

The nonnegotiable solution of self-determination through referendum to Western Sahara People

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Abstract

The International Court of Justice judged on October 16th, 1975 that Morocco's historical claims relating to the Western Sahara were unfounded and that the sahwari people have the right to a referendum of self-determination, in accordance with resolution 1514 of the United Nations of 1960.

Algeria and Mauritania which withdrew itself from the territories that it occupied opt for a peaceful solution in order to preserve security, stability and borders.

With the emergence of liberalism, capitalism and market economy, Morocco is not any more a priority for the great powers. Indeed, taking into account the intensification of their political, economic and strategic co-operation with the countries in favour of the sahwari people's self-determination, the United States following the example of Great Britain, should commit themselves concretely to setting-up international legitimacy by privileging the holding of a referendum whereas Spain and France position remains confused because of their privileged economic and political relations with the kingdom of Morocco.

Fifty three african countries support the Western Sahara in order to maintain peace, security and stability in the area.

Key words

Western Sahara, referendum, self-determination, Morocco.

Introduction

The term referendum does not begin adequately to express the content and value of a process which ensures that peoples express their own convictions freely and fairly, choose for themselves, and set their own priorities. It is a just and democratic process embodying a civic action simply because it allows a people the right to decide their own fate and way of life – a conception and process which has overseen the birth of modern states and nations, and formed the international point of reference for the peoples under colonial rule giving them the right democratically to decide on their option of choice through a referendum on self-determination.

This presentation addresses three issues: the international legality of the Western Sahara issue; Morocco's stance on the issue and actions in Western Sahara; and the powers influencing the region and the Western Sahara issue.

The international legality of the Western Sahara issue

Since the Berlin Conference (1884) which divided Africa between the several European colonial powers, Western Sahara has been a colony. As such, its future can only be settled within the colonial paradigm. This means that the people of Western Sahara must be accorded the right to decide their destiny by referendum. With only a few exceptions, all colonies – including most recently East Timor – have achieved independence through internationally sanctioned means.

As Africa's last colony, Western Sahara should be no exception lest the international community be faced with the dangerous situation

of having to reconsider what has been achieved through the principle of frontiers inherited by and from colonialism.

Claims and actions justified by historical ties have already provoked serious conflicts – indeed wars – between many independent states and have threatened security and stability in many regions of the world of which Eritrea and Kuwait are the most obvious recent examples. Concerns over so a dangerous situation and its potentially serious consequences have been expressed by the International Court of Justice (ICJ) when it stated that frontiers inherited through colonisation must be preserved in order ‘to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power’⁽¹⁾. Morocco’s plan for self-autonomy is of questionable international legality and impractical in the light of earlier projects and attempts both before and after decolonisation.

The acceptance of Morocco’s self-autonomy plan would mean that ‘for the first time since the founding of the UN and the ratification of the UN Charter more than 60 years ago, the international community would be endorsing the expansion of a country’s territory by military force, thereby establishing a very dangerous and destabilizing precedent’⁽²⁾.

However, in the case of Western Sahara, the historical claims raised by Morocco are unfounded as was confirmed by the International Court of Justice on October 16th 1975 when it stressed that justifications and evidence presented by Morocco failed to establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian. In addition, there is no bar to the realization of the principle of a referendum on self-determination for the Western Sahara people in conformity with UN resolution 1514 in 1960⁽³⁾.

We cannot afford the time to explore whether or not Morocco had historical ties with Western Sahara before the Spanish colonial enterprise. The respect of frontiers inherited through colonialism is vital for all and a consideration of historically fanciful Moroccan claims is both a provocation and an excuse for independent states to claim modification their colonial borders. And it must be remembered that Africa is seriously vulnerable to border disputes.

Since 1963, Western Sahara has been registered with the United Nations as a decolonisation case. This gives the Saharawi people the right to a referendum on self-determination under the UN resolution 1514. In this light, and in accordance with principles of international legality, all members of the United Nations –Morocco included – are obliged to respect this right. Any other procedure would be illegal and the country concerned would –as is the case with Morocco – be in violation of the international law.

