of their families.

In order to make the international organizations face up to their responsibilities, Morocco and Mauritania launched the following joint appeal on 23 July 1976 for the voluntary repatriation of Sahrawis from the Moroccan and Mauritanian provinces who are in the Tindouf region:

The two Heads of state, fully conscious of the great poverty in which a number of native Saharans are living in the Tindouf area, strongly urge them to return to their respective countries where it

is guaranteed they will be welcomed with all the solicitude called for by their situation. From now on it is the duty of Saharans to cease to live on international charity in a foreign country and to return to their homes and families and participate in the improvement and prosperity of their native land, side by side with their brother Moroccans and Mauriticians, in an atmosphere of freedom and dignity.

"The Kingdom of Morocco and the Islamic Republic of Mauritania are resolved to do everything possible to ensure the repatriation of their nationals, in close co-operation with the competent international humanitarian organizations. They invite these organizations to help them to put an end to the tragic situation of the Saharans, and assure them of their determination to grant all facilities and all guarantees which will enable these men, women and children, who are natives of the Sahara, to become once more a part of the society to which they belong and to live among their own people in peace and freedom".

The text of this appeal was transmitted to the United Nations High Commissioner for Refugees, the President of the Red Cross and the Chairman of the League of Red Cross Societies on 26 July 1976.

This Morocco-Mauritanian decision was taken in accordance with article V, paragraph 4, of the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, dated 6 September 1969, which states:

"...Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished. The text of such appeal shall be given to refugees and clearly explained to them by their country of asylum".

Henceforth, the solution can therefore only be found through the international humanitarian organizations, and more generally through the entire international community, whose role should be to use the words of the report of the United Nation High Commissioner for Refugees (Supplement No. 12 A (A/31/12/ Add.1, 1976) **"not to perpetuate a problem but rather to seek speedy and permanent solutions"**.

B. The role of the International community : While both the legal and political problems associated with the decolonization of the former Spanish Sahara have been solved in accordance with the decisions of the Security Council, the resolutions of the General Assembly and the advisory opinion of the highest international legal body, it is for the International community to find a solution to the only two real problems which arise : that of the tension created in the Arab Maghreb and that of the fate of the displaced Moroccan and Mauritanian Sahrawis at Tindouf, both problems being a direct consequence of the actions and machinations of the Algiers Government.

(1) The role of the competent regional organizations:

Having been unable to achieve their ends directly in the Moroccan and Mauritanian provinces of the Atlantic Sahara by the means which they had chosen, the rulers of Algiers apparently considering that it was only a question of time, saw in every session of the various international and regional organizations a further opportunity to bring up again with a view to the fulfilment, however late, of their designs - what they choose to call, somewhat wistfully, "the problem of Western Sahara".

However, the States members of the Organization of African Unity, the Arab League and the Conference of Heads of State and Government of Non-Aligned Countries are now perfectly aware of the nature of the problem - if, indeed, there is a problem and have therefore clearly ceased to give any attention, and even

less credence, to Algerian Government's contrived arguments concerning "Western Sahara" arguments which are reiterated to the point of obsession and which are essentially based on fallacies and gross demagoguery and untruths which are daily refuted by the facts.

At the twenty-sixth session of the Council of Ministers of the Organization of African Unity, the "question of the former Spanish Sahara" was considered at the insistence of the Algerian Government, but the final declaration of the Council of Ministers fell far short of the hopes of the rulers of Algiers, since it failed to reorganize the so-called "Polisario" as a "national liberation movement, as they had hoped it would.

Similarly, at the thirteenth Assembly of Heads of State and Government of the OAU, held at Mauritius, Algiers, despite all kinds of pressure and inducement, was unable to divert the Summit from its decision to refer consideration of "the question" to "an extraordinary Summit meeting to be held at a later date".

It was clear that the major concern of the thirteenth African Summit was to avoid prolonging a political discussion which might cause a needless and irreparable split within the OAU on account of a problem of international relations which would no longer exist in any regard were it not for the obstinate behaviour of Algiers.

Lastly, at the fifth Conference of Heads of State or Government of Non-Aligned Countries held at Colombo in 1976, the rulers of Algiers, who had chaired the fourth Conference, believed that they had finally found the "unique opportunity" which they were seeking to give a new impetus to their plot against Morocco and Mauritania.

However, the outgoing Chairman of the Non-Aligned countries, far from winning the expected triumph, was to end his term of office with a further setback before the immense majority of the international community.

The Conference placed "the question" in an entirely different context from that which the Algerian leaders had sought to impose by stressing, in the Final Declaration, the strictly regional nature of a conflict between three States of the Maghreb, and by referring to the Extraordinary African Summit, recommended by OAU, the peaceful settlement of this conflict, which was diplomatically described by many prominent Chiefs of State of non-aligned countries as "marginal".

With regard to the Arab League, it will be recalled that at the seventh Arab Summit, held in October 1974 at Rabat, all the Arab countries, including Algeria, welcomed the agreement reached between Morocco and Mauritania to hasten the decolonization of the former Spanish Sahara. Since the Algerian Government is about face, the Secretary General of the Arab League as well as several Arab leaders have offered their good offices in an effort to end the tension, but so far Algiers has adopted a consistently un-co-operative attitude towards all those initiatives.

