

Is autonomy the solution to the Western Sahara conflict?

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(A) PEDRO SÁNCHEZ'S LETTER TO MOHAMED VI

On the 14th March of 2022, the Spanish Prime Minister, Pedro Sánchez, sent a letter to the King of Morocco, in which, among other things, he pointed out that the Moroccan autonomy proposal presented in April 2007 to the Security Council, even more regressive than the one presented in 2003 and rejected by this body, is “the most serious, credible and realistic basis for the resolution of this dispute”. This letter, which was supposed to contain the secrecy that characterises bilateral diplomatic negotiations, was made public four days later by the Moroccan government through the daily *Le360*.

The Moroccan proposal of 2007 stated that “the autonomy statute shall be submitted to the populations concerned for a referendum, in keeping with the principle of self-determination and with the provisions of the United Nations Charter”, and clarified what Morocco meant by self-determination: the so-called “populations concerned” were to say simply yes or no to autonomy, which is incompatible with the main UN resolutions on the exercise of this right.²

Therefore, the Spanish government’s support for Moroccan autonomy as a solution to the conflict is not only not “credible, realistic and lasting”, but constitutes yet another violation of its obligations as the administering power of the territory³, and, moreover, will have no legal consequences whatsoever.

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¹ <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/MINURSO%20S2007%20206.pdf>

² GA Resolutions 1514 (XV), 1541 (XV) and 2625 (XXV), among others.

³ Although successive governments of the Spanish democracy have repeatedly affirmed the contrary, there is unanimity in Spanish doctrine in considering Spain as the administering power of Western Sahara (<https://www.aepdiri.org/index.php/actividades-aepdiri/declaracion-sahara>), not only from the perspective of international law, but also from the perspective of Spanish law : *Spain de jure, but not de facto, remains the Administering Power of the territory; and as such, until the end of the period of decolonization, has the obligations contained in Articles 73 and 74 of the Charter of the United Nations, among them to provide protection, including jurisdictional protection, to its citizens against any abuse, for which it must extend its territorial jurisdiction for facts such as those referred to in the complaint to which the present proceedings relate* (translated by the author) (Writ of the National High Court of July 4, 2014, chaired by the current Minister of the Interior, Fernando Grande-Marlaska (<https://www.poderjudicial.es/search/doActionaction=contentpdf&database-match=AN&reference=7197131&links=sahara%20occidental&optimize=2014028&publicinterface=true>)). All websites mentioned in this study were last consulted on November 15, 2022.

By means of this letter, which was apparently not intended to be public, the Spanish government was futilely trying to reduce the enormous pressure that Morocco has been exerting on Spain and the European Union for decades to recognise its sovereignty over the Saharawi territory. To achieve this goal, Morocco uses several well-known means: ‘illegal immigration’ organised from and by Morocco, the claim of sovereignty over Ceuta and Melilla, the control of drug and narcotics trafficking, cooperation in anti-terrorist matters, and so forth.

(B) TRUMP’S RECOGNITION OF MOROCCAN SOVEREIGNTY OVER WESTERN SAHARA AND ITS CONSEQUENCES

On 10 December 2020, ironically coinciding with the anniversary of the Universal Declaration of Human Rights, the still President of the USA, Donald Trump, decided to recognise Moroccan sovereignty over Western Sahara.⁴ This recognition was made conditional on the normalisation of diplomatic relations between Morocco and Israel, provoking the bewilderment of Moroccan civil society, which until then had considered its king to be the main defender of the rights of the Palestinian people before the international community. But the reality is very different: the collaboration between these two states dates back at least to the time when, in the midst of the war of national liberation (in the 1980s), the wall that divides the Saharawi territory in two was built. Despite this, and although it is unlikely that he will go back on his predecessor’s decision (it should not be ignored that behind Trump’s decision is the powerful Jewish lobby, without whose support it is practically impossible to accede to the US presidency), far from implementing and consolidating the recognition of Moroccan sovereignty over the territory, Joe Biden’s administration has taken significant steps in the opposite direction.⁵

⁴ On the legality of the recognition granted by Trump, vid. GONZÁLEZ VEGA, J.A., “El reconocimiento por EE.UU. de la anexión marroquí del Sahara Occidental en perspectiva: aspectos jurídicos y políticos”, REEI, núm. 41, junio 2021, DOI: 10.17103/reei.41.07, pp. 1-33; HAMZA HADJ Ch., “When Recognition Violates the Obligation of Non-Recognition: A Legal Criticism of the U.S. Proclamation of Recognition of the “Sovereignty” of Morocco over the Western Sahara”, *Technium Social Sciences Journal*, Vol. 20, June, 2021, pp. 377-389.

