

The supposed shift that marginalizes Spain from the resolution of Western Sahara conflict

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Abstract: Spain is the European Union member state most concerned about the Western Sahara question, not only because of its direct ties as a former colonial power, but due to the interference caused by the conflict in its relations with its two Maghrebi neighbours, Morocco and Algeria. The declaration made by the Spanish government aligning itself with the Moroccan position has had direct domestic and foreign consequences. This text examines the extent to which this represents a substantial and significant shift in the Spanish position, in what would be a revision of its traditional position of 'active neutrality', and how this might affect Spain's ability to make constructive contributions to the resolution of this conflict.

Keywords: foreign policy, mediation, conflict resolution, propaganda

(I) INTRODUCTION

The position of the Spanish government regarding the Moroccan autonomy proposal for Western Sahara as 'the most serious, realistic and credible basis for resolving the dispute' caused a scandalized uproar when it became public in March 2022. It was, of course, first made public in a press release published by the Moroccan Royal Palace, which was then confirmed by the Spanish Ministry of Foreign Affairs and later upheld by the president of the government in an appearance before parliament. One portion of the government, the members on the left, expressed their dissent. Several parliamentary political parties across the spectrum criticized the change in the traditional Spanish position without prior debate, breaking the existing consensus in contradiction with the traditional positions around this issue. The Foreign Affairs Committee of Congress and the Plenum of the Senate both passed motions of condemnation. Social and solidarity movements protested this second betrayal of the Sahrawi people. More than 100 international academics drew attention to the serious legal implications of Spain's formal support for the Moroccan proposal.¹ Algeria was harshly critical, and a bilateral crisis was sparked that was, at least, predictable. The Polisario Front spared no adjectives when condemning the words that were issued from Moncloa. Several European chancelleries also discreetly expressed their surprise at the declaration from a country so deeply involved in the Western Sahara question. In light of all this commotion, a wide variety of ideas circulated about the reasons for the declaration, its concessive character in pursuit of re-establishing relations, the consequences it would have for relations with

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¹ Statement on Western Sahara and International Law, March 2022. <https://www.aepdiri.org/index.php/actividades-aepdiri/declaracion-sahara>

Algeria, the possibility that other European countries will eventually follow suit and the legal implications of the position.

This text examines two dimensions of what has been called ‘Spain’s shift on Western Sahara’. The first concerns the congruence of the supposed shift with regard to the traditional position of the Spanish government. The second is related to the possible consequences of this new position for Spain’s role in the resolution of the conflict. To that end, the text begins with a review of what the policy of ‘active neutrality’ has meant for more than four decades, with its different facets and implications, in order to evaluate whether the shift was as significant as has been presented. This is followed by an analysis of Spain’s position in the different areas from which it will attempt to help resolve the issue of Western Sahara.

(II) FALSE NEUTRALITY, ACTIVE AMBIGUITY

In the summer of 1975, after the events that occurred in Western Sahara during the visit of the delegation of the United Nations Special Committee on Decolonization, the Spanish authorities accepted that their plans for Western Sahara had failed miserably.² The Sahrawi National Union Party (PUNS), a puppet party set up by the colonial authorities, had no social base and could not take over as had been hoped, while the Polisario Front, which wanted to break with the colonial order, had both the political initiative and the mass support of the people. In the face of the pro-independence agitation in the territory and the terrorist and propaganda pressure from Morocco, Spain accepted the impossibility of holding a referendum that clearly would result in independence, with a Sahrawi nationalist government unfriendly to Spain. Consequently, that same summer the government began to repatriate its civilians. In the following months, pressure from Morocco, which was mobilizing its civilian population in the so-called Green March, precipitated the country’s decisions. The government of Carlos Arias Navarro preferred to safeguard its relations with Rabat and Washington rather than complete the decolonization process.³ In the Madrid Accords signed on 14 November 1975, Spain agreed to leave the territory, ceding it de facto to Morocco and Mauritania.⁴ A few days later, on 19 November, Law 40/1975 on the decolonization of Western Sahara was enacted.⁵ On 26 February 1976, Spain completed its evacuation and ended its presence in the territory; the Spanish government communicated to the Secretary-General of the United Nations that Spain had definitively withdrawn from and ceased its participation in the administration of the territory after 92 years.⁶ In short, Spain did not carry out the decolonization as it

² *Report of the United Nations Visiting Mission to Spanish Sahara*, 10 October 1975. Special Committee to Examine the Situation Regarding the Application of the Declaration on the Granting of Independence to Countries and Colonial Towns. UN Doc. A/10023/Add.5, Annex, at 26 (1975).

