



INTERNATIONAL

THE WESTERN SAHARA: DISLOYALTY, NEGLIGENCE... OR RESPONSIBILITY

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The dispute over the Western Sahara is both a key area of concern in our policy towards North Africa and a very sensitive issue for many Spaniards. There is no doubt that Spain's primary interests in the region are to promote peace, stability and political openness along with economic development through a responsible, friendly, bilateral relationship. Zapatero's policy initiatives have made these objectives less attainable.



PHOTO: EFE

Sympathisers of the Saharawi people were expelled from a recent electoral rally presided over by Zapatero in the Canary Islands. This photograph shows Jesús Negrín, vice-president of the Canary Islands Association for Friendship with the Saharawi People being forcibly removed from the rally. In an unprecedented move, Negrín was put under arrest for accusing Zapatero of selling out the Sahara.

I- The Government's unbearable solitude: Spanish policy since 2004

The Western Sahara question has presented successive socialist governments with a political and ethical dilemma between two basic alternatives: either to support international law and work through the Security Council to make it effective, or to ignore international legality, contribute towards further delaying a solution of the dispute while, in the process, eroding the Saharawi people's identity and capacity for resistance. Much water has flowed under the bridge since Felipe González declared in Tinduf, in November 1976, that "our party will be with you until the final victory."¹ There was even a symbolic referendum organized in the So-

¹ Original photographs and videos of the event are available in <http://www.nodo50.org/labarored/interpueblos/Sahara/noticias/junio06.htm>, May 21, 2007, 17:59

cialist-led Andalusian regional parliament, that precipitated the withdrawal of the Moroccan Ambassador in 2001.

Today, the policy of the Socialist leadership has changed. A short while ago, on April 8, the Polisario Front deplored both Morocco's proposal to grant the Western Sahara a semi-autonomous status, and the PSOE's "dangerous" support for the plan, which the Polisario considered to be "a project that runs counter to freedom of expression and international law", that could "lead to instability" and, subsequently, "to war." Rodríguez Zapatero's Socialist government has decided to combine deliberately ambiguous rhetoric directed towards its grassroots – who prefer to maintain the traditional Spanish stance of supporting international law – with a policy of clear support for the Moroccan position.² This is an approach that ignores the so-called "Baker Plan II", which was unanimously approved by the Security Council (including France) in resolution 1495 in 2003, when Spain held the presidency of the Council. It also ignores Spanish socialism's traditional position, which maintained that holding a referendum was the only possible way of resolving the conflict.

In the process, Rodríguez Zapatero has ignored the fact that the right to self-determination granted to the Saharawi people by international law is *jus cogens*, and that both Spain and Morocco are obliged to respect that right. Steering this particular course has required a degree of rhetorical flexibility. It should therefore come as no surprise to anyone that government spokesmen would insist that their policy complies with UN requirements, while at the same time continually repeating that "there should be no non-negotiable positions" – a clear reference to the Saharawi people's demand to exercise their right to hold a totally open and honest referendum on self-determination.³

Pasqual Maragall, the former socialist head of the Catalan regional government, admitted publicly in May 2004 that "the position held by the President of the Government with regard to resolving the Saharan question does no longer relate to the UN."⁴ In the same vein Minister of Foreign Affairs Moratinos let slip in October 2004 that while the framework of the United Nations remains the legal reference, it would be desirable to create a "new dynamic" (sic), in which "we should look not to the past but to the future" in order to reach an "agreement on a bilateral and regional basis."⁵ Elena Valenciano, the PSOE's current Secretary for International

² Statement by the Polisario Front's delegate for Spain, Brahim Ghali, to Europa Press on April 8, 2007 quoted in "El Frente Polisario 'lamenta' la adhesión 'peligrosa' del PSOE al plan de autonomía marroquí para el Sahara", *Libertad Digital*, April 8, 2007 (<http://www.libertaddigital.com/php3/noticia.php3?cpn=1276302926>, 21 de mayo de 2007, 17:03).

