

# The Question of Western Sahara in light of International Law: *Decolonisation Process*

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# Introduction

- The conflict in Western Sahara has lasted for over four decades, and it continues to pose a potential danger for stability and security in the region of North Africa.
- Despite international and African efforts, the solution to the conflict remains elusive.
- In the presentation, I intend to explain the root causes of the continued irresolution of the conflict in Western Sahara, and why it has been hard to find a lasting solution to a clear-cut case of decolonisation.
- I will also present some ideas on the way forward to achieve a peaceful, just and lasting solution to this decades-long conflict.
- After that, I hope that we would have enough time for a broader and fruitful dialogue.

# Main Facts

1. For the United Nations, Western Sahara is the last African Non-Self-Governing Territory on UN agenda since 1963.
2. The origins of the violent conflict in Western Sahara go back to 1975 when neighbouring Morocco and Mauritania invaded and occupied by force the Territory following the departure of Spain, the colonial power.
3. The root causes of the conflict lie in the expansionist ideology of the so-called “Greater Morocco” and the territorial claims that Morocco subsequently laid on its neighbours and beyond.
4. The Moroccan occupation forced the Sahrawi people, under the leadership of their sole and legitimate representative, the Frente POLISARIO, to continue their liberation struggle that they had started against Spanish colonial rule in 1973.

# Main Facts

5. Consistent with its policy of not recognising as legal any territorial acquisition resulting from the use of force, the UN has never recognised the legality of Morocco's occupation of Western Sahara.
6. Morocco is simply an occupying power of the Territory in line with General Assembly resolutions 34/37 of 21 November 1979 and 35/19 of 11 November 1980.
7. The Sahrawi Republic, a founding and full member of the African Union, remains the institutional, legal and political framework within which the Sahrawi people pursue their struggle for liberation and state-building.

# The Peace Plan

- The acceptance by both parties, the Frente POLISARIO and Morocco, of the UN-OAU Settlement Plan in August 1988 gave rise to many hopes that a final and lasting solution to the last decolonisation conflict in Africa was finally within reach.
- However, the hopes proved short-lived because the referendum on self-determination could not be held because of the many obstacles put in its way by Morocco.
- Aside from the ups and downs, in January 2000, MINURSO was able to establish the list of eligible voters (86,386 in total) for the referendum, thus paving the way for the vote to take place.
- It was precisely at that moment that Morocco declared that it was no longer willing to proceed with the referendum on self-determination, obviously for fear of losing at the ballot box.

# Why has MINURSO failed?

- **First**, the lack of political will on the part of Morocco to move towards a peaceful and just solution at the same time as it seeks, with complete impunity, to entrench and “legitimise” the colonial fait accompli imposed by force in parts of Western Sahara.
- **Second**, the lack of will on the part of some influential members of the Security Council to use the diplomatic and other tools that the Council possesses to compel Morocco to fulfil its obligations under the UN-OAU Settlement Plan, which remains the only agreement mutually accepted by the two parties.
- The Council is fully responsible for MINURSO, which it established under its authority, and therefore for ensuring the full implementation of the mandate of the Mission.

# Realpolitik vs. self-deter.

- The seriousness of the situation is further aggravated by the fact that the Security Council, because of its own power dynamics, has been pursuing a passive, ambivalent and a predominantly “business-as-usual approach” to its handling of the UN peace process in Western Sahara.
- It can safely be said that the root cause of the continued irresolution of the decolonisation conflict in Western Sahara lies in the tension between the doctrine of *realpolitik* on the one hand, and the legally based right of colonised peoples to self-determination and independence, on the other.
- Even the attempts to reconcile these contrasting positions could not resist the influence of *realpolitik* resulting in self-contradictory and confusing outcomes.

# Realpolitik vs. self-deter.

- Since 2007, the Security Council has been urging the two parties to enter into negotiations without preconditions in good faith to archive a mutually acceptable political solution that would provide for the self-determination of the people of Western Sahara.
- Since October 2018, the Council has additionally been calling on the two parties to achieve “a realistic, practicable and enduring political solution...based on compromise”.
- From a clear support for a solution based on the self-determination referendum, which had been agreed by both parties and approved by the Security Council itself, the Council has moved to calling for a mutually acceptable, realistic, and practicable political solution.

