

WESTERN SAHARA: OUT OF THE IMPASSE

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TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	i
I. THE EVOLUTION OF THE CONFLICT: 1975-2004	1
A. THE FIRST PHASE: THE HOT WAR, 1975-1990.....	1
B. THE SECOND PHASE: MANOEUVRING FOR THE REFERENDUM, 1991-2000	1
C. THE THIRD PHASE: THE BAKER PLANS, 2000-2004	2
II. THE IMPASSE	4
A. IN THE DOLDRUMS	4
B. THE FAILURE OF THE UN	5
C. THE LATEST ROUND: MOROCCO'S AUTONOMY PROPOSAL AND POLISARIO'S COUNTER- PROPOSAL.....	6
D. PASSING THE BUCK BUT KEEPING HOLD OF THE REINS	8
III. A QUESTION OF SELF-DETERMINATION?	9
A. THE POSITION OF MOROCCO	9
B. THE POSITION OF THE POLISARIO FRONT.....	10
C. THE POSITION OF ALGERIA	11
D. CIVILIAN-MILITARY RELATIONS AND THE POLICY DEBATE IN ALGERIA AND MOROCCO....	13
E. SELF-DETERMINATION, REFERENDUMS AND THE REALITY OF POWER	15
IV. A NEW APPROACH: NEGOTIATING RECIPROCAL RECOGNITION AND LEGITIMATION	17
A. FACING REALITY AND DEALING WITH IT	17
B. NEGOTIATING RECIPROCAL RECOGNITION AND LEGITIMATION	17
C. THE CONDITIONS OF A SUCCESSFUL NEW DEPARTURE	19
V. CONCLUSION	20
APPENDICES	
A. MAP OF WESTERN SAHARA	21
B. ABOUT THE INTERNATIONAL CRISIS GROUP	22
C. INTERNATIONAL CRISIS GROUP REPORTS AND BRIEFINGS ON THE MIDDLE EAST AND NORTH AFRICA	23
D. INTERNATIONAL CRISIS GROUP BOARD OF TRUSTEES.....	25

WESTERN SAHARA: OUT OF THE IMPASSE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The combination of Morocco's recent proposal of a "Sahara autonomous region", the Polisario Front's counter-proposal of independence with guarantees for Moroccan interests and the UN Security Council's 30 April resolution calling for direct negotiations between the parties – due to begin on 18 June – has been hailed as a promising breakthrough in the protracted Western Sahara dispute. This optimism may eventually be vindicated but is likely to prove premature, since the underlying dynamics of the conflict have not changed. The formal positions of Morocco and the Polisario Front are still far apart; Algeria's position remains ambiguous and difficult to deal with; and the UN, which has responsibility for resolving the conflict, still denies itself the means to do so.

Breaking the impasse requires, at a minimum, changing the framework that has governed efforts to resolve the conflict until now. The Security Council must either discharge in full the responsibility it assumed to secure the self-determination of the people of Western Sahara or accept it cannot and encourage Morocco, the Polisario Front and Algeria to resolve matters among themselves on whatever basis they can.

The impasse can be attributed in part to the reluctance of the main parties to compromise on the fundamental elements of their respective positions. This in turn has been due to many factors: the extent to which elements of the Moroccan, Polisario and Algerian leaderships have had vested interests in the status quo; the limited room for manoeuvre of both the Moroccan monarchy and the Algerian presidency, notably in relation to their respective military commanders; the lack of pressure for a change of policy from domestic public opinion in Algeria and Morocco; the insulation of the Tindouf-based Polisario Front from public opinion in the territory and the fact that, since the ceasefire took hold in 1991, the political cost of maintaining intransigent postures has appeared lower than the potential cost of moving away from them. But, if these factors have tended to reinforce one another and to combine in a vicious circle, this has been above all the consequence of Security Council failure.

The UN's assumption of responsibility was originally predicated on a thesis – that the Western Sahara question

is a matter of decolonisation – and the principle that the future of an ex-colony must be decided on the basis of the self-determination of the population in question, to be exercised in a UN-organised referendum. For such a referendum to be truly based on the principle of self-determination, at least the two main options – integration with Morocco and independence – must be on offer. But so far the UN has wholly failed to put its doctrine into practice and organise a referendum. Yet, it has not drawn the lesson of this failure, namely that, if it cannot be reversed, the question cannot be resolved on the basis of the self-determination principle. The UN's refusal to draw this lesson has also inhibited the parties from doing so.

Instead, the UN has tacitly abandoned its earlier position of principle while continuing to play the role of arbiter of the dispute. Its inability to broker a compromise was evident as early as 2003. Yet, by continuing to attempt to arbitrate, it has encouraged the contending parties to continue to concentrate on lobbying it to arbitrate in their favour. The latest proposals by Morocco and the Polisario Front are cases in point; they have not addressed their proposals to each other, but to the UN and major Western governments. Consequently, the proposals have the character of ploys to impress the international gallery rather than opening moves in a sincere negotiation with the historic adversary. Should the Security Council favour either proposal, the result would be an imposed "solution", which would have little moral force with the other side and accordingly be unlikely to constitute a real solution.

As shown by a simultaneously published companion Crisis Group report,* the continued failure to resolve this conflict has had high costs, especially for the people of the Western Sahara, for Maghreb unity and cooperation in the security and economic spheres, and for the credibility of the UN. An end to the impasse requires the Security Council to make a choice: either it must find what it has hitherto lacked, the political will to secure a resolution of the conflict through a truly free and fair referendum, or it should renounce its ambition to arbitrate and instead induce Morocco, the Polisario Front and

* Crisis Group Middle East/North Africa Report N°65, *Western Sahara: The Cost of the Conflict*, 11 June 2007.

Algeria to resolve the dispute among themselves on the basis of whatever principles they can genuinely agree to apply. In adopting Resolution 1754, which calls for negotiations between the parties, the Security Council may seem to have definitively rejected the first option and taken up the second. But by simultaneously stipulating that these negotiations should seek a solution “which will provide for the self-determination of the people of Western Sahara”, the Security Council has in fact fudged the issue in a way that could seriously prejudice the negotiations it has called for.

A resolution of the conflict could be achieved if the three main parties were left to negotiate the terms for themselves. These terms would undoubtedly be based on *raison d'état*, and consist of a package of reciprocal concessions. Since neither Algeria nor the Polisario Front is likely to revert to war, and there is little the Polisario can offer that would address Rabat's fear that an independent Western Sahara would destabilise the monarchy, it is most unlikely they could persuade Morocco to resolve the dispute on the basis of the democratic principle of self-determination. But they and Morocco could conceivably agree to resolve it on another basis. And should the parties reach such an agreement, it would be possible to submit it to ratification by the population of the Western Sahara. Such a procedure would fall far short of realising the principle of self-determination, and it would debase the principle to pretend otherwise. But by securing consent, it could nonetheless legitimate the agreed solution in the eyes of those most directly affected.

The protracted attempt to resolve the Western Sahara question on the basis of the principle of self-determination has led most actors and observers alike to become fixated on this principle as if it is the only one at issue. In fact, other principles have been involved throughout and have tacitly informed the behaviour of the main protagonists. For Morocco, these have included the integrity of the national territory as Moroccans conceive this and the monarchy's legitimacy. For the Polisario Front, they include the preservation of the identity of the Sahrawi population of the Western Sahara and the effective representation of its interests. For Algeria, they include the principle of the inviolability of the frontiers inherited from the colonial era, the preservation of strategic equilibrium in the region and the honouring of its commitments to the Polisario Front.

These are all matters of genuine principle for the concerned parties. A negotiation which took them into account might possibly yield an agreement. And an agreement based on them would deserve the international community's respect.

RECOMMENDATIONS

To the United Nations Security Council:

1. Resolve either :
 - (a) to persuade the Moroccan government to agree to the organization of a referendum of the people of Western Sahara, based on the principle of self-determination, which by definition would include the option of independence;
 - or
 - (b) to invite Morocco, the Polisario Front and Algeria to negotiate a resolution of the conflict on the basis of whatever principles on which they can agree.
2. Recognise that if option (b) is to bear fruit:
 - (a) negotiations must be:
 - i. direct and unconstrained, neither mediated by the UN nor prejudiced by any prior definition of the issue by the UN; and
 - ii. initiated by Morocco in the form of an offer of terms which seriously addresses both the Polisario Front and Algeria; and
 - (b) the proper role of the UN in this context should be limited to:
 - i. maintaining a presence in Western Sahara as a buffer between the parties;
 - ii. providing practical assistance to the negotiation when the three parties jointly request this; and
 - iii. accepting whatever settlement is agreed by the three main parties.

To the Moroccan Government:

3. Recognise and acknowledge that its own sustained opposition to a resolution of the conflict through a referendum on self-determination gives it a greater degree of responsibility than the other parties for enabling a resolution to be achieved through negotiations.
4. Recognise that the autonomy proposal recently put forward falls far short of what is required to secure the agreement of either the Polisario Front or Algeria to a settlement of the conflict on the basis of Moroccan sovereignty, and this proposal accordingly needs either to be amended substantially or replaced by a fresh proposal, so as to:

- (a) make clear that the territory whose future political arrangements are to be agreed corresponds to the historic Western Sahara (ex-Spanish Sahara);
 - (b) provide for the right of the Polisario Front to operate within the law inside Western Sahara as a recognized political party; and
 - (c) take proper account of Algeria's concerns, notably in respect of the principle of the inviolability of frontiers inherited from the colonial era and the outstanding issues regarding the Algerian-Moroccan frontier.
5. Address any future initiative or proposal to the Polisario Front and Algeria in the first instance.

Cairo/Brussels, 11 June 2007

WESTERN SAHARA: OUT OF THE IMPASSE

I. THE EVOLUTION OF THE CONFLICT: 1975-2004

A. THE FIRST PHASE: THE HOT WAR, 1975-1990

The definition of the Western Sahara question that has prevailed for most of the period from the early 1970s to the present is that it is a matter of de-colonisation to be resolved on the basis of the exercise of the right to self-determination by the population of the territory. Although UN doctrine allows for a colonised territory that previously belonged to a state to be recovered by that state, Morocco's claim that Western Sahara in the pre-colonial period was part of the historic Moroccan kingdom was rejected by the International Court of Justice (ICJ) in its Advisory Opinion of 16 October 1975.¹ In line with that finding, the UN has endorsed the right of the people of Western Sahara to self-determination and has identified a free referendum, in which full independence would be one of the options on offer, as the necessary instrument by which that right is to be exercised.²

¹ "Western Sahara, Advisory Opinion", ICJ Reports 1975, p. 12, www.icj-cij.org/docket/files/61/6195.pdf.

² UN General Assembly Resolution 1514 (XV) of 14 December 1960, "On the granting of independence to colonial countries and peoples", explicitly affirms the right of colonised peoples to self-determination. General Assembly Resolution 3292 (XXIX) of 13 December 1974, "Question of Spanish Sahara", reaffirmed the right of the population of the Spanish Sahara specifically to self-determination. General Assembly Resolution 2229 (XXI) of 20 December 1966, "Question of Ifni and Spanish Sahara", explicitly distinguished between the two cases and called for a referendum on self-determination for Spanish Sahara (unlike the small enclave of Ifni). Security Council Resolutions 377 (22 October 1975), 379 (2 November 1975) and 380 (6 November 1975) all invoked these General Assembly resolutions but fell short of calling explicitly for self-determination in the critical period of late 1975. There were no Security Council resolutions 1976-1987. General Assembly Resolution 4050 of 2 December 1985, "Question of Western Sahara, reaffirmed that "the question of Western Sahara is a question of decolonisation which remains to be completed on the basis of the exercise by the people of Western Sahara of their inalienable right to self-determination and independence" (clause 1) and called for a

Morocco refused to accept this. By organising the "Green March" of October 1975, in which 350,000 Moroccans entered Western Sahara in what clearly was intended to be a symbolic act of recovery of the territory, and by subsequently dividing Western Sahara with Mauritania, it pre-empted the application of the self-determination principle. In the war that followed, the Polisario Front, operating from its bases around Tindouf in the Algerian Sahara, scored some early successes, notably in forcing Mauritania in 1979 to relinquish her claim to the southern zone of the territory, leaving Morocco on its own. But Morocco was able to consolidate its occupation and the successful completion of a system of defensive walls (known as the "Berms") by the mid-1980s and Polisario's failure to prevent this meant that, militarily, it had obtained an unmistakable strategic advantage.