³ "Sahara: Zapatero expresó a Abdelaziz su deseo de contribuir a un acuerdo en el marco de la ONU", November 26, 2004, (<https://www.psoe.es/ambito/ongymovsoc/news/index.do?action=view&id=40817>, 15th May 2007, 14:29); "Zerolo: España está intentando buscar una solución negociada y consensuada. 31 años son demasiados y urge una solución justa y duradera", November 13, 2006, (<https://www.psoe.es/ambito/ongymovsoc/news/index.do?action=view&id=96464>, May 16, 2007, 16:03); "El Sahara Occidental", *Puntos de Vista. Comisión Ejecutiva Federal*, March 28, 2007 (<https://www.psoe.es/ambito/internacional/docs/index.do?action=view&id=125833>, May 16, 2007, 17:01).

⁴ "Maragall afirma que Zapatero busca una solución para el Sahara sin la ONU", *El País*, May 28, 2004.

⁵ "Moratinos reclama consenso en la nueva resolución del Sahara", *El Mundo*, October 14, 2004; "Valenciano: "El único acuerdo posible es aquél que integre y respete los derechos e intereses de todas las partes", April 15, 2007 (<https://www.psoe.es/ambito/internacional/news/index.do?action=view&id=130433>, May 14, 2007, 16:20).

Relations, is somewhat more direct: “The only possible agreement is one that includes and respects the rights and interests of all parties involved.”⁶ In this scenario, needless to say, the Saharawi people’s *rights* are just as important as Rabat’s *geo-political interests*.

Outside Government, other members of the Socialist leadership appear to be following the strategy set out by La Moncloa. In May 2005 Josep Borrell, who was President of the European Parliament at the time, scandalised his fellow MEPs with a failed attempt to block a parliamentary declaration that called for Morocco to free Saharawi political prisoners and open the doors of the region to journalists, representatives of non-governmental organisations and international observers.

This new policy regarding the conflict in the Western Sahara has become a serious internal policy dilemma for the government: the Socialist leadership has found itself completely isolated from the rest of Spain’s political players. On the one hand the opposition Partido Popular (Popular Party, PP) has maintained in Congress its previous policy of supporting United Nations Resolutions, respecting the foreign policy consensus that existed until 2004 and observing international law. This position has also been voiced repeatedly by all the other parties both in Madrid and in Brussels. On a national scale, the government’s isolation was made particularly evident in March 2007 when, on the initiative of the United Left (Izquierda Unida), the Congress unanimously approved a non-legislative proposal calling for the government to “respect international law.”⁷ Another similar proposal made by the Popular Party in May 2005 was also approved by all parliamentary groups. There has also been repeated criticism of Morocco’s behaviour in Western Saharan territory by the European Union and international human rights organisations.

“Zapatero has ignored the fact that the right to self-determination granted to the Saharawi people by international legislation is *jus cogens*. Spain and Morocco are under an obligation to respect that right.”

More alarming from La Moncloa’s point of view is the irritation among the Socialist Party’s grass-roots and its electoral allies, who do not understand why current law and the enormously popular cause of the Saharawi people should be abandoned. The government’s allies (the Bloque Nacionalista Galego/Galician Nationalists, Esquerra Republicana de Catalunya/Republican Left of Catalonia and Izquierda Unida/United Left) are thus squarely opposed to its pro-Moroccan enthusiasm. Izquierda Unida, for example, has issued no less than 26 communiqués on this matter over the last eighteen months, describing the “Spanish

⁶ Interview with Elena Valenciano, *Tiempo*, May 4, 2007.

⁷ Gaspar Llamazares, in a speech given at the Public University of Madrid’s Symposium on the Western Sahara, May 8, 2007 (http://www1.izquierda-unida.es/noticia_final.jsp?id=1752, May 15, 2007, 12:42).

Government's unacceptable submissiveness to Morocco" as "scandalous" and demanding that the "inadequate policy regarding the Sahara" be revised because it "supports Morocco."⁸

As for the Socialist grass-roots, a document from the 10th Inter-Parliamentary Groups Conference published in *Enclave Socialista* in March 2006 "urges the government to take on the Spanish state's historical responsibilities regarding this conflict and drive forward...as many political and diplomatic actions as might speedily bring about a situation in which the Saharawi people can exercise their right to free self-determination by means of a referendum."⁹ In a more moderate tone, Socialist MP Cristina Pereda recalled shortly afterwards that "we socialists do recognise that we have a responsibility that obliges us not to look the other way" and that "we will remain committed to a solution that gives the Saharawi people the final word."¹⁰ This point of view is echoed in successive communiqués from Socialist Left and from regional and municipal groups from all over Spain, from the Getafe Town Council in Madrid to the Cantabrian Federation of Town Councils led by Socialist María Jesús Calva.