³ D. Garí, *Estados Unidos en la guerra del Sáhara Occidental* (La Catarata, Madrid, 2021).

⁴ Declaration of Principles on Western Sahara, 14 November 1975, unofficially referred to as the Madrid Accords (*Acuerdo Tripartito de Madrid* in Spanish).

⁵ Law 40/1975 of 19 November on the decolonization of Sahara. BOE-A-1975-23743.

⁶ Letter dated 26 February 1976 to the Secretary-General from the Permanent Representative of Spain to the United Nations, Doc. NU, A/31/56-S/11997.

was supposed to and had committed to in the United Nations; rather, it unilaterally interrupted the process, failing to meet its obligations as the administrative power of the territory and abandoning a portion of its population.

Although the later transition and democratic governments distanced themselves from the decision made by the Arias Navarro government, they never condemned the Madrid Accords or considered taking any action to remedy the act. The immediate war in Sahara, the involvement of other actors supporting the warring factions, the collateral effects of the conflict in the Canary Islands and waters off the Sahara and the confrontation between Morocco and Algeria pushed Madrid into a complex and difficult policy of neutrality, equidistance, equilibrium and compensation with its Maghrebi neighbours, advocating a merely reactive policy to the pressures of the various actors.⁷ The Sahara question would take shape as the permanent backdrop to intraregional tensions. At the same time, since then, Western Sahara has become a delicate question for Spain, both for reasons related to its role as a former colonial power and because of its permanent interference in Spanish relations with the countries in the Maghreb.

Under Prime Minister Adolfo Suarez, the lack of consensus about the issue in Spanish politics made it impossible to have a proactive policy consistent with the democratic change. With Leopoldo Calvo-Sotelo, there was a rapprochement with Morocco that increased instability in the region and in bilateral relations. However, during the 1980s, the socialist governments attempted a different type of approach with the country's Maghrebi neighbours that continues to this day. A difficult policy of balances was abandoned in favour of a dedicated global policy based on the principle of a buffer of mutual and reciprocal interests. In other words, the country chose to create a dense interdependence in every area to counteract the permanent instability, cushion the recurring bilateral crises and demands, particularly territorial claims, and progressively establish good neighbourly relations. With Algeria, political and economic relations were formed that would later result in a significant energy dependence, while with Morocco trade relations were combined with police and development cooperation. This did not stop relations with the Maghreb, and particularly Morocco, from suffering from ups and downs and the permanent threat of crisis, and several disputes are ongoing. As rightly observed by Bernabé López García and Miguel Hernando de Larramendi, 'this strategy of depoliticizing the bilateral agenda by focusing it on reinforcing financial interdependence as a stabilizing element in relations [...] and Spain's role as the champion of Morocco's interests in the European Union, have not been able to avoid the periodic outbreak of crises, uneven in scope and intensity'.⁸ With interdependence, Morocco managed to establish a 'conflictive partnership' with Spain; it knows itself to be essential and thus applies pressure in ways that are very sensitive for Madrid and Brussels.

It is within this complicated framework that Spain is positioned with respect to Western Sahara. Spain has never truly held a neutral position, not during the period of

⁷ M. Hernando de Larramendi, 'España, Mediterráneo y el mundo árabe', in J.C. Pereira (coord.), *La política exterior de España. De 1800 hasta hoy* (Ariel, Barcelona, 2010), pp.511-512.

⁸ B. López García and M. Hernando de Larramendi, 'Profundizando en la crisis con Marruecos', 63, *Afkar/Ideas* (2021) 34-37.

equidistance and equilibrium with Suarez's Union of the Democratic Centre, nor during Calvo-Sotelo's alignment with Morocco, nor with the turn towards interdependence under the Spanish Socialist Workers' Party. When Felipe González became prime minister, he ended up abandoning his support for the argument of the Polisario Front, which he had backed while he was in the opposition.⁹ This is when the concept of 'active neutrality' appeared as the principle of the Spanish position regarding Western Sahara. In 1976, Minister of Foreign Affairs José María Areilza became the first person to use the concept as a way to avoid condemning the Madrid Accords and compromising relations with Morocco. Later the concept took on a new meaning with the intensification of relations between Spain and its Maghrebi neighbours and the implementation of the Settlement Plan in 1991 under the auspices of the United Nations and the Organization of African Unity. The successive Spanish governments discovered a discursive partition in this equivocal formula, so loaded with ambiguity, where they could pursue a pragmatic policy.