As to the OAU Extraordinary Summit, its postponement sine die proves, if such proof be necessary, that the great majority of African countries are not allowing themselves to be manipulated in order to enable the rulers of Algiers blinded by their egocentrism, to make use of an international meeting which should have the objective of reaching a constructive and peaceful solution for the purpose of aggravation further its relationship, with two fraternal neighbouring countries and, in general, inter-African relationships. In this connexion, it is interesting to note the following commentary from the weekly **magazine Jeune Afrique** in its issue [N. 854 of 20 May 1977, to which reference had already been made:

"Few countries in Africa and in the Arab world have so far agreed to attend an extraordinary summit, as desired by the 'Polisario' and Algiers. In spite of the efforts of the Secretariat of the Organization of African Unity (OAU) to hold such a summit, fewer than a dozen

Chiefs of State have wished to deal with this thorny issue. Hence the many postponements. The most recent postponement was made by the President of OAU, Sir Seewoosagur Ramgoolam, Prime Minister of Mauritius, who recently stated that the latest date fixed, 16 May, could not be met because 'neither he nor the OAU Secretary-General would be available on that date' and 'Addis Ababa was no longer a suitable venue'. The Ethiopian capital had been chosen precisely because no other African State had agreed to host the summit meeting. Moreover, it is odd that, even among the nine African countries which have recognized the Polisario, some, such as Burundi and Rwanda, are keeping their distance from the Sahrawi movement".

(2) Role of international humanitarian organizations

This role rests primarily with the United Nations High Commissioner for Refugees whose tasks are based, as is known, on the following principles, which are always mentioned in connexion with each report submitted by UNHCR and which consist in :

Making constant efforts to avoid the appearance or perpetuation of the refugee problem by promoting a better understanding between the parties concerned; focusing international assistance on the attainment of a speedy and durable solution, particularly through voluntary repatriation; restoring the dignity of the refugee and enabling UNHCR to act by granting the treatment provided for by the 1951 Convention on the Status of refugees and the relevant Protocol of 1967.

In response to the joint Moroccan-Mauritanian appeal. The United Nations High Commissioner for Refugees made the following statement in a message dated 29 July 76; "As you know, the voluntary repatriation of refugees is one of the statutory priority tasks of the High-Commissioners Office. Therefore, I wish to assure you, and through you, the Government of His Majesty King Hassan II, that my Office remains ready, at any moment, to facilitate the

repatriation to their territory of origin of the Sahrawis living at present in Algeria, if they so desire. In this connexion, I am, of course, prepared to discuss with your Government in due course the various procedures that must be envisaged at the appropriate time".

At its twenty-seventh session, held at Geneva from 4 to 12 October 1976, the Executive Committee of the High Commissioner's Programme "requested the High Commissioner to continue his programme of humanitarian assistance and **the same time to undertake discussions ... with a view to the speedy implementation, in accordance with the usual policy of his Office, of permanent solutions, including voluntary repartition and durable settlement**" (document A/ 31/12/add.1).

The dangerously negative attitude of Algiers hampers any political approach to the solution of the distressing problem of the Mauritanian and Moroccan Sahrawis detained at Tindouf. Consequently, recourse to international humanitarian organizations remains the only means available to guarantee the human rights of these thousands of Moroccan and Mauritanian nationals, ruthlessly uprooted from their homes and maintained in a state of utter destitution to serve the needs of a hegemonic policy, which is sustained by hate and intrigue and is quite contrary to the normal attitude in this area of the Arab Muslim West in which all efforts are aimed at ensuring fraternal understanding.

For its part, in any event, the Kingdom of Morocco will continue, in accordance with its pledge to the Executive Committee of the High Commissioner's Programme, to give its full co-operation to the competent humanitarian organisations, so that the future of brotherhood in the Maghreb will no longer be darkened by this tragedy, for which the present leaders of Algeria bear a heavy responsibility before the international community and before history.

Thus, quite recently, following a message sent on 26 May 1976 by the responsible official of Algerian diplomacy to the President of the international Committee of the Red Cross concerning the Zouérate hostages affair, the Minister for Foreign Affairs of the Kingdom of Morocco reassured the High Commissioner that the Moroccan Government remained entirely at his disposal and stressed the great importance which it attaches to the implementation of the decision taken by the Executive Committee of the High Commissioner is programme at its twenty seventh session, in This regard, he transmitted to the High. Commissioner the text of the following message addressed, on 31 May 1977, to the President of ICRC:

"Mr. President,

"With regard to the message which you addressed, on 24 May 1977, to Mr. Abdelaziz Bouteflika, Algerian Minister for Foreign-Affairs, and of which I was informed by a Press agency dispatch, I should like, first of all, to express to you my appreciation for the noble concern which underlies the constant preoccupation of ICRC with regard to the . development of the situation in the Maghreb region.

