



# WESTERN SAHARA

*Towards the Liberation of  
Africa's Last Colony*

Edited by

**OLADIPO FASHINA**

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LAST COLONY

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## PREFACE

This book, *Western Sahara: Towards the Liberation of Africa's Last Colony*, is a product of an international conference with the same theme held in Nigeria from 2nd to 4th June, 2015. The conference, which took place in Nigeria's federal capital, Abuja, was sponsored by the Academic Staff Union of Universities (ASUU), Nigeria. Participants at the conference included scholars and activists from across Africa, Asia, Europe, South America and the USA. Issues discussed at the conference included the Saharawi history and ideology, expropriation of the natural resources of the Western Sahara, and international law perspectives on self-determination, and decolonization of the Saharawi people. Presentations also covered geo-politics and the Western Sahara question, pan-African, Latin American and Caribbean perspectives on the liberation struggles in Western Sahara, and decolonization, drama and gender dimensions.

The outcomes of the conference have led to a renewed tempo in the activities of groups, states and individuals calling for the independence of Africa's last colony. Following the conference, ASUU, in conjunction with the Nigeria Labour Congress (NLC), the Trade Union Congress (TUC) and other civil society groups in Nigeria, launched the Nigerian Movement of Solidarity with Western Sahara, in March, 2016, in Abuja. Professor Ibrahim Gambari, former Nigerian envoy to the United Nations, was elected pioneer President while Comrade Dipo Fashina (ASUU Trustee) was elected the first National Coordinator. The publication of this book, after some initial hiccups, is in furtherance of the determined efforts of the Union to support the liberation struggle of the Saharawi people. This is because of our avowed belief that until Western Sahara is free from the colonization by Morocco, Africa's freedom is incomplete.

The misfortune of the invaded territory of Western Sahara originally populated by the Berber tribes, began with the imperialist scramble for Africa during which Spain colonized Western Sahara in 1884. By 1934, Spain had extended its domination over the entire

territory and, in 1958, Western Sahara had become a Spanish province. When Morocco gained independence in 1956, it started laying claim to the territory of Western Sahara and has continued to rebuff the United Nations' calls for the decolonization of Western Sahara since 1965. In 1975, King Hassan of Morocco, ignoring the ruling of the International Court of Justice (ICJ) in favour of the right of the Saharawi people to self-determination-independence, staged his "Green March" of 350,000 Moroccans towards Western Sahara. In 1979, Morocco went further to annex the part of the Saharawi territory that was vacated by Mauritania, the other African country that invaded Western Sahara after the exit of colonial Spain.

The promising guerrilla war of the Polisario Front against Morocco for 16 years was halted by the UN-initiated ceasefire in 1991. To the credit of the Front, however, the Saharawi Arab Democratic Republic (SADR) was recognized by many countries. As a result, the SADR became a full-fledged member of the Organization of African Unity (OAU) and consequently a founding member of the African Union (AU). The failure of Morocco to conduct a referendum on the independence of Western Sahara, as agreed during the UN-brokered ceasefire, means that the war of liberation in the colony is still far from being over. Moroccans continue to plunder the vast natural resources of the Saharawi people. They brutalize Saharawi men, women and children on a daily basis. They violate the rights and dignity of a people with a proud history and rich culture. This must not be allowed to continue unchecked.

In the last two-and-half decades, the UN and the AU have sponsored several talks with the intention of getting Morocco to accept a referendum on the future of Western Sahara. Several conferences have been held in Spain, Algeria and elsewhere across the globe on the subject. However, talks and conferences alone will not bring the expected result until and unless the struggle for the freedom of the Saharawi intensifies from both within and outside Western Sahara. To paraphrase Walter Rodney, it is the intensity of a struggle that, at any given time, primarily determines the relevance and utility of the conference or talk as a technique of co-ordination. Nelson Mandela puts the challenge more poignantly when he declares: "There is no easy walk to freedom anywhere, and many of us will have to pass through the valley of the shadow of death

again and again before we reach the mountaintop of our desires.”

Our desire for the freedom of the Saharawi people will certainly not come on a platter of gold. We in ASUU are resolved to do all within our capacity to support the Nigerian Movement for the Liberation of Western Sahara as a platform for intensifying the struggle from the outside. Given the calibre of the leadership and members of this Movement, we are convinced that the platform has what it takes to contribute meaningfully to the restoration of the dignity of the Saharawi people and their right to self-determination at the economic, political, socio-cultural, and scientific levels.

As a union of intellectuals, we see education as a potent tool for the true emancipation of not only the people of Western Sahara, but all Africans as a whole. “Education,” says Malcolm X, “is an important element in the struggle for human rights. It is the means to help our children and our people rediscover their identity and thereby increase their self respect. Education is our passport to the future, for tomorrow belongs only to the people who prepare for it today.” This is a self-evident truth to which ASUU fully subscribes. In furtherance of that belief, our union recently gave postgraduate scholarship awards to three Saharawi citizens in two Nigerian universities. On the invitation of the authorities of SADR, we are also involved in the curriculum development and fund mobilization for the take-off of a Law Faculty at the University of Tifariti. Other areas of assistance, such as facilities for vocational education at the refugee camps near Tindouf, have also been raised during our recent visits and engagements with the Saharawi people.

This book is coming on the heels of the celebration of twenty-seven (27) years of the formation of the Popular Front for the Liberation of Saguia el Hamra and Rio de oro (POLISARIO FRONT) to create a free and independent Western Sahara State. The POLISARIO FRONT, a product and expression of the African Liberation movement, has led an anti-colonial struggle, the goal of which is the defeat of Spanish, and now Moroccan colonialism and the attainment of total liberty for the Saharawi people. Morocco's manoeuvres towards frustrating the march to Saharawi statehood call into question its desire for a just and lasting solution to the problem of decolonization in Western Sahara. Morocco's admission into the membership of the African Union has proved to be nothing but a tactical manoeuvre to weaken the commitment of African

countries to Saharawi independence.

