

Tifariti, September 13, 2005

H.E. Rt Hon Tony Blair MP
Prime Minister of the United Kingdom,
Current President of the Council of the European Union
10 Downing Street
London SW1A 2AA

Excellency,

I would like to address to you this letter in your double capacity as Prime Minister of the United Kingdom and current President of the Council of the European Union to convey my profound concern about the initiative taken by the European Commission to conclude a fishery agreement with Morocco that involves the natural resources of Western Sahara.

Western Sahara, as the prestigious British diplomacy perfectly knows, is a colony that was abandoned by Spain on 26 February 1976. A short time prior to that, on 14 November 1975, Spain signed together with Morocco and Mauritania a tripartite agreement establishing an interim tripartite administration of the territory. After those three countries had signed that agreement, the UN General Assembly, in its resolution 3458 A, dated 10 December 1975, continued describing Spain (paragraphs 7 and 8 of the operative part of the resolution), as “administering power”, which was a clear way of disapproving the content of Madrid agreement. Nonetheless, in its resolution 3458 B of the same date, and with a view to reaching the goal pursued by the United Nations that was and is the holding of a referendum on self-determination of the colony, it stated in paragraph 4 that:

“[It] *requests* the interim administration to take all necessary steps to ensure that all the Saharan populations originating in the Territory will be able to exercise their inalienable right to self-determination through free consultations organised with the assistance of a representative of the United Nations appointed by the Secretary-General.”

After the withdrawal of Spain on 26 February 1976, Morocco and Mauritania, instead of holding the self-determination referendum, concluded, on 14 April 1976, a treaty of delimitation of the borders by means of which they annexed and partitioned Western Sahara. Such an annexation was not recognised by the General Assembly that, in its first session following these acts, reiterated its commitment to the self-determination of Western Sahara (resolution 31/33 of 1 December 1976). Moreover, after Mauritania abandoned the part of Western Sahara that she had annexed and was subsequently invaded by Morocco, the General Assembly described the Moroccan presence in the whole territory as “occupation”, both in the part that it annexed initially and the one that was annexed later on (paragraphs 5 and 6 of resolution 34/37, dated 21 November 1979).

Describing the territory as “occupation” means that Morocco is not only denied the “sovereignty”, but any other Lawful status for its presence in the territory. That means that the Madrid agreement lacks any validity according to the General Assembly. This conclusion has been clearly expressed by the Under-Secretary-General for Legal Affairs, the legal

Counsel of the United Nations in his verdict of 29 January 2002 (S/2002/161). In its paragraph 6, the verdict stated that:

“The Madrid Agreement did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power—a status which Spain alone could not have unilaterally transferred”

Excellency,

The European Economic Community then and the European Union now have signed fishery agreements with Morocco following Spain's admission to this international organisation. The content of those agreements was confused. This can be gleaned from the last agreement signed by the European Union with Morocco, Official Journal, n° L 306 of 19/12/1995 p. 0007 - 0043) signed before the legal Counsel of the United Nations, Hans Corell, issued his verdict, on 29 January 2002, regarding the exploitation of the natural resources of Western Sahara. Article 1.2 of this agreement defines as “Morocco's fishing zone”, “the waters under the sovereignty or jurisdiction of the Kingdom of Morocco.” Now, what are the waters that are under the “jurisdiction” but not the “sovereignty” of Morocco? In case such waters were defined, it would be necessary to clarify what is the Juridical title that gives that “jurisdiction” to Morocco. As far as Western Sahara is concerned, Morocco lacks any juridical right that grants her “jurisdiction” over Western Sahara. We could deduce from this that Western Sahara was left out of the agreement, although one may still wonder to what territory under “jurisdiction” but not “sovereignty” would that clause refer.

Suspensions surrounding the clause referring to the waters under “jurisdiction” of Morocco were confirmed by the practice of the agreement, which in an exercise of bad faith was extended to Western Sahara:

- The Commission allowed that the clauses of the agreement that referred to “Moroccan ports” were applied in connection with the ports of Western Sahara (Bojador, El Aaiún and Dakhla-Villa Cisneros);
- The Commission allowed that the clauses of the agreement that referred to the “catches” were applied in connection with the captures made in waters of Western Sahara;
- The Commission allowed that the clauses of the agreement that referred to the “landings” were applied in connection with the landings made in waters of the Western Sahara;
- The list of landing ports that was made available by the Kingdom of Morocco after the coming into effect of that agreement included ports of Western Sahara;
- The Commission allowed that the clauses of the agreement (p. e.g., relative to cephalopods, seiners south, black hake trawlers, pelagic trawlers) that referred to the geographical limits of the Atlantic (“south of 28°44'N”) were used to apply that agreement in the waters of Western Sahara that begin in the parallel 27°40'N.

