



Situation Report

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Western Sahara: Understanding the roots of the conflict and suggesting a way out

Introduction

Since the Spanish withdrawal from Western Sahara in February 1976 and the Moroccan government's reassertion of its claims to that territory, the conflict that ensued between Rabat and the Polisario Front has proven extremely divisive both in the Maghreb region and the wider African continent. Despite several attempts to settle the dispute, through peace talks, plans and proposals, resolution has remained elusive. It was in an attempt to achieve an objective understanding of the complexities of this protracted conflict that the African Security Analysis Programme of the Institute for Security Studies organised an interactive roundtable seminar on this question. The seminar brought together two distinguished personalities from opposing sides to discuss the roots of the conflict, analyse the various peace proposals and plans, identify the stumbling blocks to peace, and suggest a way forward. Although they spoke in their personal capacities, their views substantially reflect the official positions of their governments.

The seminar, which was held at the Institute's Tshwane (Pretoria) office on 8 December 2008, dealt with three main themes, based on the history and evolution of the conflict. The first of these focused on the root causes and genesis of the conflict. This looked at the period from about 1970 to 1990, when the two parties to the conflict accepted the UN Settlement Plan that had been jointly elaborated by the UN and the Organisation of African Unity (OAU) and presented to them in 1988. The second theme considered the ceasefire agreement that came into force in September 1991; it also looked at peace plans and attempts to organise the referendum on self-determination that was envisaged by the Settlement Plan. The period covered by this theme lasted until June 2004, when James Baker resigned after some eight years as the Personal Envoy of the UN Secretary-General to Western Sahara and the chief mediator. Events since then, including the Manhasset talks that began in mid-2007, were dealt with under the third theme. This session also looked at the future of the conflict or peace negotiations and sought to provide some policy recommendations for a way out of the impasse at which the talks appear to have arrived.

This Situation Report is based on the proceedings of that roundtable seminar. Both speakers agreed to submit written papers based on their verbal interventions, organised around these three main themes. Their contributions are published here without any changes, besides the necessary editorial touches approved by both authors before publication. As the organiser and chair of that seminar, it was important for me to provide this introduction and place the debate between the

* The opinions expressed in this Situation Report do not necessarily reflect those of the Institute, its Trustees, members of the Council, or donors. Institute research staff and outside contributors write and comment in their personal capacity and their views do not represent a formal position by the ISS.

two camps in its proper context. It was not necessary to take a position here, for the aim is to allow the readers to analyse the facts and arguments presented by both authors and make up their own minds. This is why the three principal themes are repeated in this report. They are dealt with by each author in turn as identified at the beginning of his contribution. We also provide a conclusion to recapitulate the various arguments advanced by the two authors. But before presenting the two contributions, a brief contextualisation or overview of the main events is in order.

The crisis over Western Sahara started in the early 1970s when Spain was forced to announce plans to withdraw from the territory it had effectively occupied since 1934. But when Spain withdrew from the territory in February 1976, the Kingdom of Morocco, which lies to the north, and Mauritania, located to the east and south of the territory, sent troops to occupy parts of what was then called 'Spanish Sahara', the lion's share going to Morocco.

Both Morocco and Mauritania lodged claims to those parts of the territory they had occupied, considering them to have been part of their countries well before the Spanish occupation. To these two countries therefore, their move was one of 'recovery' rather than 'occupation'.

Along with the territory, the two claimants also inherited a local resistance movement, formed in 1973 to fight Spanish colonialism, the *Frente Popular para la liberación de Saguia el-Hamra y Río de Oro* (the Popular Front for the Liberation of the Saguia el-Hamra and Río de Oro) more commonly known as the Polisario Front. The latter now turned its guerrilla war against Morocco and Mauritania, and also escorted a significant number of the Sahrawi population into exile in Algeria, whose government provided Polisario with open support. In 1979 Mauritania withdrew from its sections of the territory after heavy losses in the guerrilla war with the Polisario Front. Morocco, however, has held on to the territory to the present day, and the government of the Sahrawi Arab Democratic Republic (SADR), which was unilaterally proclaimed by the Polisario Front a few days after the Spanish withdrawal in February 1976, lives in exile in Sahrawi refugee camps near Tindouf in Western Algeria and in a tiny area inside Western Sahara itself.