The active neutrality policy associates two ideas: neutrality and activism. On the one hand, Spain, figuratively speaking, does not take part in the Western Sahara question. On the other hand, the country has expressed its desire not to remain on the sidelines, but to participate in what is assumed to be the resolution of the conflict. The claim of neutrality, of not taking a position in favour or against any one option, can first be explained by the fact that Spain does not want to endanger its relations with Morocco and Algeria, which are increasingly more intense and vital. Economic and security interests take precedence, and Morocco in particular is expected to contain its territorial claims. Spain actively does not recognize the *de facto* Moroccan annexation, viewing Western Sahara as a territory whose definitive status has yet to be defined. Nor does it recognize the Sahrawi Arab Democratic Republic, the quasi-state in exile declared by the Polisario Front. However, neutrality also means a refusal to take charge in the frustrated decolonization, as the first step in a restorative policy in the new democratic context. The clearest manifestation has been the permanent denial of all the governments to consider themselves the 'administrative power', either *de jure* or *de facto*, arguing that no United Nations resolution or report from the Secretary-General on the situation confers this status upon the country. Yet a number of legal experts have argued that Spain cannot decline this responsibility unilaterally or renounce an obligation of this nature. This Spanish position of neutrality, which is actually false, has a very significant consequence: the renunciation of any political affirmation or leading role, the renunciation of making proposals,¹⁰ the renunciation of taking a prominent role in the resolution of the conflict like Portugal in the decolonization process in

⁹ J.L. Neila Hernández, 'El "giro mediterráneo" de España en un mundo en tránsito', 19 *Pasado y Memoria. Revista de Historia Contemporánea*, (2019) 51-77.

¹⁰ The refusal to take the initiative under the pretext of neutrality has even been challenged by former heads of Spanish diplomacy. One such case is Marcelino Oreja: "[...] in my opinion, Spain cannot remain indifferent to what is happening in the territory and must take the initiative to help see that free determination is implemented. This will reinforce our international credibility and demonstrate the coherence of our position to Morocco. We must not forget that authoritarian regimes grow in the face of conciliatory approaches, which they see as a sign of weakness. Spain has to stay firm in defence of the fundamental principles that must serve as inspiration, including the respect for human rights'. M. Oreja, 'Valores universales y descolonización. El Sahara Occidental', 88, *Anales de la Real Academia de Ciencias Morales y Políticas* (2011) 191-208.

Timor, the renunciation of influencing or involving the European Union and the renunciation of including the Saharan colonial project in the Democratic Memory,¹¹ all of which is surprising given that Spain, de facto, continues to take responsibility for air traffic and sea rescue in the territory.¹²

The second component of this concept concerns the intention to act. Spain is not passive and does not want to be left out. Rather, the country has exploited two facets of soft diplomacy: multilateral mediation – supporting the efforts of the United Nations – and humanitarian assistance to Sahrawi refugees. In 1993, on the initiative of the United States, the so-called Group of Friends of Western Sahara was created, an informal structure made up of four permanent members of the Security Council (United States, France, United Kingdom, Russia), which was joined by Spain in its status as the former metropolis. The initial function of the Group was to coordinate positions, help to implement the Settlement Plan, write draft resolutions for the Security Council and support the Secretary-General. Spain has never really played an important role in this structure, but it has been consulted and tends to support the decisions of the two most influential actors, France and the United States. When Spain has played the rare active role as a temporary member of the Security Council, it has been to soften the body's responses and prevent pressure on Morocco. Nobody disputes that the Group of Friends – made up of former colonial powers, with no states from the Global South – is characterized by *Realpolitik*. Neither is it surprising that its positions and actions are frequently challenged by other members of the Security Council, and that it was held responsible for blocking the Settlement Plan when it refused to apply coercive measures to fulfil the agreements. To a large extent, the Group of Friends of Western Sahara is responsible for prolonging the situation, plotting changes in the formulation to resolve the conflict, from the categorical defence of self-determination (S/RES/621 of 1988) to the search for a 'mutually acceptable political solution' (S/RES/1541 of 2004).¹³

On the other hand, Spain presents itself as a strong supporter of the UN Secretary-General and his Personal Envoy for Western Sahara. The person in this position, which is less common than the Special Representative and Special Envoy of the Secretary-General, is responsible for supporting negotiations, exercising good offices in his name and working with all the relevant interlocutors. The first Personal Envoy for Western Sahara was James Baker, who was appointed in 1997; since which there have been six more, with diplomat Staffan de Mistura currently holding the position. Morocco only allows the Personal Envoy to act as facilitator, and not a mediator.