Despite the admission of Morocco into the African Union as a member-state, after Morocco's ratification of the AU Consultative Act, Morocco continues to hold on to Western Sahara as a colony, defying international law, justice in international relations, and the universally recognized right of all peoples to freedom. Morocco and its backers are employing easily identifiable tactics to hold on to Western Sahara. One of them is to play the game of simulating interest in the United Nations-led peace process.

What is Morocco's strategy? Morocco's rulers play along with the UN peace process. They are also intensifying efforts to convert African governments "from inside" by developing large trade interests and ties, and where possible, religious and personal, with individual groups in the ruling/business circles in other African countries. Thus, engaged in seductive trade, social and religious connections with influential and powerful circles in other African countries, Morocco's rulers will be better poised to damage African support for Western Sahara from inside Africa.

The Academic Staff Union of Universities (ASUU) hopes that this publication will go some way not only in enhancing the understanding of the issue of Western Sahara, but very importantly, we hope that this publication will persuade our readers on all continents to support the just struggle of the Saharawi people for independence.

**Nasir F. Isa**

**Biodun Ogunyemi**

*Academic Staff Union of Universities (ASUU), Nigeria  
30th July, 2019*



## CONTRIBUTORS

1. Jinadu, Adele, Political Science, Babcock University, Ilishan, Ogun State, Nigeria. Formerly of Lagos State University, Lagos and University of Lagos, Lagos, Nigeria.
2. Mediero, Andreu, Faculty of Education, Department of Special Training, University of Las Palmas de Gran Canaria (ULPCG), Spain.
3. Okunade, Bayo, Department of Political Science, University of Ibadan, Nigeria.
4. Ogunyemi, Biodun, *Olabisi Onabanjo* ~~Ogun State~~ University, Ago-Iwoye, Nigeria.
5. Hagen, Eric, Western Sahara Resource Watch, Oslo, Norway.
6. Mordi, Emmanuel Nwafor, Delta State University, Abraka, Nigeria.
7. Cristani, Federica, Peter Catholic University, Budapest, Hungary.
8. Adam, Gamel Nasser, University of Ghana, Ghana.
9. Corell, Hans, Former Undersecretary-General for Legal Affairs and Legal Council.
10. Gambari, Ibrahim, Ahmadu Bello University, Zaria, Nigeria. Former Ambassador.
11. Mundy, Jacob, Peace and Conflict Studies, Colgate University, USA.
12. Lamore, Jean.
13. Licerias, Juan Soroeta, University of San Sebastian, Spain.
14. Cuervo, Jose Ignacio, Loi Gomera, Canary Islands, Spain.
15. Olaniyan, K.O., Department of Jurisprudence and International Law, University of Ibadan, Nigeria.
16. Mateo, Luz Marina, International University of La Plata, Argentina.

17. Munene, Macharia, United States International University, Nairobi, Kenya.
18. Isa, Nasir Fagge, Bayero University Kano, Nigeria.
19. Yaqub, Nuhu, Sokoto State University, Sokoto, Nigeria.
20. Azuwike, Okechi Dominic, Department of Geography and Environmental Management, Imo State University, Owerri, Nigeria.
21. Fashina, Oladipo, Department of Philosophy, Ahmadu Bello University, Zaria, Nigeria.
22. Ilesanmi, Omotayo Adeyoju, Nigerian Institute of International Affairs, Victoria Island, Lagos.
23. Leite, Pedro Pinto, Chairman, International Platform of Jurists for East Timor, The Netherlands, and Jefferey J. Smith.
24. Omar, Sidi, Universitat Jaume Castellon, Spain.
25. Ladan, Usman, Department of History, Ahmadu Bello University, Zaria, Nigeria.
26. Raji, Wumi, Obafemi Awolowo University, Ile-Ife. Osun State, Nigeria.
27. Zoubir, Yahia H., Business School, Marseille, France.

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## *Chapter Fifteen*

# **Decolonization of Western Sahara within the International Legal Framework: Matters Arising**

**K. O. Olaniyan<sup>1</sup>**

### **1. Introduction**

Western Sahara, otherwise known as Spanish Sahara when it was a colony of Spain, is a territory situated between Morocco to the North, Mauritania to the South and Algeria to the East. It is mostly desert, and was, until the very recent past, the ancestral home of nomadic tribes. For about forty years now, the process of decolonization of Western Sahara has raised serious implications

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<sup>1</sup> K. O. Olaniyan, Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Ibadan, Ibadan, Nigeria.



for the application of the principles of international law.

In this context, this paper will discuss the legal issues involved in the Moroccan occupation and forcible entry and annexation of Western Sahara in 1975 even after the recognition and call by the United Nations for the exercise of the right of the people of Western Sahara to self-determination.

This is 2015, and the people of Western Sahara have not yet been able to exercise that right. This attitude on the part of Morocco is seen as a violation of the fundamental norms of international law.

The paper will also discuss the legal basis for the right of the people of Western Sahara to self-determination and decolonization. More precisely, it will look at the adequacy of the activities and efforts of the United Nations at addressing the protections of the rights of the people of Western Sahara within the confines of International Law.

The paper will bring out the salient points involved with a view to demonstrating that the question of Western Sahara is, in essence, a decolonization issue, and hence, the exercise by the Sahrawi people of their inalienable right to self-determination and independence constitutes the only legal and political basis for achieving a just, viable and lasting solution to the conflict in Western Sahara and the Maghreb region.

The paper shall propose a way forward by way of conclusion.

## **2. International Recognition for the People of Western Sahara**

Since the mid-1970s, the sovereignty over Western Sahara has been in dispute. The 1950s and 1960s had seen the independence from colonial rule of most of the states of Northwest Africa.<sup>2</sup> Western Sahara remains the only colony left in the region. Both the United Nations and the African Union (formerly the Organization of African

<sup>2</sup> Most states of the Northwest African had won their independence between the 1950s and the 1960s, first Morocco in 1956, then Mauritania in 1960 and finally Algeria in 1962.