# Realpolitik vs. self-deter.

- Without a doubt, direct negotiations between the two parties are essential for reaching a peaceful and sustainable solution to the conflict.
- In fact, the UN-OAU Settlement Plan of 1991 was elaborated based on a series of negotiations between the two parties under the UN auspices.
- However, calling upon both parties to engage in negotiations to achieve a “realistic, practicable” and “mutually acceptable political solution”, “which will provide for the self-determination of the people of Western Sahara” is a contradiction in terms.
- It is incompatible with the principles and rules governing the right of colonial peoples to self-determination.

# Realpolitik vs. self-deter.

- It is also a prime example of the “law-politics” tension, because basically the Council is no longer talking about a “process” but is now trying to infuse that process with a “substance”.
- In the Western Sahara case, which is a UN recognised decolonisation question, the holder of the right to self-determination is the Sahrawi people who have an inalienable right to self-determination and independence.
- All UN relevant resolutions and legal doctrine (incl. the ICJ advisory opinion on Western Sahara of 1975) affirm that the essence of the right of colonial peoples to self-determination is a democratic process by which the will of the people concerned is expressed in an informed, free, and genuine manner.

# Realpolitik vs. self-deter.

- This means that the will of the people of Western Sahara, the sole holder of the right to self-determination, must be expressed without any foreign interference of any kind.
- The expression must also be genuine and direct through the internationally established democratic processes of which the referendum is a widely used process (e.g. East Timor).
- The Security Council's self-contradictory approach to self-determination remains the underlying cause of the impasse currently facing the UN peace process in Western Sahara.
- Negotiations, by their very nature, entail a forward-looking outlook and a genuine willingness to discuss and explore all possibilities for reaching an agreement.

# Negotiations for a solution

- However, in all rounds of direct, formal, and informal negotiations, talks and roundtables held between the two parties under the UN auspices since 2007, Morocco has insisted on its “autonomy proposal” being the only basis of negotiations.
- Apart from its illegality, the “proposal” is obviously unacceptable to the Frente POLISARIO.
- It also goes against the Council’s call for negotiations in good faith and without preconditions.
- The Frente POLISARIO has always expressed its readiness to discuss all matters relating to the “ways and means” by which the people of Western Sahara could exercise their right to self-determination and independence.

# Negotiations for a solution

- It has repeatedly stressed its willingness to pay its share of the bill to restore peace and stability in the region.
- However, based on international law and UN resolutions, the Frente POLISARIO firmly believes that sovereignty over Western Sahara (and consequently the determination of the final status of the Territory) is vested in the Sahrawi people.
- What Morocco seeks through its proposal of “autonomy” is precisely to determine in advance the final status of the territory (making it an “autonomous” region) and, consequently, to exercise the right to decide on this fundamental issue instead of the people of the Territory.
- This would be a travesty of every sense of the right of colonial peoples to self-determination.

# Morocco's "proposal"

- The “autonomy proposal” presented by Morocco in April 2007 has been described by some as a “potential approach”, a “good basis” or even “the most serious, credible basis” for resolving the conflict.
- Any legal analysis of this “proposal” would clearly demonstrate that Morocco cannot grant any kind of autonomy or territorial arrangement to Western Sahara simply because it does not exercise any UN recognised sovereignty over the Territory.
- Despite all the legal issues and other political considerations of great importance, I will mention only three fundamental limitations of this “proposal” to determine (*deconstruct*), for the sake of argument, whether the “proposal” could be a basis for resolving the conflict in Western Sahara.

# Morocco's "proposal"

- **First**, in all the 35 paragraphs of the "proposal", the Frente POLISARIO is not mentioned even once. If there is no other recognised and identifiable party to this conflict (and hence the existence of the conflict itself), then the question is this: with whom is this "proposal" intended to be discussed and agreed?
- **Second**, the proposal speaks only once of "self-determination, but it does not speak of the people of Western Sahara who are the beneficiaries of the mutually acceptable solution (and obviously of the "autonomy proposed" if it were accepted in this framework).
- The Sahrawi people is a distinct political entity and the subject of a right to self-determination as established by both the General Assembly and the Security Council.