There have been numerous attempts to resolve the crisis, which now seems virtually intractable. Both the Organisation of African Unity – before Morocco's withdrawal from it in 1984 in protest at its decision to admit the SADR as a member state – and the United Nations have tried to mediate between the parties and have proposed various peace plans. In September 1991, after both parties had accepted an OAU/UN Settlement Plan, a ceasefire agreement was signed. As part of this plan, the UN established its Mission for the Referendum in Western Sahara (MINURSO) to prepare for the referendum envisaged by the plan. A special representative of the Secretary-General was also appointed with sole and exclusive authority over all matters relating to the organisation of the referendum. Although both parties sometimes heeded certain of the numerous calls by the UN to cooperate with the identification commission, both found reasons and strategies to interrupt and delay the process.

Thus, by late 1996, the UN realised the need to revive the peace process by adopting a different strategy and approach. This coincided with the election of Kofi Annan to the post of UN Secretary-General in January 1997. After consultations, he appointed former United States Secretary of State, James Baker, as his personal envoy and chief negotiator, in the hope that someone of this stature would be able to make a breakthrough. Following several futile attempts to secure the parties' agreement to a mutually acceptable solution, however, Baker finally resigned in June 2004.

In April 2007, both Morocco and the Polisario Front put forward their own peace proposals, which are analysed in some detail below. But given the divergent views contained in these proposals, especially with regard to a number of fundamental issues, the Security Council refrained from endorsing either. Instead, in Resolution 1754 of 30 April 2007, the Council reiterated its call upon the parties to enter into

negotiations 'without preconditions', with a view to achieving a just, lasting and mutually acceptable political solution that would lead to the self-determination of the Sahrawi people. These talks came to be known as the Manhasset negotiations, named after the New York suburb where they are held under the auspices of the UN. The first round of these talks between the two parties took place at the Greentree Estate in Manhasset, New York, on 18 and 19 June 2007. Representatives of Algeria and Mauritania were also present at the opening and closing sessions and were consulted separately. Three more rounds have since been held without any tangible breakthrough. The talks now appear to have arrived at a real dead-end.¹

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Self-Determination and Western Saharan Conflict: A Moroccan Perspective

Dr. Abdelhamid El Ouali

Ever since the failure in 2004 of James Baker's mediation, Algeria and Polisario have continued to allege that Morocco is opposed to the holding of a referendum on self-determination to address the Western Sahara issue. In fact, Morocco has never been opposed to the implementation of the principle of self-determination as a means to provide a fair and lasting solution to the Western Sahara conflict. Morocco's attitude towards self-determination has been consistent from the outset. There are many fundamental issues that explain this attitude.

First, Morocco has always been a proponent of the principle of self-determination in the debates of the United Nations. Indeed, it was one of those few independent Third World states that requested in 1960 the United Nations to endorse the principle of self-determination, leading to the adoption of the famous Declaration on the Granting of Independence to Colonial Peoples (Res. 1514 (XV)) which constitutes the modern basis of that fundamental right.

Since Independence in 1956, Morocco has devoted all its energies to free Africa from colonialism. Not only did it provide financial and military assistance to the Algerian resistance against French colonialism, but also to other liberation movements in the rest of Africa. This is true even in cases when certain of these movements espoused radical ideologies such as in Mozambique and Angola. Morocco also provided military training to African militants, including the future President Nelson Mandela who trained in 1962 at a Moroccan military camp in the city of Oujda. Indeed, French aircraft bombed this city several times because it was hosting combatants against French colonialism.

Second, Morocco's support to African liberation movements has its origins in the close links established over centuries with sub-Saharan peoples, which has made of Morocco the most pro-African state in the Maghreb, as witnessed by the Moroccan people, their culture and traditions.

Third, Morocco's support to African liberation movements also relates to Morocco's own sufferings at the hands of the colonial powers, which had violated the country's territorial integrity. It can be argued that Morocco was the first African country in modern history to feel the force of colonial expansion: the first colonial penetration into the Kingdom of Morocco started at the beginning of the 15th century when Portugal succeeded in establishing its control over the Moroccan city of Ceuta on the Mediterranean Sea. However, Morocco was able to resist colonial expansion until 1912 when France and Spain succeeded in creating their protectorates over Morocco, thus dividing it. Hence, Northern (on the Mediterranean coast) and Southern (present Western Sahara) Morocco fell under a Spanish protectorate, while its centre was placed under a French protectorate.

Morocco also suffered from a very difficult post-protectorate situation in which, even after it recovered its independence in 1956, large parts of its territory remained under French occupation (Morocco's Central Sahara), which France

annexed to its Algerian colony and which independent Algeria has since refused to return to Morocco. Western Sahara remained under Spanish colonial domination.