Morocco recognised the principle of a referendum for self determination of the Western Sahara people until 1975 when –together with Mauritania – it violated international law by itself taking on the role of colonial power. Mauritania was forced to abandon its colonial pretensions in 1979 when it retreated from the area it had occupied in the face of resistance by *Frente Popular de Liberation de Saguia el Hamra and Rio de Oro* (Polisario established in 1973 and bringing together the various Saharawi independence movements). Mauritania's withdrawal should have marked an end to the Madrid Agreement which represented an indivisible pact between Mauritania, Morocco and Spain. It should also have led Morocco to follow suit and withdraw as its joint excuses for and presence in Western Sahara alongside Mauritania had ceased to exist.

The people of *Saguia el Hamra* and *Rio de Oro* for maintained centuries their own identity⁽⁴⁾ (including their Hassania-specific Arabic language) as a single independent community evidencing political

organisation in the form of tribal chiefs led by a single unifying chief; social communication; tradition; tolerance; patience; generosity; strong resistance to adverse natural conditions which reinforce their dignity; and relentless opposition to invaders of their land.

Polisario has been striving for the independence of Western Sahara in conformity with international legality and the provisions of the United Nations system (UN Charter, UN Security Council, UN Fourth Committee On Decolonisation, as well as legal regional organizations such as the Organization of African Unity – now the African Union), for many years. Polisario initiatives have always been in conformity with the international legality.

The initiative includes, in addition to the option of independence, the Moroccan two-option solution of integration and autonomy based within the referendum option. Negotiations between Morocco and Polisario are to be based on these three options and how they can be implemented. Even in the case of the choice of independence, Polisario's initiative embodies economic guarantees, priorities and privileges for Morocco. The initiative further both protects the interests of the Moroccan population residing in Western Sahara, and confers nationality on any Moroccan citizen legally established in the territory⁽⁵⁾. In spite of Polisario's international commitments, the people of Western Sahara are yet to be allowed their inalienable right to self-determination.

Morocco's use of force in occupying Western Sahara is a violation of both United Nations resolutions 1514 and 2625⁽⁶⁾. Resolution 2625 affirmed that every state must "refrain from the threat or use of force to violate the existing ... boundaries, ... the act of force will never be recognised as legal"⁽⁷⁾. It is certainly ironic to note that Moroccan military forces, while fighting against the 1990-91 occupation of Kuwait, were in fact themselves occupying Western Sahara at the time.

The Saharawi Arabic Democratic Republic (SADR), founded in 1976, is recognised by eighty countries. It is a founding member of the African Union and exercises sovereignty over the Saharawi liberated area which includes political, social economic and cultural activities. The anniversaries of the foundation and congresses of Polisario and SADR, as well as Saharawi open parliament sessions take place in Tifariti in the liberated area. A visitor to the liberated area and its refugee camps will find a disciplined organization with normal government and state institutions ready for a fully independent, modern, democratic and sovereign state. It has cadres, militants and highly educated leaders trained in the West, and especially in Spain, who adhere to Western liberal ideas and democratic institutions.

On the non-official level, in most countries – including the United States of America, Canada and a Europe (and more particularly Spain) there are non-governmental, parliamentary and local government entities, which recognize the SADR and support the Polisario liberation movement. The European Coordination Committees in Solidarity with Saharawi People (EUCOCO) is a great example. Polisario is an observer member of the Socialist International. In Morocco itself, there are human and political voices such as those of the party of the *An-nahj ad-dimoqrati (La Voie Démocratique: the Democratic Way)* challenging their government in opposing its human rights' violations in the occupied territory of Western Sahara and seeking a just solution to the issue.

Non-governmental organisations and members of parliaments across the globe have been pressing their governments not to sign agreements with Morocco exploiting the resources in the occupied Territory of Western Sahara. A country has no right to exploit natural resources of a non-self-governing territory before a referendum has been held and the people have decided their destiny⁽⁸⁾.

Morocco's position on the issue and actions in Western Sahara

The Moroccan position is both confused and confusing. The country has adopted policies, taken actions, and put forward proposals that contradict its claims to sovereignty, not to mention its violation of international law. The royal regime appears to be primarily interested in preserving the status quo in Western Sahara to serve domestic ends by exporting internal pressure and failures – a typical behaviour from outmoded political regimes such as the royal regime of Morocco.

