

A full-page photograph of a soldier in desert camouflage gear, including a vest and binoculars, looking through the binoculars. The background is a clear blue sky and a sandy desert landscape. The text 'PEACE IN SIGHT?' is overlaid in large white letters.

# PEACE IN SIGHT?

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*After 40 years of occupation, why has  
no one managed to create peace in  
Western Sahara?*



## PREFACE

**Nicklas Poulsen Viki, Martine Jahre, Inga Marie Nymo Riseth**

The executive committee of SAIH

Since the 1960s SAIH has been fighting for decolonization, democracy and justice. We were active in the struggle against apartheid in South Africa and for the decolonization of East Timor. The last 18 years, SAIH has worked for the decolonization of Africa's last remaining colony, Western Sahara. In this struggle, SAIH has contributed in making consensus among all the political youth parties and political parties in Norway. We have also been one of the driving forces for Norwegian businesses to withdraw from Western Sahara, because it contributes to and prolongs the occupation. The struggle is still ongoing, and we will not surrender before Western Sahara is liberated.

The UN-led negotiations between Morocco and the representatives of Western Sahara has broken down long ago. Morocco has both France and USA on its side, and refuses to accept a referendum as long as independence is one of the possible outcomes. As such, Morocco remains the superior part in the conflict, and can continue the occupation as before. This became evident once more in the aftermaths of the UN Secretary General's visit to the Sahrawi refugee camps. Most of the international community are idle bystanders, which in reality means supporting status quo.

Over 40 years have passed since Moroccan forces marched into Western Sahara. The more time that passes, the less likely it is that the Sahrawi people will have their right to self-determination fulfilled. The patience and strength that the people has shown through peaceful and non-violent struggle is remarkable, but we know that the impatience among Sahrawi youth is growing.

The sand in the hourglass is soon running out. It is time that the international community reaffirms that human rights and international law stands above the narrow geopolitical interests of the member-states in the Security Council.

### SAIH urges the international community to:

1. Work actively to revive negotiations, based on international law and the UN Settlement Plan from 1991.
2. Increase the diplomatic pressure against Morocco and their alliance partners for acceptance of a free and democratic referendum on independence, in accordance with international law.
3. Work actively for the inclusion of a permanent, independent, and impartial monitoring of human rights in the mandate of UN's peacekeeping mission MINURSO.

## ABOUT THE REPORT AUTHOR

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Christian Ranheim is a Norwegian human rights lawyer. He has more than 20 years of experience from work with peace processes and human rights in countries such as East Timor, Sri Lanka and Indonesia. Ranheim was employed for 10 years at the Norwegian Centre for Human Rights at the University of Oslo. He currently manages the consultancy firm, Human Rights Solutions.



## ABBREVIATIONS

*AU* The African Union

*ICJ* The International Court of Justice

*MINURSO* The UN Mission for the Referendum in Western Sahara

*OAU* The Organization of African Unity

*POLISARIO* The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro

*SADR* The Saharawi Arab Democratic Republic

*UN* The United Nations

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«*International law is our first line of defense*»

Norwegian Minister of Foreign Affairs  
Børge Brende,  
Kirkenes, Norway, February 4th, 2015

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# 1.

## TIMELINE

### TIMELINE



**1884**  
The Berlin Conference. Spain colonizes Western Sahara.

**1956**  
Morocco achieves independence from France.

**1960**  
The UN adopts resolutions 1514 (XV) and 1541 (XV) regarding independence for colonial countries and peoples.

**1963**  
The UN adds Western Sahara to their list of non-self-governing territories, with Spain as administrator.



**1966**  
The UN urges Spain, under UN supervision, to hold a referendum in Western Sahara in accordance with the right to self-determination. Morocco votes in favor of the resolution. Similar resolutions are passed in 1967, 1968, 1969, 1970, 1972 and 1973.

**1973**  
The Polisario Front is established.

**1974**  
Morocco urges the UN General Assembly to ask the International Court of Justice in The Hague for an advisory opinion on the judicial status of the territory prior to Spanish colonization.

**1975**  
**15. Oct**  
The report of the UN investigation commission that visited Western Sahara earlier that same year is published. No factions supporting the territorial demands of neighboring countries had been encountered, but there had been massive demonstrations in favor of independence.

**16. Oct**  
The International Court of Justice delivers its advisory opinion on Western Sahara. The conclusion is that the territory belonged to neither Morocco nor Mauritania prior to Spanish colonization.

**6. Nov**  
Morocco initiates the "Green March", in which 300 000 Moroccans enters Western Sahara by foot. Simultaneously, a military invasion is taking place.



**6. Nov**  
The UN Security Council condemns the "Green March".

**14. Nov**  
Spain, Mauritania and Morocco agree on the Madrid Accords, set to transfer administrative authority from Spain to Mauritania and Morocco. The treaty is not sanctioned by the UN.

**1976**  
**26. Feb**  
Spain withdraws from Western Sahara.

**27. Feb**  
Polisario declares the Sahrawi Arab Democratic Republic (SADR).



**1979**  
Mauritania withdraws and Morocco takes over the area previously under Mauritanian control. The UN condemns the extension of the Moroccan occupation.

