

Self-determination, decolonisation and human rights  
with reference to the Western Sahara

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Prepared for the Conference on Multilateralism and International Law  
with Western Sahara as a case study

hosted by the South African Department of Foreign Affairs and the  
University of Pretoria,  
4 and 5 December 2008

Back in the 1980s, when I was active in the international anti-apartheid movement, I not only looked forward to the day when the people of South Africa would be free, but the principled leadership that a free South Africa would bring to the international community. Nothing illustrates this better than South Africa's efforts on behalf of the right of self-determination for the people of Western Sahara. It is South Africa, more than any other country in recent years, which has prevented Morocco and its allies from prevailing at the United Nations in their efforts to legitimize their illegal annexation of their southern neighbor. It has been South Africa, more than any other nation in recent years, which reminded the international community that is not simply a "disputed territory," but a case of a long-overdue decolonization.

While the Algerians have also taken impressive leadership on this issue – going as far back as 1974, if not earlier – their efforts have often been interpreted by some as being motivated primarily by their own geopolitical interests. No such claims can be made about South Africa, however, which has taken on this issue in a particularly timely and selfless manner.

I recall visiting the refugee camps and surrounding areas in western Algeria and the liberated zones of Western Sahara back in 1987, when the war was still raging. At one point, I was shown an array of Moroccan weapons captured by the Polisario Front, including some armored personnel carriers. I couldn't help but notice a number of inscriptions in Afrikaans, clear evidence that South Africa's apartheid regime was directly arming the Moroccan conquest. It is not surprising that a government that would not allow self-determination of its own people would be supporting the efforts of those who would deny it to others.

Similarly, it is not surprising that a government that eventually emerged from such a difficult and protracted freedom struggle would ally themselves with those still engaged in their own freedom struggle. It is perhaps ironic that South Africa – one ostracized by the United Nations during the apartheid years for its failure to live up to the UN's principles of self-determination during its occupation of Namibia – now has to remind the United Nations to uphold these very principles in relation to Western Sahara.

In 1963, the United Nations placed Spanish Sahara on its list of known colonies. In 1965, following deliberations in the Fourth Committee, the General Assembly passed, in a nearly-unanimous vote, Resolution 2072 (XX), which "Urgently" requested that "the Government of Spain ... take immediately all necessary measures for the liberation of the Territory of Ifni and Spanish Sahara from colonial domination." Morocco, Mauritania and Algeria voted for the resolution; Spain and Portugal were the only two nations to vote against it; the abstainers were the governments of France, South Africa, the United Kingdom and the United States. (Ifni was returned to Morocco in 1968.)

Outlined in the 1966 resolution was the basic formula for a referendum in Western Sahara that the United Nations would use in the 1990s, although the

questionable status of some of the “exiles” complicated efforts to make sure that only “indigenous” Western Saharans voted. The regimes in Morocco, Mauritania and Algeria voted in support of Resolution 2229; the governments of Portugal and Spain continued their lonely dissent.

In 1971 the Fourth Committee and the General Assembly decided to wait a year before addressing Spain’s Saharan colony. When it returned to the issue in 1972, the General Assembly’s Resolution 2983 (XXVII) not only reaffirmed “the inalienable right of the people of the Sahara to self-determination,” but also “to independence.” The Spanish government convinced several Latin American dictatorships, along with fascist Portugal and apartheid South Africa, to join it in voting against the resolution. The United States government abstained with a number of countries, including Morocco.

The Spanish government announced in July 1974 that it intended to hold a self-determination referendum in early 1975. In response to a Moroccan request, supported by Algeria, a resolution was drafted and passed on December 14, 1974. Resolution 3292 (XXIX) asked the ICJ for an advisory opinion regarding Moroccan and Mauritanian claims to Spain’s colony, and whether or not those claims trumped the Western Saharans right to self-determination. It also called for a special Visiting Mission to access the realities on the ground. Spain agreed to postpone the referendum.

The World Court held hearings on the question of Western Sahara from late June to late July 1975. This came almost a month after the UN visiting mission went to the region in May. The latter’s findings, which confirmed broad indigenous support for both independence and Polisario in Western Sahara, were released on October 15. The ICJ’s ruling, which recognized the Sahrawis right to self determination, was issued the following day.

