

Excmo. Sr. Don Mariano Rajoy Brey
Presidente del Gobierno
Palacio de la Moncloa
Madrid

Madrid, 9 de enero de 2012

Mr. President:

The Human Rights Association of Spain, has been working for decades to defend human rights of the Saharawi people, mainly the Right of Self-determination as a solid condition for the exercise of other rights mentioned in the Universal Declaration, United Nations Chart and International Covenants.

The Moroccan strategy of buying time, has been unveiled along with the purpose behind it which is: to deny the Saharawi people their right to self-determination. Faced with this unacceptable situation, we state the following:

115 km from the Canary Islands, a humanitarian disaster has been persisting since the Moroccan military invasion (1975) and which left thousands dead, and hundreds missing, tortured and imprisoned.

While Morocco, the occupying force, has been consistently violating human rights, international agreements and UN resolutions, Spain (never transferred sovereignty, "a status which Spain alone could have never done on its own and alone), remained impassive, while giving up its responsibilities as the Administering Power. According to Chapter XI of the Charter A/5514, annex III, Spain failed to comply since 1975 Article 73 of the same Chart, that "the interests of the inhabitants of the Territory are above all. It is, undoubtedly, being accepted it as a sacred agreement to promote the welfare of the Saharawi people and their right to self determination."

It was always said that democracies are strengthened depending on the amount of information, involvement and participation of citizens.

We are always being told, (especially at election time), while doing politics, while participating in politics, we must denounce all that is wrong in order to improve the whole society. However, protests, complaints and arguments against the origin of the conflict in Western Sahara, the "Madrid Agreement", has been provided for decades to silence of Spanish politicians.

Thirty-five years later, the Saharawi population provides a lesson in dignity, patience, courage, and sacrifice, showing that everything has a limit, and that the infamous "Madrid Agreement" were only an illegal instrument. While no complaint has been filed, this has resulted into a state of destabilizing the entire region, where arbitrary detention, torture, abductions, disappearances and murders have been and are the sad legacy of the performance of the signing of such agreements.

Considering the fact that the Spanish state will always have the obligation to comply with the Charter and resolutions of United Nations Universal Declaration of Human Rights, Opinion of the ICJ in The Hague, and the International Covenants signed and ratified: We, citizens, members of civil society, through the Human Rights Association of Spain, as well as, organizations, personalities, intellectuals, and professionals who adhere to this document;

CONSIDER the following:

If we want to improve the world and our blue planet, and want to make a difference between what should be allowed and what should not be allowed, and that what happened 35 years ago with the "Madrid Agreement" would not be repeated ever again and be an example to eradicate: We, respected politicians, "who practice the noble art of work for the good of society" call to uphold and strengthen international law, while considering what it says and what it stands for and defend.

The "Madrid Agreement", destroyed countless barrages of accumulated tension in the region, triggering a bloody, and ignited a fratricidal war. This led to causing the biggest crisis in the history of the OAU and the destabilization of the region. It is also behind the great failure of the Arab Maghreb Union (UMA), and has aborted the creation of what would have been a beneficial North African Common Market.

Therefore, if we want the work and concerns of all citizens who have been struggling unsuccessfully for many years, it should be regarded as a recognition and a tribute to the victims of the "Madrid Agreement" and a strengthening of international legality;

Demand the following, of this government, and political parties that make up the parliamentary spectrum broad to denounce the "Madrid Agreement" as being far from contributing to the reform of international peace and security which have allowed the continued violation of Human Rights while blocked the celebration of the referendum on self-determination and hindered the resolution of the conflict. All this, while assuming the responsibilities of relevant state, and based on the following arguments:

- 1 .- Violate the principle of self-determination of colonial people, a rule of "jus cogens", established in international law and enshrined in the Charter of the United Nations, and therefore opposable "erga omnes" (against all), whose grave violation illegally impedes the entire international community, is even an international crime (Res AG 1514 - (XV) 12/14/1960).
- 2 .- On the failure of the Spanish state in carrying its responsibilities as the administering Power, Art. 73 (Chapter XI), the UN, to 73,497 Saharawis are unprotected against abuses, according to official census of 1974, while their natural resources are being plundered, without taking into account their political aspirations.
- 3 .- Deliberately violate the purposes and principles of the Charter of the United Nations: Peacekeeping and international security, conflict resolution through peaceful means, Restoration of Human Rights and Respect for the right to self-determination.
- 4 .- As opposed to article: 53 of the Vienna Convention on the Law of Treaties, which are null and void under international law.
- 5 .- Treacherously violate and being used in bad faith as described in the article: 33 and 103 of the UN Charter (in case of conflict between the obligations of the United Nations state member and Charter, then the obligations shall prevail by the law invested and imposed by this Charter). Likewise, complicity in the violation of the Res, AG 16 1964 Organization of African Unity (OAU), on the inviolability of borders inherited from colonialism.
- 6 . For violating the internal law by not publishing the Madrid Agreement on the BOE, as Article 1 - (2), Article 1 - (5), Art 2 - (1) Civil Code (art 46 C. Vienna). The publication in the Official Bulletin of the "Law of decolonization", 19/11/1975, sought to replace these agreements by claiming that "Law", and to circumvent the responsibilities as the administering Power of a Non-Autonomous Territory (TNA).