These were some of the reasons why Morocco was among those countries that requested the United Nations to determine the scope of self-determination through the adoption by the General Assembly of Resolution 1541 (XV), which stipulated that self-determination should provide the populations concerned with different options: independence, integration (or re-integration) or association with another state.² Unfortunately, it was Algeria that, after having refused to return the Central Sahara to Morocco, argued within the United Nations the idea that all colonial territories should become independent even if they had been detached from a former independent state, as was the case with regard to Morocco, a kingdom founded at the beginning of the 9th century. Algeria was supported in this reasoning by other states that had inherited from the colonial powers, and illegally annexed, large territories to themselves.

In 1964, Algeria also succeeded, by allying itself with newly hegemonic African states, to impose the neo-colonial doctrine of the sanctity of colonial borders on the Organisation of African Unity (OAU) in the pretence that this would prevent territorial conflicts in Africa.³ We now know that this doctrine has shown its limitations as it has not prevented border conflicts in many parts of Africa, but has been one of the major factors behind the failure of many African states to build viable nation-states and provide well-being to their peoples.

This said, in a goodwill gesture towards Algeria and in order to facilitate the building of the Maghreb region, Morocco partly accepted the doctrine of the inviolability of borders by signing in 1972 an agreement with Algeria by which it recognised the latter's sovereignty over Central Sahara. But it has refused the implementation of this doctrine to Western Sahara because this would have allowed, on the one hand, Spain to create a puppet state and, on the other hand, Algeria to separate Morocco from Africa and to have direct access to the Atlantic Ocean, thus fulfilling an old French colonial design.

It is often forgotten that Morocco was the first to refer the Saharan question to the United Nations: it did so on 14 October 1957, just a year after independence. This happened when Morocco realised that Spain was not prepared to hand it back its Saharan provinces unless it received recognition of Spanish sovereignty over Ceuta, Melillia and the Jaafarines islands. At that time, Morocco wanted to persuade the international community to support its diplomatic demarches vis-à-vis Spain. At the beginning, the question of the Sahara was therefore simply a question of the restitution of a part of the national territory of a sovereign state (Morocco) which had remained under the control of a colonial power.

Originally, the United Nations backed Morocco in requesting direct negotiations between the latter and Spain,⁴ but the UN changed its position in 1966 as a result of pressure from Spain, Algeria and their allies. At that time, Spain realised, having discovered phosphates in the Sahara, that it could keep its hold over that territory by creating an artificial state, while Algeria saw this as a means to weaken Morocco and expand its own hegemony over the whole Maghreb.

In order to achieve their neo-colonial project, Spain and Algeria tried to neutralise Morocco's legitimate claim to Western Sahara. Their strategy was based, on the one hand, on the creation of an artificial conflict by giving rise to proxy players – the so-called “Sahrawi people”, the Polisario and later on the imaginary SADR – and on the other hand, through the manipulation of the concept of self-determination. Amazingly, whenever the prospects of a fair and honest solution were blocked by Spain and Algeria, it was Morocco that for decades has recommended that the United Nations and the OAU implement the right to self-determination on the Western Sahara conflict. Nevertheless, the international community has never been able to implement the right to self-determination, largely because of the attempts by Spain and Algeria to manipulate that right in their own interest.

It is clear, therefore, that the Sahara conflict was originally a territorial conflict between Morocco and Spain, the former demanding that the latter return the Saharan provinces it had illegally occupied since the end of the 19th century. But Spain declined this request by evoking sovereignty acquired in accordance with colonial law, among which the discovery of a *terra nullius*. In international law, a territorial conflict requires a solution based on legal titles.⁵ Never in the history of international law has a bilateral territorial dispute such as this been submitted to the arbitration of the populations of the territory concerned. All such issues have been reserved for international legal rights, titles and evidences. The first mistake was therefore to evoke the right to self-determination in a bilateral legal dispute, the solution of which falls traditionally under the principles of jurisdiction of international law related to the settlement of territorial disputes either through negotiation between the parties concerned or through arbitration.

By disregarding this norm, within just a few years the question of Western Sahara has been turned into a simple colonial question to which, according to Morocco's opponents, the right of self-determination is conceived as a right to independence (because unfairly interpreted in light of the doctrine of the sanctity of borders). It was this attempt to turn the territorial question of the Sahara into a question of decolonising a territory, which had belonged to Morocco since immemorial times, that underlies the failure of the right to self-determination/independence in an issue for which it was not designed. It was as if the whole attempt had been doomed to failure from the start. What follows from this is that the current impasse on the question of the Sahara is the result of an erroneous approach.