**1984**  
SADR becomes a member of the Organization of African Unity (OAU).

**1988**  
Morocco and Polisario accept the UN proposed Settlement Plan.

**1990**  
The UN Security Council approves the Settlement Plan.

**1991**  
**29. April**  
The UN establishes MINURSO (United Nations Mission for The Referendum in Western Sahara), which is supposed to implement the Settlement Plan. According to the agreement, a referendum on the future of the territory is to be held in 1992.

**6. Sept**  
The ceasefire between Morocco and Polisario is implemented.

**1996**  
The identification of eligible voters is stopped.

**1997**  
James Baker is appointed Personal Envoy of the UN Secretary General, and the parties agree on "the Houston Accords". A referendum is scheduled for 1998.

**1999**  
The first list of eligible voters is published.  
  
The first wave of protests in the occupied territories takes place.

**2000**  
The second list of eligible voters is published. Morocco protests and Kofi Annan receives the support of the Security Council to seek alternatives to the Settlement Plan.

**2001**  
A new peace effort is launched – "The Framework Agreement". The plan is rejected by Polisario and does not receive the support of the UN Security Council.

**2002**  
The Legal Counsel of the United Nations, Hans Corell, renders a legal opinion upon the request of the Security Council on exploitation of mineral resources in Western Sahara.

**2003**  
A new plan, "The Baker Peace Plan II", is approved by Polisario and a unanimous Security Council, but rejected by Morocco.

**2004**  
James Baker resigns as Personal Envoy.

**2005**  
A second wave of protests in occupied Western Sahara.

**2007**  
Morocco lays out a framework for a peace solution based on autonomy. This is rejected by Polisario. Fruitless peace talks in Manhasset, USA.

**2008**  
Another round of fruitless peace talks in Manhasset, USA.

**2010**  
A new round of fruitless peace talks in Manhasset, USA. The largest demonstration among Sahrawis to date in Western Sahara takes place.

**2011**  
Fruitless negotiations in Malta and in Manhasset.

**2012**  
Another round of fruitless negotiations in Manhasset, USA. Christopher Ross informs the Security Council that he does not see any benefit in more direct negotiations. Instead, he initiates a policy of "shuttle diplomacy".

**2015**  
The European Court of Justice annuls a trade agreement between the EU and Morocco on the ground that it includes Western Sahara. Ross expresses his frustration to the Security Council that Morocco does not wish to negotiate.

**2016**  
UN Secretary General, Ban Ki-Moon, visits the refugee camps in Algeria. Protests by Morocco, obliging UN to reduce MINURSO staff. The Security Council adopts a resolution calling for full resumption of MINURSO activities.

## FROM CARAVAN ROUTE TO WAR ZONE

- the background to the conflict



## FACTS

## WESTERN SAHARA

## INTERNATIONAL STATUS

Non-self-governing territory

## OFFICIAL LANGUAGE

Arabic

## POPULATION

App. 500 000

## SIZE

266 000 km<sup>2</sup>

## CAPITAL

El Aaiún

**W**estern Sahara is a country the size of Britain, and consists mostly of desert and mountains. The territory was originally inhabited by nomads who used the desert to transport salt to and from the coast.

Western Sahara first caught the eye of the colonial powers during the 15th century, when Spain became aware of the fishing resources off the coast. In 1884, Western Sahara was officially recognized as a Spanish colony at the Berlin Conference.

After World War II, the struggle against colonialism accelerated. The UN requested Spain to let the Sahrawis determine their own future through holding a referendum.<sup>1</sup> In 1973, the Sahrawi liberation movement, the Polisario Front, was established and launched an armed struggle against Spanish colonial rule.

During this period, Morocco intensified their diplomatic efforts aimed at securing support for Moroccan sovereignty over Western Sahara. This culminated in a plea from Morocco and Mauritania to the UN General Assembly for a legal determination of the status of the territory. Subsequently, the General Assembly requested the International Court of Justice to provide an advisory opinion on the affiliation of the territory prior to Spanish colonization. The situation then escalated quickly. On October 16, 1975, the court rendered its opinion.<sup>2</sup> In spite of ties between Morocco, Mauritania and Western Sahara, the court did not consider them of such a nature that the territory belonged to any of them.

Contrary to the court's advisory opinion and resolutions issued by the UN, Morocco prepared for an invasion of Western Sahara.

*Supported by the Moroccan army, more than 300 000 civilians entered Western*

*Saharan territory in November 1975.*

The purpose of the "Green March" was to pressure Spain into transferring the sovereignty over Western Sahara from Spain to Morocco. The tactics proved successful, and with General Franco on his deathbed, Spain agreed to transfer the temporary administration to Morocco and Mauritania until the question of self-determination had been resolved.<sup>3</sup> The UN has never sanctioned this agreement, known as the Madrid Accords. Spain is thus still considered administrative power over Western Sahara, according to Article 73 and 74 of the UN Charter, while Moroccan control over the territory is considered illegitimate. In December 2015, the European Court of Justice confirmed that no international body has given Morocco the mandate to administer Western Sahara.<sup>4</sup>

*In the wake of the invasion of Western Sahara, a large part of the population fled in panic. At the same time, Polisario proclaimed Western Sahara as an independent state and resumed armed struggle, this time against Morocco and Mauritania.<sup>5</sup>*

Polisario quickly developed an effective form of warfare through launching hit and run attacks. With their local knowledge and increased access to modern weaponry, they forced Mauritania into accepting a peace treaty in 1979. Moroccan forces also suffered heavy losses up until the early 1980s, when Morocco started building defensive walls inside Western Sahara. To this day, a 2700-kilometer wall supported by minefields has been constructed between the territories controlled by Morocco and Polisario. The wall and the mines made it more difficult for Polisario to launch their attacks, and in the late 80s the parties entered into a standstill in which Polisario had military control over approximately one third of the territory and Morocco the remaining two thirds.