⁵ Thus, for example, the head of the Moroccan government, Saadeddine El Othmani, publicly welcomed the fact that the military maneuvers, called “African Lion”, jointly conducted by the U.S. and nine other states, would take place for the first time on Saharawi territory. This affirmation was denied by the spokeswoman of the US Armed Forces Central Command for Africa (AFRICOM), Bardha Azari, who pointed out that these manoeuvres would take place in Morocco, Tunisia and Senegal, outside Western Sahara. (<https://www.efe.com/efe/espana/mundo/ee-uu-confirma-maniobras-militares-en-el-sur-de-marruecos-fuera-del-sahara/10001-4551393>). When Morocco falsely announced that the manoeuvres would take place in Saharawi territory, the Spanish government was forced to refuse to participate, citing budgetary issues (<https://elpais.com/espana/2021-05-29/espana-rehusa-participar-en-unas-maniobras-de-ee-uu-para-no-legitimar-la-ocupacion-del-sahara.html>). Moreover, on 17 March, the day before Sánchez’s letter was published, the US Congress refused to include development aid for Western Sahara in the package of aid to Morocco: “Unlike recent years, the Congress did not list the Western Sahara under Morocco in the Act. That is because the Fiscal Year 2022 Act, like the United Nations, does not recognize Western Sahara as part of Morocco. Assistance for Western Sahara is included elsewhere in the Act, under the Middle East Partnership Initiative. The explanatory statement accompanying the Act directs the Secretary of State to ‘continue to support a United Nations-led political process that achieves a just, lasting and mutually acceptable political solution in accordance with relevant United Nations Security Council resolutions.’”

Trump's decision encouraged the Alawite monarchy to intensify its pressure on Spain and the European Union, convinced that, with the support of the US, it was only a matter of time before this goal could be achieved.

At that time, the Spanish government decided to take in Brahim Ghali, president of the Sahrawi Arab Democratic Republic (a state that is not recognised by Spain, but shares membership with Morocco in the African Union), who was in serious condition due to COVID-19, to a Spanish hospital. The Moroccan government took advantage of this circumstance to increase this pressure, withdrawing its ambassador in Madrid, Karima Benyaich, who had previously declared that "If Ghali leaves Spain as he entered, it will worsen the serious crisis",⁶ although she would later acknowledge that the real cause of the diplomatic "crisis" had not been this fact, but Spain's failure to take the step of recognising its sovereignty over the Saharawi territory.

Initially, the Spanish government did not budge. For example, Minister González Laya refused to allow the *Depositaria de Bienes Españoles en el Sahara Occidental* in El Aaiún, which served as an unofficial consulate in Western Sahara to look after the Sahrawi citizens holding Spanish passports (approximately 12,000), to become a Spanish consulate in Morocco, as this State intended.⁷ After the minister's dismissal, ten months after leaving Spain and threatening our government in a non-veiled manner ("there are acts that have consequences and they have to be assumed"⁸), the Moroccan ambassador returned to Madrid after noting Mohammed VI's surprising ability to appoint and remove ministers in our country.⁹

(C) DOES THE SPANISH PRESIDENT'S LETTER REPRESENT A REAL CHANGE IN SPAIN'S POSITION?

Despite the indignation produced in civil society and in the Spanish parliament itself¹⁰ by the fact that the government has once again given in to pressure from the Alaouite monarchy, reinforcing Spain's pusillanimous image in the world in its relations with Morocco, " this decision does not represent a real change in its traditional position

The political status of Western Sahara is an issue to be resolved by the parties to the conflict, not by the Congress" (<https://www.leahy.senate.gov/press/assistance-for-morocco-and-for-western-sahara>).