¹¹ The recent Law 20/2022 of 19 October on Democratic Memory makes no mention of colonialism as a crime or the disappearances and victims of repression during that period; neither does it invalidate the clearly unlawful Madrid Accords, which do not comply with international law.

¹² The International Civil Aviation Organization (ICAO) continues to assign Spain responsibility for managing the airspace over Western Sahara; ENAIRE, the public Spanish company that provides air navigation services, combines the Canary Island region and Western Sahara in the same zone. Similarly, the International Maritime Organization (IMO) includes the waters off Western Sahara in the search and rescue area of responsibility related to the Canary Islands.

¹³ Since 2001 (S/RES/1359), the resolutions of the UN Security Council have not mentioned the referendum, but continue to refer to the free determination of the Sahrawi people. See the most recent resolutions: S/RES/2548 (2020), S/RES/2602 (2021), S/RES/2654 (2022).

As part of its support, Spain provides information, undertakes conversations and arranges transport and logistics, with an airplane from the Spanish Air Force for visits to the various countries involved.¹⁴ At the same time, Spanish thinktanks, with the backing of the Ministry of Foreign Affairs, have been involved in some second-track diplomatic initiatives. However, the Spanish presence and its support for the UN representatives does not mean that the country has any appreciable influence or significance in the process. Spain also contributes financially to the United Nations Mission for the Referendum in Western Sahara (MINURSO), although a Moroccan veto prevents the country from making military contributions.¹⁵ Additionally, when Spain participates in the Special Committee on Decolonization, it does not mention Sahara, limiting its remarks to the case of Gibraltar. Finally, Spain has continuously provided significant humanitarian aid to the Sahrawi refugees in the Tindouf camps in southeast Algeria.¹⁶ This population has always figured as the primary beneficiary in every master plan for Spanish cooperation, and the Sahrawis are the number one recipients of Spanish assistance per capita in the world, making Spain the largest state donor after Algeria.

This combination of (false) neutrality and (limited) involvement has always been ambiguous and contradictory, and openly concealed a clear alignment with Morocco. Neutrality has never brought Spain to condemn the occupation and its daily manifestations; on the contrary, Madrid's silence in the face of the permanent human rights violations in the occupied territories and its aloof reaction to the extension of the MINURSO mandate are notable. Spanish companies have been allowed to operate in the occupied zone. Additionally, there is an acceptance that irregular migrants are returned through airports in occupied Western Sahara, in violation of the bilateral migration agreement.¹⁷ Spain has not only been one of Morocco's greatest advocates in the European Union, but has constantly been the member state that has presented the most appeals against the judgements of the European General Court, challenging the extension of agreements between Morocco and the EU to the territory of Sahara. The list could go on and on.

Notwithstanding, the Spanish government has occasionally considered the possibility of taking a different approach to the question. In fact, during the government of José Luis Rodríguez Zapatero, an open attempt was made to leave active neutrality behind and promote supposed mediation, supporting the search for a political solution between the parties. In July 2004, during a visit by Prime Minister Zapatero to Algeria,

¹⁴ This contribution of air resources is not a voluntary contribution properly speaking, as it is discounted from the ordinary (assessed) contribution that Spain makes to the UN.

¹⁵ Spain contributed more than \$4,000,000 to MINURSO from the time of its creation in 1991 to 2022. Moreover, the Canary Islands serves as the retreat area for MINURSO in case of evacuation. <https://www.europapress.es/nacional/noticia-espana-contribuido-mas-millones-dolares-minurso-creacion-1991-20220508110754.html>

¹⁶ This aid has been bilateral, multilateral, decentralized, and through NGOs. In recent years, Spanish public assistance to the Sahrawi refugee population in Algeria has totalled nearly €6 million a year, channelled through various international organizations like the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the World Food Programme (WFP).

¹⁷ Agreement between the Kingdom of Spain and the Kingdom of Morocco on the movement of people, transit and the readmission of foreigners who have entered illegally, signed in Madrid, 13 February 1992.