In 1975 Spain ceased to manipulate the right to self-determination by agreeing to hand back to Morocco its Saharan provinces. Nevertheless, while the conflict over the Sahara had been settled once and for all following a duly negotiated agreement between Spain and Morocco and recommended by the Security Council in accordance with Article 33 of the UN Charter and endorsed by the UN General Assembly⁶, Algeria continued pursuing its neo-colonial policy aiming at creating an artificial state in Western Sahara, with a view to establishing its own hegemony in the Maghreb. It was the stubborn determination of Algeria to pursue such a policy that pushed Morocco once again to recommend the implementation of self-determination to the Western Sahara conflict. But Algeria, fearing the free expression of the Sahrawi population, has blocked the process, first in the OAU and then in the UN, by requesting direct negotiations between Morocco and Polisario. It was the need to overcome this blocked situation that led the UN Secretary-General to advance his good offices, which resulted in 1990 in the adoption by the UN of the Settlement Plan aiming at applying the principle of self-determination to Western Sahara.

However, the manipulation of the identification process by the Chioukhs (tribal leaders) representing the Polisario led once again to an impasse in the conflict. From then on it became apparent to all the UN officials concerned that it was impossible to apply the principle of self-determination/independence to Western Sahara and that the only realistic alternative was to establish a system of territorial autonomy under Moroccan sovereignty. This was the UN's fundamental objective behind the appointment, in 1996, of the former US Secretary of State, James Baker, as a Special Envoy of the UN Secretary-General to Western Sahara. But James Baker's mission failed in attaining its objective as his first plan (the Framework Agreement, 2001) was accepted by Morocco but rejected by Algeria and the Polisario while his second plan (the Peace Plan, 2003) was rejected by Morocco but accepted by Algeria and the Polisario.

The main reason behind the failure of the two plans was that they were based on opposing conceptions of the criteria relating to the determination of the persons eligible to vote in the referendum. It was also these opposed conceptions that have rendered inapplicable any self-determination referendum, and not the alleged refusal by Morocco to accept any consultation of the populations concerned.

In the last few years, the idea of establishing a system of territorial autonomy in Western Sahara has gained momentum beyond UN circles.⁷ This idea appears all the more appealing now that self-determination is undergoing a paradigmatic change by which it becomes an instrument for establishing democracy instead of dismantling states and creating artificial entities in which poverty, instability, disorder and terrorism prevail. The paradigm is the result of the crisis to which state territoriality is being subjected. This crisis is widespread and, to varying degrees, affects states in both the northern and southern hemispheres.

For southern countries in particular, the crisis can be traced back to a number of factors, in particular, the right to self-determination/independence whose literal implementation has very often given rise to the creation of unstable countries marked by an inability to ensure the well-being and safety of their citizens. As the product of a schematic, biased and undemocratic application of the right to self-determination interpreted in light of the political principle of the sanctity of colonial borders, these arrangements leave no room to populations to decide on their own future; numerous southern states are ethnically extremely divided, subjected to the domination of military oligarchies and/or prominent clannish minorities. The latter have completely marginalised and excluded the majority of the population from power-sharing and deepened the ethnic divisions by creating patrimonial states designed to extort the wealth of their peoples.

Thus, the obstacles to the creation of nation-states existed from the outset, particularly in Africa where many states could not function normally as they

are the by-products of the creation of spurious statehood as a result of the precipitated ending of the colonial era.... The imperial epoch indulged in a reckless ordering of boundaries with cavalier disregard for ethnic or political realities on the ground. The end-product of this 'great game' is a whole slate of states that have no legitimacy among their people, whose identity is, instead, to some older, ethnic or cultural tradition within the new state or – worse still – across its boundaries, and becomes, therefore, a challenge to persistence shell of the 'nation'.... The historical and legitimate states are still there, of course, but they are tribal and are seen, irony of ironies, as a threat to the 'integrity' of the new chimerical nations. These same new 'nations' have been engaged in a spurious and largely empty process of 'nation building' where there is no nation to build.⁸

This has led to extremely chaotic situations in which the newly created states are 'quasi-States',⁹ as they are unable to exercise their normal functions – the provision of security and well being to their populations. Even more serious, the failure of these pseudo-states is such that they are not only unable to protect their own populations, who are forced to place themselves under the protection of warlords,¹⁰ but they have also become a danger for the security of foreign states because they tend to generate violence, civil wars, organised crime and terrorism.¹¹