Diplomatically, however, the Polisario Front appeared to have gained the upper hand. In 1976 it announced creation of the "Saharan Arab Democratic Republic" (SADR), and energetic diplomacy soon secured recognition from over 70 states. The Polisario Front's position was, in particular, strongly supported by the Organisation for African Unity (OAU), which admitted the SADR in 1984, a decision which prompted Morocco to walk out of the organisation. Meanwhile, not one state recognised Morocco's occupation of Western Sahara as legitimate.

B. THE SECOND PHASE: MANOEUVRING FOR THE REFERENDUM, 1991-2000

This combination of the Polisario Front's inability to sustain its military resistance and Morocco's inability to secure diplomatic endorsement eventually provided the basis for a kind of negotiation. In August 1988, both Polisario and Morocco declared that they accepted a UN proposal (based on an earlier OAU proposal) for a ceasefire, exchange of prisoners, repatriation of refugees and the withdrawal of Moroccan forces from the territory,

referendum to this end (clause 3). Security Council Resolution 621 (20 September 1988) invoked General Assembly Resolution 4050 in expressing its own explicit support for a self-determination referendum; this has remained the formal position since then.

to be followed by a referendum on self-determination, with the choice being between independence and integration into Morocco.³ A final version of this proposal, known as the Settlement Plan, was approved by the Security Council in 1991,⁴ and the Polisario Front announced a complete ceasefire on 6 September 1991. In the meantime, the UN had established its mission to organise the referendum (Mission des Nations Unies pour la Référérendum au Sahara Occidental, MINURSO).

In effect, what then began was not so much a genuine negotiation as a continuation of war by other means, with numerous diplomatic skirmishes over secondary issues but the main battle being joined over the modalities of the referendum.⁵ The most controversial matter was the precise identification of the electorate. Morocco and the Polisario Front had formally agreed in 1988 that the referendum should be based on the electorate as defined by the 1974 census of the territory, when it was still under Spanish control,⁶ which was what the principle of self-determination for the population of the colony required. But in April 1991 King Hassan of Morocco insisted that the voter rolls be expanded well beyond what had previously been agreed and include people who had long been settled in Morocco.⁷

The next nine years were largely consumed in manoeuvring over this as the two sides pushed sharply divergent definitions and criteria for inclusion and exclusion of potential electors. “The 1991 Settlement Plan did not deal with all the details”, a senior Algerian

diplomat told Crisis Group. “The Moroccan strategy was to exploit the details in order to maximise Morocco’s chances of winning the referendum”.⁸

When the process seemed in danger of coming to a stop, the personal envoy of UN Secretary-General Kofi Annan, former U.S. Secretary of State James A. Baker III, managed to rescue it through intensive diplomacy. In a series of meetings which he held with Morocco, Polisario and Algeria in April 1997, all three parties reaffirmed their commitment to the 1991 Settlement Plan.⁹ Further rounds in London and Lisbon paved the way for a final meeting in Houston on 14-16 September 1997. There, agreement was reached by the parties on all the issues blocking implementation of the Settlement Plan, including the key issue of voter identification.¹⁰

But this agreement proved short-lived as well. In January 2000, MINURSO, after years of meticulous work,¹¹ at last arrived at what it regarded as a fair determination of the valid electorate for the proposed referendum, namely a total electorate of 86,386.¹² It was promptly faced with no fewer than 131,038 appeals against its decisions from disappointed would-be voters, the vast majority of these Moroccan-sponsored applicants.¹³ Reluctant to dismiss these appeals and accordingly faced with the prospect of, in effect, having to begin the voter identification process all over again, the UN tacitly dropped the 1991 Settlement Plan, and Kofi Annan asked Baker to explore the possibility of a compromise solution.

C. THE THIRD PHASE: THE BAKER PLANS, 2000-2004

James Baker made two attempts to broker a compromise centred on the concept of autonomy. His first effort, the “Draft Framework Agreement on the Status of Western Sahara”, provided for the territory to be administered for an initial four-year period by an executive elected by the voters eligible for the abandoned referendum. At the end of this four-year period, a fresh executive would be

³ This development followed the resumption of diplomatic relations between Algeria and Morocco, broken off in 1976 in the wake of the formation of the SADR. The joint Algerian-Moroccan communiqué of 16 May 1988 reaffirmed support for a referendum on self-determination in Western Sahara. Crisis Group interview, Ramtane Lamamra, secretary-general of the ministry of foreign affairs, Algiers, 3 December 2006.

⁴ The Settlement Plan is contained in UN Security Council document S/22464, 19 April 1991.

⁵ Khadija Mohsen-Finan, “Le Règlement du Conflit du Sahara Occidental à l’épreuve de la nouvelle donne régionale”, *Politique Africaine*, 76, December 1999, pp. 95-105; Jacques Eric Roussellier, “Quicksand in the Sahara? From Referendum Stalemate to Negotiated Solution”, *International Negotiation*, 10, 2005, pp. 311-336.

⁶ Roussellier, op. cit., p. 323. The census carried out by the Spanish colonial authorities in 1974 found the Sahrawi population of the territory to be 73,497 and the European population to be 26,126. The first figure excluded all Sahrawi resident elsewhere (southern Morocco, northern Mauritania, Algeria) at that time. For a discussion of the complexities involved in the census, see Tony Hodges, *Historical Dictionary of Western Sahara* (N.J. and London, 1982), pp. 287-289.

⁷ Jacob Mundy, “Seized of the Matter”: The UN and the Western Sahara Dispute”, *Mediterranean Quarterly*, summer 2004, pp. 130-148.

⁸ Crisis Group interview, Ramtane Lamamra, secretary-general, ministry of foreign affairs, Algiers, 3 December 2006.

⁹ Anna Theofilopoulou, “The United Nations and Western Sahara, A Never-ending Affair”, United States Institute for Peace, Special Report 166, July 2006, p. 6.

¹⁰ The Houston Agreement was published as an annex to UN Security Council document S/1997/742, 24 September 1997.

¹¹ This entailed the vetting of 198,469 applicants for voter status and the personal interviewing of over 138,000 of them. See Mundy, “Seized of the Matter”, op. cit., p. 132.

¹² This result was close to what the original agreement regarding the 1974 census would have entailed.

¹³ Roussellier, op. cit., p. 325; Mundy, “Seized of the Matter”, op. cit., p. 133.

chosen by an assembly which would be elected on the basis of a quite different electoral roll, consisting of anyone aged eighteen or more who had been resident in the territory since 31 October 1998 or was on the list of refugees to be repatriated. This assembly would be bound by the terms of the Moroccan constitution. After one more year, a referendum would be held on the final status of the territory, using yet another electoral roll: this time, anyone aged eighteen or more who had been resident in the territory for the preceding year would be eligible.

This provision gave Morocco every incentive to encourage the settlement of Moroccans in the territory over the five-year period preceding the referendum in order to guarantee a pro-Moroccan outcome. Moreover, the proposal for a final status referendum did not specify what options would be available to the voters and thus fell short of stipulating that they should have the chance to choose independence.¹⁴ The plan was widely seen as biased towards Morocco and was rejected by the Polisario Front and subsequently by Algeria, both of which subjected it to heavy criticism.¹⁵ The Security Council decided in July 2002 not to approve the plan but asked Baker to engage in further discussions with the parties and to recast his proposals.

Baker's second proposal, the "Peace Plan for Self-Determination of the People of Western Sahara", which he presented in January 2003, differed from the first in that it suggested a far more detailed scheme for the self-government of the territory during the five years pending the referendum; this gave Rabat significantly less room for manoeuvre over the degree of autonomy it would provisionally have to concede. But the crucial differences from the earlier Draft Framework Agreement were that it specified that the final status referendum to be held after five years would include the options of independence and autonomy as well as full integration with Morocco, and it defined the electorate for the referendum in a more balanced way. In addition to those electors identified by MINURSO and those on the list of refugees to be repatriated, other eligible electors had to have been resident continuously in the territory since 30 December 1999. In other words, it removed the possibility of the Moroccan government organising a fresh wave of settlers to engineer a majority vote in its favour and thus left the result of the proposed referendum more open.

This new formula was initially rejected by Polisario, which remained strongly attached to the 1991 Settlement Plan, as this had been confirmed by the 1997 Houston Agreement. But Algeria responded constructively to Baker II, going so far as to describe it as "an historic

compromise in favour of peace";¹⁶ and then, in an abrupt change of line, the Polisario Front announced in July 2003 that it too "would be ready to contribute to the effective exploration of Mr Baker's proposal to achieve the objective, that cannot be renounced, of the self-determination of the Sahrawi people".¹⁷ The proposal was then sunk, however, by Morocco and the Security Council.

Morocco rejected Baker's plan for three reasons. Rabat was hostile both to the detailed nature of the prerogatives of the proposed autonomous government and, especially, to the revised definition of the electorate for the final status referendum. But the main problem in the Moroccan government's view was that it explicitly offered independence as one of its final status referendum options. Aziz Mekouar, Morocco's ambassador to the U.S., told Crisis Group that an independent Western Sahara was "unthinkable. It would create a crisis in Morocco. The Baker Plan is a recipe for disaster".¹⁸ The Security Council, at France's insistence, rejected a U.S.-backed draft resolution explicitly endorsing the Peace Plan and resolved merely to "support strongly" Baker's proposal,¹⁹ a formula which actually fell far short of genuinely strong support; in reality, Baker II was dead in the water.²⁰

¹⁴ Theofilopoulou, op. cit., p. 10.

¹⁵ Ibid.

¹⁶ Toby Shelley, "Behind the Baker Plan for Western Sahara", *Middle East Report Online*, 1 August 2003.

¹⁷ Efe News Agency, 11 July 2003, cited in Toby Shelley, *Endgame in the Western Sahara* (London, 2004), p. 161.

¹⁸ Crisis Group interview, Washington DC, 12 September 2005.

¹⁹ UN Security Council Resolution 1495, 31 July 2003.

²⁰ As was eventually confirmed by Security Council Resolution 541 (29 April 2004), which, while repeating its formal support for the Peace Plan, also called for "a mutually acceptable solution", which for all practical purposes ruled out the implementation of the Peace Plan, see Theofilopoulou, op. cit., p. 13.

II. THE IMPASSE

The period from late 2003 to the end of 2006 saw the Western Saharan question at an impasse, apart from some movement on secondary matters.²¹ This state of affairs eventually prompted Kofi Annan to suggest that the UN might abandon its attempt to secure a resolution and refer the matter to the parties concerned to resolve for themselves. This idea gained little support at the time, whereas Morocco's rumoured intention to put forward a serious proposal for autonomy aroused considerable interest. The question that has arisen since this proposal was at last published in April 2007 is whether it represents a genuine way forward, or is merely the latest symptomatic manifestation of the impasse itself.

A. IN THE DOLDRUMS

When, in September 2004, the Secretary-General's Special Representative, Alvaro de Soto, visited Morocco, Polisario, Algeria and Mauritania for talks, the attitude of Algeria and Polisario was that there was nothing to discuss until Morocco agreed to implement the Peace Plan. Morocco expressed its willingness to negotiate a final status agreement for autonomy, so long as its "territorial integrity" was respected; in other words, Rabat continued to rule out a referendum that might lead to independence.