*Because of Western Sahara, Morocco is still the only African country that is not a member of the African Union.*

## 3.

### THE PEACE PROCESS

- Entering new battlegrounds

**T**he Organization of African Unity (OAU), predecessor of the African Union (AU), quickly took a lead role in attempting to secure a ceasefire between the parties. They established an implementation committee, which cooperated with the UN in supporting peace negotiations based on the Sahrawis' right to self-determination. Morocco initially seemed positive of a referendum, but frustration soon spread inside the OAU when there was no progress in the discussions. Instead, the organization in 1984 chose to recognize SADR, which led Morocco to withdraw as a member state. Because of Western Sahara, Morocco is still the only African country that is not a member of the African Union.<sup>6</sup>

After the rupture between the OAU and Morocco, the UN assumed the task of finding a peace solution that could lead to formal decolonization. In 1985, the General Assembly authorized UN Secretary General, Javier Pérez de Cuéllar, to initiate a dialogue with the parties based on the proposals for a peace treaty originally developed by the OAU.<sup>7</sup> This work started in 1986 and bore fruit in 1988, when the parties agreed on the principles for a peace plan known as "The Settlement Plan".

#### **PEACE PLAN, BUT NO PEACE TREATY**

The Settlement Plan was approved by the UN General Assembly in June 1990.<sup>8</sup> It contained a proposal for a ceasefire, procedures for exchanging prisoners of war and provisions for the return of refugees. However, the most important part of the plan was guidelines

for a referendum regarding self-determination. The referendum was to be organized by a separate UN mission, and it was all to be implemented within 34 weeks. To the great surprise of many within the UN Secretariat, the plan was criticized by both the warring parties, and especially by Morocco.<sup>9</sup> King Hassan II criticized the draft publicly, claiming that the referendum should only determine to which degree the population wanted Moroccan citizenship. In addition, he argued that the plan did not include all potential voters, in particular the Sahrawis who had settled in southern Morocco.

*Both Polisario and Morocco had already at this point understood that inclusion on the list over those eligible to vote would have strong impact on the outcome of the referendum.*

Despite the parties' objections, the plan was approved, and in April 1991, the UN Security Council established MINURSO (United Nations Mission for the Referendum in Western Sahara).<sup>10</sup> This UN operation was assigned with implementing the peace plan, which entailed several tasks, including monitoring the ceasefire, the exchange of prisoners of war and, not least, conducting the referendum. Their mandate was to carry these tasks in 46 weeks. Unfortunately, this did not happen.

After some fighting during the summer of 1991, the ceasefire came into place in September the same year. While Polisario welcomed MINURSO, Morocco was less enthusiastic. Roadblocks were erected, and civilians were prohibited from speaking to foreigners.<sup>11</sup> The main challenge, however, was the process of registering voters for the referendum.

*Polisario and the UN originally wished to use a Spanish census from 1974 as the basis of the process, while Morocco wished to include more people, based on previous migrations.*

An identification committee was established by the UN, and they were first given the task of updating the census of 1974 based on population growth and

migration. The UN quickly realized that this work would be problematic. The parties had different stances, and in his report to the Security Council in December the same year, Pérez de Cuéllar therefore modified the procedure.<sup>12</sup> In the report, he introduced new eligibility criteria, among them, affiliation with Sahrawi tribes and de facto residence in Western Sahara prior to 1974. Polisario refused to accept the amendments, which they considered too vague and potentially capable of changing the census considerably.

Almost two years would pass until the parties were able to agree on new criteria. In the meantime, the Egyptian Boutros Boutros-Ghali had assumed the position of UN Secretary General. He finally managed to secure agreement on detailed rules for which persons were eligible to vote, and not least verification procedures based on written documentation or, when this was non-existent, confirmation of tribal affiliation from Sahrawi sheiks.<sup>13</sup>

The identification committee could finally start their work in August 1994. However, they quickly ran into trouble.<sup>14</sup> More than 130 000 new people wanted to register as voters, almost all of them from Morocco. Polisario protested what they considered a delay of the process, while the UN Secretary General requested Morocco to conduct a pre-evaluation of the new applications. The process stalled in the summer of 1995 when Polisario withdrew. This was partly due to disagreements regarding the identification process and partly a protest against draconian prison sentences meted out against Sahrawi activists. Morocco, on the other hand, refused to pre-evaluate the new applications.

*Despite attempts of direct talks between the parties, the identification process in the end collapsed.*

In May 1996, large sections of MINURSO were withdrawn. Time had come to renew the peace process.