Minister of Foreign Affairs Miguel Ángel Moratinos stated that ‘Spain must shed its traditional inhibition about Sahara, camouflaged by activism in the thus far sterile framework of the United Nations, and adopt an active neutrality and “get its hands dirty” pushing for an agreement’, and it did. The Spanish contribution manifested itself in assistance to Morocco to create the autonomy proposal that would become official in 2007, accomplished with the assistance of Spanish socialists. Apparently, however, the experience was not very satisfactory, as the Moroccan proposal fell far short of the minimum standards of credible autonomy. When the People’s Party returned to government, it naturally reverted to the former position.

(III) A RESPONSIBLE SHIFT OR AN UNWISE CONCESSION

This summary of the events that put the Spanish declaration in context provides some enlightening facts that help to explain the supposed shift in Spain’s Western Sahara policy:¹⁸ the communiqué from the Royal Cabinet of Morocco that revealed the letter from the Spanish government containing its position on the autonomy plan; the hasty, confused reaction of the Spanish government; the appearances before Parliament; the presidential visit to Morocco and the joint Spanish-Moroccan declaration of 7 April 2022. All of this led to the re-establishment of bilateral relations, although it remains to be seen the extent to which the pending issues are going to be addressed in depth. Rabat’s traditional unpredictability and recurrent use of pressure (including Pegasus spyware against domestic opponents and foreign allies) raises fears that the crisis is not really resolved.

Spain’s interest in normalizing relations with Morocco, which were interrupted for ten months, is perfectly legitimate and understandable, especially in an international context as fraught as the current situation, and with the prospect of a restoration of Euro-Mediterranean relations aimed at establishing a nearshoring strategy with the EU’s southern neighbours. The bilateral agenda is thick and the interests substantive: trade exchanges, offshoring migration control, police cooperation, what to do about Ceuta and Melilla. Moreover, Spain is clearly suffering the repercussions of blocking the Settlement Plan and the return of military hostilities in Western Sahara, and it is understandable that the country would like to do something to break the status quo. For Spain, resolving the conflict is fundamental, given that it constantly interferes with bilateral relations and blocks any regional Maghrebi integration.

This, then, begs the question of whether Spain’s position towards Sahara was a calculated, decided political shift or a concession made under Moroccan pressure to re-establish some degree of normalcy in bilateral relations. At least two interpretations are possible. The first is that Spain calmly decided to modify its policy towards Sahara, considering all the implications. However, it is difficult to describe this shift as novel, because Spain has aligned itself with Morocco for more than two decades and, in that case, this action is merely one more step in the logic of going beyond the active neutrality proposed by Moratinos in 2004. On the other hand, this is certainly not the most

¹⁸ J.A. González Vega, ‘Triste España!: Los aspectos formales y contextuales del cambio de posición español’, 74/2 *Revista Española de Derecho Internacional* (2022) 431-446.

propitious time, after the American recognition of Moroccan sovereignty in December 2020, in a context of war and while awaiting the judgement of the Court of Justice of the European Union (CJEU). Additionally, the way in which it was made public was completely unusual.

The second interpretation is that Spain may have accepted a draft declaration submitted during a negotiation. Morocco would have demanded a clearer alignment with its irredentist positions and Spain would have accepted it as a concession. In both cases, given the impact of the actions, miscalculations and a clumsy handling of the question cannot be excluded. Moreover, it is important to consider that Morocco is anxious to gain international recognition for its annexation of Western Sahara; American recognition of Moroccan sovereignty may have been a boost, but it has not produced a shift in international support. Additionally, Morocco needs to keep Spain neutral as an auxiliary actor in international efforts and use its northern neighbour for other types of support. To do this, it will use any means within reach, both collaborative and confrontational.

The events of March 2022 represented a successful use of political communication, of framing, of controlling the political discussion on the part of the Moroccan authorities to impose a discourse and make it hegemonic. In its foreign activity, Morocco regularly uses the imposition of discourses as manipulated tools, which particularly suits its conflictive partnership with Spain and the European Union. It has managed to launch and establish high-impact material in the international public debate, from which it derives specific benefits. These discourses are accepted and relayed by others until, after a few months, they dissipate.¹⁹ This was also the pattern followed with the Spanish-Moroccan declaration: on 18 March the Royal Cabinet of Morocco released a communiqué referring to relations with Spain and cited a letter from the Spanish government to King Mohammed VI. However, the crux of the communiqué was Spanish support for the Moroccan autonomy proposal for Western Sahara, which it used as the title of the communiqué and focus of the text.²⁰ Moreover, the communiqué was unexpected and unilateral on Morocco's part and caught Spanish diplomatic circles completely unawares, forcing the country to react with an explanation from the minister that placed its focus on the reestablishment of uninterrupted bilateral relations. For their part, the Spanish never published the mentioned letter, and what reached the press was a muddled, unofficial text that merely heightened the confusion. In short, with a precipitous announcement and the communiqué from the Royal Cabinet, Morocco managed to impose a message to its own benefit and to magnify the Spanish position, presenting it as a groundbreaking shift that was amplified in Spain and internationally, neutralizing the Spanish government.

