

Sovereignty & Self-Determination in Western Sahara

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In 1837, the English poet Alfred Lord Tennyson pondered a better future. In a poem entitled "Locksley Hall," he saw a Vision of the World. It was, to him, a wondrous view, informed by a "Parliament of man". He wrote;

There the common sense of most shall hold a fretful realm in awe

And the kindly earth shall slumber, lapt in universal law.

This vision underpinned the formation of the United Nations – Harry Truman is said to have carried a copy of the poem in his pocket as he lobbied in and out of pre-UN meetings – yet, the landscape seen by Tennyson has not quite evolved. As the British UN representative Gladwyn Jebb noted, the UN was perhaps too patrician for, as he put it, "this wicked world."

For the Saharawis of Western Sahara, the role of the UN as the pre-eminent international body has diverted somewhat from Tennyson's vision and perhaps adhered more to Jebb's more cynical assessment.

The case of Western Sahara highlights four central problems with the UN structure and culture and offers definite insights into just why the organisation may fall short of its albeit ambitious goals.

These issues are sovereignty, legitimacy, the application of international law and, the role of violence.

I'd like to address each in turn.

Sovereignty is of course an old chestnut in UN debates. The concept has been used time and time again to justify UN inaction and has traditionally knobbled the organisation, often to the great frustration of the General Assembly and the Secretary-General himself.

That such a central tenet should rely on an avowedly European context, drawn from a series of religious wars some 350 years ago has aroused pointed critiques, especially from the non-European world.

But, age does not invalidate good ideas. The idea of democracy, for instance, is many centuries older than the Westphalian order. Nor should Europe's past undermine its better outputs: the English Magna Carta of 1215 remains, rightly, a seminal document in human political society and its ideals communicate favourably with the forces of freedom in Western Sahara as elsewhere.

As such, sovereignty is not a faulty device in its own right. Borders must be respected and peoples should not be subject to arbitrary assault. While it has, as a concept, been horribly manipulated to serve narrow ends, the sovereign state is a valuable entity and should be protected.

For the Sahrawi, the concept of sovereignty is, of course, utterly vital and touches us every day. We support the notion.

Indeed, it is our argument that our very real and existing sovereignty has been ignored in favour of that of Morocco's invasion, even though the latter has been found, in a definitive ruling of the International Court of Justice, to have no legal claim on our territory and no recourse to any form of sovereign rights in Western Sahara.

The problem is that not only has the notion of sovereignty become corrupted, it has been over-ridden in diplomatic circles by something we might call Super Sovereignty.

This view is driven by the role of the UN's veto powers.

It is these powers which have tended to influence debate over Western Sahara's future and to apply their sovereign interests to issues outside their own sovereign purview. The diplomatic Super Sovereignty of France in particular has twisted the illegal invasion and subsequent, decades-long occupation by Morocco into a basis to press for a settlement which offers the Sahrawi less than their sovereign and legal rights ought to guarantee.

The UN, held in a straight-jacket by the veto powers, is finding it hard to push against the intentions of these Super Sovereign powers.

This dynamic touches upon the second of the over-arching problems besetting the UN and, as a result, Western Saharan independence: legitimacy.

More to the point, what I want to talk about here is the sense that, in terms of the standard international relations reality, sovereignty does not equal legitimacy. Generally, in fact, sovereignty and the presence of Super Sovereign states, almost always is able to manufacture an artificial legitimacy to serve more immediate and prosaic interests.

As the afore mentioned International Court of Justice decision of 1975 on Western Sahara makes absolutely clear, Morocco has no legitimate rights over Western Sahara.

Yet, the campaign for an autonomous arrangement within a Moroccan state avers the power of sovereignty to Morocco. It is a position that is, in the face of its illegitimate foundation, baseless.

Morocco's utterly groundless and shameful claim to be the legitimate ruler of Western Sahara even in an autonomous structure, has been supported by some of the major powers - such as the Super Sovereigns. What's more these fallacious calls to legitimacy have become the basis for a claim to Moroccan sovereignty, which has been thrust into the vacuum that is believed to exist on Western Sahara as the politically acceptable solution.

Here, we see in evidence the third problem we are dealing with: the gap between international law and international political reality.

The ICJ landmark decision in 1975 found that at the time of Spanish colonisation of Western Sahara, the Sahrawi people were the only sovereign power. Subsequent attempts at annexation by Morocco and Mauritania after the withdrawal of the Spanish thus can be seen, in blank terms, to be illegal and in contravention of the UN Charter.

The argument should therefore end there.

