

UNITED NATIONS



GENERAL ASSEMBLY



SECURITY COUNCIL

Distr.
GENERAL

A/31/48*
S/11971
6 February 1976
ENGLISH
ORIGINAL: FRENCH

GENERAL ASSEMBLY
Thirty-first session
IMPLEMENTATION OF THE DECLARATION ON THE
GRANTING OF INDEPENDENCE TO COLONIAL
COUNTRIES AND PEOPLES

SECURITY COUNCIL
Thirty-first year

Letter dated 6 February 1976 from the Permanent
Representative of Algeria to the United Nations
addressed to the Secretary-General

I have the honour to transmit herewith a memorandum from the Algerian Government on the question of Western Sahara.

On instructions from my Government, I request you to arrange for its circulation as a document of the General Assembly and of the Security Council.

(Signed) Abdellatif RAHAL
Permanent Representative of Algeria
to the United Nations

* For information concerning the new system of numbering General Assembly documents, see A/31/INF/1.

ANNEX

Memorandum from the Algerian Government on the question
of Western Sahara

I. Developments in Western Sahara (Sakiet El Hamra and Rio de Oro) following the tripartite agreement of Madrid will have serious consequences for the future of the Saharan people, their national unity and the integrity of their territory and also for peace, security and stability in that region of the world. This agreement, which resulted from a combination of private interests, various pressures and the abandonment by the administering Power of its prerogatives, has undermined and impeded the normal course of decolonization laid down by the United Nations in resolution 1514 (XV) and other pertinent resolutions.

The armed intervention of Morocco and Mauritania, long-standing rivals in presenting their respective territorial claims, has led the Saharan people, the sole legitimate possessors of the rights of sovereignty over this Territory, to resist fiercely in order to uphold their right to a dignified and free existence.

This armed opposition by the Saharan people to invasion shows clearly that the settlement of this problem cannot be left to the discretion of Morocco, Mauritania and Spain. The problem of Western Sahara therefore remains.

II. The right to self-determination is a fundamental principle whose violation will undermine the basic doctrine of our Organization which excludes all foreign interference when a free or still dependent people are engaged in the choice of their own destiny. In the decolonization of Western Sahara Algeria has always acted in conformity with the policy of the international community as expressed on many occasions by the United Nations, the Organization of African Unity and the Group of Non-Aligned States.

As early as 20 December 1966, the General Assembly in resolution 2229 (XXI) invited the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise its right to self-determination.

Between 1966 and 1974, the United Nations was to adhere faithfully to this procedure and was to adopt resolutions repeatedly emphasizing the right to self-determination of the Saharan people (resolutions 2354 (XXII), 2428 (XXIII), 2591 (XXIV), 2711 (XXV), 2983 (XXVII) and 3162 (XXVIII)).

This approach to the problem was confirmed by many decisions taken by OAU and the recommendations of the non-aligned States; it was to be confirmed also by

the advisory opinion of the International Court of Justice and the conclusions of the report of the United Nations Visiting Mission to Western Sahara.

III. At the regional level, the three countries bordering on Western Sahara, Morocco, Mauritania and Algeria, desirous of ending Spanish colonial domination over the Territory and preserving peace and security in the region, decided jointly in 1969 to unite their efforts and to work together for the implementation of a policy in conformity with the pertinent decisions of the United Nations.

Meeting at Nouadhibou on 14 September 1970, the three Heads of State of Algeria, Morocco and Mauritania undertook in a joint communiqué published that same day "to intensify their close collaboration to expedite the decolonization of Sahara under Spanish domination in conformity with the pertinent resolutions of the United Nations and to set up a Tripartite Co-ordination Committee with the permanent task of monitoring, both on the political and diplomatic level, the process of decolonization of that Territory".

On 24 July 1973, at Agadir, President Houari Boumediène, President Mokhtar Ould Daddah and King Hassan II "reaffirmed their unswerving attachment to the principle of self-determination and their desire to ensure its application within a framework which guarantees the inhabitants of Sahara the free and authentic expression of their will in conformity with the pertinent decisions of the United Nations".

The Tripartite Co-ordination Committee, composed of the Foreign Ministers of the three countries, met at Algiers on 5 January 1972 and at Nouakchott on 9 May 1973. At the end of each meeting, the Committee reaffirmed the spirit of the decisions taken at Nouadhibou and the determination of the three countries to work together at the United Nations to ensure that that body assumed its responsibilities clearly expressed in its many resolutions and supported by the OAU and the non-aligned States.