Following de Soto's departure from his MINURSO post in August 2005, former Dutch diplomat Peter van Walsum took over Baker's role as Kofi Annan's personal envoy, while Francesco Bastagli, an experienced UN official from Italy, took over de Soto's post based in Western Sahara's administrative capital, El Ayoun. Van Walsum made his first trip to the region in October 2005, visiting Rabat, Tindouf, Algiers and Nouakchott. After winding up his tour in Mauritania, he summarised the positions of the parties as "quasi-irreconcilable".²² This judgment was widely shared by Western diplomats. As one U.S. State Department official told Crisis Group, the situation was one of "stalemate, pure and simple".²³

²¹ In late 2004 the UN High Commission for Refugees (UNHCR) and MINURSO successfully facilitated the first round of family visits between the refugee camps and the Moroccan-controlled Western Sahara. This ongoing "confidence building measure" has allowed hundreds of Western Saharans to be reunited briefly after years of separation and to see what life is like on the other side of the Berm.

²² According to a UN official, Van Walsum had wanted to say "irreconcilable" but tried to tone it down by adding the confusing qualifier "quasi". Crisis Group interview, New York, 8 December 2005.

²³ Crisis Group interview, New York, 8 December 2005.

In the meantime, unrest in the territory, which had been occurring intermittently since 1999,²⁴ came to a fresh head in May 2005 demonstrations calling for independence in El Ayoun, Boujdour, Dakhla and Smara – the principal towns of the territory.²⁵

It was against this background that Kofi Annan floated the suggestion in his report to the Security Council in April 2006 that, in light of the Security Council's abandonment of Baker II, the dispute should be referred back to the parties to resolve themselves by "direct negotiations, which should be held without preconditions".²⁶ He further suggested that:

The objective of those negotiations between Morocco and the Frente Polisario as parties, and Algeria and Mauritania as neighbouring countries, must be a just, lasting and mutually acceptable political solution that will provide for the self-determination of the people of Western Sahara.²⁷

This proposal deferred to Algeria's insistence that it was not itself a party to the dispute and continued to posit self-determination as the objective to be sought. It was, nonetheless, immediately rejected by Algeria and Polisario²⁸ and received very coolly by the Security Council, which, in resolving to extend MINURSO's mandate for another six months, mentioned that it had considered Annan's report but gave no support to his proposal beyond "noting the role and responsibilities of the parties" in achieving a political solution.²⁹ Annan's suggestion that the UN was unable to resolve the problem accordingly was not debated.

²⁴ For a good account, see John Damis, "Sahrawi Demonstrations", *Middle East Report*, Spring 2001, p. 218.

²⁵ UN Security Council, "Report of the Secretary-General on the situation concerning Western Sahara", 19 April 2006, p. 2. See also Jacob Mundy, "Western Sahara between Autonomy and Intifada", *Middle East Report Online*, 16 March 2007.

²⁶ "Report of the Secretary-General", op. cit., p. 9.

²⁷ Ibid, p. 11.

²⁸ See the series of articles in the Algerian press by T. Hocine: "La question Sahraoui à nouveau devant l'ONU: Appel à des négociations directes Maroc-Front Polisario", *El Watan*, 23 April 2006; "Sahara occidental: rencontre Bedjaoui-Kofi Annan", *El Watan*, 25 April 2006; "Le Conseil de sécurité et le conflit du Sahara-occidental: Un débat extrêmement important", *El Watan*, 26 April 2006; "Autodétermination du Sahara-occidental Mohamed Abdelaziz dénonce la campagne de terreur", *El Watan*, 29 April 2006; "L'ONU et le conflit du Sahara-occidental Le statu quo, un danger", *El Watan*, 30 April 2006. See also Rabah Beldjenna, "Abdelaziz : le Plan de Annan a été déjoué grâce à l'Algérie", *El Watan*, 30 April 2006.

²⁹ UN Security Council Resolution 1675 (28 April 2006).

B. THE FAILURE OF THE UN

Since 1991, the UN has sponsored two main attempts to resolve the Western Sahara question. The first, seeking to establish the conditions of a free and fair referendum that would enable the people of Western Sahara to exercise at last their right to self-determination, was abandoned in 2000, essentially because of Morocco's refusal to accept MINURSO's painstaking arbitration of the voter-identification issue and the UN's refusal to dismiss Morocco's objections or put informal pressure on Rabat to withdraw them. The second, seeking a transitional formula of self-government for a limited period, after which a final status referendum would be held, combined the original principle of self-determination with the idea of autonomy. This, too, was abandoned because of the UN's refusal to override Morocco's objections. In both cases, what Morocco objected to above all else was the possibility of losing the vote in the eventual referendum in which independence was an option.

There is a clear asymmetry in the behaviour of the main parties. The Polisario Front signed up to the 1991 Settlement Plan and, having made a number of concessions on the voter identification issue and on certain secondary matters, was clearly prepared to abide by its outcome. It did not pretend to accept Baker's first proposal but came round to a constructive attitude to his second proposal, which then lapsed through no fault of Polisario's. It cannot be said of Polisario that it went back on any of its undertakings. But Morocco repeatedly did so with impunity. Whenever matters came to a head, Morocco demonstrated that it did not accept UN arbitration of important issues if this arbitration went – or threatened to go – against it. And Morocco also, and above all, repeatedly demonstrated that it accepted the principle of self-determination only if the result of its exercise in a referendum could be guaranteed in advance to be in Morocco's favour.

The failure of the UN to uphold the principle of self-determination in practice has been a failure of political will at the highest level.³⁰ The efforts through MINURSO, to organize a referendum to decide the dispute have been continuously frustrated by the Moroccan government's refusal at critical junctures to cooperate in practice in the implementation of the agreed procedures. But Rabat has been able to behave in this way only because of the attitude of the Security Council, which has repeatedly refused to impose its binding arbitration at Morocco's expense. By continually allowing the Moroccan

government to evade the practical implications of its own verbal commitments, namely the obligation to submit the issue to the decision of the people of Western Sahara through a referendum, the Security Council has in practice undermined MINURSO's efforts and has been complicit in the endless postponing of a resolution of the conflict. Abdelkader Messahel, the Algerian minister-delegate for Maghreb and African Affairs, told Crisis Group:

If the Great Powers wanted a solution, it would be very easy. Is it that the status quo serves the interests of the United States, France or Spain? I do not know. But they have not put their weight into the balance. Algeria does not have the power or the means to put pressure on Morocco but they do.³¹

The procedural premise of the Security Council's attitude has been the fact that the entire question has been handled under Chapter Six of the UN Charter, which envisages the resolution of a dispute based on the consensus of the contending parties, instead of Chapter Seven, which authorises the Council to impose binding arbitration. The requirement of consensus and the UN's abstention from any attempt to impose arbitration have in effect given Morocco a veto, and – granted that right by the Security Council – Morocco has used this veto whenever it has felt it needed to. The Security Council's initial decision to invoke Chapter Six rather than Chapter Seven and its subsequent indulgence of Rabat have been rooted in the refusal of the U.S. and French governments to jeopardise their own strategic relationships with Morocco. James Baker has stated:

...the real issue is whether or not any country on the Security Council is going to expend political chips on the issue of Western Sahara. That's what makes this so difficult because the profile of the issue is so very low, and they're not going to want to risk alienating either Morocco, on the one hand, or Algeria, on the other, by taking a firm position. And they're not willing to ask either or one or both of the parties to do something they don't want to do.³²

Even within the limiting framework of Chapter Six, however, it might have been possible for the Security Council to put Rabat under sufficient informal pressure in 1999 to persuade it to drop its obstructionist tactic of contesting MINURSO's voter-identification decision and thereby save the referendum. The evidence is clear that, in the new political situation following the death of King Hassan II in July 1999 and the accession of the young and untested King Mohammed VI, Paris and

³⁰ As James Baker stated very frankly in his interview with Mishal Husain on the Public Broadcasting Service (PBS) program "Wide Angle", 19 August 2004.

³¹ Crisis Group interview, Abdelkader Messahel, Algiers, 4 December 2006.

³² Baker interview, op. cit.

Washington were unwilling to put Rabat under pressure; on the contrary, they were anxious to give the new king their support.³³ This attitude also prevailed in respect of Baker's Peace Plan in late 2003. The premise of this attitude has been the conviction that the political standing of the monarchy since the mid-1970s has been heavily dependant on the king's success in championing the Moroccan claim to Western Sahara and that "any failure on his part in maintaining the Western Sahara in Morocco would thus be a threat to his survival as political leader".³⁴

Thus political considerations – in the sense of international *realpolitik* – have continuously trumped UN de-colonisation and self-determination doctrine and international law.

C. THE LATEST ROUND: MOROCCO'S AUTONOMY PROPOSAL AND POLISARIO'S COUNTER-PROPOSAL

The idea of autonomy as a compromise solution has been around for many years. It was floated in the early 1980s, when King Hassan II declared that he just wanted "the flag and the postage stamp – everything else is negotiable",³⁵ which appeared to imply that, given the symbols of Moroccan sovereignty, he could envisage a substantial measure of self-government for Western Sahara. It began to attract interest once more when the 1991 Settlement Plan was getting into difficulties in the mid-1990s. Successive UN Secretaries-General (Perez de Cuellar, Boutros Boutros-Ghali and Kofi Annan) apparently have been privately convinced for years that genuine self-determination was a non-starter and have favoured some kind of autonomy as the necessary compromise.³⁶

In December 2003, Morocco submitted, as a counter-proposal to Baker's Peace Plan, a "Draft Autonomy Status" document, which proposed a form of self-government for its "Sahara Autonomous Region".³⁷ Since then, Rabat has been encouraged by the U.S. and France to develop this idea. According to Mohammed Loulikchi, director-general of multilateral relations in the Moroccan foreign ministry, Madrid and London joined Washington and Paris in urging Rabat to take

this route.³⁸ This encouragement eventually bore fruit of a kind.

On 11 April 2007, the Moroccan government submitted a fresh proposal, the "Moroccan Initiative for Negotiating an Autonomy Status for the Sahara", to the new Secretary-General, Ban Ki-Moon. The initiative recycles the late 2003 scheme in proposing the establishment of a "Sahara Autonomous Region", which would enjoy a measure of self-government "within the framework of the Kingdom's sovereignty and national unity".³⁹ This proposal, which makes fairly detailed suggestions concerning the institutions and prerogatives of the region's government and its relationship to the national government of Morocco, is offered for negotiation⁴⁰ and it is envisaged that the autonomy statute that is finally agreed on "shall be submitted to the populations concerned for a referendum".⁴¹ The previous day (10 April), in what was clearly an attempt to steal a march on the Moroccans, the Polisario Front transmitted to Ban Ki-Moon a text entitled "Proposal of the Frente Polisario For A Mutually Acceptable Political Solution Assuring The Self-Determination of the People of Western Sahara".⁴²

The two proposals are sharply at odds. Morocco proposes to concede a measure of autonomy on condition that this is consistent with its sovereignty over Western Sahara and, in a token gesture to the principle of self-determination, is willing to have this ratified by a referendum. The Polisario Front wants full self-determination via a free referendum with independence as an option – its longstanding position of principle. But it fills out its reference to "a mutually acceptable" solution with the suggestion that, if an independent Saharan Republic resulted, this would not only accord citizenship to all Moroccans resident in the territory⁴³ but also offer Morocco a number of guarantees concerning their future relationship, notably in respect of joint security arrangements and economic cooperation.⁴⁴

³⁸ Crisis Group interview, Rabat, 30 November 2005.

³⁹ The text of the proposal is available on the website of the Royal Consultative Council for Saharan Affairs (Conseil Royal Consultatif pour les Affaires Sahariennes, CORCAS), www.corcas.com/eng/Home/tabid/486/ctl/Details/mid/1636/ItemID/1210/Default.aspx.

⁴⁰ As the proposal itself states (in clauses 7, 8, 9 27, 33 and 34) and as was reiterated by the Moroccan interior minister, Chakib Benmoussa, on 13 April 2007; see "Moroccan plan for West Sahara open for negotiation: minister", Agence France-Presse (in English), 13 April 2007.

⁴¹ Ibid.