As noted by Richard Rosecrance and Arthur Stein, these are the main reasons explaining why today

international opinion and Great power support for self-determination and the creation of new states have lessened. As governments have perforce embraced globalisation, they have also become leery of dissidents who reject it. Even more significant, dissenters who use the methods of international terrorism to gain attention for their plight have thereby generally discredited themselves. Thus, the international climate of opinion and action has turned against axiomatic national self-rule for every dissident group.¹²

Motivated by the need to bring an end to an artificial conflict that has so far blocked the building of the Maghreb Union, eager to reinforce the democratic process in which it has engaged itself in the past decade, and echoing the UN officials' recommendations, on 11 April 2007 Morocco presented to the United

Nations its initiative for negotiating an autonomy statute for the Sahara. Based on a truly democratic spirit and inspired by the world's most advanced experiences related to territorial autonomy, the Moroccan initiative aims at establishing genuine self-government in Western Sahara. Perceived as being a serious and credible proposal, the initiative has generated great interest among a growing number of states and in the UN Security Council, which recognised this on 30 April 2007 by resolution 1754. This marked a radical reversal in the position of the United Nations by inviting the parties concerned to negotiate on a new basis, which would take into account the territorial autonomy as a modern expression of self-determination. As a result of this, four rounds of negotiations have taken place between the concerned parties. However, the UN recently complained about the lack of any tangible progress in the negotiations. Hence, on 21 April 2008, Peter van Walsum, the Personal Envoy to Western Sahara of the UN Secretary General, called upon Polisario to show a greater sense of realism, stressing that an independent Western Sahara is not an attainable and realistic goal. The Maghrebi Peoples are again torn between optimism and scepticism. It is believed in many circles that the artificial conflict over Western Sahara has become an internal Algerian issue and that it will not come to an end unless the situation changes in Algeria through the establishment of a genuine democratic political system in that country.

Many people argue that it would be wiser to resolve the Western Sahara conflict between Africans. I share this belief, but on the condition that prominence is given to the old African traditions of compromise and consensus. Such a policy of wisdom would undoubtedly reflect positively on many African conflicts.

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The Conflict in Western Sahara: A Polisario Perspective

Mhamed Khadad

The main causes of the conflict in Western Sahara may be encapsulated broadly in three interrelated categories: politics, economy and geopolitics.

The political aspect relates to the Moroccan ideology of “Greater Morocco” which in the early 1960s, in defiance of the principle of *uti possidetis juris* (inviolability or sanctity of the borders inherited from the colonial era), espoused the idea of a greater pre-colonial Morocco extending over the territory of the Spanish Sahara, parts of present-day Algeria, Mauritania, Mali and Senegal. Mauritania's involvement in the conflict was precisely due to the fear of its government that, after occupying Western Sahara, Morocco would continue its march southwards and eventually annex Mauritania as well.

The second theme (the economic one) relates to the abundant natural resources of the Western Sahara. In particular, the discovery of significant phosphate deposits in the Bucraa region in the early 1940s triggered heightened interest in the territory from both Spain and then Morocco. Equally important are the rich fishing grounds off the Western Saharan coast, which were exploited illegally first by Spain (until its accession to the European Community (EC) in 1986) and then by the European Union. It is also thought that the Territory has great potential in terms of commercial oil and gas reserves. Moroccan dealings in these resources led the United Nations Security Council in 2002 to request a legal opinion on the issue. In its opinion, UN legal counsel affirmed that any further exploration or exploitation of these resources would be illegal if it proceeded in disregard of the interests and wishes of the Sahrawi people and without consultation with their legitimate representative, the Polisario Front.¹³

Finally, mention should be made of the international context at the time, particularly the Cold War, when the US and France joined hands to prevent the emergence of an independent state in Western Sahara. To this end, they exerted pressure on Spain, at a time when the Generalissimo Franco was on his deathbed,

to hand over the Territory to Morocco. It is pertinent to recall, in this context, the position adopted by former US Secretary of State, Henry Kissinger, who, in a recently declassified document of the State Department of 11 November 1975, revealed that he was afraid that “Hassan [King of Morocco] may be overthrown if he does not get a success” in Western Sahara.¹⁴ In effect, the stability of the friendly Alaouite monarchy in Morocco – which is structurally weak in the absence of real political legitimacy – constituted the Western powers’ main reason for defending and supporting the indefensible *fait accompli* – Morocco’s illegal annexation of Western Sahara.