Unity) have been exerting considerable pressure on Spain to withdraw from the territory so that the people of Western Sahara<sup>3</sup> would determine their political future through a referendum. Spain assented to the international pressures in 1974 when it conducted a census of the population and began to formulate plans for such a referendum.<sup>4</sup>

There is no gainsaying the fact that it was the adoption by the General Assembly of Resolution 1514 (XV) on 14th December 1960, that embodied the declaration on the "Granting of Independence to Colonial Countries and Peoples", that self-determination emerged as a right rather than a simple principle in the United Nations Charter. The political imperative of decolonization also served as the driving force behind that shift, and drove the colonial people to self-determination as expressed later in the International Human Rights Covenants of the 1960.<sup>5</sup>

Self-determination has, therefore, increasingly been considered a peremptory norm of international law whose violation is expressly characterized as a crime in accordance with the General Assembly Resolution 2621 (XXV) of 12 October 1970.

The General Assembly Resolution 1514 (XV) in its paragraph 5, states that the right to self-determination is to be exercised and implemented in accordance with the "freely expressed will and desire" of the peoples concerned. In addition, the General Assembly Resolution 1541 (XV) of 15 December 1960, details the principles that determine the outcome to which the decolonization of a non-self governing territory could lead.

Pursuant to these resolutions and other legal instruments, the colonial people were given an inalienable right to self-determination to be exercised by the establishment of an independent state, integration in or association with another state. In the latter cases

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<sup>3</sup> The natives of Western Sahara are often referred to as the People of the Western Sahara or "Sahrawis".

<sup>4</sup> Spain announced its intentions to the United Nations in a letter dated 20 August 1974 from the Permanent Representation of Spain to the United Nations to the Secretary General. See UN Document A/9714.

<sup>5</sup> See Hannum, *Autonomy, Sovereignty and Self Determination; The Accommodation of Conflicting Rights* (1980).

the outcome should be the result of the free choice of the people of the territory concerned and expressed through informed and democratic processes.

### 3. Morocco's Illegal Claims on the Western Sahara

It will be observed that from all available historical materials, Morocco deliberately violated the right of the people of Western Sahara to self-determination within international law.

Morocco's territorial claims to the territory of Western Sahara can be said to be part of and originating from the expansionist ideology of a "Greater Morocco" which was advanced in the late 1950s by Allal el-fassi, the leader of the ultranationalist Istiglal Party, shortly after Morocco gained its independence from France in March 1956.<sup>6</sup> The ideology of the Greater Morocco, which was fully embraced by the monarchy<sup>7</sup> asserted that the then Spanish Sahara, all of Mauritania, a large part of Western Algeria, and even St. Louis du Senegal and a slice of Northern Mali (including Timbuktu) all belonged historically to Morocco.<sup>8</sup>

However, as time went on, Morocco's numerous claims were fraught with contradictions especially in practical terms. For instance, by the early 1960s, Morocco had quietly dropped its claims to parts of Mali and Senegal. The claim to Mauritania was also dropped in 1969 when Morocco finally recognized that the country is an independent state<sup>9</sup>. Morocco did not abandon the claim to

<sup>6</sup> Precisely on 7 July 1956, the Istiglah daily newspaper, *Al Alam* published a map of "Greater Morocco". A month later, the expansionist policy was endorsed by party congress.

<sup>7</sup> The Moroccan government formally laid claim to Western Sahara and Mauritania at the United Nations on 5 October, 1956. Abdulkebir, a cousin of Allal el-fassi, was named as the head of the new department of Moroccan Ministry of Interior. This is contained in the Pazzanita Historical Dictionary of Western Sahara (2006).

<sup>8</sup> See generally Vilar *El Proceso de Auto determinacion due Sahara* (1982); see also Hodges: *Western Sahara: The Roots of a Desert War* (1983).

<sup>9</sup> On 8 June 1970, a treaty of friendship and cooperation was signed at Casablanca between Morocco and Mauritania.

Algeria easily. It launched a failed military campaign against Algeria in 1963 which came to be known as the "sand war," to occupy part of the Algerian Western desert by force.

It was after dropping its territorial claims to the other countries, that Morocco centred its attention on the then Spanish Sahara to which it began laying claims publicly.

In the absence of any legal basis for its claims, Morocco, which was then joined by Mauritania, requested the General Assembly to refer the issue to the International Court of Justice. Therefore, by virtue of General Assembly Resolution 3292 (XXIX) of 13 December 1974, the court was requested, without prejudice to the application of the principles embodied in resolution 1514 (XV), to give an advisory opinion on the status of Western Sahara and any legal ties between the territory (Western Sahara) and the two claimant countries at the time of Spanish occupation. It is noteworthy to state that the General Assembly's decision to request an advisory opinion from the ICJ was to enable it determine the policy to be followed in order to accelerate the decolonization process in the territory.<sup>10</sup>

Before continuing the analysis of Morocco's illegal claim to Western Sahara, it is pertinent to discuss briefly the involvement of the International Court of Justice (ICJ) in the decolonization process of Western Sahara.

#### **4. International Court of Justice (ICJ) Involvement in the Decolonization Process**

In its historic advisory opinion on Western Sahara issued on 16 October 1975, the ICJ, very clearly, established that:

The materials and information presented to it do not establish any tie of the territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritania entity. Thus the court has not found any legal ties of such a nature as might affect the application of General Assembly Resolution 1514

<sup>10</sup> General Assembly Resolution of 13 December 1974 was contained at 3292 paragraph 3.

(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.<sup>11</sup>

Pursuant to the ICJ advisory opinion above, there are several matters arising therefrom to be discussed later in this paper. It is therefore pertinent to bring out the issues involved in the said case whereupon the advisory opinion was arrived at.

Morocco and Mauritania first persuaded the members of the fourth committee of the UN General Assembly to request the postponement of the referendum. The General Assembly acceded to the request in Resolution 3292 (XXIX).<sup>12</sup> The questions requested to be presented to the International Court of Justice (ICJ) were:

- (1). Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?
- (2). If the answer to the first question is in the negative, what were the legal ties between this territory and the Kingdom of Morocco and the Mauritania entity?