⁴² The text of the proposal is available on www.arso.org/PropositionFP100407.htm#en.

⁴³ "Proposal of the Frente Polisario", article 9, section 2.

⁴⁴ Ibid, article 9, section 3-8.

³³ Mundy, "Seized of the Matter", op. cit., pp. 140-1411.

³⁴ Nizar Messari, "National Security, the Political Space and Citizenship: the Case of Morocco and the Western Sahara", *Journal of North African Studies*, 6, 4, Winter 2001, pp. 47-63.

³⁵ Mundy, "Seized of the matter", op. cit., p. 135.

³⁶ Messari, op. cit., p. 60; Shelley, *Endgame*, op. cit., pp. 142-143. See also Javier Perez de Cuellar, *Pilgrimage for Peace*, (New York, 1997), pp. 341-342.

³⁷ Theofilopoulou, op. cit., p. 13.

There is a great deal of vagueness about both proposals. While this is to be expected in advance of serious negotiations, the element of vagueness in the Moroccan proposal is arguably more serious, in view of the groundswell of apparently uncritical support it has already secured in Western capitals. Quite apart from the element of uncertainty concerning the precise powers and composition of the autonomous region's government,⁴⁵ the text nowhere specifies the geographical limits of the "Sahara Autonomous Region". This cannot be assumed to be co-terminous with the existing territory of Western Sahara and could be intended to include districts currently in southern Morocco, i.e. outside Western Sahara properly so-called. This could signify that the electorate of the eventual autonomous region would be dominated by elements of the population that are not native to Western Sahara, such that, even if legalised by the Moroccan authorities, the Polisario Front could be denied the prospect of ever governing the region.

In addition, the text nowhere specifies the modalities of the envisaged referendum.⁴⁶ Finally, whereas the Polisario Front's proposal offers "to enter into direct negotiations with the Kingdom of Morocco", the Moroccan text merely refers to "the other parties"; it does not mention the Polisario Front nor commit the Moroccan government to negotiating with it.

An important issue that is accordingly likely to arise in the context of negotiations over Morocco's autonomy proposal is that of trust. Even if Rabat agreed to devolve substantial powers to the government of a "Sahara autonomous region" that properly corresponded to Western Sahara and also agreed to allow the Polisario Front to participate in the political life of the region, could it be counted on to maintain these arrangements over time, especially in the event that elections gave the Polisario Front a majority and thus regional executive power? What guarantees would there be that Rabat would not subsequently go back on its initial autonomy deal – either by reducing the devolved powers or by harassing, destabilising or even banning the Polisario Front?

This problem should be taken seriously because it arises out of the other parties' experience of Morocco's behaviour to date. On 13 February 2007, the Polisario Front submitted a long memorandum to the Security

Council which included a detailed account of Morocco's successive manoeuvres and reversals.⁴⁷ Polisario's view is strongly seconded by Algeria. "Morocco has not kept her promises", Abdelkader Messahel told Crisis Group.⁴⁸ A leading Algerian commentator on the Western Sahara question, Tayeb Belghiche, went further: "The Algerians do not trust the Moroccans. The Sahrawis will never trust the Moroccans".⁴⁹

An optimistic reading of these initiatives is that the two sides are staking out initial positions that they may be willing to modify substantially in the course of subsequent bilateral negotiations. Specifically, Rabat's autonomy proposal might conceivably be a way of preparing Moroccan public opinion for a solution that falls significantly short of Morocco's original claim of full sovereignty. Equally, Polisario's proposal may conceivably be preparing the ground for a formula of "independence in association with Morocco" that also falls short of a completely sovereign Sahrawi state.⁵⁰ But while these possibilities should arguably be borne in mind and certainly cannot be ruled out, there is at present no reason to assume that the proposals portend anything of the kind, and there are grounds for a more pessimistic reading.

Taken at face value, the two texts reflect and confirm the impasse rather than point to a way of breaking through it. It is far from clear that Morocco and the Polisario Front are really ready to engage in negotiations with each other. They have been prevailed on to agree to Security Council Resolution 1754 of 30 April 2007 calling on them to do so, but reportedly did so "reluctantly".⁵¹ In publishing their respective proposals, both sides are still playing to the international gallery and seeking once again to induce the UN to arbitrate in their favour. In doing this, however, they have been taking their cue from the Security Council.

⁴⁵ A senior Moroccan official told Crisis Group that "the degree of autonomy remained to be negotiated and would depend on the reactions of the various parties", Crisis Group interview, Washington DC, 12 February 2007.

⁴⁶ In particular, not only does it fail to specify the range of options that will be available to the voters (the option of independence being, presumably, excluded), but it also does not specify that public campaigning against the autonomy option will be allowed.

⁴⁷ "Memorandum by the F. Polisario on the Question of Western Sahara", Polisario Front Representation to the United Nations, New York, 13 February 2007.

⁴⁸ Crisis Group interview, Algiers, 4 December 2006.

⁴⁹ Crisis Group interview, Tayeb Belghiche, Sidi Fredj, Algeria, 6 December 2006; Belghiche is the Western Sahara specialist and chief leader-writer for the influential Algiers daily, *El Watan*.

⁵⁰ Such a formula was advocated for Algeria in relation to France by the legalist wing of Algerian nationalism prior to the onset of the war of liberation in 1954.

⁵¹ As has been acknowledged by Zalmay Khalilzad, U.S. ambassador to the UN; see Patrick Worsnip: "Morocco, Polisario Agree UN Call for Sahara Talks", Reuters, 30 April 2007.

D. PASSING THE BUCK BUT KEEPING HOLD OF THE REINS

Resolution 1754 does not merely call on Morocco and the Polisario Front to engage in negotiations. It complicates these negotiations in advance in at least two different ways. The relevant sections read:

The Security Council,

...

2. *Calls upon* the parties to enter into negotiations without preconditions in good faith, taking into account the developments of the last months, with a view to achieving a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara;

3. *Requests* the Secretary-General to set up these negotiations under his auspices and invites Member States to lend appropriate assistance to such talks;

4. *Requests* the Secretary-General to provide a report by 30 June 2007 on the status and progress of these negotiations under his auspices, and expresses its intention to meet to receive and discuss this report.⁵²

Thus, on the one hand, the Security Council insists that the parties should enter into negotiations “without preconditions”. On the other hand, it lays down two preconditions of its own: that the object of negotiations should be a solution “which will provide for the self-determination of the Saharan people”, and that the negotiations should be arranged by the UN Secretary-General. Indeed, the Secretary General subsequently invited Morocco and the Polisario, along with Algeria and Mauritania, for talks to begin on 18 June.⁵³

The conception expressed in this resolution is not a new one. It was inherent in the proposal advocated by Kofi Annan in his report to the Security Council in April 2006. While recommending the suggestion of his personal envoy (Van Walsum) that the UN should refer the matter to the parties for direct negotiations, Annan immediately

went on to imply that the UN would continue to have a role:

After years of reliance on United Nations-sponsored plans, it should be made clear to the parties that the United Nations was taking a step back and that the responsibility now rested with them. This did not mean that the parties would henceforth be on their own. My Personal Envoy believed that there was a consensus in the Council that any solution to the problem of Western Sahara had to be found in the framework, or under the auspices, of the United Nations.⁵⁴

That this continuing role was not to be a mere formality was made clear by Annan in the preceding paragraph, where he introduced the proposal of “recourse to direct negotiations, which should be held without preconditions”, for he immediately added:

Their objective should be to accomplish what no “plan” could, namely to work out a compromise between international legality and political reality that would produce a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara.⁵⁵

Thus, while speaking of negotiations “without preconditions”, Annan’s proposal in reality encumbered the proposed negotiations with two very definite preconditions, namely they should aim for and result in “the self-determination of the people of Western Sahara”, and they should be held under UN auspices. Instead of frankly admitting that the world organisation was powerless to resolve the dispute and inviting the parties to do so as best they could among themselves, Annan’s formula proposed to delegate responsibility to the main parties for achieving what UN doctrine mandated, self-determination, but the UN itself had been failing to achieve for the previous fifteen years, and simultaneously to qualify – if not cancel – this delegation of responsibility by arranging for the negotiations to be conducted within the framework of the UN.

With Resolution 1754, the Security Council has now taken up Annan’s contradictory formula and made it official policy (while dropping the adjective “direct” in respect of the envisaged negotiations). In this manner the possibility of genuine negotiations resolving the conflict may well turn out to have been pre-empted rather than furthered. Genuine negotiations between the parties in conflict would require them to address one another and concentrate on impressing one another with

⁵² UN Security Council: Resolution 1754 (30 April 2007).

⁵³ “The Secretary-General has invited the parties, that is Morocco and the Polisario Front, and the neighbouring countries, Algeria and Morocco, to a meeting that will take place in the proximity of New York on ... 18 June. And his Personal Envoy, Peter Van Walsum, will conduct direct or proximity talks as a first step in the process of negotiations.” Spokesperson for the Secretary-General, Noon Briefing, 4 June 2007, http://www.un.org/News/briefings/docs/2007/db07_0604.doc.htm.

⁵⁴ “Report of the Secretary-General”, op. cit., p. 9, para. 35.

⁵⁵ Ibid, p. 9, para. 34.

the quality of their proposals and counter-proposals and the skill of their bargaining, not to impress external onlookers or the “international community”. Instead of giving the parties an incentive to come properly to terms with each other through genuinely direct (that is, unmediated) negotiations, however, the Security Council has given them reason to keep playing the same old game of manoeuvre and counter-manoeuve, while seeking arbitration the UN has shown itself in the past to be systematically incapable of providing.

This is primarily because on the one hand the UN has continued to define the issue as one of self-determination and continued to presume to bring it to conclusion on this basis, while on the other hand its highest body clearly has refused to follow the logic of this formal position to its proper conclusion, the holding of a genuinely free referendum in which independence would be an option. By continuing to define the issue as self-determination, the UN has encouraged the Polisario Front and Algeria to continue to invest all their energy in seeking the realisation of this principle and at the same time has pressured the Moroccan government to pay lip service to self-determination, when in reality Rabat has never sincerely subscribed to it. The UN thereby has inhibited the parties to the dispute from exploring the possibility of a resolution based on a different principle or set of principles.

It is accordingly essential that the place of self-determination in this conflict be reviewed and, at last, properly understood.

III. A QUESTION OF SELF-DETERMINATION?

The Western Sahara question is widely and routinely defined as one of self-determination. That the issue of self-determination has been an important aspect of the conflict throughout is not in dispute. The problems arise when this aspect is taken, as it almost invariably has been, as *defining* the question to the exclusion of its other aspects. And to define the question in these terms when one of the parties both clearly rejects this definition in principle and has in practice a veto on outcomes it does not like is to guarantee that the question cannot be resolved.

A. THE POSITION OF MOROCCO

Morocco clearly does not really subscribe to the view that the principle of self-determination should be applied to this case. In organising the Green March and occupying the territory in 1975, it pre-empted the application of the principle at the outset. In encouraging settlement in Western Sahara by Moroccan nationals since then to the point that they now constitute a majority of the territory's population,⁵⁶ it has been industriously creating facts on the ground to make impossible any effective application of the principle by the indigenous Sahrawi population. And in wriggling out of its verbal commitments to cooperate in the holding of a referendum – allowing itself to be led towards the water but refusing to drink – it has repeatedly sabotaged attempts to operationalise the principle.

The Moroccan government has never really accepted the Western Sahara question to be a matter for self-determination. On the contrary, it has considered it to be comparable – if not, in substantive principle, identical – to the issues arising in the decolonisation of the other Moroccan territories once governed by Spain: the Rifian zone and Tetuan (both returned to Morocco in 1956), Sidi Ifni (returned in 1969), Mellila (Spanish since 1497 but claimed by Morocco) and Ceuta (also still under Spanish sovereignty but claimed by Morocco).⁵⁷ In short, the Moroccan government's real position, whatever its discourse might on occasion suggest, is that the territory

⁵⁶ For an account of this, see Shelley, *Endgame*, op. cit., especially chapter 5, “Sahrawi Society under Occupation”.