IV. Whereas in the United Nations, the OAU and the Group of Non-Aligned States, and also at the regional level, the decolonization of the Territory was envisaged in terms of the exercise of the right to self-determination, and whereas Spain had undertaken to organize in the first six months of 1975 a referendum held under the auspices and control of the United Nations, the Moroccan Government, violating its own commitments, abandoned in 1974 the procedure defined in the tripartite decisions and launched an intensive campaign in pursuance of its territorial claim to Western Sahara.

V. At its twenty-ninth session, the United Nations General Assembly requested the International Court of Justice to give an advisory opinion on the following questions:

1. Was Western Sahara at the time of colonization by Spain "a territory belonging to no one"?

2. If the answer to the first question was in the negative, what were the legal ties between this Territory and the Kingdom of Morocco and the Mauritanian entity?

That decision was taken on the initiative of the Moroccan Government. Mauritania, which up until that time had also laid claim to all of Saharan territory, associated itself with the Moroccan initiative, while solemnly reaffirming that "the future of the Territory cannot be decided without consulting the population concerned".

Even though this procedure would delay the application of the decolonization process, Algeria supported the joint initiative of Morocco and Mauritania because it did not wish to break up the anti-colonial front formed in 1969 at Nouadhibou and because it was convinced that in lending its support it would be promoting a peaceful solution to the problem.

In resolution 3292 (XXIX), the General Assembly specified that it was seeking an advisory opinion of the International Court of Justice "without prejudice to the application of the principles embodied in General Assembly resolution 1514 (XV)". At the same time, it decided to send a visiting mission to Western Sahara with instructions to report to the General Assembly at its thirtieth session.

VI. In its opinion dated 16 October 1975, the International Court of Justice concluded that "the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory." a/

Thus, the International Court of Justice rejected the claims of Morocco in a case brought before it on the initiative of Morocco itself. It should be noted that the ad hoc judge too, although nominated by Morocco, clearly took a position in favour of the self-determination of the Saharan people.

VII. The United Nations Visiting Mission stated in its conclusions that "any settlement ... must be worked out with the agreement and participation of all the concerned and interested parties, namely the administering Power, the Governments of the countries adjoining the Territory and the representatives of the Saharan population". b/

a/ A/10300, p. 64, para. 162.

b/ A/10023/Add.5, p. 9, para. 32.

"In this connexion, it should be noted that the concerned and interested Governments of the countries adjoining the Territory, the political movements of Spanish Sahara and the spokesmen for the Saharan political exiles and refugees in the neighbouring countries set out the following conditions for the holding of any popular consultation in the Territory:

(a) withdrawal of the Spanish armed forces and administration;

(b) return of political exiles and refugees; and

(c) a period of transition during which a United Nations presence would assume responsibility for the administration and the maintenance of peace and order in the Territory." c/

VIII. The opinion of the International Court of Justice and the report of the Visiting Mission are in agreement on the fundamental point that nothing should be allowed to impede the free exercise by the people of Sahara of their right to self-determination.

IX. At that stage, and as the thirtieth session of the General Assembly was preparing to discuss the question once again, the Moroccan Government, flouting the opinion of the international community and the previous decisions of the United Nations, decided unilaterally and with the agreement of the Mauritanian Government to invade the Territory under the guise of the "Green March". Faced with the threat posed by this action to peace and security in the area, the Security Council was obliged to consider the question at the request of Spain.

As the course of events was to prove, the "Green March", carried out in spite of the resolutions of the Security Council, was nothing but a ruse intended to disguise the infiltration into Saharan territory of Moroccan regular troops and to furnish a pretext for the dealings between the Governments of Morocco and Mauritania on the one hand and the administering Power on the other. Those dealings led to the Madrid tripartite agreement which, excluding the party most fundamentally concerned, namely, the Saharan people, contemplated the partition of their territory between the Kingdom of Morocco and the Islamic Republic of Mauritania.

X. It should be stressed that as of the day on which they took upon themselves the grave responsibility of invading the territory of Sahara, Morocco and Mauritania cannot be considered as anything but aggressor States, with all the legal consequences which that designation entails, having regard to the relevant provisions of the Charter, resolution 2625 (XXV) of 24 October 1970 containing the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, and resolution 3314 (XXIX) of 14 December 1974 which sets forth the definition of aggression.

c/ Ibid., para. 34.

The sixth preambular paragraph of the annex to the latter resolution defined as a clear case of aggression any breach of the "duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence".