At the request of the UN General Assembly, the International Court of Justice (ICJ) issued a legal opinion on Western Sahara on 16 October 1975 in which it clearly established 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 General Assembly 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.¹⁵

Shortly after the release of this opinion, King Hassan II of Morocco ordered the so-called “Green March” to invade the territory of Spanish Sahara, a move that had the blessing of both the US and France. This march was finally set in motion on 6 November 1975 after Moroccan armed forces had already advanced and penetrated the northern part of the Territory on 31 October. In response, the UN Security Council unanimously adopted Resolution 380 (1975) of 6 November 1975, in which it “deplored” the holding of the march and called upon Morocco “to withdraw from the Territory of Western Sahara and all the participants in the march”.

On 14 November 1975, a secret deal (also known as the Madrid Tripartite Agreement) was signed in Madrid between the governments of Spain, Morocco and Mauritania, whereby Spain agreed to institute a temporary tripartite administration in the Territory, including representatives of Morocco, Mauritania and Spain. The agreement was evidently null and void, in terms of Article 53 of the 1969 Vienna Convention on the Law of Treaties, as it violated the United Nations Charter and various resolutions of the UN Security Council and General Assembly.¹⁶ To persist in their defiance of international law, Morocco and Mauritania signed an agreement on 14 April 1976 in which they partitioned and annexed Western Sahara – the northern part going to Morocco and the southern part to Mauritania.

This inevitably led to war between Morocco and Mauritania and the Polisario Front. Following three years of war, Mauritania signed a peace treaty with Polisario on 5 August 1979, by which it renounced its territorial claims over Western Sahara and later recognised the Sahrawi Arab Democratic Republic as the sovereign entity in Western Sahara. Morocco moved to annex the territory evacuated by Mauritania.

Because of the Moroccan annexation and occupation of Western Sahara, Spain continues to claim that it is no longer the administering power of the Territory. Nevertheless, Spain remains the *de jure* administering power, and Morocco is only a *de facto* occupying power. In effect, when Spain decided to abandon the Territory in 1976, it should have opted for one of the following two options in accordance with the UN Charter: either hand over the Territory to the legitimate representatives of the Sahrawi people; or transfer administration of the Territory to the United Nations pending a process of self-determination, most likely through a free and open referendum. In other words, Spain had no right whatsoever to purport to transfer the Territory to neighbouring countries that lacked any legal connection with the Territory, as confirmed clearly by the ICJ.

Between 1975 and 1991, Polisario, recognised by the UN as the sole and legitimate representative of the Sahrawi people, was engaged in a national liberation

struggle. The war and its huge human and economic losses eventually compelled Morocco to consider negotiating with Polisario to seek a peace plan for resolving the conflict. During this time, the Sahrawi Arab Democratic Republic was admitted, as full member, to the Organisation of African Unity; as a result, Morocco withdrew from the OAU in protest at this decision of the pan-African body.

In August 1988, both Morocco and Polisario agreed to a Settlement Plan, which was jointly elaborated by the UN and the OAU, and adopted by Security Council Resolutions 658 (1990) of 27 June 1990, and 690 (1991) of 29 April 1991. The plan envisaged, as had been the practice in most of Africa's colonised territories, the holding of a referendum in which the Sahrawis would choose between two options: independence of the Territory or its integration into Morocco. The King of Morocco was well aware that the outcome of any free and fair referendum in which only Sahrawis would participate would be a choice in favour of an independent Western Sahara. Using his ability to apply diplomatic pressure, he succeeded in 'retouching' the Settlement Plan to the point of making it unrecognisable, simultaneously employing a range of delaying tactics to block the entire process.

The fact remains that there are no technical problems, as Morocco argues, that could impede the implementation of the Settlement Plan, or make the holding of the referendum impossible or unworkable. In effect, the main questions relating to the voter eligibility for the referendum were clearly determined in the Settlement Plan. As a result, MINURSO began a rigorous and costly process of identifying the potential voters in conformity with the criteria negotiated by the two parties. By December 1999, this had culminated in the development of a list of 86,386 eligible voters. The only remaining obstacle to the holding of the referendum is the stubborn political resistance of the Moroccans, and the inability of the Security Council to use its Chapter VII powers to enforce its own resolutions, largely because of the backroom support and veto threat from France.

Moroccan intransigence could only be overcome with the intervention of an objective third party. Thanks to the tireless efforts of former US Secretary of State, James Baker, the parties agreed and signed the 1997 Houston Accords, which eventually would have allowed a process of self-determination for the people of Western Sahara. As part of this deal, the Polisario Front would have to accept, first, a regime of autonomy for the region for five years during which indigenous Sahrawis, selected on the basis of the UN identification process, would govern the territory, albeit with limited administrative authority. It would also have to accept that, at the end of the autonomy period, a referendum on self-determination would be held in which the electorate would include not only the indigenous Sahrawis, but also Moroccan settlers in the Territory – at the time, these outnumbered the Sahrawis by three-to-one. However, Morocco, which had doubts even about the voting intentions of its citizens (a fact confirmed recently by Van Walsum before the French Parliament) decided to disengage from the peace process, and to reject categorically the possibility of holding any referendum on the future of Western Sahara unless the independence option was removed.