⁵⁷ Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (New York, 1986), p. 124; cited in Susan Slyomovics, “Self-Determination as Self-Definition: The Case of Morocco”, in Hurst Hannum and Eileen F. Babbitt (eds.), *Negotiating Self-Determination* (Lanham, Boulder, New York, Toronto, Oxford, 2006), pp. 135-157.

is historically and therefore rightfully part of the Moroccan kingdom⁵⁸ and that its recovery cannot be allowed to depend on, let alone be jeopardized by, the preferences of a majority of its inhabitants. This is, of course, not a democratic attitude. But it is an attitude which numerous other states have had in relation to problematic territories, including, as it happens, every single permanent member of the UN Security Council at some point of their history.

Both the Polisario Front and Algeria have had grounds for considering that Morocco has behaved hypocritically in paying lip-service to UN discourse and playing along with MINURSO. It might have been better – in the sense of aiding everyone to conceive of the situation more accurately – had Morocco continued frankly to dispute (as it did at the very outset in 1975) the view that the principle of self-determination could or should apply. Its position in 1975 was that the Western Sahara had been part of the Moroccan kingdom prior to the colonial period, and the kingdom was accordingly entitled to recover its old possession. In ruling against this claim, the International Court of Justice (ICJ) based its judgment primarily on the absence of political ties of a modern territorial nature in the pre-colonial period.⁵⁹ From this finding, it concluded that Morocco's claim was invalid. This judgment was certainly defensible, but by no means incontrovertible. Instead of persisting in trying to contest it, however, Morocco was eventually induced to defer, at least formally, to the derived postulate that the question was a matter of self-determination by the fact that the UN took and maintained this position.

Thus the definition of the question adopted by the UN obliged Morocco to pay lip service to the self-determination principle while trying to get around it. In taking Morocco's pretence at face value, the UN has connived at the eventual failure of its own efforts, given the Security Council's refusal not only to envisage a non-consensual resolution but also to apply informal pressure at critical moments. It follows that, if Morocco's real attitude cannot be overridden by a united and determined Security Council, any serious attempt by the main parties to negotiate an alternative solution must address and take proper account of Morocco's true position, not its feigned one.

B. THE POSITION OF THE POLISARIO FRONT

The Polisario Front has defined the question in terms of the right of self-determination, and it has had every reason to do so. There is no doubt that, in so far as the people of Western Sahara in 1975 possessed the right to determine their own future, that right was violated and its exercise thwarted by Morocco's behaviour. There is also reason to believe that, had a free and fair referendum been held on the basis of MINURSO's eventual definition of the electorate in 2000, the result would have been a vote for independence. The Moroccan government's refusal to countenance such a referendum on the basis of that electorate at the time, and its subsequent refusal to countenance a referendum in which independence is an option for the electors, whoever these may be, furnish support for the Polisario Front's view of the matter and reason for it to stick to its thesis that the question is solely a matter of the right to self-determination.

As has been noted, the Polisario Front's interpretation of this principle has been consistent and democratic. It has always accepted that the option of full integration with Morocco should be offered to the people of Western Sahara in a final status referendum. It also has accepted that the option of autonomy should be on offer if other parties insist on this. But what it has consistently refused to accept is a formula for autonomy in lieu of a genuinely free referendum in which independence would be an option.

It was for this reason that Polisario was instinctively opposed to James Baker's second proposal, the Peace Plan, as well as to his earlier Draft Framework Agreement, since they both proposed to establish a form of autonomy within the constitutional framework of Moroccan sovereignty in advance of any referendum, and thereby tended to pre-empt or prejudice the referendum in some degree. What enabled Polisario eventually to guardedly accept the Peace Plan as a basis for discussion was the much improved definition of the electorate for the final status referendum and the fact that independence was to be offered as an option – in other words, that the principle of self-determination as it understood this was still (just) being retained. Even so, many Polisario officials regarded their change of position as the most painful concession they have ever made. Mohammed Sidati, Polisario's representative to the European Union, put it this way:

The Baker Plan was a big change from the Settlement Plan but we recognise that we are the weaker party, and we made the painful concession. That was the last concession of the Sahrawi people – to live under Moroccan sovereignty, to include

⁵⁸ Slyomovics, *op. cit.*

⁵⁹ Shelley, *Endgame*, *op. cit.*, pp. 130-131. For a sympathetic discussion of the Moroccan case at the ICJ, see George Joffé, "International Court of Justice and the Western Sahara", in Richard Lawless and Laila Monahan, *War and Refugees: the Western Sahara Conflict* (London, 1987).

the choice of autonomy and to let Moroccan settlers vote. What more can we give?⁶⁰

Mohammed Yeslem Bissat, the Front's representative in Algiers, told Crisis Group that Polisario has made all the concessions, often with promises from the UN Secretaries-General, Baker, Spain or the U.S. that it would be followed by pressure on Morocco:

In 1991, we gave up on unconditional independence; in 1994 we gave up the 1974 census; in 1997 we allowed the identification of the contested tribes, and in 2003 we allowed Moroccans to vote in our referendum. What has Morocco given us in return? Nothing.⁶¹

The one concession which the Polisario Front has refused to make has been on the principle of self-determination. A Polisario official said: "Even if we wanted to, we do not have the power or right to deprive the people of the Western Sahara of their right to determine their future. Our mandate is to realise that right. If we betray it, we will lose whatever legitimacy we have".⁶² Morocco's recent autonomy proposal falls short of respecting this principle, and Resolution 1754, which refers approvingly to the Moroccan proposal in "welcoming serious and credible Moroccan efforts to move the process forward towards resolution",⁶³ discounts this fact.

C. THE POSITION OF ALGERIA

Algeria's position is arguably the most complex and certainly the most controversial. On the one hand, its representatives have regularly stressed that the country's support for Polisario is based on its general and longstanding support for the principle of self-determination, and it is not a party to the Western Sahara conflict.⁶⁴ The tendency has been to present

Algeria's position as one of high-minded idealism and altruistic solidarity. On the other hand, Morocco has regularly insisted that Algeria is indeed a party to the conflict (and often suggested that the Polisario Front is a mere pawn of Algiers). Numerous observers have stressed Algeria's rivalry with Morocco for influence in the region and have suggested that Algiers has had very substantial material and strategic interests of its own in the eventual establishment of a Western Saharan state that would be a satellite or client.

These extreme and sharply opposed readings of Algeria's position are simplistic and misleading. But it is in part due to the way the Western Saharan question has been handled by the UN that the more complex truth of the matter has remained obscure.

There can be no doubt that Algeria's support for Polisario has been rooted in, and an instance of, its longstanding support for the principle of self-determination. Given that its liberation struggle was fought, among other things, in the name of that principle and that referendums on self-determination played a role in the resolution of its decolonisation drama, it was natural for Algeria to take this position.⁶⁵ Long before the Western Sahara crisis developed, Algeria had a track record of supporting other national liberation movements on the same ground of principle, notably the ANC in South Africa, FRELIMO in Mozambique, the MPLA in Angola, the PAIGC in Guinea-Bissau, the PLO in Palestine and SWAPO in Namibia.

But it is also evident that Algeria and Morocco have been engaged in constant competition for influence in the Maghreb region and beyond. Mohammed Benouna, Morocco's UN representative, told Crisis Group: "Behind the Sahara [conflict], there is a geopolitical dispute between Morocco and Algeria".⁶⁶ A senior Moroccan official said: "The region will be either under Algerian influence or under Moroccan influence".⁶⁷ Algerian journalist Tayeb Belghiche agrees: "It's a conflict of two countries; each country wants to be the dominant power in the region".⁶⁸ Algeria has undoubtedly been disadvantaged by Morocco's annexation of Western

⁶⁰ Crisis Group interview, Brussels, 22 November 2005.

⁶¹ Crisis Group interview, Algiers, 3 November 2005. The "contested tribes" were those which had a small number of members resident in Western Sahara and the majority of their members outside (mostly in Morocco, a few in Mauritania and Algeria). The Moroccan government argued that all their members should be allowed to apply for inclusion on the electoral roll. Most such applications were considered but eventually rejected by MINURSO. For a discussion, see Shelley, *Endgame*, op. cit., pp. 140-141, 144.

⁶² Crisis Group interview, Washington DC, May 2007.

⁶³ UN Security Council Resolution 1754 (30 April 2007), Preamble.

⁶⁴ Algerian official discourse distinguishes between the "concerned parties", of which there are two – Morocco and the Polisario Front/SADR – and the "interested parties", namely bordering states that are bound to be affected to some extent by the outcome, among which Algeria numbers itself.

This distinction enables it to justify both its support as an "interested party" for the Polisario Front and its refusal (not being a "concerned party") to engage in direct negotiations with Morocco.

⁶⁵ Yahia H. Zoubir and Karima Benabdallah-Gambier, "Morocco, Western Sahara and the Future of the Maghrib", *Journal of North African Studies*, 9, 1, spring 2004, pp. 49-77.

⁶⁶ Crisis Group interview, Mohammed Benouna, UN, New York, 8 December 2005.

⁶⁷ Crisis Group interview, Washington DC, 12 February 2007.

⁶⁸ Crisis Group interview, Sidi Fredj, Algeria, 6 December 2006.

Sahara, since this changed the strategic balance to Rabat's benefit. It greatly enlarged Morocco's territory and, in addition to giving it access to valuable resources (phosphates, fisheries and, potentially, oil), gave Morocco a new frontier (with Mauritania) – while simultaneously depriving Algeria of a frontier⁶⁹ – and greatly extended its coastline.

It was entirely natural for Algeria to be dismayed by this change and to wish to see it reversed, and these considerations certainly form an important aspect of the context of Algeria's position on the conflict. But their significance should not be misread. They are a factor in Algeria's position rather than a constituent element of it.

The rivalry between Morocco and Algeria is of a kind with rivalries between many neighbouring states. It predates the onset of the Western Sahara conflict and is likely to continue long after this conflict has been resolved. The modification to Morocco's benefit of the regional power balance has reduced Algeria's previous advantage but by no means cancelled it and so is not in itself threatening. It is for this reason, among others, that there has always been a current of opinion within the Algerian political elite that has been inclined to accept Morocco's annexation⁷⁰ on certain conditions. If this conciliatory current has remained in the minority in Algiers, this has been in part because the manner in which Morocco has enlarged itself has been entirely unacceptable, representing a massive affront to and setback for Algerian diplomacy and a major blow to its prestige not only in the Maghreb but in Africa and the Arab world as a whole. In other words, the problem for Algiers is not simply that Morocco has acquired the Western Sahara, but that it did so unilaterally, by force, without any attempt at negotiation or proper consultation with interested parties other than Mauritania.

The all but exclusive emphasis on the principle of self-determination that has characterised the UN's approach has tended to obscure the fact that Algeria's position (unlike the Polisario Front's) has always rested in

addition – and as much, if not more – on another principle: the inviolability of frontiers inherited from the colonial powers.⁷¹ Algeria's rivalry with Morocco and its strategic interests with respect to the Western Sahara conflict have been relevant with regard to this second important principle.

By the principle of the inviolability of frontiers inherited from the colonial powers, Algeria has not meant that these frontiers are sacrosanct, but that they can be modified only by consent achieved through negotiation by the interested parties. Thus the frontiers can be altered by political agreement but they may not be violated. Algeria has acted constructively and purposefully on this principle in negotiating with most of its neighbours, notably Tunisia, Libya, Niger and Mali, to determine in a consensual manner, through peaceful diplomatic procedures, the exact location of its frontiers. When Morocco invaded and occupied the Western Sahara, Algeria naturally opposed this as transgressing this second principle.