After the examination of the evidence of political, military, religious and economic ties between the claimants and the inhabitants of the territory before Spain's arrival, the ICJ judges found that the information before the court did not support Morocco's claims to have exercised territorial sovereignty over Western Sahara.<sup>13</sup>

The Court explained that while the evidence showed that the Sultan exercised "some authority over some, but only some of the nomadic tribes of the region, it does not establish any tie of territorial sovereignty between Western Sahara and that state. It does not show that Morocco displayed effective and exclusive state activity in the Western Sahara."<sup>14</sup>

<sup>11</sup> See ICJ (1975) Advisory Opinion on Western Sahara 1975.ICJ.12ICJ, [\(http://www.icj.cij.org/docket/index/php.sum\)](http://www.icj.cij.org/docket/index/php.sum). (2008) accessed 10 May 2015.

<sup>12</sup> See GAOR Supp. 31 at 103 – 104. UN Doc A/9631/(1974).

<sup>13</sup> See Advisory Opinion on Western Sahara (1975) (hereinafter "ICJ Opinion") ICJ Report P 48.

<sup>14</sup> Ibid at 49.

The Court's response to Mauritania's claim was virtually the same.<sup>15</sup> The Court therefore concluded that it had not found any legal ties of such a nature as might affect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the territory.<sup>16</sup>

Morocco was hoping that its claim to the territory would be legally endorsed by the ICJ, but the advisory opinion dealt a heavy blow to its plan and put the monarchical regime of Morocco in a very difficult situation.

The ICJ opinion denying the claims of Morocco and Mauritania and affirming the right of the Sahrawi to self-determination in 1975 made the claim of the Sahrawi people to self-determination a binding and valid one, and was consolidated when Mauritania, by virtue of a peace treaty signed with the Frente-Polisario, otherwise known as 'Polisario Front', on 5 August 1979, renounced its territorial claims to Western Sahara. It is worthy of note that within days of the issuance of the ICJ opinion, about 350,000 Morocco civilians organized by Morocco's government, crossed the border into Western Sahara in a show of support for Morocco's position. This march, which came to be known as the "Green March", was undertaken on 18 October, 1975.

Although it is true that the ICJ was not requested to express its opinion on the existence or otherwise of a Sahrawi people at the time of Spanish colonization, the significance of its conclusions, which were borne out of the many historical facts at its disposal, lies in affirming that the indigenous people inhabited Western Sahara prior to Spanish colonization and that due to their subsequent subjection to alien domination they were entitled to exercise their right to self-determination. The ICJ findings also serve to refute the Moroccan and the Mauritanian claims that denied the existence of a distinct socially and politically organized pre-colonial Sahrawi entity.

It is noteworthy, again, that in pre-colonial times, the Sahrawi

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<sup>15</sup> Ibid at 68.

<sup>16</sup> Ibid at 60.

lived as one independent community and developed their own socio-political structures that were distinct from those established by neighbouring peoples who inhabited Northwest Africa. It is, therefore, these idiosyncratic elements and many other factors that have progressively constituted the distinctiveness of the Sahrawi people over the centuries.

During the colonial era, an incipient Sahrawi national consciousness emerged. It was initially translated into demand for greater political participation in the affairs of the territory and later developed into renewed anti-colonial sentiments, creating the conditions for the emergence of Sahrawi movements with a strongly nationalist agenda. This was what prompted the creation of the Frente Polisario on 10 May 1973 as an anti-colonial and liberation movement. The movement, also known as the *Frente Polisario* (Polisario Front), was recognized by the United Nations as the legitimate representative of the Sahrawi people.<sup>17</sup>

Again, there was the proclamation of the Sahrawi Arab Democratic Republic (SADR) on 27 February, 1976 as the embodiment of the collective will of the Sahrawi people for freedom and independence. The SADR is a founding member of the African Union, formerly the Organization of African Unity (OAU), and has been recognized by more than eighty countries across the world, including South Africa.

In the light of this brief discussion of the self-determination of Western Sahara and the involvement of the ICJ, which showed the emergence of the Sahrawi national identity, one can safely say that it was logical for the United Nations and its relevant organs to affirm the applicability of the right to self-determination of the people of Western Sahara and set in motion a process of decolonization in the territory.

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<sup>17</sup> See for instance GA/RES/34/137 of 21 November 1979.

## 5. The United Nations and the Decolonization Process in Western Sahara

It is noteworthy that the involvement of the United Nations in the issue of Western Sahara dates back to 1963 when the territory was placed on the list of Non-Self-Governing Territories under Chapter XI of the Charter. The list included those territories whose people had at that time not yet attained a full measure of self-government.

The General Assembly on 16 December, 1965 adopted Resolution 2072 in relation to what was then called Spanish Sahara in which it recalled its earlier Resolution 1514 (XV) and requested Spain to take all necessary measures to liberate Spanish Sahara from colonial domination. As a result of this resolution, Spain was also recognized as the "administering power" of the territory with the attendant obligations as set out in Article 73 of the United Nations Charter.

It is also noteworthy that all resolutions adopted by the General Assembly on Western Sahara since 1966 share a common bearing with Resolution 1514(xv). The recognition of the inalienable right of the people of Western Sahara to self-determination and the need for its strict implementation through a free and fair referendum or self-determination in accordance with Resolution 1514 (XV), has been reiterated and reinvented at every annual meeting of the General Assembly.

At this juncture, it is pertinent to say that there were historical documentary statements made by Moroccan officials which point to the fact that Morocco itself had in effect recognized the right of the people of Western Sahara, not only to self-determination but more important to independence well before Morocco embarked on its illegal expansionist project which led to the invasion and annexation of Western Sahara in 1975.

A few of this documentary evidence are referred to in this part of the paper to elucidate the point. On 7 June 1966 for instance, the Moroccan delegate to the Committee of 24, Dey Oued Sidi Babe declared that "I ask for the independence of Western Sahara as soon as possible and this should be an authentic independence hence we can get over the actual impasse"<sup>18</sup>

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<sup>18</sup> See A/PV 1441 (1966).