⁶ <https://elpais.com/espana/2021-05-21/la-embajadora-de-marruecos-en-espana-senala-que-si-gali-sale-de-espana-con-opacidad-se-agravara-el-conflicto-diplomatico.html>.

⁷ Finally, on 13 February 2020, the Spanish government once again bowed to Moroccan pressure and decided to paralyse the administrative and bureaucratic services that the "Depositaria" had been offering since 1976 (issuing or certifying official administrative documents, travel permits for accompanying minors, etc.), which must now be carried out at the Spanish Consulate General in Rabat, located more than 1,100 km from the capital of Western Sahara.

⁸ <https://www.europapress.es/nacional/noticia-embajadora-marruecos-hay-actos-tienen-consecuencias-tienen-asumir-20210518145207.html>.

⁹ <https://www.europapress.es/nacional/noticia-embajadora-marruecos-hay-actos-tienen-consecuencias-tienen-asumir-20210518145207.html>.

¹⁰ <https://elpais.com/espana/2022-04-07/el-congreso-consuma-su-reprobacion-al-giro-de-sanchez-sobre-el-sahara.html>.

¹¹ As an example, while, shamelessly showing that this was not a humanitarian crisis but a pressure tactic, the Moroccan police were opening the gates of the Ceuta fence in front of television cameras all over the world, the Council of Ministers approved an amount of 30 million euros "to help Morocco in its police de-

on the Sahrawi conflict.¹² Since the first governments of democracy, and despite civil society's support for the self-determination of the Sahrawi people, Spain has supported the military occupation of the territory,¹³ shielding itself behind a supposed position of "active neutrality", which, moreover, it has never maintained. All of them have boasted of being the largest donors of humanitarian aid to the refugee camps in Tindouf, pretending to ignore that this aid, which certainly serves to soothe some consciences, and is, moreover, essential for the mere survival of the refugee population, does not solve, but rather perpetuates the conflict that the Spanish state itself brought about, by handing over the territory to someone who, without any legal right to do so -as the ICJ clearly established¹⁴- has been subjecting the Sahrawi people to systematic and permanent violation of their human rights since 1975. The novelty is that, for the first time, Spain has said so expressly.

In this regard, it should be recalled that Spain participates in the legal proceedings brought by the POLISARIO Front before the CJEU not to defend the permanent sovereignty of the Sahrawi people over their natural resources, as it should as an administering power;¹⁵ but to support their illegal exploitation by the occupying power of the territory. This attitude contrasts sharply with Portugal's attitude towards East Timor until the territory's independence. Although it did not effectively control the territory, which had been militarily occupied by Indonesia in the same month of the same year that Western Sahara was occupied by Morocco and Mauritania (November 1975), it always claimed its status as an administering power, and even brought a case before the ICJ to

ployment against irregular immigration" (<https://elpais.com/espana/2021-05-18/espana-entregara-30-mil-lones-de-euros-para-ayudar-a-marruecos-para-frenar-la-inmigracion-irregular.html>).

¹² Former presidents Felipe González Márquez and José Luis Rodríguez Zapatero, who have supported the military occupation of Western Sahara for decades, have recently reaffirmed that autonomy is "the best solution" to resolve the conflict (<https://www.elmundo.es/espana/2022/04/01/624675ebfdddf9cao8b45bc.html>), and that Sánchez's letter does not represent a turning point in Spanish politics (<https://elpais.com/espana/2022-03-23/jose-luis-rodriguez-zapatero-es-razional-pensar-que-la-autonomia-sea-algo-mejor-para-los-saharauis.html>).

¹³ Probably the last time Spain firmly defended the right to self-determination of the Sahrawi people was through the intervention of Julio GONZÁLEZ CAMPOS before the International Court of Justice in 1975. (vid. J.C. Fernández Rozas, "El profesor Julio D. González Campos y el arte de la paz", *Pacis artes. Obra homenaje al profesor Julio D. González Campos*, t. I, Madrid UAM, Eurolex, 2005, in particular pp. 136-138). It is a pity that our governments continue to ignore a statement of him that perfectly reflects the situation of the territory then and now: the Madrid tripartite agreements "condemned the Saharawi people to a new colonial domination" (GONZÁLEZ CAMPOS, J., "Los acuerdos nulos de Madrid", *El País*, 18 September 1977). Our country is supporting the consolidation of this colonial domination.