#### **JAMES BAKER TAKES ON THE CHALLENGE**

Kofi Annan had now assumed the position of UN Secretary General, and in March 1997 he appointed



12 the experienced American lawyer and politician James Baker as his Personal Envoy for Western Sahara. His first assignment was to determine whether the peace plan had any future.

*Somewhat surprisingly, he quickly reported that the parties confirmed their willingness to find a solution based on the original plan of 1991.*

Baker put forth a draft for a peace agreement already in June 1997. This was, after a few rounds of negotiation, first accepted by the parties and then approved by the Security Council in September the same year.<sup>15</sup> The so-called “Houston Agreement” was modelled on the original peace plan and included holding a referendum. The principles for registration of eligible voters were further specified, and the parties reached an important agreement regarding the security arrangements surrounding the referendum itself.

The task of identifying eligible voters was immediately resumed. In August 1998, the commission finalized the processing of the first Sahrawi groups.<sup>16</sup> Almost 150 000 individuals had been registered, and 84 000 of those were considered eligible to vote. The majority of those rejected were applications presented by Morocco. What remained at this point was processing the applications from tribes with disputed Western Saharan affiliation. This turned out to be problematic for more than one reason. The parties disagreed on the procedures, and Morocco realized that the eligible voters from areas under their control would now be in minority.

In addition, several events occurred during this period that put the peace talks in peril.

*King Hassan II of Morocco passed away, and was succeeded by his son, Mohammed VI. Equally important, was the referendum held in East Timor, where an overwhelming majority voted for independence from the occupying party Indonesia.*

Following the announcement of the result, the Indonesian military and East Timorese militia went

on a rampage of violence and destruction. They did not withdraw until a military force led by Australia assumed control. The similarities with the situation in Western Sahara were many, which gave both Polisario and Morocco second thoughts regarding their own referendum. Polisario was worried about the security surrounding the referendum, while Morocco now increasingly feared losing the election.

In January 2000, the UN published a temporary list of all eligible voters. It contained 86 386 names, a number far lower than the 244 000 that had originally applied.<sup>17</sup> Morocco protested and appealed 130 000 rejected applications.

*It was obvious to everyone except Morocco that these appeals would not be granted. The parties had agreed on a detailed procedure to determine who would be registered, and the Moroccan protest was an obvious attempt to delay the whole process.*

The UN now questioned whether holding a referendum would be possible at all. The organization realized that the parties were of diametrically opposing opinions regarding the procedures for appeal. Kofi Annan, with support of the Security Council, therefore asked James Baker to seek alternative peace solutions.<sup>18</sup>

#### **COMPROMISING THE RIGHT TO SELF-DETERMINATION**

For the first time, the original peace plan had now been set aside, and with that, also the accustomed approach to decolonization. Instead, the UN wanted the parties to consider different options for a negotiated solution not only including independence, but also autonomy. The organization initiated a dangerous game where the basic right to self-determination was in danger of becoming compromised. While Morocco showed an early interest in autonomy-based solutions, Polisario was, with good reason, skeptical. Initial negotiations did not either produce any results. Nevertheless, in 2001, James Baker distributed the draft of what he called “The Framework Agreement”. This proposed a narrow, autonomy-based solution with a referendum “on the future of the territory” after five years. In addition, anyone with residence in Western Sahara in the last year prior to the referendum would be eligible to vote.

It was obvious that Polisario could not support this solution, and Baker failed to receive a mandate from the Security Council to push the plan through. Baker was instead asked to revise his draft.<sup>19</sup> He put forth his second draft for a peace plan in early 2003. Like the previous plan, it proposed a five-year period of autonomy succeeded by a referendum.<sup>20</sup> The difference was that this time, the people would be able to choose between independence, autonomy and integration with Morocco. In addition, the group of eligible voters was more nuanced. Polisario chose to accept the agreement, which received the support of the UN Security Council.<sup>21</sup>

Morocco refused to accept the agreement because it included the possibility of voting for independence.<sup>22</sup> Instead, they presented their own autonomy plan. The UN rejected to endorse the proposals, and James Baker withdrew as Personal Envoy.<sup>23</sup>

#### **COLLAPSE**

The peace process was at the brink of collapse, and it was hard to envisage new solutions that would satisfy the UN’s requirements. Morocco began to develop the autonomy concept further, while Polisario came up with a compromise based on the referendum option. Polisario’s plan was presented on April 10, 2007, and Morocco’s autonomy plan the day after.<sup>24</sup> Despite of Polisario’s willingness to negotiate according to international law, the Moroccan plan received the most attention. Their vision of an “autonomous Sahrawi region” only vaguely referred to a referendum that would decide what the parties agreed to in negotiations. In addition, the executive power of the entire region would rest with King Mohammed VI.

Despite its obvious faults, the UN Security Council described the plan as “serious and credible”.<sup>25</sup> They also encouraged new direct talks between Morocco and Polisario facilitated by the UN’s new envoy, Peter Van Walsum. Polisario understood the danger in initiating a dialogue based on the Moroccan proposal, but nevertheless chose to take part in the negotiations in Manhasset, New York in the summer of 2007. These did not get the parties closer to agreement, and Van Walsum’s contract with the UN was not extended.