Also the Moroccan Minister of Foreign Affairs Mohammed Charkaoui declared at the 21st session of the General Assembly held on 13 October 1966 that "Morocco supports real independence for Western Sahara, putting the future of the region in the hands of its sons, which in the context of liberty, will decide freely on their self-determination."<sup>19</sup>

Again, during a press conference on 30 July 1970 the late King Hassan II, the then King of Morocco, stated that "instead of going on claiming the territory of the Sahara, I would make the specific request that a popular consultation takes place, assuring that the first result being the departure of the non-African and allowing the people of the Sahara to choose between life under the Moroccan aegis, under own aegis or under any other aegis."

Finally, during the Council of Ministers' meeting of the Organization of African Unity (OAU) held in Rabat from 5-12 June, 1972 Morocco worked actively for the adoption of Resolution CM/Res 272 (XIX), which called on Spain, the administering power for Western Sahara, to enable the people of the territory "to exercise their right to self-determination and independence without delay and in conformity with the United Nations Charter."

The above examples are a few of the pieces of evidence that demonstrate, beyond any doubt, Morocco's recognition of the right of the people of Western Sahara, not only to self-determination, but also to independence. And all this happened well before Morocco decided to deny them this right, which it had earlier recognized by invading and annexing the territory in 1975.

## **6. The United Nations and the Referendum that Never Was**

The evidence quoted above point irresistibly to one fact, that in line with the General Assembly Resolution 1514 (XV), Moroccan officials had also shown at one time or another their readiness to give the necessary assistance to the people of Western Sahara in their struggle, not only for self-determination but also, and more

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<sup>19</sup> Ibid.

important, for independence. As a result of this, the illegal Moroccan invasion and annexation of the territory of the part of Western Sahara is to be seen not only as an action in bad faith but, more grievous, a crime under international law. This was the context in which the United Nations and the Organization of African Unity (OAU) deployed their joint efforts to elaborate a peace plan aimed at enabling the people of Western Sahara to exercise their right to self-determination in line with General Assembly resolutions and the United Nations doctrine relating to decolonization. It would be recalled that King Hassan II of Morocco accepted the idea of holding a self-determination referendum in the territory during the OAU summit held in Nairobi in 1981. In October 1983, the same King Hassan II stated before the 37th session of the General Assembly that:

Morocco wants to tell you that it wants the referendum, Morocco wants to tell you that it is ready for the referendum to be held tomorrow if that is what you want. Morocco is willing to grant all the help needed to all observers wherever they come from to reach a cease-fire and hold a free fair and just consultation. After all, Morocco is solemnly committed to and to abide by the results of the referendum.<sup>20</sup>

It is pertinent to recall that after the Moroccan civilians crossed the borders into the Western Sahara, a march which was later called the "Green March", at about the same time, Spain entered into an agreement with Morocco and Mauritania known as the "Madrid Accord" which purported to authorize Spain's withdrawal from the territory and permit its occupation by Morocco and Mauritania.<sup>21</sup>

Following these Madrid Accords, in late 1975, Moroccan and Mauritanian forces entered Western Sahara, setting off a war with

<sup>20</sup> See Amuaire de l'Afrique du Nord (1970) CNRS Paris 1971 at 807.

<sup>21</sup> On November 14, the governments of Morocco, Mauritania and Spain issued a joint communiqué notifying the world of certain agreements reached as a result of negotiations on the Western Sahara issue. The precise terms of the said Madrid Accords remain secret till today. See also Y. Hodges, *Western Sahara: the Roots of a Desert War*. Lawrence Hill & Co, 1983 at 223.

the Sahrawi led by an independence movement called the Polisario front. The war further led to a mass exodus of majority of the Sahrawi civilian population to refugee camps in Algeria.<sup>22</sup>

Again, it can also be recalled that the war between the Polisario, Morocco and Mauritania dragged on for several years. Finally, in 1979 Mauritania agreed to withdraw from the territory and renounce its claims. The Polisario which by that time controlled more than one-third of the territory, was able to direct its full force against Moroccan troops both within Western Sahara and in Morocco itself. Morocco, aided by the United States and France, stemmed Polisario's advances somewhat but was not able to win a decisive battle against them. By 1988, the war between the Polisario and Morocco reached a stalemate and later that year the United Nations and the OAU persuaded the parties to agree to a ceasefire and a plan known as the Settlement Plan, under whose terms the issue of sovereignty over the territory of Western Sahara would be settled by a referendum "where the inhabitants of the region that were reflected in the census conducted by the Spanish in 1974, would be able to choose between integration into Morocco and Independence."<sup>23</sup>

In August 1988, therefore, Morocco accepted the settlement plan which was jointly elaborated by the United Nations and the OAU and endorsed by the Security Council Resolutions 650 (1990) and 690 (1991). It can be recalled that the main objective of the plan was to organize a free and fair referendum on self-determination so as to allow the people of Western Sahara to "choose between independence and integration with Morocco." The United Nations

<sup>22</sup> Although it is very difficult to estimate precisely the number of Sahrawi who had fled the territory between 1975-76, according to an article in *The Times* (London) April 2, 1976, at 7, some 60,000 Sahrawis had by that time become refugees. See also T. Franck, *The Stealing of the Sahara*. 70 AJIL, p. 694 at 695.

<sup>23</sup> On August 11 1988 the Secretary General of the United Nations and a Representative of Organization of African Unity (OAU) presented an outline of a plan to both parties, which was accepted in principle by both parties on August 30, 1988.

Mission for Referendum in Western Sahara (MINURSO) was entrusted with the holding and supervision of the referendum.

In 1997 Morocco committed itself once again to the referendum on self-determination and to the options already agreed upon by the two parties, namely independence or integration, when it signed the "Houston Accords", voluntarily negotiated by the two parties under the auspices of former United States Secretary of State, James Baker.

On the strength of this Houston Accord and James Baker's involvement, MINURSO managed to complete the identification of potential voters for the referendum by January 2000. Out of about 200,000 applications to participate in the referendum, most of them lodged by Morocco, MINURSO eventually concluded that only 86,386 were eligible to take part in the vote. With the voters' identification and eligibility settled, the next step was obviously to hold the referendum.