Since 2004 the government's equivocal attitude has also been criticised unceasingly by Spanish non-governmental organisations which are in the general orbit of the PSOE. Thus, after the resumption of Moroccan repression in 2005 José Taboada, President of the State Co-ordinating Agency for Associations in Solidarity with the Sahara (CEAS-S) denounced the government for trying to "camouflage" its support of Morocco.¹¹ A few months later Salvador Pallarès-Garí, President of the Associació Catalana d'Amics del Poble Saharauí, (ACAPS or Catalan Association of Friends of the Saharawi People), examined an "Information Document" sent by the leaders of the PSOE to its member groups on the occasion of the 30th anniversary of the Madrid Accords and concluded that the document overlooked the "UN-approved resolutions" and attempted to "equate the positions of invader and victim."¹² The pressure and discontent with the government's policy finally came to a head with a demonstration, called by the CEAS-S, on April 21, 2007 to "demand unambiguous government support for the UN resolutions."¹³

⁸ "Izquierda Unida considers that "it is time for the government to explain publicly its scandalous policy regarding the Sahara." November 10, 2006 (http://www1.izquierda-unida.es/noticia_final.jsp?id=162, 15th May 2007, 13:27.). See also "IU reclama al Gobierno que rectifique su política inadecuada sobre el Sahara porque "refuerza" a Marruecos" March 4, 2007 (http://www1.izquierda-unida.es/noticia_final.jsp?id=1188, 15th May 2007, 13:27); "Izquierda Unida denuncia la posición "inaceptable sumisión" del Gobierno español a Marruecos y le acusa de desequilibrar la zona", April 9, 2007 (http://www1.izquierda-unida.es/noticia_final.jsp?id=1285, 15th May 2007, 13:27.); "IU reclama al Gobierno que rectifique su política inadecuada sobre el Sahara porque 'refuerza' a Marruecos", March 4, 2007, (http://www1.izquierda-unida.es/noticia_final.jsp?id=1434, 15 May 2007, 12:52).

⁹ "Paz y libertad para el pueblo saharauí, X Conferencia de intergrupos parlamentarios", March 16, 2006 (<https://www.psoe.es/ambito/izquierdasocialista/docs/index.do?action=View&id=76052>, May 18, 2007, 14:18).

¹⁰ Cristina Pereda, "Sahara Occidental, 30 años después", *Diario Montañés*, February 23, 2006.

¹¹ "Jose Taboada, President of the State Co-ordinating Agency for Associations in Solidarity with the Sahara: "Debemos exigir al Gobierno que asuma su responsabilidad histórica", *Periódico Diagonal*, N. 41, 9 – 22nd November 2006 (http://www.diagonalperiodico.net/article2461.html?var_recherche=taboada, May 11, 2007, 12:45).

¹² "Salvador Pallarès-Garí, el PSOE y el Sahara" January 3, 2006, (<http://www.arso.org/opinions/spg030106.htm>, May 9, 2007, 14:55).

¹³ "La Coordinadora Estatal de Asociaciones Solidarias con el Sahara, convoca manifestación 21 abril para exigir al Gobierno apoye claramente las resoluciones de la ONU, y denuncie la violación de los derechos humanos en el Sahara Occidental por parte de Marruecos", April 17, 2007, http://www1.izquierda-unida.es/noticia_final.jsp?id=1594 (10 de May 2007, 16:45).