The use of the issue of Western Sahara to escape from internal problems is widely expressed in Morocco itself, as explained by professor and author, Mohamed Atrokin, who argues that the royal institution used the Sahara problem for national mobilisation at the expense of political participation ... postponing democracy ... the national political parties have shifted the objectivity of political competitiveness in opposition to the royal system from democracy to the field of national unity⁽⁹⁾. Morocco's confusing policies and contradictory actions *vis-à-vis* Western Sahara are many and varied; a few examples will suffice:

- The division of Western Sahara between Mauritania and Morocco in terms of the Madrid Agreement of November 14th 1975 is a recognition that Morocco does not seek sovereignty over all Western Saharan territory. Mauritania withdrew from its part in the occupation in 1979; Morocco should have done the same. Unfortunately, it did not. Polisario continued its resistance to Moroccan occupation until 1991 when a United Nations/Organisation of African Unity cease-fire was implemented. The cease-fire included a plan for a referendum on self-determination allowing the Saharawi people to choose between integration and independence. A special United Nations Mission for Referendum (MINURSO) was charged with organizing the referendum. A commitment by Morocco is yet to be secured.

- Moroccan construction of the 2700 km wall surrounded by more than three million land mines and described by the Saharawi as “the wall of shame”, dividing Western Sahara in two parts, is another clear recognition by Morocco that not all Western Saharan territory falls under Moroccan sovereignty.
- Morocco accepted the reality of inherited colonial borders in its dealings with Mauritania in 1969; it should do like wise in the case of Western Sahara. Moroccan behaviour in breaching countries' borders took place in all neighbouring countries. In 1958, Morocco negotiated the Algerian borders with the French colonialists in the hope of expanding its borders within Algeria while that country was engaged in the most intensive period (1958-62) of its war of liberation. A few years later, immediately following Algerian independence (1962), Morocco launched (1963) a border war against Algeria. The same situation faced Western Sahara when Polisario was fighting Spanish colonialism for freedom (1973-75). In 1975, in the midst of the conflict, Morocco negotiated the Madrid Agreement with Spain. In the end, Morocco failed in Algeria and Mauritania, as it will fail in Western Sahara. Moroccan royal expansionist thinking and behaviour are seriously discussed and supported both in and outside of Morocco. In pursuit of this objective, various extraterritorial centres have been created and mobilized by elements loyal to royal expansionist thinking such as the American Moroccan Institute (AMI) in New York headed by the Moroccan royalist, Mokhtar Ghambo⁽¹⁰⁾.
- Moroccan administrative practices in the occupied territory of Western Sahara are colonial in nature and character. They do not differ from those of other ex-colonial powers and include, exploitation, torture, massive violations of human rights (detention of hundreds of Saharawi facing unfair trials and the worst possible conditions in prisons), military oppression exercised by 130.000 Moroccan soldiers (the occupied territory is under a military siege), and denial of access to international

media and human rights observers. Suppression of protests by the indigenous people seeking freedom and independence occurs daily. This is a situation which can only be settled by a referendum for the Saharawi people. In the field, there is in fact no normal Moroccan presence which would indicate sovereignty over the occupied territory. For all practical purposes, we are dealing with a military occupation which has been rejected and resisted daily by the indigenous people since Moroccan occupation in 1975. Both the civilriots and the peaceful movement led by Polisario activists have been widespread both in the occupied territory and in southern Morocco and at Moroccan universities especially since 2005, the year marking the onset of the intensive peaceful *Intifada* across all the occupied territory. The highest level of protest culminating in the Intifada, Polisario international activities, diplomatic recognition of the SADR, and international pressures by the United Nations and international human rights' organizations, drove Morocco to accelerate its campaign for autonomy.