¹⁴ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, paragraph 162.

¹⁵ The General Assembly had been pressing Spain since the 1960s to organise the referendum on self-determination in its capacity as an administering power. Thus, for example, Resolution 2711 (XXV), adopted on 14 December 1970, invited Spain to "to take all the necessary steps to ensure that only the indigenous people of the Territory participate in the referendum" (...), to "comply with the resolutions of the General Assembly on the activities of foreign economic, financial and other interests operating in colonial countries and territories" (...). Also invited "all States to refrain from making investments in the Territory in order to speed the achievement of self-determination by the people of the Sahara". One of the most important resolutions on the conflict, 3202 (XIX) (adopted on 13 December 1974), which requested the advisory opinion of the ICJ, reiterated "to all States to observe the resolutions of the General Assembly regarding the activities of foreign economic and financial interests in the Territory and to abstain from contributing by their investments or immigration policy to the maintenance of a colonial situation in the Territory".

defend the permanent sovereignty of the Timorese people over their natural resources.¹⁶ Undoubtedly, the administering power's firm defence of the Timorese people's rights favoured the proclamation of the new state's independence in 2002, in sad contrast to Spain's position on Western Sahara.

Moreover, President Sánchez's letter relies on the hollow words used by the Security Council resolutions, whose draft resolutions emanate from the so-called "Group of Friends of Western Sahara" ("friends", how ironic!), of which Spain is a member, so he is perfectly aware of their calculated lack of content. These resolutions insist on supporting efforts to "reach a just, lasting and mutually acceptable political solution based on compromise and providing for the self-determination of the people of Western Sahara", and "welcomes Morocco's serious and credible efforts to move the process forward towards a solution".

A solution "*mutually acceptable* to the parties providing for the self-determination of the Saharawi people", when one of the parties, Morocco, has publicly rejected this right for more than ten years?

A "just and lasting solution"? The only just, and therefore lasting, solution is the application of international law. There can be no peace without justice. Why would the Saharawi people, now that they have just taken up arms again, accept their integration into Morocco as a solution to the conflict? Nearly half a century of resistance is clear evidence to the contrary. The autonomy advocated by the Spanish and Moroccan governments is an unjust solution, and certainly not a lasting one, because it would always have the Saharawi people -and international law- against it. On the contrary, autonomy, freely decided by the Saharawi people in a referendum including the option of independence, would be perfectly valid from the perspective of international law. But this is not the proposal advocated by Spain.

Serious and credible efforts by Morocco to move the process towards a solution"? These efforts should be aimed at reaching an agreement with the POLISARIO Front. But such an agreement already exists. After fifteen years of war (1975-1991), Morocco and the POLISARIO Front agreed on a peace plan providing for the holding of the referendum on self-determination within six months. At that time, the Security Council created the *Misión de las Naciones Unidas para el Referéndum en el Sahara Occidental* (MINURSO), which, despite the obstacles systematically placed by the Moroccan government in the process of identifying voters,¹⁷ successfully concluded the elaboration of the census 10 years later.¹⁸ It was then that, faced with the evidence that the pro-independence option was going to win overwhelmingly, Morocco made public its final decision never to hold

¹⁶ *East Timor (Portugal v. Australia)*, Judgment, I. C.J. Reports 1995.

¹⁷ Vid. my study "El plan de Paz del Sahara Occidental, ¿viaje a ninguna parte?", *Revista Electrónica de Estudios Internacionales*, n. 10 (2005), pp. 1-33.