The effects of the Government's growing isolation and rising pressure from left-wing grass-roots were expressed very graphically in the "dislodging, arrest and detention" of the Vice-president of the Canary Islands Association for Friendship with the Saharawi People, Jesús Negrín on April 14, 2007. Mr. Negrín had been invited to attend a pre-campaign meeting on that date at which Zapatero congratulated himself for the resumption of Spanish activity in what he twice referred to as "Moroccan fisheries." At that moment Negrín spoke up to make the point, correctly, that the fisheries are not Moroccan but Saharawi, and that both the treaty and the President's rhetorical slip seemed to indicate that he was adopting a policy of "selling" the Sahara. Negrín was asked by security guards to leave the room, which he agreed to do, but only after hearing Zapatero's response. He was then "dragged" out of the room, handcuffed and taken to a police station, and is now awaiting trial for "disobedience and causing a public affray."¹⁴

"According to the PSOE's current leadership, the rights of the Saharawi people are just as important as Rabat's geopolitical interests"

The President is not the only one who finds it difficult to reconcile political action with his words. In order to save face, certain middle ranking officers of the Socialist hierarchy found themselves embroiled in a series of rhetorical contortions. These protestations, while flagrantly contradicting the statements being made by the President of the government and the Minister for Foreign Affairs, were an attempt to calm Socialist militants and those sympathisers with the Saharawi cause who traditionally lean towards the PSOE. In his capacity as the PSOE's Secretary for Social Movements and Relations with NGOs, Pedro Zerolo was forced to participate in the demonstration organised by the CEAS-S at the same time as he was defending the government's policy, which he claimed showed "leadership" in the conflict by prioritising the "understanding" with Mohamed VI.¹⁵

II- Facts and the law: the basis for Spain's position

Spain and the Kingdom of Morocco signed the Friendship, Co-operation and Good Neighbourhood Treaty on July 4, 1991. After that the PSOE government began to change its foreign policy strategy regarding North Africa. As of then the Socialist government and an influential segment of the PSOE began a review of the policy of supporting the Polisario Front and introduced a fresh approach of subtle backing for the arguments that justified Moroccan annexation of the Western Sahara.

¹⁴ "La Asociación Canaria de Amistad con el Sahara cree desmesurado el 'arresto' de su vicepresidente en mitin de Zapatero", April 16, 2007, Europa Press (<http://www.europapress.es/> 18th Mayo 2007, 13:25); "El defensor del Sahara, que interrumpió un mitin de Zapatero, será juzgado el 5 de julio", ABC, June 19, 2007.

¹⁵ "Zerolo: Zapatero deja de lado confrontación PP con Sahara" (<https://www.psoe.es/ambito/izquierdasocialista/docs/index.do?action=View&id=64720>, 15th May 2007, 15:01).

On September 6, 1991 the Polisario Front and Morocco signed a cease-fire under the auspices of the United Nations and the then Organisation for African Unity. In return, the United Nations was to organise a referendum on self-determination, thereby implementing the Security Council resolutions that had been accepted by all parties.

Morocco's systematically negative position has meant that it has not been possible to hold the referendum. During the reign of Hassan II, Moroccan opposition was presented as a technical issue, centred on problems with defining the electoral roll. During the reign of Mohammed VI, this opposition has become political. According to the latest argument the referendum is a legal formula that is impossible to implement. Morocco has unilaterally decreed that it is now past its "sell by" date. The reason given is that the independence option is not compatible with the policy of full integration being pursued by the new King. King Hassan II accepted the referendum formula but his son and successor has rejected holding it if it includes an option for an independent territory.

This shift in Morocco's position is an attempt to change the terms of the debate. With Hassan II what was being questioned, through the ongoing discussion about the electoral roll that was designed to delay the referendum "sine die", was the identity of the Saharan people, holders of a right to self-determination that has not been explicitly denied by Morocco. With King Mohammed VI the underlying dispute over sovereignty has been made perfectly clear in the declaration that the Western Sahara, a non-autonomous territory that, according to the United Nations is awaiting decolonisation, has become part of the Kingdom of Morocco under the name of "Southern Provinces."

Morocco's stated aim of granting the so-called Southern Provinces internal autonomy will have serious political repercussions for the peaceful resolution of this dispute over the sovereignty of the Western Sahara. It should be remembered that the referendum on self-determination was in return for the cease-fire. With Morocco having rejected the referendum the cease-fire is a *de facto* reality, and as long as it remains in force the military occupation by Morocco and the Polisario Front of those parts of the territory that each controls simply becomes stronger. This situation perpetuates the existing sovereignty dispute, making it difficult for the Security Council to resolve the argument peacefully and to achieve stability in the region.