- Morocco's proposal of autonomy means there is a land and a people, only sovereignty is lacking. This is a Moroccan recognition that Western Sahara as a territory and its people are distinct from Morocco. Although projects of autonomy and attempts by ex-colonial powers to preserve their colonies – including Spain for Western Sahara in 1974, which was rejected by Polisario – are not uncommon, none has ever succeeded. They were forced to pursue the legal route of self-determination through a referendum. Morocco's attempts to force the artificial project of the Royal Consultative Council for Saharawi Affairs (CORCAS) have failed, not only as an institution but also as members who are divided among themselves as regards Polisario and the indigenous Saharawi people in the occupied territory. This has been recognised by Morocco itself, which is even considering changing the CORCAS structure and members, including the president of CORCAS. A large number of CORCAS members see themselves as deceiving the Western

Saharan people, while others see them as traitors.

The above analysis, coupled with the economic and strategic priorities of the great powers, show that long-term Moroccan gains can only be sustained through a fair and free referendum for the people of Western Sahara. Morocco's economic interests and gains should override political fears.

There are more important Moroccan national and regional gains – including economic, trade and security cooperation with countries in the region – that will promote a positive and solid politico-economic image of Morocco.

Morocco should separate its responsibility and engagement in the negotiations from any other regional considerations or mutual relations. Neighbouring countries such as Algeria or Mauritania, certainly have an interest in the issue based on national security as it is playing out along their borders. Escalation of the conflict will, of necessity, be at the expense of stability and security in the region.

Mauritania is more sensitive to Morocco's claims to Western Sahara because this will provoke and justify Moroccan royal traditional expansionist policies. Despite its independence in 1960, Mauritania was not recognised by Morocco until 1969. Algeria, which fought a liberation war to secure its own self-determination and independence, cannot but support the same cause in Western Sahara and other decolonisation cases in the world.

Influential powers in the region and the Western Sahara issue

Pragmatism and political realism arise from wishful thinking and auto-interpretation and must take account of the reality of great power economic, political and strategic interests. Morocco is not as important for the West as it was during the Cold War. There are no socialist or capitalist blocs, nor are there the military pacts of Warsaw and NATO. Morocco was seen as an ally of the West during this period. Now

almost all countries in the world are driven in the same direction of liberalism, economic markets, capitalism, and globalization. Morocco is not a priority for powers with substantial influence in the region, that is the USA, France and Spain.

African countries such as South Africa, Nigeria, Libya, and Algeria, are better placed to serve their interests. This not with standing Morocco's unacceptable and overtly political approach which contradicts the very basis of a modern state and the requirements demanded of democratic state institutions.

United States of America

Morocco's reliance on historical relations with the USA or on different means of influence on US state member institutions can never change the position of a great power like the USA.

The latter is not the Spain of General Franco during which Morocco exploited Franco's illness to put pressure on certain elementin Spanish government to sign the Madrid Agreement. This agreement is acknowledged as "unfortunate", not only by the Spanish people and Spanish state-elected institutions, but even by certain Spanish authorities in one-on-one discussion.

Different representatives of the United States Secretary of State visited countries in the region during 2005 – 2014 and repeatedly stressed the necessity for negotiations between Morocco and Polisario on the basis of self-determination forthe people of Western Sahara in accordance with the demandsof international legality. This was sharply criticised by the Moroccan government who argued that it ignored Moroccan sovereignty over Western Sahara. However especially since 2007 Morocco has been forced by the United Nations Security Councilresolution to negotiate with Polisario as the only party in the conflict⁽¹¹⁾.

The United States original attitude stems from its notion of self-determination for peoples, even those within one nation –as in Iraq. It would be naive to believe that the United States would urge the integration or annexation of another territory already independent within the context of its colonial status and international legality.

Increased economic, trade, political and strategic cooperation between the United States and countries favouring a referendum for the Western Saharan people, may lead it to take its declared commitment to international legality more seriously⁽¹²⁾. The United States broad strategic view and its position favouring a separate state for Western Sahara can be read in the analysis by distinguished United States ex-diplomat, John Bolton, in his 1998 presentation to the United States Defence Forum Foundation, Washington DC, under the title “Resolving the Western Sahara conflict”. He argues that it is in the interests of the United States, the United Nations, and the world to pursue international legality through a referendum in Western Sahara. Failure to do so, he states, would be a great ‘defeat for the United Nations. It would ... be a harm to any other possible use of the UN in a related context almost anywhere else around the world’⁽¹³⁾.