However, while the Spanish alignment with the Moroccan proposal has remained part of the government's discourse in the intervening months, it appears selectively and within the framework of re-establishing relations with Morocco. Indeed, there

¹⁹ Such operations are common with regard to Western Sahara; for example, the condemnation of the supposed diversion of humanitarian aid sent to the refugees, the links between the Polisario Front and terrorist groups from the Sahel, Irani support via Hezbollah, the hospitalization of Brahim Ghali, etc.

²⁰ Communiqué from the Royal Cabinet, 18 March 2022. <https://www.maroc.ma/fr/activites-royales/communique-du-cabinet-royal-lespagne-considere-linitiative-marocaine-dautonomie>

have been no specific consequences for either camp to date. For example, it is quite noteworthy that there has been no mention of the development in the United Nations. The speech by Prime Minister Pedro Sánchez to the General Assembly on 22 September 2022 adopted the classic and conventional formula of referring to Western Sahara, avoiding any mention of the autonomy proposal, ensuring support for the work being done by the United Nations and promising to continue to back humanitarian aid to the refugees.²¹ A few days later, on 3 October 2022, a surprising event occurred in the UN Special Political and Decolonization Committee (Fourth Committee). Spain had been included on the list of speakers, which was quite unusual because the country has not spoken about Western Sahara in that space since 1975. However, at the last minute, the Spanish representative cancelled his appearance, to widespread surprise. The situation provided food for thought. Spain may have reconsidered its involvement because its support for autonomy is legally indefensible and cannot stand up to the legal soundness of Western Sahara's right to free determination. It is also possible that pressure from a third country was applied or that Spain reconsidered in order to avoid causing a rift with Morocco. There is also a possibility that the Spanish government backed down, and has not yet made a decision regarding a true political shift on the question.

(IV) SELF-MARGINALIZATION IN THE RESOLUTION OF THE CONFLICT

It is clear that the declaration by the Spanish government did not alter the political situation or international legal status of the case; nor did the declaration by President Donald J. Trump in December 2020, only comforting Morocco, which wants to add more international supporters for its proposal.²² For that reason, the Spanish government insists that it has not changed its position and that its assessment of the autonomy proposal is compatible with the principles of international law and its support for the efforts of the United Nations. Speaking from Brussels, Josep Borrell made the same argument. However, Spain finds itself in a contradiction, which is not new, but is more explicit, that consists of trying to reconcile (Moroccan style) autonomy with the right to free determination, when it is obvious that autonomy is a form of integration and a way to deny that right.²³

However, the new Spanish position had a predictable negative effect: Spain's loss of credibility in this case and the deterioration of relations with the involved parties, which led to the country's disqualification from international efforts at facilitation and mediation. Defending the Moroccan autonomy proposal for Western Sahara discredited and deteriorated the image of an actor that wants to participate on the

²¹ Speech by the President of the Government of Spain at the General Debate of the 77th sessions of the United Nations General Assembly: <https://www.lamoncloa.gob.es/presidente/intervenciones/Paginas/2022/prsp22092022.aspx>

²² J.A. González Vega, 'El reconocimiento por EE. UU. de la anexión por Marruecos del Sáhara Occidental en perspectiva: Aspectos jurídicos y políticos', 41 *Revista Electrónica de Estudios Internacionales* (2021).