In 2004, James Baker resigned under pressure from the Moroccan lobby. Baker singularly denounced Morocco as the party responsible for the failure of a proposal he considered favourable to the interests of the country.

The eighteen years of a so-called 'peace process' clearly demonstrate two things. On the one hand, the initial accord agreed to consensually by the two parties has been undermined. This begs the question: why search for another consensus when there is already one freely negotiated by the two parties and endorsed by the Security Council? The reason is that Morocco has used the peace process to delay *ad infinitum* the holding of the referendum – it is clearly comfortable with the unacceptable status quo. As a result, the voluntary laying down of arms and the hitherto unprecedented patience exhibited by the Polisario Front seems to have been in vain. It is even more so given the harsh living conditions of the Sahrawi people, physically divided between those who live dependent upon humanitarian aid in the refugee camps in the desert near Tindouf (western Algeria) and those

who suffer the repression and systematic human rights violations inflicted on them by Morocco in the occupied Western Saharan territories.

In this regard, it is important to note that the threat of a French veto has always impeded any reference in Security Council resolutions to the incessant violations of human rights in the Sahrawi occupied territories. These horrors have been documented and openly denounced by international organisations such as Amnesty International and Human Rights Watch.¹⁷

After recognising the obvious lack of political will on the part of Morocco and the pathetic passivity of the Security Council, Personal Envoy of the UN Secretary-General, Peter van Walsum, in his final statement to the Council in April 2008, called on the Polisario Front to countenance a system of autonomy within an expanded Moroccan territory whose implementation could be 'endorsed internationally'. It is evident that this proposal contravenes international law by failing to deliver an open-ended process of self-determination. Moreover, were such a proposal to be adopted, the conflict would no longer be recognised as an international one, resulting in its removal from the agenda of the UN General Assembly's Decolonisation (Fourth) Committee. In brief, the dispute would be reduced to a Moroccan domestic problem. The fact remains that autonomy is not the solution. As long as the Sahrawi people have not had a say on their future, the conflict will persist.

The UN-sponsored negotiations that were held between the two parties over the past two years (2007/08) have not yet yielded any substantive results. As of December 2008, Morocco was still blocking the appointment of the new UN envoy. In its resolutions 1754 (2007) of 30 April 2007 and 1813 (2008) of 30 April 2008, the Security Council called the parties to negotiate in good faith and without preconditions. This assumes that the problem lies in a lack of negotiations. However, contrary to this, we believe that the major impediment to progress remains that Morocco is unwilling to accept any compromise that departs from the concept of autonomy within its territorial integrity. This is obviously a precondition that precludes any possibility of constructive negotiation. By presenting a proposal it knows is utterly unviable and inconsistent with international law, Morocco has made a mockery of the Security Council and any chance of progress in a 33-year long dispute.

After all, how could Polisario accept, as a starting point for negotiations, the annexation of a territory that despite 33 years of occupation, neither the United Nations, nor the African Union or any other country has accepted?

There are two proposals on the negotiating table: Morocco's proposal (11 April 2007), which offers autonomy within its territorial integrity, and the Polisario Front's proposal (10 April 2007), which upholds the legitimate right of the Sahrawi people to a meaningful process of self-determination through the holding of a free and open referendum for choosing between two possible options: independence or the autonomy proposed by Morocco. The Sahrawi proposal takes into account the substance of the Moroccan position, whereas the Moroccan proposal offers no possible outcome other than its preferred option. It is clear that such an approach will never lead to any agreement, and that any negotiations held on this basis are doomed to fail.

The Polisario Front, as is clear from its proposal, is ready to accommodate the security needs of others, and to address and respect the rights of all those who now live in Western Sahara, including Moroccans. A Sahrawi state would be sensitive to the concerns of our neighbours further to the north, including migration, human and drug smuggling and the ever-present scourge of terrorism.

Peace, stability and the longstanding desire of our people for regional integration and unity depend on a fair and just resolution of the conflict of Western Sahara. The principles of self-determination and the sanctity of the African borders inherited from the colonial era are essential pillars for a solid and lasting peace.