Up till today, despite the pressure from the international community, the settlement plan was never implemented. After years of haggling over the details of the plan, and despite the publication in 1999 of a provisional voters' list,<sup>24</sup> the process came to a halt. Morocco suddenly declared that it was unwilling to proceed with any referendum that offered the option of independence.<sup>25</sup> Instead, Morocco proposed a negotiated solution under which it could offer to integrate Western Sahara as an autonomous region.<sup>26</sup>

It will not be out of place to conclude that Morocco's sudden refusal to go along with the implementation of the settlement plan was borne out of its fear of losing the referendum, as can be seen in Morocco alleging arbitrarily that the settlement plan was not implementable, despite its earlier commitment and despite the fact that the plan was endorsed by the Security Council and supervised by the General Assembly.

<sup>24</sup> See S/2000/131 (17 February 2000).

<sup>25</sup> On April 15, 2004 Morocco delivered its final response to the settlement plan indicating that it would only agree to a plan that provided for "Autonomy within the Framework of Morocco Sovereignty."

<sup>26</sup> See "The Moroccan Initiative for Negotiation and Autonomy Statute for the Sahara Region", April 2007.

Therefore, in order to break the impasse created by Morocco, James Baker put forward the peace plan for self-determination of the people of Western Sahara known as “Baker’s plan”. The idea behind this plan was the thinking that the reason for Morocco’s rejection of the settlement plan was its concern that the Sahrawi electorate would vote overwhelmingly in favour of independence. Baker therefore proposed the enlargement of the electoral body in the referendum to include Moroccans residing in Western Sahara until 31 December, 1999. In Baker’s own words, “this would have given voice to all Moroccans who moved into Western Sahara during the occupation.”<sup>27</sup>

Baker’s proposal was strongly supported by the Security Council in its Resolution 1495 of 31 July 2003. In the words of the Security Council, the plan was “an optimum political solution” to the conflict and called upon the parties to work with the United Nations and with each other towards acceptance and the implementation of the peace plan.

The Polisario Front, as a gesture of goodwill, officially accepted the plan in July 2003 despite the risks it posed. In its report dated 16 October 2003,<sup>28</sup> the Secretary-General recalled that “the acceptance of the peace plan by the Polisario now offers a window of opportunity for solving the long standing dispute” and urged Morocco to seize the opportunity and positively engage in the process by accepting and implementing the plan.<sup>29</sup>

However, to Baker’s surprise, Morocco rejected the plan on the pretext that the referendum included the option of independence. In his report dated 23 April 2004,<sup>30</sup> the Secretary-General pointed out that Morocco does not accept the settlement plan including the independence option “to which it had agreed for many years.”<sup>31</sup>

In reality, it may be argued that the reason for Morocco reneging

<sup>27</sup> See “Baker Worked Very Hard and Stay Out of Politics! Adventures and Lesson from an UN Expected Public Life”, (2006) at 354.

<sup>28</sup> See Report S/2003/1016 of 16 October 2003.

<sup>29</sup> Ibid at par 27.

<sup>30</sup> See Report S/2004/325 of 23 April 2004.

<sup>31</sup> Ibid p 26 of the Report.

on its commitment is the fact that it knows that it may lose if a referendum on self-determination were to be held even with the participation of Moroccan citizens residing in Western Sahara.<sup>32</sup>

By April 2004, Morocco declared, in its official reaction to the settlement plan, that it rejected any solution that would not require from the outset its annexation of Western Sahara. It was then very clear and obvious that, all along, Morocco was acting in "bad faith" in implementing the "Settlement Plan" and "Houston Accords". It also shows the lack of a political will on the part of Morocco to resolve the conflict in a peaceful, just and lasting manner in line with United Nations Resolutions as well as the doctrine and principles of international law relating to decolonization. The fact that Morocco is yet to give its approval to the new Personal Envoy for Western Sahara is yet a further demonstration of this uncooperative and rejectionist attitude. In the last part of this paper, the matters arising therefrom can now be addressed before the conclusion.

## 7. Matters Arising

Now after showing a lack of good will in the several rounds of direct negotiations held between the two parties over the last few years in line with the Security Council Resolution 1754 of 2007, Morocco still insists on presenting its unilateral proposal of autonomy as the only "realistic" way to resolve the conflict. The objective of the new Moroccan tactics is solely to gain the rejection by the international community of the inalienable right of the people of Western Sahara to self-determination and independence. Apart from this, the approach ignores fundamental realities on the ground. Forty years of institution and nation building have made the Sahrawi nation an irreversible reality. In addition the Sahrawi Republic (SADR) is a

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<sup>32</sup> James Baker was reported to have said in one press interview with the PBS that Morocco became more nervous every time the United Nations got closer to holding the referendum. He was quoted as saying that "the closer we got, the more nervous I think the Moroccans got about whether they might win the referendum."

full-fledged state that exercises its full sovereignty over the Sahrawi liberated territories and has the administrative, legal as well as political capacity to handle its own affairs and conduct its international relations. Indeed, it is the embodiment of the strong collective will of the Sahrawi people and their vehicle to achieve their legitimate national aspirations for self-determination and independence.

Meanwhile, Morocco continues to violate the human rights of the Sahrawi civilians in the occupied areas of Western Sahara. This is one of the matters arising from the continued illegal occupation of Western Sahara by Morocco with the active connivance of its European allies. The issue of human rights abuse and others shall now be discussed.

#### **(a) Violation of International Humanitarian Law of the Sahrawi People**

Since their illegal occupation of Western Sahara in 1975, the Moroccans, who also invaded part of the portion of the territory evacuated by Mauritania in August 1979, have perpetrated grave violations of international humanitarian law as contained in the 1949 Geneva Conventions. A joint investigation by France Liberties and AFASPA in October-November, 2002<sup>33</sup> documented in-depth the violations that Moroccans have committed in Western Sahara, which, from the point of view of international law (especially under Article 73 of the UN Charter), still remains under de jure Spanish administration.

The report, most importantly, proves not only that Morocco had attempted genocide against the Sahrawi populations even when Spain was still present in the territory, but also that Spain had partaken in the exploration of the territory and still continued to do so until recently.

The humanitarian angle of the crisis is that since Morocco's illegal occupation of the territory, Sahrawi civilians have not received the protection required by virtue of the various Geneva Conventions.