The new envoy, Christopher Ross, was assigned in 2008. He quickly met with the parties and hosted several rounds of negotiations. These did not result

in any solution, and Ross as recently as December 2015 said that while Polisario was willing to resume negotiations, Morocco rejected it.<sup>26</sup> Morocco had also expressed a lack of trust in Ross, and in 2015, denied him access to the areas they control in Western Sahara.<sup>27</sup> Kim Bolduc, head of MINURSO, was also denied entry in 2014-15.

In November 2015, King Mohammed VI stated that dividing Moroccan territory is not an option and that autonomy is the only alternative acceptable to them.<sup>28</sup>

*In March 2016, the UN Secretary General, Ban Ki-Moon, visited the refugee camps in Algeria. During the visit, he stated that “no real progress had been made in negotiations towards a just, lasting and mutually acceptable solution, based on the self-determination of the people of Western Sahara”.*

Although his aim had been to revive the peace process, his visit sparked controversy after his characterisation of Morocco’s presence in Western Sahara as an occupation. According to Moroccan media reports, an estimated 1 million people took to the streets in Morocco’s capital Rabat to protest against the Secretary General’s remarks.

The situation now seems completely deadlocked.

## 4.

## WHAT WENT WRONG?

The Sahrawis have become accustomed to empty promises from the international community. Time and again they have witnessed solutions fail due to Morocco's unwillingness and UN's inability to enforce passed policy proposals through. Why are we today, 25 years after the approval of the first peace plan, still not closer to a peaceful end to the conflict?

The first setback came as early as in 1975. Spain had at this point finally agreed to hold a referendum in order to secure the decolonization of Western Sahara. In the course of a few days in late 1975, this changes. While the Spanish dictator Franco was on his deathbed, panic started to spread in Madrid. Morocco threatens to invade Western Sahara.

*In total secrecy, an agreement is reached between Spain, Morocco and Mauritania. Instead of securing decolonization in accordance with UN regulations, Spanish Prime Minister, Navarro, with a stroke of the pen, transfers administration of the territory to Morocco and Mauritania.*

The UN never sanctioned the agreement, yet the result proved fateful. Spain's transfer of de facto control triggered a bloody war, denied the Sahrawis' right to self-determination, and inflicted long and severe suffering upon them.

When a peace plan was finally presented in the late 1980s, it appeared as though a breakthrough had finally been achieved. However, there were challenges ahead.

*The UN Secretary General, Javier Pérez de Cuéllar, had initiated an opaque and not very inclusive process. With his "Settlement Plan", he presented a solution that, as it turned out, the parties did not have full knowledge of until it was published.*

This caused fury and created immediate distrust. The plan was unclear in its choice of words, and Javier Pérez de Cuéllar and his successors constantly had to quell conflicts in order to secure the continued willingness of the parties to take part in the process.

Throughout the 1990s, there were constant objections against the process of identifying eligible voters. The process was substantially delayed in hope of reaching agreement on new, modified criteria. Towards the end of the 1990s, the UN had lost hope of a speedy solution. However, enlisting an influential American diplomat proved to be a smart move. When everyone thought Morocco would not enter new negotiations, James Baker managed to secure the support of both parties for new talks based on the original plan. A referendum was still not out of the question. A new, detailed agreement was presented. It included a referendum which gave the Sahrawis the option of voting for independence. Baker had managed to secure a signed peace treaty for the first time, which was clearer and more detailed than the original plans presented by the UN.

The process of identifying voters resumed. Not surprisingly, Morocco complained once again. They presented 130 000 appeals which they wanted processed, which made the UN Secretary General put his foot down in 2000. The process collapsed.

In many ways, Annan's decision meant a change of course in the UN peace process. The original peace plan with a referendum on independence was

*Why are we today, 25 years after the approval of the first peace plan, still not closer to a peaceful end to the conflict?*