The legal heart of the matter is how to gain sovereignty over a non-autonomous territory in the Western Sahara that has still not, according to the United Nations, been fully de-colonised.

The International Court of Justice's extensive case law includes a law, drawn up by the ICJ itself, that applies to sovereignty disputes in the context of decolonisation processes. It was applied to the case of the Western Sahara in the

judgement the Court handed down on December 16, 1975 as requested by the General Assembly at the initiative of Morocco and Mauritania in 1974.

This law can be summarised by saying that the general rule is that a colonial people or country has a right to self-determination (General Assembly Resolutions 1514 (XV); 1541 (XV) and 2625 (XXV)). There are some well-known exceptions to this rule such as Gibraltar, the Falklands and Ifni, where the principle of restoration of the territorial integrity of the state that exercised its sovereignty over those territories during the pre-colonial period would apply. Elsewhere, the right to self-determination is the legal way of resolving any dispute over sovereignty. In the case of the Western Sahara, the judgement handed down by the International Court of Justice is categorical. The people who are the original inhabitants of the Western Sahara are the ones who hold this right [to self-determination] and it is up to them to make the decision on the issue of sovereignty.

“With Morocco having rejected the referendum the current situation is consolidating the military occupation of the Sahara”

This is the law that applies to resolving a conflict by political means. According to the United Nations Charter it is the Security Council’s job to take the appropriate measures to ensure that the Saharan people’s right to self determination is fully respected, in other words that they are given all the legal options, which include independence, integration and free association with Morocco. The latest Security Council Resolution, nº 1754 (2007) of April 30 says no less: it exhorts the parties involved to start negotiations in good faith and with no prior conditions attached, taking into account the events of recent months with a view to achieving a just, lasting and mutually acceptable political solution that will in turn lead to free determination for the people of the Western Sahara.

A series of legal premises need therefore to be established in order to define Spain’s position, hopefully by consensus, regarding this issue:

- 1.** Morocco has no sovereignty over the Western Sahara and the Madrid Accords of November 14, 1975 that it signed with Arias Navarro’s Government constitute the only legal title that could justify its presence in the territory to the international community.
- 2.** The international law that applies to the de-colonisation of the Western Sahara is contained within General Assembly Resolutions 1514 (XV), 1541 (XV) and 2625 (XXV) and in all the General Assembly and Security Council resolutions relating to the Western Sahara. In the Judgement it delivered on October 16, 1975 the International Court of Justice established the obligation to respect the Saharan people’s right to self-determination as part of the de-colonisation process.

3. While it has not officially denied this law, the current Socialist government has given political support to a Moroccan initiative that is based on an illegal premise: that Morocco already has sovereignty over the territory and that it intends in the exercise of that sovereignty to grant the territory autonomy as per terms that are as yet unpublished.

4. The Moroccan project would be legally viable only if it were a specific option amongst several others in a referendum on self-determination organised by the United Nations to complete the process of legal de-colonisation of the Western Sahara. In such a case the Saharawi people would have the final say on the proposal to integrate the territory legally into Morocco. Should this option be accepted in preference to other equally legal options such as independence or free association, the de-colonisation process would thereby be complete. Morocco would thus have acquired sovereignty over the Western Sahara as a result of the Saharawi people freely accepting a statute of autonomy of their own, guaranteed by the United Nations and that could only be revoked or altered through the same process.

The dispute over the Western Sahara is not a labyrinth but a political and ethical dilemma that presents any democratic Spanish government with, essentially, two alternatives. The first consists of supporting international law and lobbying for the Security Council to make it effective. The second disregards the law and involves postponing the resolution of the dispute so as to wear down the resistance and erode the identity of those who are entitled to exercise a specific right: the Saharawi people.

“The Government’s systematic erosion of a right that according the United Nations charter and relevant resolutions is inalienable, is incomprehensible”

Through its ambiguous, confused diplomatic gestures and its policy of supporting the Moroccan argument, the government is systematically eroding the effectiveness of an inalienable right that both Spain and Morocco should respect and facilitate, in accordance with the United Nations Charter and its relevant resolutions. Peace and stability in the region, which are key interests for Spain, will be illusory until such time as the Saharawi people’s right to free self determination is respected, in compliance with international law.