Like its support for the principle of self-determination, Algeria's attachment to the principle of the inviolability of frontiers inherited from the colonial powers is founded on a combination of doctrinal ideal and practical self-interest. As a major African state with a natural ambition to play a role in the continent's affairs, and conscious of the often artificial and fragile nature of the frontiers of the newly independent African states, Algeria has always been a leading supporter of the OAU (now AU) insistence on this principle as a necessary factor of stability. But Algeria's own Saharan frontiers are also artificial. Colonial rule deprived Morocco of its Saharan hinterland but bequeathed to Algeria a share of the Sahara that greatly exceeds the territory to which the pre-colonial Algerian state – the Ottoman Regency of Algiers – ever laid claim. Algeria has consequently had a major strategic interest in all her neighbours accepting and abiding by the principle that frontiers may not be changed except by negotiated agreement. And her interest in this point has been most acute in relation to Morocco, since the historic party of Moroccan nationalism, the Istiqlal (Independence) Party, publicly laid claim as long ago as 1956 to large parts of the Algerian Sahara as well as to Western Sahara and parts of Mauritania and Mali as integral components of historic "Greater Morocco".⁷² It

⁶⁹ That, is, the frontier it had with Spanish Sahara from 1962 onwards, which it could retain only if the former colony became an independent state.

⁷⁰ In 1976, four leading figures of the Algerian nationalist movement – Ferhat Abbas (President of the GPRA 1958-1961), Benyoucef Benkhedda (President of the GPRA 1961-1962), Hocine Lahouel (General Secretary of the Mouvement pour le Triomphe des Libertés Démocratiques, 1950-54) and Sheikh Kheireddine (a member of the Association of the *Ulama*) – publicly dissented from Boumediène's policy of resisting Morocco's claim. Another even more prominent Algerian nationalist, Mohamed Boudiaf, one of the nine historic founders of the FLN in 1954 and briefly head of state in 1992, also publicly accepted Morocco's claim.

⁷¹ Shelley, *Endgame*, op. cit., p. 27 (citing former Algerian foreign minister Ahmed Attaf) and 33. That the principle of the inviolability of frontiers inherited from the colonial era has throughout been an element of Algeria's position was confirmed by Ramtane Lamamra. Crisis Group interview, Algiers, 3 December 2006.

⁷² Allal al-Fassi, the leader of Istiqlal, called for the unification of Greater Morocco in a speech on 27 March 1956; on 7 July 1956 Istiqlal's paper, *Al-Alam*, published a map of "Greater

has accordingly been a matter of the greatest importance to Algiers that Rabat should not be allowed to get away with violating a colonial frontier with impunity, lest a dangerous precedent be set.

In other contexts (and especially in relation to her other neighbours), Algeria has articulated this principle clearly and to effect. But, while occasionally mentioning this principle in the Western Saharan context, it has been inhibited from emphasising it. This mainly is because, from the moment the Western Sahara question became subject to the UN-orchestrated attempt to resolve it, it became subject to the UN's definition of the question as a matter of self-determination and nothing else. It followed logically from this definition that only Morocco and the Polisario Front were concerned parties.

To recognise this is not to deny that Algeria early and of its own accord perceived and framed the question in terms of self-determination. But it did so when it had every reason to believe that international law and UN doctrine would support and secure a resolution of the conflict on this basis. What has happened since 1975 is that both international law and the UN have failed to operate coherently and effectively in accordance with the self-determination principle, while the UN's continued insistence on defining the question exclusively in terms of self-determination has trapped Algeria in its original stance.

Morocco has often complained, with some reason, that Algeria, in reality is a concerned party and has proposed that it be included in negotiations. Mohammed Benouna told Crisis Group: "There have to be three parties at the table. Polisario cannot negotiate without the blessing of Algeria".⁷³ Mohamed Loulikchi also stressed this: "Algeria must be directly involved in negotiations. Without Algeria there is no point".⁷⁴ Another Moroccan diplomat asserted: "All it would take to resolve this conflict is for the major countries to pressure Algeria to change its stance. The Polisario would have no choice but to follow".⁷⁵ But Algeria has been behaving consistently, within the framework of the UN process, in refusing to be drawn

into such negotiations and especially one-to-one talks with Morocco to the exclusion of the Polisario Front. The very emphatic way in which it has couched this refusal has clearly impressed the UN as well as many observers. Mohammed Tefiani, director of Algeria's bilateral relations with Africa, said:

Let me make this clear for once and for all. We will not accept bilateral negotiations on the Sahara. We reject any approach that attempts to force an Algerian-Moroccan dialogue on Western Sahara.⁷⁶

What has not been sufficiently understood is the logic of this position. Since the self-determination of the Algerian people has not been at issue, the Algerian state could not, as a matter of logic, admit to being a concerned party to the Western Sahara dispute, given that this has been officially defined by the UN as a matter of self-determination. Thus, the narrow definition of the question has obscured a significant aspect of Algeria's principled objection to Morocco's position and behaviour and impeded progress toward resolution of the conflict.

D. CIVILIAN-MILITARY RELATIONS AND THE POLICY DEBATE IN ALGERIA AND MOROCCO

A striking feature of the Western Sahara controversy has been the near total absence of Algerian or Moroccan vocal public opinion from the debate. In asserting Morocco's claim to the territory in 1975, King Hassan II united the political class behind the throne as the champion of nationalism (as his father Mohamed V had done in the last years of the colonial era).⁷⁷ Since 1975, only fringe political groups and a few independent-minded journalists have dared to break with the prevailing unanimity on this issue.⁷⁸ In Algeria, since the advent of formal political pluralism in 1989, not one party has ever made an issue of the Western Saharan question, let alone challenged government policy. As a result, the policy debate in both countries has in effect been conducted within the executive branch of the state alone. But it has also tended to be prey to the persistent tensions found there between the civilian and military wings of the governing elites.

Ensuring the loyalty of the officer corps has been a major concern of the Moroccan monarchy throughout. King Hassan narrowly survived a major coup led by senior generals in 1971⁷⁹ and an assassination attempt

Morocco", which included a large part of the Algerian Sahara. The next month Istiqlal formally adopted Al-Fassi's call as party policy. See Anthony S. Reyner, "Morocco's International Boundaries: A Factual Background", *Journal of Modern African Studies*, 1, 3, September 1963, pp. 313-326; Laura E. Smith, "The Struggle for Western Sahara: What future for Africa's last colony?", *Journal of North African Studies*, 10, 3-4, September 2005, pp. 545-563.

⁷³ Crisis Group interview, Mohammed Benouna, UN, New York, 8 December 2005.

⁷⁴ Crisis Group interview, Mohamed Loulikchi, Rabat, 30 November 2005.

⁷⁵ Crisis Group interview, Washington DC, May 2007.

⁷⁶ Crisis Group interview, Algiers, 16 November 2005.

⁷⁷ Messari, *op. cit.*, pp. 48, 57.

⁷⁸ Slyomovics, *op. cit.*, p. 148.

⁷⁹ For an authoritative account of the 1971 coup, see John Waterbury, "The coup manqué" in Ernest Gellner and Charles

master-minded by his interior minister, General Mohammed Oufkir, in 1972. Thereafter, he repeatedly demonstrated his concern to divert his generals from engaging in political intrigue by giving the armed forces important military tasks in the Middle East⁸⁰ and sub-Saharan Africa,⁸¹ as well as in the Western Sahara, where the occupation and subsequent war served to keep the army busy. His success in restoring the monarchy's legitimacy over the Western Saharan issue enabled Hassan subsequently to broach significant internal political reforms, but also freed him somewhat from his earlier dependence on the military for internal security, symbolized by General Oufkir till 1972 and by General Ahmed Dlimi until his death in a mysterious traffic accident in January 1983.

From 1979 onwards, the interior minister was a civilian, Driss Basri, who built the ministry into a seat of enormous political power and eventually a major player in the management of the Western Saharan question. Entirely loyal to King Hassan, Basri was a past master at political fixing and especially adept at managing elections. King Hassan was willing to consider a final status referendum with independence as an option in part because of Basri's confidence that he could ensure a pro-Moroccan result. Following King Hassan's sudden death in July 1999 and the accession of Mohamed VI, Basri was an early casualty of the reshuffling of the political deck, as army officers close to the new king increased their influence at the expense of veteran civilian functionaries. In sacking Basri in November 1999, King Mohamed won plaudits for what was represented as a reform gesture, but he also deprived himself of the man who could have "managed" a referendum for him. It was after this that Morocco's stance began to harden into the refusal of any referendum in which independence would be an option.

In Algeria, the generational change within the army and the onset of the crisis of the state since 1992 (if not 1988) has complicated matters very greatly. The tendency has been for civilian figures in the nationalist tradition, such as Ferhat Abbas, Benyoucef Benkhedda, Mohamed Boudiaf, Sheikh Kheireddine and Hocine Lahouel, to be more inclined to favour a negotiated settlement of some kind with Morocco, while the military has been predominantly inclined to resist this.

Micaud (eds.), *Arabs and Berbers; from tribe to nation in North Africa* (London, 1972).

⁸⁰ Moroccan troops took part in the October 1973 war in the Middle East, where they saw action on the Syrian front.

⁸¹ Following the invasion of the Shaba (ex-Katanga) province of Zaïre by Angola-based forces of the Front pour la Libération Nationale du Congo (FLNC) in March 1977, 1,500 Moroccan troops were dispatched to Zaïre, where they played an important role alongside French forces in saving the Mobutu regime.

In the army, the older generation of nationalist officers who emerged from the guerrilla forces of the wartime National Liberation Army (Armée de Libération Nationale, ALN) were loyal to the late President Boumediène and tended to make fidelity to his pro-Polisario line on Western Sahara an article of faith. The eclipse of the Boumedienist old guard in 1988-1992 by a younger coterie of ex-officers of the French army (the so-called *Déserteurs de l'Armée Française*, DAF),⁸² headed by Khaled Nezzar⁸³ and Larbi Belkheir,⁸⁴ introduced a fresh element of instability to policy. On the one hand, the close ties these officers had with the French military establishment inclined them to be sensitive to pressure to resolve the Western Saharan question on terms acceptable to Paris and Rabat. On the other hand, the unprecedented power the army commanders acquired from 1992 onwards following their overthrow of President Chadli Bendjedid and in the context of the descent into violence inclined them to veto efforts by successive heads of state to reach an understanding with Rabat.

President Bouteflika's experience has exemplified these tensions and pitfalls. In 1975, when he was foreign minister and President Boumediène's close confidant, he reportedly argued that Algeria should accept a deal with Rabat, allowing the "recovery" of Moroccan territory in Western Sahara in return for a definitive demarcation of the Algerian-Moroccan border (and thus Rabat's explicit renunciation of its "Greater Morocco" claims to Algerian territory).⁸⁵ On becoming president in 1999, Bouteflika apparently sought a new understanding with Hassan II; he was evidently dismayed by Hassan's sudden death and persisted in his friendly attitude towards Mohamed VI on the occasion of Hassan's funeral in July 1999.⁸⁶ The next month, two leading members of the powerful DAF coterie, former defence minister Major General Khaled Nezzar and former navy commander Major General Abdelmadjid Taright, were prominent guests at the congress of the Polisario Front.⁸⁷ This was interpreted as signalling that the army disapproved of any search for détente with Rabat

⁸² The *Déserteurs de l'Armée Française* were junior officers and officer cadets who deserted the French army in the second half of the Algerian war and joined the units of the Armée de Libération Nationale stationed in Tunisia and Morocco. By 1992, nearly all the commanding positions in the Algerian armed forces were held by members of this coterie.

⁸³ Commander of land forces and deputy chief of staff, 1986-1988; chief of staff, 1988-1990; minister of defence, 1990-1993; member of the High State Committee, which replaced President Chadli, 1992-1994.

⁸⁴ Director of military college, 1975-1980; secretary-general of the presidency, 1985-1986 and 1989-1991; director of cabinet of President Chadli, 1986-1989; minister of the interior, 1991-1992, director of cabinet of President Bouteflika, 2000-2005, Ambassador to Rabat, 2005 to present.

⁸⁵ Shelley, *Endgame*, op. cit., pp. 27, 39.