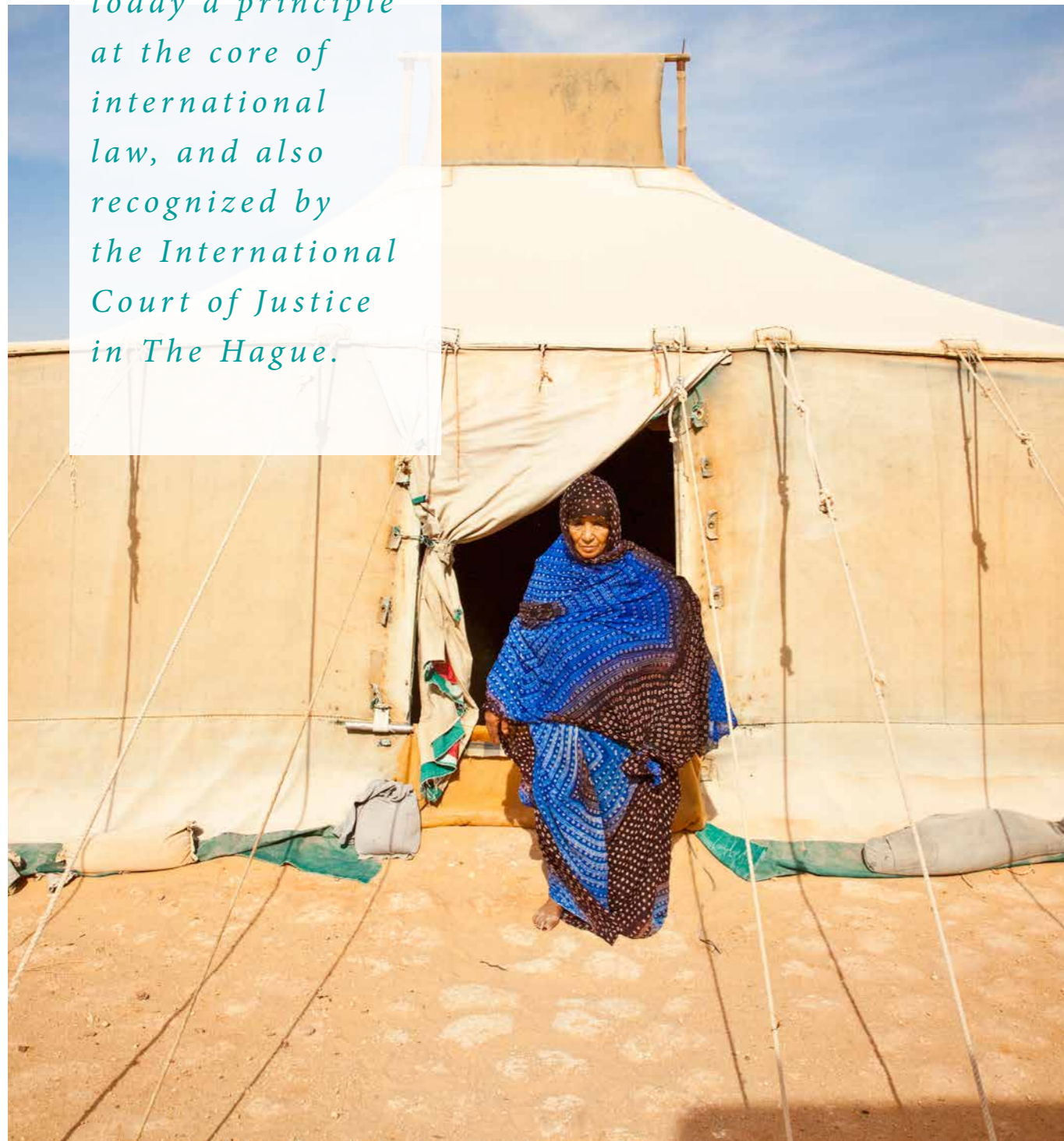
abandoned in favor of considering a negotiated, alternative solution.

*In 2006, Annan went a step further by stating that he wanted a negotiated solution based on a compromise between "international legality and political reality". The UN is now compromising its own principles, and the Sahrawis are the losing part.*

From 2007 until 2012, the peace process appeared futile. The parties met for regular, direct talks which produced no results. From 2012, the envoy of the Secretary General entered into a process of "shuttle diplomacy" in which he only acts as an intermediary between the parties. The last few years, annual UN meetings on Western Sahara have been predictable. The only real discussion is whether MINURSO should have a mandate of monitoring human rights violations in Western Sahara. Even this proposal is repeatedly blocked by France.



*The right to self-determination for non-self-governing territories is today a principle at the core of international law, and also recognized by the International Court of Justice in The Hague.*



## 5.

### WHAT IS THE MEANING OF SELF-DETERMINATION IN INTERNATIONAL LAW?

**T**he Sahrawis' right to self-determination has been central to the whole peace process. Why is this, how has it guided the peace process and, what does self-determination really mean in international law?

When the UN was established in 1945, almost a third of the world's population lived in more than 80 colonies. Peoples' right to self-determination was first introduced in the UN to secure a transition from colonial rule to independence. Already the first article of the UN Charter mentions the principle of peoples' right to self-determination, and the Charter also includes a whole chapter on the rights of inhabitants of non-self-governing territories.

15 years after the approval of the UN Charter, there was still a need to strengthen the UN's work for decolonization. The UN General Assembly in 1960 approved Resolution 1514 (XV) with the title "Declaration on the Granting of Independence to Colonial Countries and Peoples". The resolution states, among other things:

"Immediate steps shall be taken, in trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire...in order to enable them to enjoy complete independence and freedom."<sup>29</sup>

The following day, the Assembly approved Resolution 1541 (XV), on the duty to report on non-self-governing territories. This resolution also further specifies how the process of decolonization is to take place. Finally, the UN decided on establishing a separate committee responsible for overseeing the implementation of the resolutions.

Numerous resolutions and treaties have confirmed the principle of peoples' right to self-determination, including the UN's two binding human rights covenants of 1966. The right to self-determination for non-self-governing territories is today a principle at the core of international law, and also recognized by the International Court of Justice in The Hague.

*Self-determination regarding decolonization means that the people of the non-self-governing territory are to decide on their own future status.*

In short, the principle raises three overarching questions: what does the right consist of, how should it be practiced, and who can claim the right?

#### WHAT DOES THE RIGHT CONSIST OF?

When a people is to exercise its right to self-determination, there are, at the outset, potentially three different results. They can choose to become a fully independent state, become fully integrated into another state or an option in between, in which they are part of another state, but with extended autonomy. For decolonization, independence is the main rule, but one is also free to choose different degrees of autonomy or to become an integrated part of another state.