In its reaction to the announcement of the Green March, the Spanish government simultaneously brought the issue to the attention of the United Nations Security Council while also opening urgent discussions with Hassan. The Security Council opened debate on a draft resolution calling on the Moroccan government to “desist from the proposed march on Western Sahara.” Instead, on October 22, the Security Council, under pressure from the United States and France, adopted a resolution (377) that appealed for “restraint” on all sides and requested the Secretary General to enter into consultations with the parties. With this weak response from the United Nations, Spain was forced to pursue direct negotiations with Morocco simultaneously, which resulted in a postponement of the march until November. As ordered by the Security Council, the Secretary-General toured the region between October 25 and 28 but obtained little cooperation from King Hassan, who favored keeping up the pressure until Spain relented.

On November 2, the Security Council answered another Spanish request for another emergency meeting “to oblige the Government of Morocco to desist from the march it has announced.” adopting Resolution 379, urging all parties to avoid any actions that might escalate tensions and requested the Secretary-General to intensify his mediation efforts. As the Moroccan government began ferrying marchers to the border on

the evening on November 5, the Spanish representative to the United Nations again pressed the Security Council for action. The President of the Council quickly sent an “urgent request to put an end forthwith to the declared march into Western Sahara” to King Hassan, who replied that until the Spanish government agreed to “undertake urgent bilateral negotiations” the march would continue. The Security Council finally passed a more strongly worded resolution (380) late on November 6, which “deplored” the Green March, called on the Moroccans to withdraw immediately, to respect the Western Saharans right of self-determination and to cooperate with the Secretary-General’s mediation efforts.

However, France and the United State made sure that this resolution as not enforced. According to U.S. ambassador to the United Nations Daniel Patrick Moynihan, “The United States wished things to turn out as they did, and I worked to bring this about. The Department of State desired that the United Nations prove utterly ineffective in whatever measures it undertook. This task was given me, and I carried it forward with no inconsiderable success.” Not only Resolution 380 not enforced, it was the last Security Council action on the Western Sahara issue for ten years. Unable to obtain any meaningful response from the Security Council to stop Hassan’s invasion, Spain decided to cut a secret trilateral deal with Morocco and Mauritania, finalized between November 12 and 14 in Madrid.

The UN Fourth Committee held hearings between November 14 and December 4, where the Western Sahara was a hot agenda item. The Committee forwarded two resolutions to the General Assembly. One resolution (3458 A), adopted by a vote of eighty-eight to zero on December 10, with forty-one abstentions (including the United States), called on Spain, with the help of the Secretary-General, to hold a popular referendum on self-determination in the Western Sahara. The other resolution (3458 B), passed by a vote of fifty-six to forty-two, with thirty-four abstentions, took note of the Madrid agreement and requested that the parties to the agreement “ensure” that all persons originating from the territory “exercise their inalienable right to self-determination.”

Throughout 1976, the United Nations, with attention focused on the guerilla war and the massive refugee exodus triggered by the Moroccan invasion, failed to address the underlying issue of self-determination. That December, the General Assembly passed Resolution 31/45 in which the body decided to hold off further deliberations on the matter until the United Nations could hear the results of a scheduled extraordinary session of the Organization of African Unity on the Western Sahara. Resolutions adopted over the next three years -- 32/22 (1977), 33/31 (1978) and 34/37 (1979) -- revealed that the United Nations had deferred the matter totally to the OAU.

The Security Council became involved in the conflict in 1990 with a series of resolutions which put in place a cease fire between Moroccan and Polisario forces, the stationing of UN peace keeping forces in the country, and an internationally-supervised referendum in which the remaining Sahrawi population in Western Sahara combined with repatriated refugees would take part in a referendum which would offer the choice of

voting in favor of either independence or integration with Morocco. Neither the repatriation nor the referendum took place, however, due to the Moroccan insistence on stacking the voter rolls with Moroccan settlers and other Moroccan citizens that it claimed had tribal links to the Western Sahara. A series of UN Security Council resolutions urged the referendum process to move forward (Resolutions 690, 725, 809, 973, 995, 1002, 1017, 1033 and 1056), but Morocco remained intransigent.

Perhaps in part to help solicit American cooperation with United Nations efforts to resolve the conflict, Secretary General Kofi Annan enlisting former U.S. Secretary of State James Baker as his personal envoy to help resolve the impasse. In 1997, Baker oversaw the signing of the Houston Accords which codified the modalities of the referendum process, including identification of voters, but despite a series of additional UN Security Council resolutions (1182, 1215, and 1359), Morocco refused to allow the referendum to go forward and, as they had done since the beginning of UN Security Council involvement, French and American threats of a veto prevented the Security Council from enforcing its mandate.