Excellency,

Upon knowing that a new fishery agreement was being negotiated, the Frente POLISARIO addressed a letter to the European Commissar, Mr. Joe Borg, on 18 May 2005 alerting him to the seriousness of the initiative that he was taking while negotiating with Morocco over the waters of Western Sahara. In the letter, we stated to him the following:

“We firmly urge you to fully respect the internationally recognised frontier between the Kingdom of Morocco and Western Sahara, this is, the parallel 27° 40’, as clearly established by the United Nations and the international practice, and use the whole European political weight to protect the waters of Western Sáhara and their thousand kilometres-long coast from any agreement that involves European ships that may subsequently be detrimental to the critical biomass of these fisheries.”

In the letter we recalled that the United States of America, in its free trade agreement with Morocco, included a clause that expressly excluded Western Sahara from Morocco. This clause reflected the scrupulous respect of international law that the United States of America showed in its relations with Morocco.

On 12 July 2005, the delegate of the Frente POLISARIO for Europe received a response that was written on behalf of the Commissar by the head of cabinet of Mr. Joe Borg and where, after assuring that “the Commission is vigilant in putting into force the principles of international law”, he stated to the great surprise of the Frente POLISARIO that:

“The possible negotiations of a Fishery Partnership Agreement with the Kingdom of Morocco would refer to the waters under Morocco’s sovereignty or jurisdiction.”

Excellency,

Our concern is not groundless. The chief negotiator of the European Commission, the Spanish César Deben Alfonso, affirmed that in the fishery agreement between the EU and Morocco “the waters of Western Sahara are included, not because the Commission considers that they are Moroccan, but because they are under Moroccan administration, according to the agreement between Spain and Morocco of 1975” (Dispatch of the Spanish agency *Europe Press* of 28 July 2005). To imply that Madrid tripartite accords of 1975 are a valid agreement and that they attributed the quality of administering power (and, therefore, the “jurisdiction”) of Western Sahara to Morocco can only be a result of a misjudgement or an evident error, given that the United Nations has been categorical in its resolutions and verdicts. To seek in an agreement between the European Union and Morocco to attribute to the latter the “administration” of Western Sahara leaning on the agreement of 1975 and describing Western Sahara as a territory under Moroccan “jurisdiction” is an unlawful attempt to give to Morocco what the United Nations has not given her, and something that the European Union cannot and should not give.

This initiative of the European Commission is even more serious especially at a time when the UN Secretary-General in his latest report on the situation in Western Sahara (S/2005/204), dated 19 April 2005, expressly requested the parties stating:

“In the meantime, both parties must refrain from inflammatory statements or taking any action, including legal, political or military, which would have the effect of further complicating the search for a solution or cause unnecessary friction.” (paragraph 22 of the report).

There is no doubt that this fishery agreement causes friction among the parties to the conflict and it constitutes a dangerous action that can complicate the search for the solution to the conflict.

Excellency,

Indeed, the Frente POLISARIO cannot claim the right to show the United Kingdom or the European Union with whom they should conclude treaties. The Frente POLISARIO does not question in any way that treaties can be concluded with the Kingdom of Morocco. But the Frente POLISARIO, as the legitimate representative of the Saharawi people, has the right and obligation to alert all international subjects that, owing to misjudgement or error, seek to reach agreements with Morocco regarding territories over which she has no juridical right in conformity with international law. The Frente POLISARIO does not request the European Union not to reach a fishery agreement. Now, to protect the right of the Saharawi people and the right to self-determination that all States have the obligation to respect, we demand that, for the sake of respect for international law as an indication of responsibility, the European Union includes a reservation that states that Western Sahara is excluded from this agreement. It would be a great contribution to peace and to the resolution of the conflict in conformity with international legality.

Excellency,

Confident that a Prime Minister of a country worldwide renowned for its respect for "the state of law" will not allow that international law is irresponsibly violated in relations with Morocco, receive the assurances of my highest consideration.

Tifariti,

Territories of Western Sahara Western under the control of the Frente POLISARIO

Post Scriptum

Considering the relevance the issue for the United Nations and for the Nations which showed respect to the International Law in the case of the Western Sahara we send a copy of this letter to the General Secretary of the United Nations, the current President of the Security Council and the Head of the State Department of the United States of America.

Mohamed Abdelaziz,

Secretary General of Frente POLISARIO ,

President of the Saharawi Republic.