Article 7 of that same annex to the resolution setting forth the definition of aggression stresses the legality of support given to peoples which, like the Saharan people, are struggling in certain conditions to resist invading armies in order to secure their right to self-determination:

"Nothing in this Definition ... could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial ... régimes, ... nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration."

XI. On the basis of the debates in the Security Council and the resolutions that it adopted between 20 October and 6 November 1975 the following conclusions may be drawn:

1. The Security Council has confined itself to considering the situation created by the Moroccan decision to organize a march in the territory of Western Sahara, since the fundamental question of the decolonization of Sahara fell - by virtue of the United Nations Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) - within the exclusive competence of the General Assembly.

2. The Security Council:

(a) Urged all the parties concerned and interested which, in addition to Spain as administering Power, are Algeria, Morocco and Mauritania, to avoid any unilateral or other action which might further escalate the tension in the area;

(b) Requested the Secretary-General to hold consultations with the parties concerned and interested in order to enable the Council to adopt any further appropriate measures to deal with the present situation with regard to Western Sahara.

XII. The declaration of principles announced by Spain, Morocco and Mauritania on 16 November 1975 provides for a transfer of power from Spain to Morocco and to Mauritania. That declaration of principles actually constitutes a deliberate violation of the resolutions adopted only shortly before by the Security Council and an added hindrance to the efforts made by the Secretary-General in co-operation with all the parties concerned and interested to carry out the mission entrusted to him by the Security Council.

Drawn up outside the framework of the United Nations, the Declaration of Madrid constitutes a real obstacle to the efforts of the United Nations to promote the harmonious and peaceful decolonization of the Territory of Western Sahara, based on the following fundamental realities:

(1) The process of decolonization in Western Sahara, as defined 10 years ago by the General Assembly, has been upheld in the advisory opinion of the International Court of Justice and the report of the United Nations Visiting Mission.

(2) Since Western Sahara is a Non-Self-Governing Territory under Chapter XI of the Charter, Spain as administering Power is answerable to the United Nations for it and can legally transfer its responsibilities only to the people of the Territory, who are the sole possessors of sovereignty, with the United Nations guaranteeing the procedures for such a transfer.

(3) Since the foregoing is universally recognized, the Algerian Government regards the Declaration of Madrid as having no validity and considers it to be null and void, the Governments of Spain, Morocco and Mauritania having no right whatever to dispose of the Territory of Sahara and decide the destiny of its population.

(4) It follows that the Spanish Government, vis-à-vis the United Nations and the international community, continues to be bound by its fundamental responsibility as administering Power, Article 103 of the Charter, inter alia, being relevant in this case. The General Assembly, for its part, continues to have the question of Western Sahara before it and must in this specific case of decolonization take the appropriate decisions so as to guarantee the effective exercise of the inalienable right to self-determination of the people of Western Sahara.

XIII. On 10 December 1975, the General Assembly, after a particularly exhaustive debate, adopted by a very large majority resolution 3458 A (XXX) reaffirming the inalienable right of the people of Western Sahara to self-determination and requesting that measures should be taken so that the Saharan people might exercise that right fully and freely under United Nations supervision.

Under the terms of that resolution, Spain continues to be bound by its responsibility as the administering Power.

Since the case involves a Non-Self-Governing Territory to which the relevant provisions of the Charter and United Nations resolutions are applicable, Spain can divest itself of its responsibility only in favour of the United Nations or of the Saharan people themselves, to the exclusion of any third State.

Consequently, the agreement concluded on 14 November 1975 at Madrid between the representatives of the Spanish, Moroccan and Mauritanian Governments is totally

lacking in validity as it is in complete contradiction with the United Nations Charter and every relevant resolution adopted in the past 10 years, in particular the most recent of them, resolution 3458 A (XXX) of 10 December 1975.

XIV. Moreover, a key provision of the Madrid agreement envisaging a consultation of the people of Western Sahara through the Djemaa has been overtaken by events. The Djemaa proclaimed its own dissolution on 28 November 1975, thereby invalidating any claim on the part of the signatories that they are acting on behalf of the people of Sahara.

XV. The attempts to disregard or distort the resolutions of the competent organs of the United Nations have plainly failed and that failure has given rise to a blatant act of aggression against the Saharan people by the countries that signed the tripartite agreement of Madrid. That aggression is now virtually assuming the proportions of genocide, and the situation arising from it is seriously affecting the peace and stability of the entire area.

It is imperative and urgent that this dangerous process of deterioration should be halted. The way to achieve this is through a salutary restoration of international legality which will guarantee the exercise by the Saharan people of their inalienable right to self-determination through a free and genuine referendum.

Algiers, 6 February 1976.