Another important question in recent years has been to which degree parties can negotiate a solution that does not include the option of voting for independence. Can Polisario according to international law choose to accept an autonomy agreement on behalf of the people of Western Sahara if they are not given the opportunity to vote for independence?

*The UN has on several occasions made it clear that the peoples of non-self-*

In addition to working opportunities, particularly in fisheries, Moroccan settlers are given tax exemptions and subsidies. It has been claimed that today there are more settlers than original Sahrawi inhabitants in Western Sahara today.<sup>32</sup>

### THE IMPACT OF THE RIGHT ON OTHER STATES

Peoples' right to self-determination is a so-called erga omnes right. This means that they are not only entitled to it, it also creates obligations for other states. In the advisory opinion on the Israeli wall, the International Court of Justice described the principle as such:

- States must not recognize the illegal situation.
- States must not assist in any way that could contribute to maintaining the illegal situation.
- States should cooperate in order to end the illegal situation.<sup>33</sup>

### WHAT DO THE DIFFERENT NEGOTIATED ALTERNATIVES MEAN FOR WESTERN SAHARA?

#### INDEPENDENCE

The population of Western Sahara choose their own elected representatives and government. Western Sahara becomes an independent country.

#### AUTONOMY

This entails local self-government with separate local elections and local institutions. Morocco will be in charge of defense and foreign policy, and the King of Morocco will be head of state. This might lead to different degrees of economic integration.

#### FULL INTEGRATION

Western Sahara becomes a fully integrated part of Morocco.



*governing territories not only have the right to self-determination, but also to independence.*

This is confirmed most recently in the 2010 advisory opinion on Kosovo from The International Court of Justice, where they state:

“During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories”.

Excluding independence as an alternative is therefore unacceptable. An alternative that has been discussed is to choose the same solution as in East Timor’s referendum, where the vote was for or against autonomy, but voting against autonomy would lead to independence.

### HOW SHOULD IT BE PRACTICED?

The right to self-determination means that the people should freely choose between the three different alternatives of independence, autonomy or integration. For the territories to become independent, there are actually no procedural demands for how to choose, while the two other solutions contain certain procedural regulations.

Resolution 1541 (XV) requires that the choice of integration into another state must be grounded in the “freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage”. Autonomy-based solutions are required to be based on the free will of the people expressed through an informed and democratic process.

*In other words, international law does not explicitly require a referendum, but different democratic processes must be followed.*

The advisory opinion on Western Sahara from the International Court of Justice stated that “the right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized.”

An example of such a process could be electing political parties or representatives with different views, and not directly on the question of independence, autonomy or integration. However, in reality, referendums have been most common – either organized or observed by the UN or by the states wherever possible. It is also obvious that a referendum would normally be the best way to secure the people getting to express their view in a free, democratic process.

### WHO CAN CLAIM THE RIGHT?

A central question is who would be eligible to vote. According to international law, it is the people who has the right to self-determination.<sup>30</sup>

*This implies that it is the people and not their representatives who have that right.*

Polisario can, as such, not decisively approve a negotiated solution, but has to consult the people in a free, democratic process.

When deciding who “the people” are in a legal sense, it is also important to be aware that Western Sahara is a territory where there has always been large-scale migration. It was traditionally a nomadic society where people moved across large distances. In addition, Western Sahara has a big population of refugees, and many Moroccan migrants have come there to work.

There are few international legal sources on this subject, and different solutions have been negotiated. However, it is important to be aware of the UN Plan of Action on decolonization of 1980, which states that:

“States shall adopt the necessary measures to discourage or prevent the systematic influx of outside immigrants and settlers into Territories under colonial domination, which disrupts the demographic composition of those Territories and may constitute a major obstacle to the genuine exercise of the right to self-determination and independence by the people of those Territories.”<sup>31</sup>

*Morocco has since the invasion of 1975 taken a series of measures to get Moroccans to take up residence in Western Sahara.*



# 6.

## WESTERN SAHARA AND THE GREAT POWERS

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**D**espite multiple peace initiatives, Western Sahara remains the last non self-governing territory in Africa. Ever since the Settlement Plan, Morocco has refused to accept the peace plans proposed by the UN Secretary General. Why, and who supports Morocco's position on Western Sahara?

During the cold war, Morocco remained officially non-aligned. However, the country displayed pro-western sympathies and became an important partner for several Western states. Both USA and the former colonial power France maintained civilian and military liaisons with Moroccan authorities. The US, in particular, has had extensive military cooperation with Morocco, and more than one president has established close relationship with the Moroccan royal family.

*France remains the country's main trade partner and an important political ally.*

Information from WikiLeaks reveals that, during a visit to Morocco, former French president Nicolas Sarkozy supported the autonomy plan as the basis for further negotiations.<sup>34</sup> As recently as 2016, Sarkozy expressed his support for Morocco's sovereignty claims.<sup>35</sup>

*After the terrorist attacks against the US in 2001, Morocco has become an extremely important partner in the global fight against terrorism. The US has prioritized strengthening both law enforcement and intelligence cooperation with Morocco.*

Algeria has shown an unconditional support for Polisario, and maintains its role as host to the many Sahrawis living in refugee camps in the state. Morocco and Algeria, on the other hand, have a highly strained relationship through which Morocco accuses Algeria of steering the conflict in Western Sahara after its own interest.