⁸⁶ Mohsen-Finan, op. cit., p. 99.

⁸⁷ *Ibid*, pp. 98-100.

and was pressuring Bouteflika to abandon his conciliatory stance. It appears that he did so with some reluctance and remained interested in seeking a way forward as soon as circumstances might allow. During his U.S. visit in November 2001, Bouteflika reportedly told James Baker “that Algeria was no longer opposed to the ‘third way’ in Western Sahara”,⁸⁸ that is, Algiers would consider a compromise solution. This provoked uproar in Algiers, articulated in hostile press commentary, and forced the government to issue official statements reiterating the traditional position.⁸⁹ However, once Bouteflika reverted to an intransigent discourse in support for Polisario and self-determination, senior army commanders apparently sought to undercut this by making conciliatory noises of their own.⁹⁰

Thus, Western Sahara policy has regularly tended to become an issue in the broader conflict between the army commanders and the presidency in Algiers.⁹¹ On the one hand, it can be used to wrong-foot the president. On the other hand, the army commanders are widely considered to have a vested interest in the status quo. The Algerian historian Daho Djerbal told Crisis Group: “The conflict there created tension between Morocco and Algeria that has justified the existence of a large security sector. So they [the generals] see no benefit in peace”.⁹² As a result, the civilian elements, including the president, of successive governments have been permanently handicapped in their efforts to make progress on this issue, liable to be subverted when calling for self-determination and disowned when exploring compromises.

⁸⁸ Zoubir and Benabdallah-Gambier, op. cit., p. 62.

⁸⁹ Ibid.

⁹⁰ In March 2003 former defence minister, retired Major General Khaled Nezzar told a Moroccan newspaper that “Algeria does not need another state at its borders” (“L’Algérie n’a pas besoin d’un nouvel État à ses frontières”), interview with Samir Sobh, *La Gazette du Maroc*, 10 March 2003; see also Zoubir and Benabdallah-Gambier, op. cit., p. 62. This was an implicit repudiation of the line of vigorous support for the Polisario Front that he had taken against Bouteflika in August 1999. Nezzar was a leading opponent within military circles of Bouteflika’s ambition to secure a second term in the presidential election scheduled for April 2004, publishing a vehement, book-length attack on him in October 2003, *Bouteflika, l’Homme et son Bilan* (Algiers, 2003), republished the following month in France as *Algérie, le Sultanat de Bouteflika* (Paris, 2003). His declaration to the Moroccan paper occurred at a time when Algeria’s diplomats, under Bouteflika’s overall supervision, were seeking to make the most of Baker’s Peace Plan and to reconcile the Polisario Front to it in order to keep the political initiative.

⁹¹ For a detailed analysis of the army-presidency conflict in Algeria, see Hugh Roberts, “Demilitarizing Algeria”, Washington, Carnegie Endowment for International Peace, May 2007.

⁹² Crisis Group interview with Daho Djerbal, Algiers, 16 November 2005.

But more than anything else, the very terms of the Western Sahara question as defined by the UN have kept the civilian political forces impaled on the horns of this dilemma. The UN definition of the question exclusively in terms of self-determination has kept the Algerian government permanently cramped in its handling of the dossier. If this definition were modified and other dimensions properly recognised, it would become possible for the Algerian government and diplomacy to address these dimensions constructively, without fear of being called to order or destabilised by the military commanders. There can be no guarantee this would happen, of course. Removing a major obstacle would not, on its own, ensure fresh momentum. It is, however, a necessary condition for achieving momentum.

E. SELF-DETERMINATION, REFERENDUMS AND THE REALITY OF POWER

The claim which the Polisario Front has been making for the right of the people of Western Sahara to determine their own future has become identified with the demand for a free and fair referendum, in which independence as well as integration with Morocco and possibly other options would be on offer. Such a referendum would unquestionably be a democratic exercise. But the general environment of the contemporary Maghreb is not a democratic one. However positively one evaluates the element of pluralism in the political systems of contemporary Algeria and Morocco, the actions of the electorate do not yet actually determine the character, composition or behaviour of governments in either country. Elections and referendums are at best occasional elements in the complex political processes which occur; they are very far from being decisive.

The Moroccan government’s opposition to a referendum that would provide for real self-determination by offering the option of independence is rooted in the fear not only that the vote might go against it, but also that a precedent might be set that could be invoked sooner or later in other outlying regions of the Moroccan state with a history of resisting the central government.⁹³ In asking Morocco to accept such a referendum, the UN has been asking it to do something that is not in its nature, that is to accept that secession from the “historic kingdom of Morocco” is a legitimate political choice. To say this is not to weaken the case – grounded in international law and democratic

⁹³ On 1 May, 2007, Amazigh (Berber) demonstrators in the coastal town of Nador in the Rif region of northern Morocco reportedly marched with banners proclaiming “Le Mouvement Amazigh du Nord du Maroc demande l’autonomie de la région”, www.amazighworld.org/human_rights/morocco/index_show.php?Id=1019.

principle – for self-determination in the Western Sahara. It is to explain why it has from the outset been unrealistic to expect Rabat sincerely to agree to such a referendum in the absence of Security Council inducements or pressure.

It is true that referendums played a part in the complex decolonisation process in Algeria, but they were instigated by the French government, not the Algerian nationalists. They did not have the function of deciding what was at issue between Algerian nationalism and French power, nor between Muslim and European in Algeria. Rather, they had the function of legitimating in the eyes of French public opinion the policy on which General de Gaulle was decided. The basis on which this policy was decided was the new balance of power, as this had been established in protracted warfare combined with energetic and effective diplomacy in an international environment extremely favourable to the Algerian nationalist cause.

In considering realistically what outcomes are possible in the Western Sahara case, it is important to take account of the factor of military power. Significantly, both the Polisario Front and Algeria have abandoned the recourse to force. Since a few intense skirmishes in 1976, the Algerian army has never engaged in military confrontation with the Moroccan Royal Armed Forces. And since 1991, the Polisario Front has been observing a ceasefire. One consequence of the ceasefire is, of course, the absence of serious pressure for resolution of the conflict. As James Baker put it, “this is a really low-intensity, low-level dispute...there’s no action forcing event in the Western Sahara conflict”.⁹⁴

Thus, the Polisario Front’s decision to cease its military campaign, instead of leading rapidly to a political solution, could arguably be held to have set the scene for the protracted impasse, by enabling the Security Council to give the conflict low priority since it was no longer in the headlines and killing people. The implications are ironic and disturbing. Instead of being rewarded for ending its military campaign and relying on the UN process and international law, the Polisario Front has gained nothing from this and has arguably lost appreciably. This is a reason why some elements of the younger generation of Polisario militants have been urging resumption of the military campaign. But it is doubtful they could achieve anything by resuming military activity beyond getting the issue back into the world’s headlines, and it is also doubtful that Algeria would countenance anything more than occasional skirmishing by Polisario.⁹⁵

⁹⁴ Interview with Mishal Husain on the program “Wide Angle”, Public Broadcasting Service, 19 August 2004.

⁹⁵ Tayeb Belghiche acknowledged that to revert to the military option would be difficult, in part because of the Polisario Front’s loss of military capacity (i.e. with the aging of its fighters and the lack of opportunity to train a new generation)

In purely military terms, Moroccan gained the upper hand two decades ago. It is a misconception of the military position, as this had been established by the time of the 1991 ceasefire and maintained ever since, to describe it as a “stalemate”.⁹⁶ Morocco has held the strategic advantage since the late 1980s. Its army comfortably controls some 85 per cent of the Western Sahara, including most of the economically significant parts, and this has enabled the Moroccan authorities to pursue to considerable effect their plans for the territory. James Baker’s observation – “Morocco has won the war. She’s in possession”⁹⁷ – may lack nuance but it does not lack realism.

In consequence, the joint Polisario-Algerian strategy has been to try to get the UN’s political, diplomatic and moral force to trump Morocco’s military force. This has clearly failed to date because the Security Council has been neither united nor determined. Only if it agreed to put real pressure on Morocco could one realistically expect Rabat to agree to a genuine referendum and thereby risk allowing itself to be voted out of what it has always regarded and proclaimed to be an integral part of its national territory. But the Security Council has consistently refused to do this, and there is no reason to expect a change in this respect.

If it is out of the question that the great powers on the Security Council will unite in a determined stance to induce Morocco to concede a genuine referendum, then it follows that the conflict cannot be resolved in a manner consistent with the Polisario’s historic objectives or the principle of self-determination. Either it will not be resolved at all, and the impasse will continue indefinitely, or it will be resolved on the basis of a negotiated bargain that reflects the military balance of advantage. In that case, to persist in describing what can realistically be achieved in the way of a settlement as a form of “self-determination” merely confuses the issue and debases the concept.

since the ceasefire took hold in 1991, Crisis Group interview, Sidi Fredj, Algeria, 6 December 2006.

⁹⁶ The “military stalemate” thesis is a regular feature of Jacob Mundy’s analyses and an important premise of his arguments; see his articles: “Seized of the Matter”, op. cit., pp. 130-148, “Western Sahara”, op. cit., and “Western Sahara: Against Autonomy”, *Foreign Policy In Focus*, 24 April 2007, at www.fpif.org/fpiftxt/4172.

⁹⁷ Interview with Mishal Husain, op. cit.

IV. A NEW APPROACH: NEGOTIATING RECIPROCAL RECOGNITION AND LEGITIMATION

If external force is not brought (however indirectly or subtly) to bear, the status quo established by Moroccan military supremacy on the ground will inevitably be the basis of an eventual resolution. That is to say, in the absence of any change in the military equation, what can be at issue in a negotiated resolution undertaken by the three main interested parties – Morocco, Polisario and Algeria – can only be the terms and conditions of Sahrawi and Algerian recognition, acceptance and hence legitimation of Morocco's recovery of its Saharan territory. But, given Algeria's and the Polisario Front's willingness and ability to hold out, these terms can only be ones which offer a substantial measure of recognition of the Polisario Front's position and of Algeria's legitimate concerns as an interested party.

A. FACING REALITY AND DEALING WITH IT

Morocco has had substantive possession of the Western Sahara for the last 31 years, and this possession has been militarily undisputed for the last fifteen (and arguably secure, despite intermittent military attacks, since the completion of the third defensive wall over twenty years ago). Possession is often (if not always) nine-tenths of the law. In effect, what the Polisario and Algeria have been doing has been to deny Morocco the last tenth.⁹⁸ They have been able to prevent Morocco from converting its de facto possession into de jure property, by withholding – and getting the international community to withhold – recognition and legitimation of Morocco's claim to sovereignty. But they have made no real progress beyond this limited achievement because Morocco, in effect, has been refusing to gamble what it holds on the chance it can secure the remainder, an entirely rational attitude given the irresolution of the Security Council. Equally, Morocco has done nothing to persuade the Polisario Front and Algeria to change their attitude.

If any future recourse to force on the anti-Moroccan side (whether by Polisario or Algeria) and Great Power sabre-rattling in the Security Council are ruled out, all that can be at issue is how Algeria and the Polisario might be persuaded to stop withholding their recognition. The focus of negotiations between the three main parties would, therefore, have to be what

⁹⁸ Since Morocco controls only 85 per cent of the Western Sahara, one could say that it has in reality less than nine tenths of what it claims, with the Polisario Front and Algeria withholding the remainder.

Morocco can offer the other two that would satisfy their essential requirements. Morocco must be faced with its responsibility to take the initiative on this.

B. NEGOTIATING RECIPROCAL RECOGNITION AND LEGITIMATION

Since it is indispensable that any negotiation be direct and unmediated, there should be no question of pre-empting it with externally suggested preconditions. That said, the main elements of what is likely to be required are fairly clear. Morocco will have to satisfy Algeria on three distinct issues: the principle of the inviolability of frontiers inherited from the colonial era, the strategic balance between the two countries, and Algeria's need to honour its commitment to the Polisario Front.