In 2000, the Clinton administration successfully convinced Baker and Annan to give up on efforts to proceed with the referendum as originally agreed by the United Nations ten years earlier and to instead accept Moroccan demands that Moroccan settlers be allowed to vote on the fate of the territory along with the indigenous Sahrawis. This proposal was incorporated in the first Baker Plan presented in early 2001, which would have held the plebiscite under Moroccan rule after a four to five year period of very limited autonomy with no guarantee that independence would be one of the options on the ballot. This first Baker Plan received the enthusiastic backing of the incoming Bush administration, which had come to office in part through Baker's role as lead counsel for the Republican Party regarding the disputed Florida vote the previous November, leading some analysts to note that it was only appropriate that he would put forth a plan that would effectively give legitimacy to a rigged election. Most of the international community roundly rejected the proposal, however, since it would have effectively abrogated previous UN resolutions granting the right of self-determination with the option of independence and would have led to the unprecedented action of the United Nations placing the fate of a non-self-governing territory in the hands of the occupying colonial power.

As a result, Baker then proposed a second plan where, as with his earlier proposal, both the Sahrawis and the Moroccan settlers would be able to vote in the referendum, but the plebiscite would take place only after Western Sahara experienced far more significant autonomy for the four to five years prior to the vote, independence would be an option on the ballot, and the United Nations would oversee the vote and guarantee that both advocates of integration and independence would have the freedom to campaign openly. The UN Security Council approved the second Baker plan in the summer of 2003.

Under considerable pressure, Algeria and eventually the Polisario reluctantly accepted the new plan, but the Moroccans – unwilling to even allow the territory to enjoy a brief period of autonomy and risk the possibility they would lose the plebiscite – rejected it. Once again, the United States and France blocked the United Nations from enforcing its mandate by pressuring Morocco to comply with its international legal obligations.

In what has been widely interpreted as rewarding Morocco for its intransigence, the Bush administration subsequently designated Morocco as a “major non-NATO ally” in June of 2004, a coveted status currently granted to only fifteen key nations, such as Japan, Israel and Australia. The following month, the Senate ratified a free trade agreement with Morocco by an 85-13 margin, making the kingdom one of only a half dozen countries outside of the Western hemisphere to enjoy such a close economic relationship with the United States, though – in a potentially significant precedent – Congress insisted that it not include products from the Western Sahara.

U.S. aid to Morocco has gone up five-fold since the Bush administration came to office, ostensibly as a reward for the kingdom undertaking a series of neo-liberal economic reforms and to assist the Moroccan government in “combating terrorism.” While there has been some political liberalization within most of Morocco in recent years under the young King Mohammed VI, who succeeded to the throne following the death of his father in 1999, gross and systematic human rights violations in the occupied Western Sahara and Sahrawi-populated segments of southern Morocco continues unabated, with public expressions of nationalist aspirations and organized protests against the occupation and human rights abuses routinely met with severe repression.

The Sahrawis have fought for their national rights primarily by legal and diplomatic means, not through violence. Unlike a number of other peoples engaged in national liberation struggles, the Sahrawis have never committed acts of terrorism. Even during their armed struggle against the occupation, which ended fifteen years ago, Polisario forces restricted their attacks exclusively towards the Moroccan armed forces, never towards civilians.

The irresolution of the Western Sahara conflict has important regional implications. It has encouraged an arms race between Morocco and Algeria and, on several occasions over the past three decades, has brought the two countries close to war. Perhaps even more significantly, it has been the single biggest obstacle to a fuller implementation of the goals of the Arab Maghreb Union – consisting of Morocco, Algeria, Libya, Tunisia, and Mauritania – to pursue economic integration and other initiatives which would increase the standard of living and political stability in the region. The lack of unity and greater coordination among these nations and their struggling economies has contributed to the dramatic upsurge in illegal immigration to Europe and the rise of radical Islamist movements.

Over the past three decades, the Sahrawi Arab Democratic Republic has been recognized as an independent country by more than 80 governments, with Kenya and South Africa becoming the latest to extend full diplomatic relations. The SADR has been a full member state of the African Union (formerly Organization for African Unity) since 1984 and most of the international community recognizes Western Sahara as Africa's last colony. By contrast, with only a few exceptions, the Arab states – despite their outspoken opposition to the Israeli occupation of Palestinian and Syrian land – have supported Morocco's occupation of Western Sahara.