While Mauritania has since admitted the folly of this course, Morocco has continued to over-ride actual, tried and tested legal sovereignty with a series of political manoeuvres, touching as we have seen on various weak-spots in the international system.

Our case prompts a consideration as to just how relevant and powerful is the international rule of law when it is forced to confront Realpolitik in the international context, as is almost always the case.

Such a blatant overturning of international law and principle as has occurred over Western Sahara over the last three decades has been aided by a fourth weakness in the international system I'd like to talk about: the role of warfare.

Much of the international system as we know it today, including the structure and mindset of the UN, is based upon the basic premise that war is an objective bad and that peace is an objective good. Much of the international models built in the last three centuries have been founded on this core value system and have sought to find ways to discourage war and to generate peace.

In Western Sahara, we too believe in these objective truths and while we have been forced to defend ourselves through bearing arms in the past, we have chosen a path of non-violence in our dealings with Morocco and with the world at large.

While the moral underpinnings of this approach are secure, there are those who would suggest this course has been counter-productive.

If that is so, that is less a criticism of our position and more a condemnation of the international order. For, it is without doubt, that violence begets a reaction on the international stage. Non-violence may win kudos, but it tends not to win the battle of the headlines.

Should the Saharawis have made a violent struggle out of Morocco's actions since the peace agreement of 1991, it is likely we would have been rewarded with Security Council emergency meetings and with swift resolutions and more attention.

As it is, we have been shunted off to the non-emergency basket. The voices of the thousands of Saharawis in the refugee camps and in the occupied territories are little more than minor notes in today's global symphony.

And so, we can see the international system has not worked in our favour.

Standard precepts of international discourse have been distorted to squeeze out a model of autonomy within an expansive and truculent Moroccan state, which is neither acceptable to the Sahrawis and which is, at its very core, unjust in terms of international law.

The autonomy plan has been accepted by some as a *fait accompli*. This rewards the outright aggression and the illegal activities of the Moroccan monarchy, which should in no way be so favoured.

Such a direction is, as we can see, an inversion of the very ethics of international relations, a severing of any links to legality and nothing less than a stab in the back for the Sahrawi people.

This not only has dire consequences for our people, it also sends a very dangerous message to various recidivists the world over for whom the use of violence and manipulation are a working model of advancement. Should such forces need a morale boost, they need look no further than the world's reaction to Western Sahara.

We remain hopeful that the international system can be resurrected, not only to our benefit, but to the lasting benefit of all. That means our people must be given the right to self-determination, as advised by the UN and agreed to by Morocco, so as the fate of our people is put back in their hands.

Our sovereignty is without dispute. Our moral course is sincere. We are the rightful and legal occupants of Western Sahara. The international system must hang its head forever in shame should these truths be ignored in the interests of political expediency.

We must reclaim the principles of sovereignty, lest Western Sahara become a sorry signpost of a descent into the dark recesses of Realpolitik and a savage affront to Tennyson's vision of global justice.

See annex below

Annex

Historical Background

In 1975 Morocco embarked on an act of aggression invaded and occupied Western Sahara by force. This was undertaken to further its dream of a "Greater Morocco" that would include the entire Western Sahara, the whole of Mauritania and parts of Mali and Algeria.

However, the International Court of Justice was very clear in its decision of 15th October 1975, when it concluded that:

"The materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the Decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory." (ICJ Rep. 1975 12 para 162)

Morocco ignored the decision of the ICJ and invaded Western Sahara. The UN Security Council adopted resolution (S/RES/380 (1975)) deploring the invasion and calling on Morocco to withdraw from the Territory but Morocco ignored the resolution as well as those of the General Assembly which called for the end of the occupation: A/RES/34/37 21 November 1979 and A/RES/35/19 11 November 1980.

In 1989 Morocco and Polisario accepted the UN and OAU Settlement Plan which called for the organisation of a referendum of self-determination. The UN deployed its mission MINURSO in Western Sahara with a view to holding the referendum that was supposed to take place in 1992. But Morocco reneged on its agreement and obstructed the implementation the Settlement Plan.

The people of Western Sahara found themselves facing a war of extermination where Napalm, cluster and white Phosphorus bombs were used against innocent Saharawi civilians. The war against the Saharawi people continues today through the means of systematic human rights abuses.

Human rights

While the decolonisation process of Western Sahara drags out, the situation for the Saharawi people remains dire.

The invasion of Western Sahara in 1975 forced a 165,000 Saharawis to flee Moroccan air strikes and seek refuge in the southwest of Algeria where they have been living in inhuman conditions waiting for the UN to organise the promised referendum.