¹⁸ Indeed, despite being a recurrent argument among those who defend the impossibility of holding a referendum on self-determination, the census was successfully completed in 2000. Its updating to 2022 could be carried out in a very short space of time. Thus, for example, Felipe González has stated the following: "until now, nobody has managed to unravel one of the central knots of this conflict, which is who would be entitled to vote in a referendum on self-determination (...) Whoever knows the census (of voters) that can unblock this situation, come and tell me" (<https://www.elmundo.es/espana/2022/04/01/624675ebf-dddf9c80b45bc.html>),

the referendum, after accusing the UN of having favoured the Saharawis. Another irony, because the UN not only does not favour the Saharawis, but, by its passivity, favours the occupation of the territory. Since then, only France's veto in the Security Council and Spain's and the European Union's support for that state's position have prevented MINURSO from completing its work by organising the referendum.

It should be recalled, moreover, that since the entry into force of the ceasefire in 1991, one part of the territory is under Moroccan occupation and another is controlled by the Sahrawi Arab Democratic Republic. Therefore, this autonomy plan is, moreover, impossible to implement in the unoccupied part of the territory without the consent of the Saharawi people, which, as established by the General Court (2021),¹⁹ must be expressed by the POLISARIO Front, which, actively and passively, has stated that it will never accept it unless it is part of a consultation in which the option of independence is also included.

(D) WHAT IS THERE TO NEGOTIATE WHEN THERE IS ALREADY A PEACE PLAN NEGOTIATED AND APPROVED BY THE SECURITY COUNCIL?

This agreement has existed for more than 30 years, and if it is not being implemented, it is because one of the parties, Morocco, refuses to do. So why should a new agreement be sought now, when there is already one that has been freely accepted by the parties? The Peace Plan provided for a referendum on self-determination in which the Saharawis included in the census would decide between two options: independence for Western Sahara or integration of the territory into Morocco. The independence option needs no clarification. The integration option seems to. A people can decide to integrate into a decentralised state like Spain or a centralised state like Morocco. But both possibilities are two different versions of the same option: integration. Thus, the Spanish government is supporting the integration of Western Sahara into Morocco, and is supporting the violation of international law. Can it be said without embarrassment that Morocco's efforts are serious and credible, when for more than 30 years this state has done nothing but breach the agreements it freely signed... and systematically subject Spain and the very European Union to public coercion?

The Saharawi conflict is not, as has been said, an "intractable conflict"; the solution is not to negotiate a new peace agreement,²⁰ because that agreement has already been negotiated. The solution is for the United Nations to assume once and for all that the Sahrawi people must freely decide their future. In the meantime, the sounds of war will continue to be heard in Western Sahara, and legal action will be a stumbling block in the relations of those who seek to exploit the territory's natural resources with impunity.

¹⁹ EU:T:2021:639.

²⁰ JIMÉNEZ SANCHEZ, C., "El arreglo pacífico de controversias en el Sáhara Occidental, ¿intractable conflicto es aún posible una solución?", *Anuario Español de Derecho Internacional*, Vol. 35/2019, pp. 484-485. This author argues that MINURSO should be replaced by another peacekeeping operation. Although her reasons are understandable, in my opinion, in addition to extending its human rights powers, its name should be maintained because it is a reminder of what it is there for: United Nations Mission for the REFERENDUM in Western Sahara.

Sánchez's letter states that the new Spanish-Moroccan relationship will be "based on mutual respect, compliance with agreements, the absence of unilateral actions and transparency and permanent communication".²¹ These words constitute an express acknowledgement of several serious issues: that Morocco does not respect Spain (the way in which the content of the letter has been made public is just one example of this), that it does not comply with its agreements (neither those concluded with Spain nor those concluded with the POLISARIO Front and even approved by the Security Council), that it carries out unilateral actions against our country (persistent "migratory crises" in Ceuta and Melilla and the Canary Islands),²² and that its policy is not transparent (or rather, it is, although in the opposite sense to what is required of a "friendly" state - the *Pegasus case*)²³. Certainly, one has to be very naïve to believe that this way of acting is going to change.