With Morocco's rejection of the second Baker Plan and the threat of a French and American veto of any Security Council resolution that would push Morocco to compromise, a diplomatic settlement of the conflict looks highly unlikely. With Morocco's powerful armed forces protected behind the separation wall and Algeria unwilling to support a resumption of guerrilla war, the Polisario appears to lack a military option as well.

As happened during the 1980s in both South Africa and the Israeli-occupied Palestinian territories, the locus of the Western Sahara freedom struggle has recently shifted from the military and diplomatic initiatives of an exiled armed movement to a largely unarmed popular resistance from within. In recent years, young activists in the occupied territory and even in Sahrawi-populated parts of southern Morocco have confronted Moroccan troops in street demonstrations and other forms of nonviolent action, despite the risk of shootings, mass arrests, and torture.

The failure of the Kingdom of Morocco and the Polisario Front to agree on the modalities of the long-planned United Nations-sponsored referendum on the fate of Western Sahara, combined with a growing nonviolent resistance campaign in the occupied territory against Morocco's 31-year occupation, has led Morocco to propose granting the former Spanish colony special autonomous status within the kingdom. The plan has received the enthusiastic support of the American and French governments as a reasonable compromise to the abiding conflict. As illustrated below, there are serious problems with this proposal. However, the very fact that Morocco has felt obliged to propose a special status for the territory constitutes an admission that their previous insistence that Western Sahara was simply another part of Morocco was false. As I and other visitors to Western Sahara in recent years have noticed, not only has Morocco's 33-year campaign of assimilation failed, but the younger generation of Sahrawis is at least as nationalistic as their parents.

It is unfortunate, therefore, that the Moroccan plan for autonomy falls so well short of what is required in bringing about a peaceful resolution to the conflict. Moreover, it seeks to set a dangerous precedent which threatens the very foundation of the post-World War II international legal system.

To begin with, the proposal is based on the assumption that Western Sahara is part of Morocco, a contention that has long been rejected by the United Nations, the World Court, the African Union and a broad consensus of international legal opinion. To accept Morocco's autonomy plan would mean that, for the first time since the founding of the United Nations and the ratification of the UN Charter more than sixty 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.

If the people of Western Sahara accepted an autonomy agreement over independence as a result of a free and fair referendum, it would constitute a legitimate act of self-determination. However, Morocco has explicitly stated that its autonomy proposal "rules out, by definition, the possibility for the independence option to be submitted" to the people of Western Sahara, the vast majority of whom - according to knowledgeable international observers - favor outright independence.

Even if one takes a dismissive attitude toward international law, there are a number of practical concerns regarding the Moroccan proposal as well:

One is that the history of respect for regional autonomy on the part of centralized authoritarian states is quite poor, and has often led to violent conflict. For example, in 1952, the United Nations granted the British protectorate (and former Italian colony) of Eritrea autonomous, federated status within Ethiopia. In 1961, however, the Ethiopian emperor unilaterally revoked Eritrea's autonomous status, annexing it as his empire's fourteenth province, resulting in a bloody 30-year struggle for independence and subsequent border wars between the two countries, which has taken hundreds of thousands of lives.

Based upon Morocco's habit of breaking its promises to the international community regarding the UN-mandated referendum for Western Sahara and related obligations based on the cease fire agreement eighteen years ago, there is little to inspire confidence that Morocco would live up to its promises to provide genuine autonomy for Western Sahara.

Indeed, a close reading of the proposal raises questions as to how much autonomy is even being offered. Important matters such as control of Western Sahara's natural resources and law enforcement (beyond local jurisdictions) remain ambiguous.

In addition, the proposal appears to indicate that all powers not specifically vested in the autonomous region would remain with the Kingdom. Indeed, since the king of Morocco is ultimately invested with absolute authority under Article 19 of the Moroccan Constitution, the autonomy proposal's insistence that the Moroccan state "will keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King," appears to afford the monarch considerable latitude of interpretation.

In recent years, there has been talk from European academics and diplomats, among others, that some sort of compromise, or “third way” between independence and integration such as the Moroccan autonomy plan, is the most realistic formula to end the conflict. Citing the dominant conflict resolution literature, this analysis notes how insistence upon a “winner take all” approach – such as a referendum offering a choice between autonomy and integration – is unworkable.