Since its occupation of Western Sahara Morocco has used the system of disappearances, imprisonment, torture, and murder.

Human rights organizations have regularly condemned the appalling human rights record of the Moroccan regime, particularly the inhuman treatment of the Saharawis who are under siege in the occupied territories.

In the occupied zone, the Saharawi people endure a premeditated campaign of human rights abuses, including murder, torture, disappearance as well as harassment and intimidation.

There are numerous and well-documented reports, by Amnesty International, Human Rights Watch and others, on human rights abuses by the Moroccan police and military forces in the occupied areas despite UN presence in the Territory.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a report on 8 September 2006 following a visit to the region. The report was transmitted to the parties but unfortunately it has not been made public yet.

The conclusion of the report stated that "overall, the human rights situation is of serious concern, particularly in the Moroccan-administered territory of Western Sahara. Currently, the Sahrawi people are not only denied their right to self-determination, but equally are severely restricted from exercising a series of other rights."

The recommendations of the report underline that "as has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay."

The recommendations of the OHCHR to ensure adequate and continuous monitoring of the human rights situation in the region have not been implemented.

Indeed, human rights abuses continue. Morocco uses intimidation and harassment to silence the Saharawis in the occupied areas. Hundreds of Saharawis continue to languish in prison while the fate of about 500 Saharawi civilians and 151 Saharawi prisoners of war is still unknown. Morocco continues to restrict the access of journalists and independent observers to Western Sahara.

In its report of 19 December 2008, Human Rights Watch said that Morocco violates the rights to expression, association, and assembly in Western Sahara. Human Rights Watch called on Morocco to take specific steps to improve the human rights situation in the territories under its control, and on the United Nations Security Council to ensure regular human rights monitoring Western Sahara.

Human Rights Watch said that in Western Sahara, Moroccan authorities consider all opposition to their rule of the disputed territory as illegal attacks on Morocco's "territorial integrity," and use this as a basis to ban or disperse peaceful demonstrations and to deny legal recognition to human rights organizations. The problem goes well beyond repressive laws, however: police beat peaceful pro-independence demonstrators and sometimes torture persons in their custody. Citizens file formal complaints about police abuse that the justice system routinely dismisses without conducting serious investigations, reinforcing a climate of impunity for the police.

Human Rights Watch said that the UN Security Council should ensure that the UN presence in the region includes regular human rights monitoring. Virtually all UN peacekeeping missions around the world include a human rights component and, with MINURSO forces operating in a peacekeeper capacity in Western Sahara, this region should be no exception. HRW added.

Among its many recommendations, Human Rights Watch urges Morocco to:

- Revise or abolish laws that criminalize speech and political or associative activities deemed affronts to Morocco's "territorial integrity" and that are used to suppress nonviolent advocacy in favor of Sahrawi political rights;
- End impunity for police abuses by ensuring serious investigations into civilian complaints and, where warranted, charges or disciplinary measures against abusive agents;
- Allow independent human rights associations to follow the procedure for obtaining legal recognition; and
- Ensure that courts reach verdicts based on the impartial weighing of all relevant evidence. Judges and prosecutors should give effect to suspects' right under Moroccan law to demand medical examinations, and reject as evidence any statement that is established to have been made as a result of police torture.

The European Parliament issued a report on 17 March 2009 in which it criticised Morocco for committing human rights abuses and suggested that the UN mission in Western Sahara (MINURSO) should be given the responsibility to monitor the situation of human rights.

The other issue that it is worth underlying is the systematic plunder of the natural resources of Western Sahara particularly fisheries and phosphates by Morocco in violation of international law.

The Under-Secretary-General of Legal Affairs and the Legal Counsel of the UN, Hans Correll, reiterated in an opinion on 29 January 2002 that Morocco is not considered as an administering power because "The Madrid Agreement did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power - a status which Spain alone could not have unilaterally transferred."

Mr. Correll concluded that "...if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories".

The Referendum Process

The Charter of the United Nations recognises the right of peoples to self determination. Furthermore, the UN passed landmark resolutions and established important decolonisation programs. In 1963 Western Sahara was included in the UN list of the non-self-governing territories, and in October 1964 the UN Decolonisation Committee adopted its first Resolution on Western Sahara, urging Spain to start the process of decolonising the territory. The UN General Assembly issued a similar Resolution on December 16, 1965.

Initially, Spain was reluctant to start the process of decolonisation; but in August 1974, it informed the UN that it was prepared to organize a referendum on self-determination. In this referendum, the people of Western Sahara could choose either full independence or to remain attached to Spain. Morocco and Mauritania opposed the referendum idea as they wanted the Territory for themselves.