<sup>33</sup> See generally – Information Mission of Investigation in Western Sahara (January 2003) at [www.france.liberies.fr](http://www.france.liberies.fr) accessed on 14 May 2015.

Worse still, the civilian population became the chosen target of the Moroccan army fully equipped with tanks, fighter jets and helicopters. The document of the International Mission of Investigation is replete with testimonies from Sahrawis about the violations of their basic human rights. During the invasion and up till date there is no right to equitable trial and to reparations, there is torture – even of pregnant woman and children – mutilations, forced disappearances, arbitrary arrests, detentions, and so on and so forth. The same applies in the area of socio-economic rights. It should be noted that the socio-economic conditions of the Sahrawi are appalling, as the Moroccans repress the Sahrawi's defense of their economic rights as much as they do the civil and political rights of the subjugated population.

What looks like a condemnation of these violations by the UN was the report by the Secretary-General on Western Sahara of 8 September, 2006, in which the office of the UN High Commission for Human Rights (OHCHR) concluded that “almost all human rights violations and concerns with regard to the people of Western Sahara stem from the non-implementation of the fundamental rights of self-determination.” The report therefore recommended that “as has been stated in various UN Resolutions, the right to self-determination for the people of Western Sahara must be ensured and implemented without further delay.”<sup>34</sup>

#### **(b). Illegal Exploitation of the Resources of the Sahrawi by Morocco**

Under this heading, the legal status of Morocco's use of the natural resources of Western Sahara shall be discussed briefly as one of the matters which arise out of Morocco's illegal occupation of the territory.

When Morocco forcefully entered Western Sahara in the 1970s, the major resources being exploited in the territory were the

<sup>34</sup> See <http://www.arso.org/OHCHRrep2006en>. accessed May 14 2015.



phosphate reserves in the Bou Craa mines and the fisheries located in Western Sahara's coastal waters. More recently, commercial interests in the region have also focused on oil exploration in the waters off the coast of Western Sahara.<sup>35</sup> For example, in October 2001 the Moroccan state's oil company ONHYM<sup>36</sup> entered into agreements with an American company, the Kerr-MacGee Corporation,<sup>37</sup> and a French company, Total Fina Elf SA, to engage in pre-exploration activities in the oil reserves off the coast of Western Sahara. The agreement with Ker-MacGee would allow the company to explore approximately 100,000 square kilometres of deep waters off the coast of Western Sahara, while the agreement with Total Fina Elf was for exploration of a 115,000 square kilometres area off the coast of the Dakhla region.<sup>38</sup>

Presently, several other companies are also involved in the oil and gas exploration off the coast of Western Sahara. According to the website of ONHYM, as at late 2010, it had at least four corporate

<sup>35</sup> Morocco is the single largest exporter of phosphates (used primarily in fertilizers) in the world and Western Sahara contains large phosphate deposits, most notably at Bou Craa. According to the United Nations Environment Programme (UNEP), Morocco jointly operates the mine with Spanish interest. While the mine amounts to only two or three percent of Morocco's phosphate production, the reserves are valuable because of the uranium that can be extracted from them. See US Geological Survey 2008 Minerals Year book. Morocco and Western Sahara February 2010, p. 5. See also <http://minerals.usgs.gov/minerals/pubs/country/2008>. Accessed on May 14, 2015.

<sup>36</sup> ONHYM, with full meaning Office National des Hydrocarbures et des (National Office for Hydrocarbons and Mines. Mines is the major Moroccan state oil company involved actively in the exploitation and exploration of oil in Western Sahara waters. See <http://www.onhym.com>.

<sup>37</sup> Kerr- McGee Corporation was purchased by the Houston-based Anadarko Petroleum Corporation in 2006.

<sup>38</sup> BBC News online: Western Sahara's Future, March 4, 2003, cited in The Report of the Committee on United Nations on Legal Issues involved in the Western Sahara Dispute. Use of Natural Resources, April 2011 released by the New York City Bar Association (thereinafter called UN Committee), accessed online May 10, 2015.

partners engaged in exploration activities in regions that include Western Sahara territory. For instance, in 2004 the US based Kosmos Energy and its affiliate Kosmos Energy offshore Morocco (Kosmos) purchased a 30% interest in the Boujdour basin from ONHYM.

Again, in 2006, Kosmos entered into a petroleum agreement with ONHYM granting it a 75% interest in the Boujdour sub-basin. In 2008, Irish Energy, part of San Leon Energy Plc ("SLE"), through its subsidiary San Leon Morocco had, entered into an 8-year contract with ONHYM regarding the Zag Basin and Tarfaya onshore basins. Again, in 2008 and 2009, UK-based Longreach Oil and Gas Ventures Ltd obtained a licence from ONHYM relating to the exploration of the Zag Basin and Tarfaya onshore block. And also in February 2010, Australia-based DVM International Ltd, acquired a 75% working interest and operatorship in the Tarfaya Offshore Block.<sup>39</sup>

As a result of all these agreements and licences which are exploitative in nature, at the request of UN Secretary General, Hans Corell, the UN legal counsel and Under-Secretary-General for Legal Affairs, conducted a legal analysis that resulted in an advisory opinion on the legality of these exploration contracts under international law known later as the "Corell Opinion".<sup>40</sup> The principle of law outlined by the Corell Opinion has been supported by the General Assembly in a number of resolutions. For example, the General Assembly Resolution of 14 December, 2006,<sup>41</sup> in which *inter alia*, the General Assembly stated that it:

<sup>39</sup> The fact leading to the details of the exploitation activities of these companies as a result of their agreements and licences can be found in the ONHYM website <http://www.onhym.com>.

<sup>40</sup> Letter dated 29 January 2002 from the UN Secretary General for Legal Affairs, the Legal Counsel addressed to the President of the Security Council. – S/2002/161 cited in the Report of the Committee on UN on Legal Issues involved in the Western Sahara Dispute: Use of Natural Resources (April 2011). See note 38.

<sup>41</sup> See A/RES/61/123 of December 14, 2006 cited in UN Committee Report. See not 38.