While encouraging such compromise and trying to find a win/win situation is certainly the preferable way to pursue a lasting peaceful settlement regarding most ethnic conflicts and many international disputes, Western Sahara is a clear-cut case of self-determination for a people struggling against foreign military occupation. This is not a matter of “splitting the difference,” given that one party is under an illegal foreign military occupation and the other party is the occupier. This is why the international community rejected Iraq’s proposals in 1990-91 for some kind of compromise regarding its occupation of Kuwait. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interests if allowed full independence. To insist that the people of Western Sahara must give up their moral and legal right to genuine self-determination, then, is not a recipe for conflict resolution, but for far more serious conflict in the future.

Morocco has succeeded in resisting its international legal obligations for more than three decades because of its support by permanent members of the UN Security Council. As a result of the French and American veto threats, the UN Security Council has failed to place the Western Sahara issue under Chapter VII of the UN Charter, which would give the international community the power to impose sanctions or other appropriate leverage to force the Moroccan regime to abide by the UN mandates it has up until now disregarded. Polisario's unwillingness to compromise further should not be seen as the major obstacle impeding the resolution of the conflict.

Similar support from Western industrialized nations for Indonesia for many years had prevented resolution to the occupation of East Timor. It was only after human rights organizations, church groups and other activists in the United States, Great Britain and Australia successfully pressured their governments to end their support for Indonesia's occupation that the Jakarta regime was finally willing to offer a referendum which gave the East Timorese their right to self-determination. It may take similar grassroots campaigns in Europe and North America to ensure that western powers live up to their international legal obligations and pressure Morocco to allow the people of Western Sahara to determine their own destiny.

The growth of the nonviolent resistance struggle in the occupied territories offers a unique opportunity to build international awareness of the conflict among civil society organizations that could offer much-needed solidarity with the freedom struggle inside Western Sahara. Such massive nonviolent action and other forms of noncooperation provides an important signal to the Moroccan occupiers and the international

community that the people of Western Sahara still demand their freedom and will not accept any less than genuine self-determination.

The use of nonviolent methods of resistance also makes it easier to highlight gross and systematic violations of international humanitarian law by Moroccan occupation forces, gaining sympathy and support from the international human rights community and provide greater pressure on the French, American and other governments which continued to provide security assistance to Morocco and otherwise support the Moroccan occupation.

There is a small but growing movement in Europe supporting the Sahrawis' right to national self-determination, as well as similar civil efforts in South Africa, other African countries, Australia, Japan and the United States. At this point, however, it is too small to have much impact on governmental policies, particular those of France and the United States, which are the two governments most responsible for the failure of the United Nations to enforce its resolutions dealing with the conflict. This can change, however: Just twelve to fifteen years ago, there was relatively little civil society activism regarding East Timor either. Subsequently, though, concerted efforts by peace and human rights activists, church groups, and various NGOs in Canada, Great Britain, Australia, the United States, and elsewhere eventually forced these countries to end their support for the Indonesian occupation. As a result, East Timor is now free.

A similar campaign may be the best hope for the people of Western Sahara and the best hope we have to save the vitally important post-World War II principles enshrined in the United Nations Charter

I fully acknowledge that I am not an expert on the Maghreb. I am not an uncritical supporter of the Polisario Front. I acknowledge that the numbers of people most immediately impacted by the Moroccan occupation, on a global scale, is relatively small. What motivates me to address this issue is that basic principles of human rights and international law must be upheld, even if it sometimes inconveniences my government and that – as with any fundamental moral or legal principle – it must be applied consistently. Back in the mid-1990s, I served on the board of the North American Coordinating Committee of NGOs on the Question of Palestine. At a forum I attended at the United Nations, an Arab delegate gave a passionate speech against Israeli occupation policies, citing the fundamental right of self-determination, the importance of enforcing UN Security Council resolutions, the illegality of an occupying power transferring its civilian population into occupied territories, the obligation to uphold internationally-recognized human rights. There was nothing in that speech with which I could disagree. Ironically, however, the delegate represented the government of Morocco, which was engaged and continues to engage in the same violations of these fundamental international legal standards.

If the international community cannot fulfill its responsibilities on this issue – where the legal and moral imperatives are so clear – how can we deal with more complex issues? If the international community can not uphold the fundamental right of self-

determination, how can we successfully defend other human rights? If the international community cannot enforce a series of UN Security Council resolutions regarding such a blatant violation of the UN Charter as a member state invading, occupying, annexing and colonizing a neighboring country, how can we enforce other provisions of international law?

The stakes are not simply about the future of one small country, but the question as to which principle will prevail in the 21<sup>st</sup> century: the right of self determination, or the right of conquest? The answer could determine the fate not just of the Western Sahara, but that of the entire international legal order for many decades to come.