# Morocco's "proposal"

- **Third**, according to Morocco, the referendum proposed by the UN in 1988 has proved "impracticable" and even "obsolete", and it proposes a "referendum" to be held to approve its "proposal".
- A key question that arises is what is it about the Moroccan referendum that makes it more "practical" than the referendum proposed by the UN in the Settlement Plan that Morocco itself had accepted?
- Perhaps the only difference is that the UN referendum was going to offer the Sahrawi people the choice between independence and integration in Morocco, while the Moroccan "referendum" would give them the choice between integration and integration in Morocco!

# Morocco's "proposal"

- In short, Morocco wants to negotiate a proposal with a party that it does not recognize in order to grant autonomy to a people that it does not recognize. This is totally absurd.
- In reality, what Morocco wants is to "legitimize" its illegal annexation of Western Sahara through a process that is nothing but a travesty of everything that the right to self-determination stands for.
- It is very clear that the Moroccan "proposal" is not a "serious" or "credible" basis of any solution, let alone a just and legally based solution. Its illegal nature exposes the indefensible positions of all those governments and analysts who have "miraculously" been able to see some merit in it.
- The Frente POLISARIO has strongly rejected the "proposal".

# Concl. & the Way Forward

- The legal nature of Western Sahara as a decolonisation issue on the UN agenda since 1963 is abundantly clear.
- This means that no solution will prove either just or lasting if it does not have the consent and full support of the Sahrawi people expressed through a credible, democratic, and genuine self-determination process.
- The search for a negotiated solution to the conflict would also require, first, building trust between the two parties to the conflict.
- This means overcoming the psychological barriers that have been erected during the conflict through all possible confidence-building measures (CBMs) and other means.

# Concl. & the Way Forward

- The success of the UN-supervised negotiation process will depend on the political will of both parties not only to seek a mutually acceptable solution but also to reflect seriously on their relations in the post-conflict context.
- This process of thinking jointly and reciprocally is essential to achieve not only a win-win solution but also to lay the foundations for a forward-looking and mutually beneficial long-term relationships.
- The proposal submitted by the Frente POLISARIO to the UN in April 2007 contains key elements addressing, among other things, Morocco's regime strong fear that the "loss" of Western Sahara would be very devastating for the stability of the monarchy.

# Concl. & the Way Forward

- To move the UN peace process forward, the Security Council must realise the disastrous consequences of its “hands-off” and “business-as-usual” approach.
- The approach is largely based on the assumption that, because of certain geopolitical considerations, the least costly solution in political terms is to maintain the status quo and leave the parties resolve the conflict by themselves based on their power relations on the ground and other power resources.
- The Security Council must take concrete steps to deal with the situation in the Territory that has dramatically changed since 13 November 2020 and the outbreak of the new war in Western Sahara.

# Concl. & the Way Forward

- The Council should also realise that the self-determination referendum, which is the backbone of the 1991 Settlement Plan, remains the only mutually accepted and compromise-based solution.
- Deep-seated conflicts affect the deepest part of human beings, their sense of identity, interests and needs, etc.
- However, the conflictive dynamics generated by the associated processes change, albeit slowly, as human beings continue to define and redefine their experiences in light of new developments and circumstances.
- This often creates new possibilities that could be seized to transcend and transform even the seemingly unresolvable conflicts.

# Concl. & the Way Forward

- The Sahrawi people remain strongly attached to their rights to self-determination and independence and legitimate resistance.
- They continue to hope that, one day, courage and farsightedness would prevail on the other side to work jointly to achieve a peaceful, just, and sustainable solution.
- No solution to the conflict in Western Sahara will ever prove just or lasting if it does not provide for the genuine exercise by the Sahrawi people of their right to self-determination and independence through a credible, free, and democratic process.
- Self-determination is about the people concerned making a choice, not about someone else making that choice for them