It is difficult to believe that in practice, the United States and Britain hold divergent views on the Western Sahara issue. Britain is more committed to international legality through a referendum⁽¹⁴⁾.

The proposals, plans and work of James Baker, former United States Secretary of State and Personal Envoy to the United Nations Secretary-General for Western Sahara, could not be shaped out of a United States general world view and strategy. This is particularly true of Baker’s 2003 Plan which specifically envisaged a four to five year period of self governance for the territory, followed by a referendum among both the indigenous Saharawi people and Moroccan residents of the occupied territory. Despite the complexity of such a proposal, Polisario accepted the plan. Morocco, however, rejected it as it included the possibility of independence.

Again Moroccan objections appear illogical. How the referendum could be organised without the option of independence is unclear, particularly in the light of the United Nations Secretary General's report of October 6th 2006⁽¹⁵⁾ which clearly states: "The United Nations could not sponsor a plan that excluded a referendum with independence as an option while claiming to provide for the self-determination of the people of Western Sahara" or, as argued by the United Nations Secretary General's Envoy, James Baker: "it was inconceivable for a referendum on self-determination organized by the UN not to include the option of independence"⁽¹⁶⁾.

Clearly, Morocco was afraid of garnering insufficient support from either the indigenous Saharawi or from Morocco residents in the occupied territory of Western Sahara, to carry the referendum. In the words of James Baker: "the closer we got, the more nervous I think the Moroccans got about whether they might not win the referendum"⁽¹⁷⁾.

Former United States President, John F Kennedy's commitment to national independence movements while he was a Senator is reflected within influential United States human rights foundations, prominent political and cultural personalities and political parties, especially the Democratic Party. An image which should inspire the new United States administration under President Obama, is that of Ms Aminatou Haidar, Saharawi human rights defender, imprisoned by Morocco between 1987-1991, receiving the Robert Kennedy Foundation's Human Rights Award. At the ceremony, Congressmen, influential figures in the Democratic Party, and representatives of human rights foundations expressed their opposition to Morocco's violation of human rights in the occupied territory and stressed their support for the Western Saharans to be allowed the right to self-determination. Aminatou Haidar was proclaimed as "the Saharawi Gandhi"⁽¹⁸⁾.

Spain

is not only a major interested party in the problem of Western Sahara, but also a concerned former colonial power responsible for the policy and abuse in its former colony. Spain had no right to hand its colony to Morocco and Mauritania –even if under the Madrid Accords of November 14th 1975 this was ostensibly for purposes of administration rather than annexation⁽¹⁹⁾.

Spain's role remains crucial both for the realization of international legality, and for the Spanish people. Publically and officially the current Spanish government does not press for the holding of a referendum or international legality, mainly for political and economic reasons including trade and economic relations. The visit by the King of Spain to Ceuta and Melilla on November 7th 2007, drew sharp criticism from the King Mohamed VI and his government, and was accompanied by demonstrations and protests⁽²⁰⁾.

Spanish people, local and national parliaments, and regional government, public opinion, non-governmental organizations, and prominent personalities, all support a referendum on self determination for the people of Western Sahara. In Spain there are regular demonstrations in the cities, public places and universities; debates in local governments and parliaments; and academic analyses and arguments against the government's position on Western Sahara.

The Spanish people consider the Madrid Agreement as inimical to Spain and historic Spanish ties with the Western Saharan people. Despite the colonial barriers and restraints between the Spanish and Saharawi peoples, there is a profound and deep seated understanding and tradition of communication between the Saharawi and the Spanish peoples who share both culture and language. Almost every Saharawi family has relatives working in Spain or with an income from having worked there. Thousands of Saharawi are studying in Spain, and thousands of Saharawi children are hosted every year by Spanish families

promoting and reinforcing Saharawi-Spanish ties. Many Spanish do likewise in Western Sahara, staying with Saharawi families in the refugee camps and taking part in Polisario and SADR activities, including demonstrations and protests against the Moroccan occupation.