- (1). "Reaffirms the right of peoples of Non-Self-Governing Territories to self-determination...as well as their right to the enjoyment of their natural resources and their right to dispose of those resources in their best interest.
- (2). Affirms the value of foreign economic investment undertaken in collaboration with the people of the Non-Self-Governing Territories and in accordance with their wishes..."

In addition to oil and gas exploration in recent years, the Moroccan government has engaged in commercial fishing activities in waters off the coast of Western Sahara. Evidence of these activities can be found in an examination of the fisheries treaties with Morocco entered into by the European Union (EU) and its predecessors, the European Economic Community (EEC) and the European Community (EC).

It is, therefore, the opinion of this writer and in consonance with the declaration of the General Assembly in its resolution, especially the Resolution A/RES/61/123 of December 14, 2006, that the activities of the Moroccan government on the exploitation and exploration of oil and gas, phosphate and fisheries and any other natural resources which are conducted in total disregard of the needs and interest of the people of the non-self-governing territories and without the participation of those people (Western Sahara), those activities are illegal under international law.

## **8. Conclusion**

The Western Sahara is the last colony in Africa. Its decolonization remains a matter of international legality. Denying the Sahrawi people the right to self-determination is an injustice that will forever haunt world conscience. The unresolved issue over Western Sahara is also a factor of instability in the Maghreb region. Although normalization of relationship between Algeria and Morocco is necessary for regional integration, to offer Western Sahara to Morocco illegally would aggravate tensions between the two countries. Again, the action would greatly discredit the United Nations, in that just as Spain's former Ambassador to Morocco, Fernando Aria Saigado, puts it, one need remember that the right

to self-determination of the Sahrawi people is

according to International Law, a norm of 'jus cogens', that is, one which binds not only the United Nations as an institution, but also all the member states as established by the International Court of Justice to resolve territorial dispute derived from colonization.<sup>42</sup>

It is significant to underline in this regard that neither the United Nations nor any state in the world has recognized Morocco's claims of sovereignty over Western Sahara and its illegal annexation of the territory. Facts abound to substantiate this. For example, in its Resolution 380, adopted unanimously on 6 October 1975, the Security Council deplored the holding of "the Morocco-orchestrated" "Green March" into Western Sahara and called upon Morocco "to withdraw from the territory of Western Sahara all the participants in the March."

Again in its resolutions 34/37 of 21 November, 1979 and 35/19 of 11 November, 1980, respectively, the General Assembly whilst reaffirming the inalienable right of the people of Western Sahara to self-determination and independence deeply deplored the aggravation of the situation resulting from the continued occupation of the Western Sahara by Morocco.

Furthermore, the former UN Under-Secretary-General for Legal Affairs, the legal counsel, Hans Corell, made it very clear on 29 January, 2002 that the Madrid agreement signed between Spain, Morocco and Mauritania, on 14 December, 1975, did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering power.<sup>43</sup>

The main question that needs to be raised is why Morocco has

<sup>42</sup> See Fernando Aria Saigado – available online at <http://www.org/ABC280606.htm> cited by Yahia H. Zoubir, Garpolites as impediment to the resolution of the conflict and violation of International Law: the case of Western Sahara (1992), p. 296.

<sup>43</sup> This is contained in a letter dated 29 January, 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel addressed to the President of the Security Council – S/2002/161 I of 12 February, 2002. See also <http://www.warso.org/UNlegaladv.htm>, cited in Sid M. Omar – The Legal Claims of the Saharawi people to the right to Self determination and Decolonization. p. 74.

been able to continue its occupation of the territory without suffering any retribution from United Nations which under the amazing pretext that Morocco has expressed unwillingness to go forward with the settlement plan, keeps submitting alternative options.

A comparison may be made with what happened to Iraq when Saddam Hussein did something similar in Kuwait in 1991. This is quite instructive as to the double standard in the respective positions of the US and France.

Undoubtedly, genuine negotiations between the Sahrawi and Morocco regarding the post-referendum outcome could break the stalemate and lay the foundations for future co-operation and facilitate integration in North Africa. Numerous Sahrawi leaders have contended repeatedly that should they lose a free and fair referendum, they would join together with the Kingdom of Morocco. They are, therefore, willing to negotiate all issues pertaining to economic, regional, political and security affairs before the holding of a referendum. They have insisted that should they win the referendum, which undoubtedly is the most likely scenario, they will allow Moroccan settlers to remain in the Western Sahara as legal residents, provided that those settler residents abide by the laws of the Sahrawi Republic.

However, Morocco's rejections of James Baker's second settlement plan, which included many elements that Morocco itself had proposed before, proved that the Moroccans want nothing less than the annexation of the territory which even the ICJ had declared as illegal based on the fact that

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....

This declaration by the ICJ is a pronouncement on the illegal claim and occupation of Western Sahara by the Kingdom of Morocco. This, under international law, amounts to a flagrant disobedience of the fundamental norms of state practices.

It remains, therefore, to be seen whether the United Nations and its most powerful members, especially France, the United States of America and the United Kingdom, as well as double-faced Spain, will allow such a flagrant breach of international law to continue, and go unpunished.

This book, *Western Sahara: Towards the Liberation of Africa's Last Colony*, is a product of an international conference with the same theme held in Nigeria from 2nd to 4th June, 2015. The conference, which took place in Nigeria's federal capital, Abuja, was sponsored by the Academic Staff Union of Universities (ASUU), Nigeria. Participants at the conference included scholars and activists from across Africa, Asia, Europe, South America and the USA. Issues discussed at the conference included the Saharawi history and ideology, expropriation of the natural resources of the Western Sahara, and international law perspectives on self-determination, and decolonization of the Saharawi people. Presentations also covered geo-politics and the Western Sahara question, pan-African, Latin American and Caribbean perspectives on the liberation struggles in Western Sahara, and decolonization, drama and gender dimensions.

The Academic Staff Union of Universities (ASUU) hopes that this publication will go some way not only in enhancing the understanding of the issue of Western Sahara, but very importantly, we hope that this publication will persuade our readers on all continents to support the just struggle of the Saharawi people for independence.

**HISTORY**

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