- First, Morocco must establish beyond doubt that its annexation of Western Sahara is not and cannot be a precedent for any future transgression of the inviolability of frontiers principle. It must settle the question of its frontier with Algeria to Algiers's satisfaction and agree to whatever international guarantees of this frontier may be required. It may also have to offer similar assurances regarding its frontiers with Mauritania and explicitly repudiate the Istiqlal's "Greater Morocco" vision.
- Secondly, while the net improvement in the strategic balance to Morocco's benefit cannot be cancelled, a way of compensating and reassuring Algiers in some degree – perhaps in the form of a treaty on regional security as well as treaties on economic cooperation – must be found.⁹⁹
- Thirdly, Morocco must recognise that Algeria cannot accept a bilateral settlement at Polisario's expense without incurring serious damage to its own broader diplomatic position. Morocco needs, therefore, to make a serious offer to Polisario that would enable Algeria to accept a compromise settlement without dishonouring its commitment to Polisario.

The question which arises, then, is this: what can Rabat offer the Polisario Front that it and Algiers can accept while retaining Moroccan sovereignty over Western Sahara? Here two quite distinct possibilities can be envisaged.

The first is that Morocco persuades the Polisario Front to abandon its objective of an independent Western Sahara in exchange for the substance of self-government

⁹⁹ Such a treaty could include provision for Algeria to have easy access to the Atlantic Ocean in order to facilitate the exploitation of its major iron ore deposits at Gara Djebilet.

within the framework of Moroccan sovereignty. For this to work, the following conditions would almost certainly have to be met:

- the territory that would be the unit of autonomous self-government within Morocco would have to correspond exactly to the Western Sahara, that is, the former Spanish Sahara; there could be no question of dissolving the former Spanish Sahara into some larger “Saharan province” incorporating districts of pre-1975 southern Morocco and their populations, and there would have to be a commitment to end official encouragement of settlement of the territory by outsiders from Morocco’s other provinces; and
- Rabat would not only have to accept the Polisario Front as a legal political organisation but would also have to agree to its assuming political power in the government of the autonomous region should it secure an electoral mandate.

The second possibility is that Morocco recognises that, for Polisario, the question of sovereignty is paramount, and the formula of autonomy within the framework of Moroccan sovereignty is something to which it cannot bring itself to agree at the expense of its own constitutive principles and historic *raison d’être*. In that case, while dropping the autonomy proposal, Rabat could offer Polisario the right to exist as a legal political party advocating the nationalist vision of independence for Morocco’s Saharan province (as European democracies have allowed nationalist parties advocating independence to exist – for example, the Scottish Nationalist Party in the UK) on condition that it conducts itself peacefully and within the law. The advantage of this formula is that it would allow the Polisario Front to retain its original vision and to canvass this vision legally, on the ground, while finding a new role in providing day-to-day political representation for the Sahrawi population of the Western Sahara.¹⁰⁰

From Rabat’s point of view, the *quid pro quo* would be that it need not make any special arrangement for

autonomy for the region and thereby disrupt the historically unitary character of the Moroccan state and risk encouraging autonomy demands in other potentially refractory regions such as the Rif. Allowing the Polisario Front to provide representation for the Sahrawi population as a constitutional political party could also enable Rabat to dispense with the repressive tactics on which it has relied until now.

An indispensable element of any negotiated agreement with the Polisario Front would, of course, be the return of all the Sahrawi refugees currently residing in camps in Algeria to their homes in Western Sahara, with guarantees of recovery of their full civil and political rights and measures to compensate them for loss of property and other losses endured as a consequence of their forced flight in 1975.

In both cases, what Rabat might offer clearly falls short of independence and also of self-determination, properly defined, for the people of Western Sahara. Yet, in both cases, what would be on the table could constitute a definite improvement in the real status of the Polisario Front, which would be able to return to Western Sahara and establish itself there as a legal movement, while securing the return of the Sahrawi refugees.

These would not be negligible gains. When set against the ideal vision of an independent Sahrawi state, they would fall far short, but, if it is recognised that there is no realistic possibility of an independent state in the foreseeable future, they should be measured against the alternative: that the Polisario Front and the Sahrawi refugees remain indefinitely in the *cul-de-sac* of the camps in Tindouf, a liberation movement in exile, a state in exile and a population in exile, achieving none of their goals and going nowhere.¹⁰¹

For the Moroccan government also, coming to terms with the Polisario Front would not be easy and would require a major effort. For most of the time since 1975, Rabat’s attitude has been that the Polisario are rebels against legitimate authority and, worse, “mercenaries”, the paid tools of Algerian *realpolitik*. It is essential that Rabat free itself from these propagandist stances. It should recognise and admit – at least to itself – that the position taken at the outset by the Polisario Front accurately represented the majority tendency in Sahrawi public opinion,¹⁰² and that a

¹⁰⁰ The Polisario Front’s leaders might usefully reflect on the case of Northern Ireland, where Sinn Fein is now performing this role to considerable effect. Originally the civilian wing of the Provisional IRA, Sinn Fein since the end of the IRA’s military campaign has developed into a vigorous political party and the main representative of the Catholic community in the province, while accepting the constitutional framework of the United Kingdom in practice. But it has not repudiated or abandoned its long-term objective of a United Ireland; it has merely acknowledged that this cannot be achieved in the foreseeable future. This pragmatic strategy has enabled Sinn Fein to stay in business politically and thereby keep its original goal alive.

¹⁰¹ For a discussion of the costs of the continuing impasse, in particular to the Polisario and to the Sahrawi people, see Crisis Group Middle East/North Africa Background Report N°65, *Western Sahara: The Cost of the Conflict*, 11 June 2007.

¹⁰² In May 1975, the United Nations’ Visiting Mission was allowed into Spanish Sahara; in October 1975 it reported that the overwhelming majority of the population wanted independence, and the Polisario Front “appeared as a dominant

major element of Sahrawi opinion in the territory today continues to identify with the Polisario Front's positions. It should also recognise that, during the fighting from 1975 to 1991, the Polisario Front was an honourable adversary.¹⁰³

Finally, Rabat should bear in mind that its fundamental position on the conflict has involved a serious contradiction: its original claim to the territory was based on the thesis that the Moroccan monarchy enjoyed the allegiance of the population of Western Sahara in the pre-colonial period. Since 1975, the Moroccan state has occupied the territory but has not gained the allegiance of its indigenous population; that is, its actual presence in Western Sahara since 1975 has not been legitimated – it has actually been delegitimated – by the criteria it originally invoked to validate its claim. It is unlikely that it can hope for a change in this key respect unless it comes to terms with this population's main political representatives.

C. THE CONDITIONS OF A SUCCESSFUL NEW DEPARTURE

Reaching a compromise settlement along these lines will not be easy. In view of the bitterness that has accompanied the conflict and solidified over the years, it will require considerable political skill and reserves of statesmanship on all sides.

At the core of this vision are the ideas of reciprocal recognition and legitimation. For Morocco to secure recognition and legitimation of its position in the territory, it must offer recognition and legitimation of the Polisario Front's existence as the main political representative of the people of Western Sahara and find a way to include the Front in the political arrangements for the territory in the future. In particular, it must recognise the distinct identity of the people of Western Sahara and find a way of accommodating this within the broader framework of Moroccan nationality. It must also recognise and satisfy Algeria's substantial concerns in this matter.

For this to happen, two conditions must be met. First, Rabat must take the initiative to broach negotiations in the form of a serious and substantive approach to its historic adversaries. Secondly, the UN should accept a very secondary role and should, in particular, abstain from trying to define what is at issue in the negotiations or to

determine their manner and timetable. Its proper role should be to maintain a presence of some kind in the territory as a buffer between the two sides, lend assistance to the negotiations process when the three main parties jointly request this and give its blessing to the eventual settlement when this has been agreed.

force in the territory". See Tony Hodges, *Historical Dictionary of Western Sahara* (Metuchen, N.J., London, 1982), p. 352.

¹⁰³ As Abdelkader Messahel put it, "The Sahrawis fought a clean war. They never attacked civilians", Crisis Group interview, Algiers, 4 December 2006.

V. CONCLUSION

The protracted impasse in the Western Sahara conflict has resembled a vicious circle, with each link in the circular chain blaming another for the stalemate. In fact, however, the UN Security Council has not been part of this circular chain. It has enjoyed a degree of detachment from the conflict that should, in principle, have enabled it to chart a way forward. It is for this reason that it bears responsibility for the impasse and an obligation to help end it. By defining the conflict in terms of self-determination, the UN has endorsed the Polisario Front's and Algeria's view of the question. By insisting that the resolution of the conflict must be consensual, however, it has awarded Morocco a veto on any outcome. The contradiction in these two aspects of the UN's behaviour is at the heart of the impasse.

The Western Sahara conflict can either be resolved on the basis of self-determination, that is, the basis of international law and the UN's own long-standing doctrine regarding decolonisation; or it can be resolved on the basis of a negotiated bargain between the parties to the dispute. It is a potentially disastrous mistake to muddle the two.

In order for it to be resolved on the basis of self-determination, it is indispensable that the option of independence be available to the voters in an eventual referendum. The Security Council would need to override or neutralise Morocco's objections in some way, either by putting pressure on Rabat to withdraw them or by offering it satisfactory guarantees of aid and assistance to offset the domestic political cost of the concession. If the Security Council cannot agree to do this because of the vested interest that some or all of its members may have in their relationship with Rabat, it follows that international law has been rendered inoperative in this affair. In that case, unless the Algerian government and the Polisario Front can find some way to induce the members of the Security Council to revise their calculations of their own interests in the matter, it should be recognised that there is no prospect of a resolution on the basis of the exercise of the right of self-determination and that the impasse will continually indefinitely unless a way forward via direct negotiations can be found.

In order for negotiations to offer any serious prospect of securing a sustainable agreement that might resolve the conflict, it is essential that the parties to the dispute be enabled to move away from their longstanding postures. It is equally indispensable that the negotiations address effectively the full range of interests and principles which have been at stake in the conflict. It is accordingly essential that they not be prejudiced at the outset by the

stipulation that their objective is to secure the self-determination of the people of Western Sahara. Their objective should be to resolve the conflict between the parties through an agreement to which they all genuinely adhere, whatever principles that agreement may be based on.

It is of course indispensable that any resulting agreement be put to the people of Western Sahara for their approval and that it meet with their consent. But to call this self-determination, when the option of independence is ruled out in advance, is to debase the term. And to continue to define the question at issue in any negotiations as self-determination is not merely to invite the Polisario Front and the Algerian government to remain fixed in their positions, but very possibly to oblige them to do so by making it extremely difficult for them to articulate other elements of their outlook and interests.

To abandon the definition of the conflict uniquely in terms of self-determination and to abstain from defining the objective of any direct negotiations between the parties as the realisation of self-determination is not to take a partisan position of opposition to self-determination or to express contempt for the principle. It expresses respect for the principle by refusing to debase it, and it leaves entirely open the question of the ground of principle upon which the parties may eventually negotiate an agreement. It thereby removes an obstacle that has hitherto impeded the parties from exploring properly the full range of matters at issue between them.

To remove an obstacle is not in itself to impel movement. Given the failure of the Security Council to enable the conflict to be resolved on the basis of a referendum allowing for genuine self-determination, it is incumbent upon it to act decisively to stimulate movement by prompting Morocco to take the initiative by making serious proposals to both the Polisario Front and Algeria. Whether the recent Moroccan proposal of a formula for autonomy will be enough to launch genuine negotiations, as distinct from a fresh round of mere manoeuvres, remains to be seen, but may be doubted. The Security Council should encourage the Moroccan government to develop and firm up its autonomy proposal. But, if this is rebuffed, it is essential that the Security Council encourage Rabat to make a fresh initiative, addressed from the outset to its adversaries in the conflict rather than to the UN, and that this initiative take proper account of the positions of both the Polisario Front and the Algerian government.

Cairo/Brussels, 11 June 2007

APPENDIX B

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