This strong Spanish public opinion favoring self-determination for the Western Saharan people, coupled with Spain's rising economic, trade and political priorities with other African countries that have resulted in a positive attitude towards a referendum and international legality in Western Sahara, and the fragile relations between Morocco and Spain resulting from differences over Spanish colonialism in the Moroccan territories of Ceuta, Melilla and Penon de veles de la Gomera, should influence Spain to change its position in favour of a referendum to resolve the Western Saharan dispute. Spain must understand that whatever the extent of its obligations to the European Union as a whole, and France in particular, long term Spanish interests and priorities are paramount. This proposed change in attitude was already evident under the leadership of Spanish Prime Minister, José María Aznar, between 1996 and 2004. Between 2001 and 2003 he took a clear position favouring self-determination for the Western Saharan people.

French

is the other power with a direct impact on the issue of Western Sahara and in the region as a whole. Theoretically, France with its revolutionary background of freedom and human rights, coupled with its position as a great power and founder of the United Nations enjoying the right of veto in the Security Council, and its historical and political influence and interests in North Africa, should be a leading force for the realization of international legality based on a referendum for self-determination of Western Sahara. Unfortunately, French "policy in action" does not reflect this. Logically and objectively, normal principles of democracy demand that France should clearly support the inclusion of the independence option in the referendum alternatives to be nego-

tiated between Morocco and Polisario. Referendum means open options for the people of Western Sahara (integration, self-autonomy and independence).

As in the case of Spain, France should be influenced more by its national economic interests and priorities than by politico-historical considerations in its relations with Morocco. National interests have no political or diplomatic colourings or commitments.

French public opinion is shifting towards the position advocated by Polisario. This is especially true of French human rights organizations, some members of the French parliament and local elected councils as well as prominent political personalities all of whom are active in support of self-determination for Western Sahara people in France and Europe as a whole (through EUCOCO) and participate in the activities of Polisario and SADR in the liberated area and refugee camps. Throughout the last decade members in the French parliament and prominent political personalities in cooperation with the French Friendship Association of Solidarity with Western Sahara People have intensified their campaign stressing their firm support for the just cause of the Western Saharan people and strongly criticised Moroccan oppression and violation of human rights in the occupied Territory urging the French government to distance itself from supporting Morocco's claims and to seek positive and meaningful commitment to international legality through the referendum.

Conclusion

United Nations resolutions and actions aimed at decolonization on the one hand, and the danger to world peace, stability and prosperity that a reconsideration of the principle of inherited frontiers from colonialism on the other, are enough to substantiate the essential solution to the issue of Western Sahara through a referendum – an objective that will reinforce the principle of international legality and strengthen the

credibility of the United Nations. At the same time, the settlement of the issue will promote more opportunities for peace and prosperity in the region and in Africa as a whole.

The fifty-three African countries and over eighty countries that have gained independence from colonialism must support the Western Sahara's decolonization not only in the interests of the principles of self-determination and international legality, but also for the sake of their own national security. Almost all independent countries have border conflicts with their neighbouring countries. Morocco's claims to the colony of Western Sahara are establishing a dangerous precedent which threatens world stability and security.

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4. See, eg, San Martin «Nationalism, identity and citizenship in the Western Sahara» (2005) 10 *Journal of North African Studies* 565-592.
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The world should press for the realisation of the decolonization of Western Sahara. Western powers must be true to the international obligations they have assumed – as they were in the case of East Timor after civil protests and actions in the West.

World efforts should be devoted to preventing serious threats to peace, stability and welfare such as terrorism, disease and poverty. It is embarrassing that the world of the 21st century and of globalisation, is yet to bring an end to colonialism and human rights abuses. It is even more embarrassing when powers which were the founders of United Nations Charter and its institutions stand against them. The age of selfishness and chauvinism is short lived, nature and reality

will always re-assert themselves.

The Western Saharan people will ultimately triumph and for those who opposed their just cause it will be too late for regrets. The sooner the better for all. The international legality of the Western Sahara issue 195

6. See UN GA resolutions at <http://www.un.org/documents/ga/res/25/ares25.htm>.
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8. See Muller n 1 above; Zunes n 2 above and Mundy n 1 above.
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