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Conclusion

It is clear from the debate above that both Morocco and the Polisario Front continue to express divergent views on some of the most fundamental issues at hand. In a thought-provoking essay on the factors fuelling armed conflicts and those that are susceptible to lead to peace, Kalevi Holsti contends that it is the 'stakes' that lead men and countries to go to war and that they are also the ones that dictate the termination of a particular war or dispute.¹⁸

To apply this to the Sahrawi case, the implications are to try and identify the 'stakes' that both Morocco and the Polisario Front have in holding to their current positions. The possible solution, one may suggest, will then be based on a careful analysis of these, examining them against the realities on the ground and the positions as they are likely to be in the near future. Both parties should then be encouraged to consider whether or not the 'stakes' are worth all the inconveniences entailed in the current state of affairs and the possibilities of it taking a radical shift to the disadvantage of one or both of them.

Now the issue is for both sides to strive to make an objective and critical analysis of the situation and the realities on the ground and to see where the current situation may lead. Any potential mediator should also engage in a similar exercise and bring home his objective conclusion to both parties. But international legality and established norms and principles should be the guiding light in all this. The ultimate aim should be to serve the interests of the Sahrawi people.

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1 For a more detailed overview on these issues, see Issaka K. Souaré, 'Western Sahara: Is there light at the end of tunnel?' *ISS Occasional Paper* no. 155, November 2007; 'Western Sahara: What can we expect from the Manhasset talks', *African Security Review*, 16 (4), December 2007, pp. 54–58; and 'Manhasset Spirit Fading in Western Sahara', *ISS Today*, 24 January 2008 at www.issafrica.org.

2 See Principle VI of the annexure to this resolution, adopted at the 948th plenary meeting of the Assembly held on 15 December 1960, just a day after the adoption of Resolution 1514 (XV).

3 See Abdelhamid El Ouali, 'L'Utī Possidetis ou le non-sens juridique du principe de base de l'OUA pour le règlement des différends territoriaux', *Revue Française d'Études Politiques Africaines*, December 1984 – January 1985.

4 See UN General Assembly Resolution 2072 (XX) of 16 December 1965.

5 See Abdelhamid El Ouali "Territorial Integrity: Rethinking the Territorial Sovereign Right of the Existence of the States", *Geopolitics*, 11(4), December 2006, pp. 630–650.

6 See Security Council Resolution 380 (1975) of 7 November 1975; and General Assembly Resolution 3458 (XXX) of 10 December 1975.

7 See, for instance, International Crisis Group, 'Western Sahara: Out of the Impasse', *Middle East/North Africa Report* No. 66, 11 June 2007.

8 Randall Baker, 'Challenges to Traditional Concepts of Sovereignty', *Public Administration and Development*, 20(1), February 2000, pp. 1–15.

9 Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World*, Princeton, Princeton University Press, 1990, p. 21.

10 See Robert I. Rotberg (ed.), *State Failure and the State Weakness in a Time of Terror*, Washington DC, Brookings Institution, 2003, pp. 5–6.

11 See Ben N. Dunlap "State Failure and the Use of Force in the Age of Global Terror", www.bc.edu/schools/aul/bibs/postconflict-htm.

12 See *No More States? Globalisation, National Self-Determination and Terrorism*, New York, Toronto, Plymouth, Rowman & Littlefield Publishers, 2006, p. 5.

13 See Letter dated 29 January 2002 from the UN Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, *UN document S/2002/161* of 12 February 2002. A PDF version of this document may be found at [www.minurso.unlb.org/OLA%20Advisory%20S\(2002\)161.pdf](http://www.minurso.unlb.org/OLA%20Advisory%20S(2002)161.pdf) <10 December 2008>.

14 See Jacob Mundy, 'How the US and Morocco seized the Spanish Sahara,' *Le Monde Diplomatique* (English edition), January 2006, at <http://mondediplo.com/2006/01/12asahara> <12 December 2008>.

- 15 See International Criminal Court, *Western Sahara: Advisory Opinion*, 16 October 1975, ICJ Reports at www.icj-cij.org/docket/files/61/6195.pdf <10 December 2008>. See also www.icj-cij.org/docket/index.php?p1=3&p2=4&k=69&cse=61&code=sa&p3=4 <12 December 2008>.
- 16 This Article stipulates that 'a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law' or *jus cogens*.
- 17 See, for example, Amnesty International's *Annual Report 2008* at <http://thereport.amnesty.org/eng/regions/middle-east-and-north-africa/morocco-and-western-sahara> <12 December 2008>.
- 18 Kalevi K. Holsti, *Peace and War: Armed Conflicts and International Order 1648–1989*, Cambridge: Cambridge University Press, 1991, pp. 12–15.