This is to say that this Decolonizing power has interfered in the United Nation work when it comes to the decolonization process and which is something that is out of its jurisdiction.

7 .-It was a clear invitation to divide the territory, and hence facilitating the invasion of Moroccan FAR of the Non Autonomous -territory since October 30, 1975, and of course, reporting that the invading troops were encountering an unexpectedly fierce resistance from Frente Polisario. (52 C. Vienna).

8 .- For the Jema'a, rather than be a palyer in the game of "transmission of the administration " to Morocco and Mauritania, through the art 3 of these agreements, the majority of this Jemaa held a meeting on November 28, 1975 in the town Guelta Zemmour, (where there were no invasive troops present) declared its unconditional support for the Polisario Front, and finally dissolved itself.

9 .- Violating its responsibilities as Administering Power of Non-Autonomous Territory of Western Sahara, in violation of the principle of "permanent sovereignty over natural resources, and control of those resources in the future, AG Res 1803 (XVII) of 14/12/1962, ICESCR and the ICCPR, 1966, GA Res 3201 (S-VI) of 05/01/1974, Res 3281 (XXIX) of 12/12/1974, mentioned in the Charter of Rights and Duties of States, and resolutions; (35/118 of 12/11/1980) (52/78 of 12/10/1997) (54/91 of 6/12/1999, (55/147 of 08.12.2000) and (56/74, 10/12 / 2001). (See Hans Corell Report 29/01/2002).

10 .- By converting the "Madrid Agreement" in an ignominious sale agreement of phosphates and fisheries, disregarding its consequences: the life of people is such as of those : massacred, tortured and plundered in their livelihoods, forced to displacement and suffering political persecution and all forms of human rights violations. they continue to suffer a real genocide that also involves crimes against humanity.

11 .- Hindering the Saharawi people from enjoying the benefits of their Spanish citizenship, through the "Madrid Agreement" and the illegal decree RD2258/76 (August 10, 1976), (seven months after leaving the area).

12 - Because, by signing the "Agreement of Madrid, Spain, subordinates the rights of the Saharawi people through the annexation by Morocco and Mauritania, while ignoring the impossibility of self-determination under the" Governance "and preventing treacherously the only valid formula: The transmission of the No Autonomous Territory management to the UN (Waldheim Plan), as if they had protected the rights of the Saharawi people and the celebration of self-determination referendum organized under United Nations control.

Mr. President,

Spain, in 1975, failed in its responsibilities with the UN and with the Saharawi people, and has opened the door of the Non Autonomous Territory of the Sahara to foreign troops, and thus culminating in its conspiracy with the signing of a "tripartite agreement" which became "bipartisan" since the withdrawal of Mauritania in 1979.

After thirty-five years, there is not a single member state of the international community that recognize the legitimacy of Non-Autonomous Territory of Western Sahara as a Moroccan territory. On the contrary, a high number of States, has recognized the State of SADR and has established official diplomatic relations with the government, represented by the Frente Polisario.

For all the mentioned above, the Government of Spain, must ratify the legality of the "Madrid Agreement"and the Decree RD2258/76, and otherwise:

Accepting that the Spanish State has the obligation to comply with the provisions of our Constitution, UN Charter, Universal Declaration of Human Rights and International Conventions signed and ratified by him:

REQUEST that our government:

- A) Denounce the "Madrid Agreement" along with the Decree RD2258/76 (August 10, 1976) through an emergency procedure.
- B) The immediate restitution of Spanish citizenship to all Saharawi included in the 1974 census along with their descendants, and likewise, those who can demonstrate relevant documentation to show their right to maintain or obtain Spanish citizenship.
- C) To start an urgent and relevant action to hand over responsibilities to the United Nations as acquired by Spain in 1962 as the administering Power, and, as in the case of East Timor, Western Sahara is under the "Transitional Administration of United Nations for Western Sahara", to protect the lives of its inhabitants, its natural resources and its advocacy, as a Non-Autonomous Territory in a process of decolonization through a self-determination referendum. This is goes with an ultimate goal to achieve:
 1. The preservation of International Peace and Security.
 2. The resolution of the conflict by peaceful means.
 3. The establishment of Human Rights mechanisms.
 4. Respect for the right to self-determination.

If justice is the moral principle which tends to act and judge to ensure the respect of truth while giving each its due, then, Mr. President, we urge you to act accordingly.

In the assurance of your support in the defense of such a just cause, we salute you with our highest consideration,



José Antonio Gimbernat
President

C / c: Juan Carlos I King of Spain, Congress Pte, Pte Senate, the Spanish Foreign Office of human rights, political parties in Congress, the Senate, Constitutional Court, CGPJ, Public Prosecutor, Ministry of Justice, European Parliament, (translated in various languages), International Union of Jurists, Human Rights, Council UN Humanitarian Organizations, Political NGOs accredited with the Human Rights Council United Nations, the European Court of Human Rights (Strasbourg) and Media.