"It is, of course, entirely to the credit of ICRC that it has spared no effort, neglected no initiative or approach or let slip any opportunity which would facilitate the accomplishment of its high humanitarian mission, as laid down in its statutes, leaving aside any partisan spirit and giving strict consideration to the objective reality of events and facts.

"it is nevertheless regrettable that the Algerian authorities have been placed in a position to exploit, in a rather indiscreet manner, certain terms of the message which, in the exercise of your functions, you doubtless felt it your duty to address to the head of. Algerian diplomacy perhaps with a view to expediting the solution of an additional humanitarian problem which races your organizations.

"However, there is no need to recall the well-known events which prove that this problem was created by the systematic use of methods that clearly violate humanitarian law and international law in general.

The persons detained in Algeria are merely unfortunate hostages who are persistently presented to world public opinion which is now, however, much better informed on the circumstances of the liberation of the Sahara formerly under Spanish domination as 'refugees' who fled towards the Tindouf in the face of some unknown terrible danger from their compatriots in Morocco and Mauritania.

"This is in fact nothing more than a tragic attempt at mystification and an effort to reverse role which is unique in the history of decolonization. World public opinion is no longer deceived by it.

It is now known that the acts of violence and violations of humanitarian law which are perpetrated in our region are the work of an armed section of the Algerian special services, which is composed of persons of various -nationalities and uses the so-called 'refugees' as a shield that it hides behind after committing its heinous crimes. The hostages confined in the Tindouf area are thus used by the Algerian Government to serve its designs in the area. It is this Government, and it alone, which bears the international responsibility for that situation.

"Noting the statements in your above-mentioned message that 'The obstacles which ICRC encounters in its humanitarian mission are many and difficult to bear' and that 'Although it is in touch with all the parties to this conflict, the dialogue is not satisfactory and has not so far enabled the existing problems to be resolved', I cannot but record the fact that the difficulties encountered by ICRC in its humanitarian mission are certainly more of the Moroccan Government's doing. I should like to recall, in this connexion, the message which I had the honour to address to you on 26 July 1976 and to which there has so far been no reply.

"In communicating to you the text of the appeal addressed by His Majesty King Hassan II and His Excellency President Mokhtar Ould Daddah to the persons who are natives of the Sahara formerly under Spanish domination and who are at present in the Tindouf area, as well as an invitation to the competent international humanitarian organizations to co-operate with the Moroccan and Mauritanian Governments to ensure the repatriation of those persons, I pointed out to you the following, in particular :

'The importance of the statements and commitments contained in this text will not escape you. They seek to bring about, in the best possible circumstances, a definitive solution to this problem. They are in keeping with your concerns and are such as to meet them fully.

'It is high time to put an end to the isolation and suffering of the persons in question. Only their interests, their health, their well-being and their resettlement among their own people should henceforth guide all action on their behalf. This is, in any event, the major concern of the Moroccan and Mauritanian Governments.

'The Government of His Majesty the King declares its willingness to establish with the competent international organizations the conditions which will ensure the repatriation of the displaced persons from the Sahara and to work out practical arrangements for carrying out such an operation so that it can be effected with all the requisite guarantees and in a climate of dignity and freedom.

In this regard, we have requested the United Nations High Commissioner for Refugees to make practical arrangements for the repatriation of these persons. We have also placed this matter before the Chairman of the League of Red Cross societies. We also placed on your organisation to provide, as appropriate, your valuable assistance in the proper execution on this highly humanitarian operation.

“Furthermore, I wish to remind you of the decision taken at Geneva on 12 October 1976 by the executive Committee of the High Commissioners Programme (paragraph 119 (B) of the report or the High Commissioner - document A/31/12/Add.1) which, having taken note of the statements made by the observers for Mauritania and Morocco, who drew special attention to the fact that measures were called for with a view to voluntary repatriation, in accordance with the appeal made by the Heads of State of Mauritania and Morocco and who declared that the persons in question had been brought in and detained against their will 'and' noted with satisfaction that the representatives of Algeria, Mauritania and Morocco had promised that their Governments would co-operate closely with the High Commissioner in order to enable him to accomplish fully his role, requested the High Commissioner to continue his programme of humanitarian assistance and at the same time to undertake discussions with the Governments with a view to the speedy implementation, in accordance with the usual policy of his Office, of permanent solutions including voluntary repatriation and durable settlement.

“To our sincere regret, there has been little change in the situation during the past 10 months. What we must stress is that the assistance given to the Algerian Government has in no way helped to alleviate the suffering and misery of the persons in question. Quite the contrary, it has constituted, as it were, an encouragement and an incentive to this Government in its sinister designs. The attacks at Nouakchott and Zouérate are merely flagrant demonstration of that bellicose approach. .

“You certainly agree with me, Mr. President, that in these circumstances, the machinations of the Algerian Government are contrary to both the spirit and the letter of all text governing humanitarian questions. It is therefore important that henceforth each party should draw the necessary conclusions with respect to matters of concern to it".

A l'occasion du 40ème anniversaire de la Marche Verte,
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