Both the Frente Polisario and Morocco accepted the Settlement Plan based on a referendum of self-determination. The UN declared a ceasefire in 1991 and a UN mission - MINURSO - was established in the Territory to prepare for the holding of a free and fair referendum that will give a chance for the Saharawi people to exercise their right to self-determination in accordance with UN resolutions and its doctrine of decolonisation.

But the referendum process is now obstructed unilaterally by Morocco. It is not because the referendum cannot be organised or that the UN is not capable of implementing the Settlement Plan that is based on a referendum process.

Almost eighteen years later and despite huge efforts and costs the Saharawi people are still waiting for an opportunity to decide their own future. This is due to Morocco's obstruction and violation of UN resolutions and Peace Plans.

Morocco accepted the UN/OAU Settlement Plan which is based on the organisation of a referendum of self-determination. Furthermore, Morocco signed the Houston Agreements negotiated under the auspices of James Baker the former Personal Envoy of the Secretary-General. The agreements were endorsed by the Security Council and should have led to the organisation of the referendum.

However, in August 2004, Morocco decided to abandon the peace process and the referendum idea altogether. The reason why Morocco wants to avoid the referendum process is because it fears the verdict of the Saharawi people.

In 2007 the Security Council called on both parties- Morocco and Polisario- to enter into direct negotiations without preconditions, in good faith, with a view to ensuring the respect for the right of the Saharawi people to self-determination.

The UN Security Council in its Resolution 1813 adopted on 30 April 2008 underlined, once again, the prevalence of international legality in relation to the question of Western Sahara.

The Council reaffirmed "its commitment to assist the parties to achieve a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara."

The Council also reaffirmed the relevance of resolutions 1754 and 1783 that have defined the framework and ultimate goal of the ongoing direct negotiations between the Frente Polisario and the Kingdom of Morocco.

In Resolution 1813, the Council called upon "the parties to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith." The Frente POLISARIO stands ready to continue the UN-led negotiation process.

The Frente POLISARIO expressed its willingness to cooperate in the rigorous implementation of the resolutions of the Security Council which reaffirm the validity and relevance of the principle of self-determination for the people of Western Sahara.

Therefore, Polisario put forward a proposal for a lasting and comprehensive solution of which the Security Council has taken note in resolutions (1754 (2007), 1783 (2007) and 1813 (2008)).

The Saharawi proposal has the merit of not only complying fully with international legality but also laying out a vision for the future that would be conducive to the establishment of friendly and cooperative relations with Morocco in political, economic and security domains. A free and fair referendum is an integral part of our plan.

The Saharawis are committed to accepting the results of the referendum and to negotiating with Morocco, under the auspices of the United Nations, issues of special concern to it, in the event that the voters in the self-determination referendum opt for the independence of Western Sahara.

On the other hand, the Moroccan “autonomy” proposal is a unilateral project aimed at undermining the process of self-determination in Western Sahara, maintaining the *status quo* and legitimizing the illegal occupation of our country.

The “autonomy” proposal starts from a very mistaken premise that Western Sahara is already a part of Morocco. Yet, as the esteemed participants of this seminar are aware, the reality is that Western Sahara is still a decolonisation issue and that no country in the world recognises Moroccan sovereignty over our homeland.

The Moroccan proposal furthermore excludes the option of independence and does not give the Saharawi people a chance to decide their own future in accordance with UN resolutions and the verdict of the International Court of Justice.

It is worth recalling that the Personal Envoy of the UN Secretary-General stated unequivocally that “the United Nations cannot sponsor a plan that excluded a referendum with independence as an option while claiming to provide for the self-determination of the people of Western Sahara” (para.14, S/2006/817 of 16 October 2006).

Anything short of a genuine exercise by the Saharawis of their right to self-determination will seriously affect the UN’s credibility and will not contribute to a lasting peace and stability in the region.

After 45 years on the UN agenda, it is tragic that Western Sahara’s decolonisation is still incomplete and that the Sahrawi people are still denied their basic and legitimate right to decide their own future. At the same time, the Saharawis have faced horrendous human rights abuses by Morocco. In addition, their natural resources continue to be illegally exploited by companies from all over the world, including Australia. 165,000 Saharawis have endured life in harsh conditions in refugee camps for the past 33 years.

It is the duty of the international community to make sure that a final and lasting decolonisation process is achieved in Western Sahara. The alternative to a peaceful solution will be the resumption of hostilities and the destabilisation of the whole region, something the Saharawis wish to avoid.