²³ J. Soroeta Licerías, 'Por qué la integración en Marruecos (la autonomía) no es la forma de resolver el conflicto (la descolonización) del Sáhara Occidental', 74:2 *Revista Española de Derecho Internacional*, (2022) 461-469.

international stage. Clearly, the proposal lacks credibility given the undemocratic characteristics of the Moroccan political system and regime. Morocco is not based on the rule of law; the king rules and governs, he interferes in legislative and judicial power, and civil and political liberties are restricted. This political framework is incompatible with real decentralization and self-governance.²⁴ Moreover, this is aggravated by the authoritarian drift of recent years, the exceptional security situation and the permanent violation of the civil and political rights of those living in the occupied zones. Furthermore, the proposal is not a demand presented by the population, but a programme designed by the occupier. Public support for this option, whether out of conviction or based on *Realpolitik*, discredits its advocate. Finally, although the declaration is measured and contained, it delegitimized the entirety of Spanish foreign policy because the country is supporting a proposal that is inconsistent with international law. And the discredit is compounded because the declaration has not been followed by any specific related acts, creating an ambiguous and incoherent position.

Relations with all the parties have deteriorated. As much as relations with Morocco have been re-established, they are not normal and they continue to operate in a conflictive partnership; the demands, the offensive declarations, the veiled or open threats, the pressure and the blackmail are constant. Spain has come gone back to accepting a type of hybrid relationship of permanent negotiation. Relations with the Polisario Front have reached their lowest level since the Sahrawi delegation closed in September 1985. Sahrawi frustration with the successive Spanish governments, which is long-standing, helped to intensify the effects of the Spanish declaration. In fact, they suspended communication with the Spanish government, declaring that Spain no longer has the legitimacy to mediate or facilitate. In their opinion, Spain let itself be blackmailed by Morocco and would prefer to abandon the Sahrawis. For Sidi Mohamed Omar, the Sahrawi representative to the United Nations, ‘Spain has gone from being an actor that can positively contribute to being an actor that has created more problems for the decolonization process’.²⁵ Abdullah Arabi, the Polisario representative in Spain, says that ‘Spain has automatically excluded itself from any possibility of mediation or promoting the efforts of the UN Special Envoy’. In turn, SADR Minister of Cooperation Fatma el Mehdi believes that ‘the change in the government position has done more damage to Spain than to the Sahrawi cause’. Finally, relations with Algeria have deteriorated. Algerian President Abdelmadjid Tebboune characterized the Spanish declaration as ‘the second betrayal of the Sahrawis’, withdrew the Algerian ambassador to Spain within weeks and in June 2022, suspended the bilateral friendship and cooperation treaty. The strain has had a direct effect on economic exchanges. Inevitably, Spain’s alignment with Morocco has fuelled tensions between Morocco and Algeria, neighbours who are in the midst of a full arms race.

Spain has justifications for playing a dynamic role in the search for a solution: the assets at its disposal as a formal colonial power (and administering power to this day),

²⁴ C. Ruiz Miguel, ‘La propuesta marroquí de autonomía para el Sáhara Occidental de 2007: una antigua propuesta sin credibilidad’, 7 *Revista d’Estudis Autònoms i Federals* (2008) 268-291.

²⁵ “El Polisario cree que España ya no es un actor “positivo” para el proceso de paz”, EFE 3 September 2022.

its immediate proximity to the territory (if Sahara wins its independence, it will become one of Spain's neighbouring countries), an interested and mobilized public opinion, its assertion that it has a foreign policy based on principles and respect for international law, as well as its involvement in another pending decolonization case – Gibraltar – in which Spain adheres to the application of international law.

The doctrine of 'active neutrality' always contained a willingness to participate in external efforts to resolve the conflict. This has consistently been a second-tier role, accompanying the actors who are really important, who have made proposals or who have determined the position of the Security Council. At times (between 2004 and 2011) there has been a desire to break out of the neutrality paradigm and play a more dynamic, proactive role, but the country chose not to contradict Morocco instead of really supporting the Settlement Plan, with all the consequences.

Facilitators are legitimized by their coherent behaviour, based on solid parameters (in this case international law), and the ability to create incentives and build bridges (because of their assets and relations with the parties). However, Spain chose not to create incentives for the obstructionist actor to change its position. On the contrary, the country has served as a life preserver to prevent the political collapse of the monarchy, deactivate its claims to Ceuta and Melilla and prevent the weaponization of migrations. The 2022 declaration did not help in this respect, firstly because Spain aligned itself, and secondly because it polarized the positions and inflamed the situation. All facilitators are guided by the 'do no harm' principle; do not worsen the situation and, if necessary, abstain. In the recent words of Christopher Ross, a former Personal Envoy of the Secretary-General for Western Sahara, Spain has complicated the situation.²⁶ The country has been disqualified as a serious facilitator or mediator.