The Peace Plan, the only solution that respects international law, because it has the consent of both parties (occupier and occupied), was approved by the Security Council in 1991. In contrast, the 2007 Moroccan autonomy proposal supported by our government has not been approved by either the General Assembly or the Security Council, precisely because it is no more than a version of the integration option.²⁴ As a professor of international law, it would be out of place for me to assess the virtuality of this proposal, since it is purely and simply a political proposal. But anyone familiar with the Moroccan political system knows that it is, moreover, a chimera. I have had the opportunity on several occasions to participate as an international observer in trials held in Morocco against Sahrawi human rights activists, but also against the leaders of the peaceful mobilisations in the Rif, who are not demanding independence for the territory, but rather a minimum of autonomy that would allow them to overcome the perennial poverty to which the Alaouite monarchy has condemned them for decades. In these farcical trials, harshly criticised by credible organisations such as *Amnesty*

²¹ "Today we begin a new stage in our relationship with Morocco based on mutual respect, compliance with agreements, absence of unilateral actions, transparency and permanent communication (...) All of this to guarantee the stability, sovereignty, territorial integrity and prosperity of our two countries" (translation by the author of this article) (https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/presidencia/Paginas/2022/180322-comunicado_marruecos.aspx).

²² The 'migration crisis' provoked by Morocco in Ceuta in May 2021, in which more than 10,000 Moroccan citizens entered the city, and which even provoked criticism from newspapers that traditionally ignore the very existence of Western Sahara (https://www.lemonde.fr/idees/article/2021/05/21/crise-des-migrants-a-ceuta-il-est-temps-de-sortir-d-une-certaine-naivete-dans-le-regard-porte-sur-le-maroc_6081001_3232.html), was just one more step in this policy of pressure against our country. Since then, and until the publication of Sánchez's letter, Morocco has continued to actively encourage the arrival of migrants in Ceuta and Melilla. In March 2022, shortly before the letter was published, more than 4,000 people jumped the fence in Melilla (*El País*, 23 March 2022).

²³ According to *The Guardian*, Morocco is behind the Pegasus spying system, which monitored the mobile phones of Spanish politicians during the "crisis" caused by the arrival in Spain of SADR President Brahim Ghali, and the subsequent opening of the Ceuta fences by Moroccan police (<https://www.theguardian.com/world/2022/may/03/over-200-spanish-mobile-numbers-possible-targets-pegasus-spyware>). Among them are the prime minister himself, Pedro Sánchez, and the ministers of Defence, Margarita Robles, and Foreign Affairs, Arancha González Laya. (<https://elpais.com/espana/2022-05-03/la-exministra-de-exteriores-gonzalez-laya-tambien-fue-espiada-en-plena-crisis-con-marruecos.html>).

²⁴ It should be recalled that the so-called "Framework Agreement" or "Baker Plan I", a more moderate version of this plan, prepared by James Baker in 2000, was never even submitted to the Security Council.

International and Human Rights Watch,²⁵ Sahrawis and Rifis were condemned to cruel sentences ranging from twenty years' imprisonment to life imprisonment. While Spain supports this impossible autonomy, for more than ten years the activists have not only suffered deprivation of liberty, but also inhuman and degrading conditions in the dreary prisons of the state that is the author of this "serious and credible" proposal.²⁶

(E) WHAT DOES SPAIN GET IN RETURN FOR SUPPORTING THE OCCUPATION?

As a starting point, it is unacceptable that Spanish political, economic or strategic interests, or those of any other state, can prevail over compliance with international law and respect for human rights. It is not in vain, at least in theory, that this is one of the principles on which the European integration project is built. The Spanish president has stated that these new relations lay "the foundations for a much more solid and sincere relationship based on mutual respect and the territorial integrity of both countries".²⁷ It is surprising that President Sánchez justifies the agreement with the argument of safeguarding Spain's territorial integrity, which is apparently at stake, and even more surprising that he claims that this agreement will resolve the issue. On the one hand, the legal status of Ceuta and Melilla is untouchable for both states; on the other, the Spanish decision is irrelevant when it comes to addressing the important pending issue of delimiting the maritime borders between the Canary Islands and Western Sahara. Although it is obvious from the perspective of international law, and as the judgments of the European Court of Justice have established, it must be stressed that Western Sahara is not part of Morocco. Therefore, negotiating not only the exploitation of natural resources, but also the delimitation of Saharawi territory and territorial waters with Morocco would constitute a serious violation of international law, which would give rise to Spain's international responsibility. Therefore, the legal consequences of this charter on the legal status of Western Sahara are, in my opinion, non-existent, beyond the international responsibility incurred by Spain, which is no small thing. If until now, and despite Spain's support for Morocco's sovereignty claims, both countries have not delimited their maritime borders, it is because it would constitute a serious violation of a rule of mandatory law, and it is unthinkable that they would now sit down to negotiate the delimitation of their maritime borders without the POLISARIO Front, since legally the situation remains unchanged.

General international law establishes the obligation of all states not to recognise a situation resulting from the serious violation of a peremptory norm such as that arising

²⁵ To learn more about the proceedings before the Rabat Military Tribunal against the Sahrawi human rights activists, please consult the report written by the undersigned, available on the website of the Asociación Internacional para la Observación de los Derechos Humanos (<https://aiodh.org/wp-content/uploads/2022/05/2report-aiodh.pdf>)

²⁶ As Isaías BARREÑADA has pointed out, autonomy is unfeasible in a political regime such as the Moroccan one: "Morocco raises autonomy as a blocking resource in negotiations, on the sidelines of the decolonisation process defined by the United Nations" (BARREÑADA, I., "Autonomy and Natural Resources: the self-Determination process in New Caledonia as a Counter-Lesson for Western Sahara", *The Journal of North African Studies*, 2021, pp. 18-19, <https://doi.org/10.1080/13629387.2021.1917126>).

²⁷ <https://www.rtve.es/noticias/20220323/sanchez-acuerdo-marruecos-sahara/2321150.shtml>

from the imposition on a colonial people of a regime of occupation by another state, as well as the obligation of all states not to contribute to its consolidation. The decision of the Spanish government to officially support the autonomy plan constitutes an express rejection of the right to self-determination of the Saharawi people, and entails the international responsibility of our country, insofar as it contributes to the consolidation of the occupation of the territory.

The General Court made a series of statements in its rulings of 21 September 2021 on the legality of the exploitation of the territory's natural resources²⁸ that are in direct contradiction with the decision expressed in the president's letter, and which should be recalled. On the one hand, the court stated the obvious: that Western Sahara is not part of Morocco, and that the EU (and therefore Spain) cannot recognise the sovereignty of this state over the territory; on the other, that agreements between Morocco and the EU will only be validly applicable in Western Sahara if they have the consent of the Saharawi people, which must be expressed through the Frente POLISARIO, a third party distinct from Morocco and the EU, in respect of which no rights or obligations can be created without its consent.

For this reason, President Sánchez's letter will have no consequences other than to have further encouraged Morocco to try to consolidate the military occupation and to continue the repression of the Sahrawi population in their own land; to have forced the POLISARIO Front to intensify the war it renounced in 1991 ("weapons for ballot boxes"), and to which it has been forced to return after thirty years of frustration with a peace plan that was never implemented; and to have once again handed the Sahrawi people over to the occupying state. But it will not serve to "normalise" diplomatic relations with a state that violates international law with malice aforethought: the maritime borders with our southern neighbour will remain undemarcated, Moroccan claims to Ceuta and Melilla will resume sooner rather than later,²⁹ and not the slightest progress will have been made towards resolving the conflict, which will only come when the Sahrawi people exercise their right to self-determination.

²⁸ On the latter rulings and the most relevant aspects of the previous ones, see our study "El Tribunal General pone fin a la sinrazón del Consejo y la Comisión (sentencias de 29 de septiembre de 2021): No habrá más acuerdos para explotar los recursos naturales del Sahara occidental sin el consentimiento del Frente POLISARIO", *Revista General de Derecho Europeo*, n.º. 56, 2022, pp. 34-80. See also the studies mentioned therein.

²⁹ On 9 September 2022, only 6 months after the publication of the letter, Morocco stated in a letter sent to the Office of the UN High Commissioner for Human Rights that "it does not have land borders with Spain" and that Melilla "continues to be an occupied prison", so that "we cannot speak of borders, but only of simple access points" (<https://elpais.com/espana/2022-10-13/marruecos-llama-a-melilla-presidio-ocupado-en-un-escrito-al-alto-comisionado-de-derechos-humanos-de-la-onu.html>)