In the Group of Friends, Spain undeniably joined forces with the United States and France in the faction of self-interested, unreliable parties. Neither did Spain's position ease the labour of Staffan de Mistura in his determination to resume direct negotiations. Indeed, it could even be said that Spain weakened him and reduced his room to manoeuvre by adding to the difficulties created by Morocco and the disruptive effect of the American recognition of Moroccan sovereignty. Although this may seem minor, Staffan de Mistura even lost access to the airplane that the Spanish government usually makes available for shuttle democracy in the region. To go to Algiers and Tindouf, de Mistura has had to take commercial Air Algérie flights. Algeria refused to let him fly in a Spanish aircraft because, in the words of a senior government official, 'Spain has adopted a partial position' in the conflict and 'is disqualified and cannot be associated in any way with the efforts to reactivate the political process' towards finding a solution.

²⁶ 'To sum up, we have two parties unable to negotiate, the Security Council divided, and the US and Spain complicating matters. But beyond avoiding substantive engagement and pressure, the Council has allowed the parties, particularly Morocco, to disregard its guidance with impunity'. Christopher Ross, former Personal Envoy of the UN Secretary-General for Western Sahara 2009-2017, Message on the occasion of the 1st European Day of Friendship with the Sahrawi People. Bologna, Italy, 5 July 2022.

Spain has not even improved its position in the European Union with regard to the Sahara question; rather, the country has contributed to the division and lack of consensus in advance of an even more complex scenario when the CJEU hands down its final sentence on its agreements with Morocco. Andrew Lebovich and Hugh Lovatt, policy fellows with the European Council on Foreign Relations, put it in stark terms: ‘Spain’s recent move has little to do with peace in Western Sahara and everything to do with its desire to mend ties with Morocco. But ultimately, Spain has only made itself more vulnerable to Moroccan pressure. [...] By declining to use their leverage over Morocco, Spain and the EU reduce their own bargaining power and reinforce the perception among many leaders in the Middle East and North Africa that Europeans are inconsequential actors in the region’.²⁷

(V) CONCLUSION

Spain has spent almost two decades providing discreet, but constant support to the Moroccan autonomy option to resolve the pending issue of Western Sahara. In 2022, the government took another step of questionable importance, expressing its explicit support, probably as a concession to Morocco for re-establishing acceptable relations. In its total alignment with Rabat, there are more steps to climb: recognizing autonomy as the ‘only option’ and finally recognizing Moroccan sovereignty over the territory of Western Sahara. This is what Morocco wants, but it would obviously be an extremely serious mistake, with unpredictable consequences, and it would ruin Spanish foreign policy. Moreover, it can be argued that the March declaration has not substantially improved Spain’s position. Although relations with Morocco have been re-established, relations with Algeria and the Polisario Front have deteriorated seriously. Neither has the Spanish position contained Morocco. On the contrary, emboldened, the Maghrebi country has persisted in its obstructionism and feels encouraged to convince even more countries to recognize the *faits accomplis* and the annexation. For that very reason, Spain cannot hope to be given a role as mediator or facilitator, and to pursue this will only lead to its definitive exclusion.

Spain needs to formulate a new state policy regarding Western Sahara and the Maghreb in general. The depoliticized, pragmatic and preventative ‘buffer of interests’ doctrine with Morocco and Algeria has expired and given way to a torturous instrumentalization of interdependence; it no longer corresponds to the coherent, global neighbourly relations required today. Regarding the specific question of Western Sahara, Spain must abandon its traditional obviously false active neutrality and take a coherent, consistent and responsible stand of ‘active commitment’, accepting its responsibilities as an administrative power with all the consequences, without aligning with Rabat. Only with this type of policy will Spain be granted an unprecedented, important role in resolving the conflict.

Western Sahara is suffering through a prolonged, unlawful occupation in which the occupying state, through annexation, is trying to transform the international legal status,

²⁷ A. Lebovich, H. Lovatt, ‘Endless concessions: Spain’s tilt to Morocco’, *European Council on Foreign Relations*, 23 March 2022 <https://ecfr.eu/article/endless-concessions-spains-tilt-to-morocco/>

identity and demographic character of the territory. Third countries and international actors are legally obliged to guarantee the non-recognition of the illegal international acts of the occupier. They must all exhaustively review their relations with Morocco to ensure that they are not recognizing unlawful international acts as lawful. Some in particular – and this especially applies to Spain – must lead the efforts to promote compliance with international law.