Both France and the US are members of the Group of Friends of Western Sahara, a cooperative effort between groups of states that was initiated in the early 1990s at a time when the international community were still dedicated and united in the view of holding the referendum. Amongst the members are the US, France, Spain, the UK and Russia. However, the group has had limited positive impact on the peace process, as its members have widely different interests in the conflict. In reality, Morocco's strategic position is so important that few of the influential states dare to pressure them much.

Another argument, rarely used publicly, is that states are concerned whether an independent Western Sahara would strengthen the stability of the region, or possibly the opposite in case it becomes a weak state easily accessible for terrorists and other organized criminals.

Due to these considerations, the UN Security Council and its permanent members have to a large degree attempted to balance their obligations under international law, with the need to protect their own interests. This has clearly not benefited the quest for a peaceful solution to the conflict.

# 7.

## THE NATURAL RESOURCES OF WESTERN SAHARA



**A**lthough Western Sahara mostly consists of desert, the country is rich in natural resources. It was the fishing banks outside Western Sahara which first caught the Spaniards' attention, and in 1947 phosphate was discovered. In later years, several licenses for petroleum exploration have been granted.

*Experts on Western Sahara claim that Moroccan access to the resources in Western Sahara might prolong the conflict.*

A phosphate mine in Bou Craa opened in 1972 under Spanish supervision, and was handed over to a Moroccan state-owned company, OCP, in 1976. Phosphate is important for the fertilizer industry, and in 2007-2008 the price increased at an incredible rate. The prices have returned to normal, but it is still a highly valued resource. Each year, approximately two tons of phosphate are mined in Western Sahara, which is today equivalent to an export value of app. 250 million USD.<sup>36</sup>

The fishing banks of the Canary Current off the coast of Western Sahara are exceptionally rich, although they have increasingly been subject to overfishing. Approximately 3 % of Morocco's GDP comes from fishing, and the industry employs about 400 000 people.<sup>37</sup> A Moroccan governmental report from 2009 estimated that approximately 55 % of the catch came from the waters of Western Sahara.<sup>38</sup> EU fishing vessels have been operating in both Moroccan and Western Saharan waters for decades in accordance with a EU fishing treaty. The treaty was last extended in 2014, and granted the right to catch 80 000 tons of fish.<sup>39</sup>

The offshore blocks off the coast of Western Sahara show significant petroleum exploration potential. The American company Kosmos drilled its first well in December 2014, and several other companies are following in their footsteps. In 2015, Kosmos announced that one of their exploration wells had encountered hydrocarbons. The discovery was, however, found to be non-commercial. Kosmos states in their reports that the blocks they operate along with the Moroccan petroleum agency, ONHYM are considered to be "high risk – high award".<sup>40</sup>

The exploitation of natural resources in Western Sahara has been strongly criticized by several institutions. In 2002, Swedish Hans Corell, in his capacity as the Legal Counsel of the UN put forth a legal opinion on the legality of international companies' agreements with Morocco on exploration of non-renewable resources in Western Sahara.<sup>41</sup>

*Corell concluded that exploration or exploitation was in violation with international law unless it would be in the benefit of the peoples of these territory, on their behalf, or in consultation with their representatives.*

Both the EU fisheries partnership agreement and the petroleum exploration have been strongly criticized due to Western Sahara's status as a non-self-governing territory. In December 2015, a trade protocol between the EU and Morocco was partially annulled by the European Court of Justice on the ground that it included the territory of Western Sahara in its scope.<sup>42</sup> The verdict has later been appealed.

# 8.

## WHAT NOW, WESTERN SAHARA?

**F**or more than 40 years, the Sahrawis have been the forgotten people of the world. After being deprived of their right to a proper decolonization process in 1975, they have time and again put their trust in the international community to negotiate a peace treaty. Polisario has, as the recognized representative of the Sahrawis, constantly been renegeing on their demands, while Morocco has been doing the opposite. The UN originally demanded Western Sahara to be decolonized and the Sahrawis right to self-determination to be fulfilled, in accordance with international law. This process collapsed, and the UN Secretary General took the exceptional step of recommending a compromise between "international legality and political reality".<sup>43</sup> In order to avoid violating fundamental principles of international law to the benefit of realpolitik, it is crucial that the Sahrawis receive what they are legally entitled to: self-determination, including the possibility of independence, based on a free and democratic process.

Three generations of Sahrawis have grown up under Moroccan occupation or in refugee camps. In 2015, Western Sahara was once again ranked last on the list of the world's least free countries by the organization Freedom House.<sup>44</sup> With similar scores as Western Sahara are found countries such as North Korea, the Democratic Republic of Congo and Saudi Arabia. Grave human rights violations have been thoroughly documented.<sup>45</sup> A large part of the population lives in refugee camps in Algeria, dependent on humanitarian aid, while they witness the rich natural resources of their country being plundered. The key question is now, when will Polisario lose patience? When will their frustration lead to resumption of hostilities?

*The very basis for the ceasefire they agreed to – the referendum organized by the UN – has not been fulfilled. The situation is currently in a deadlock. What potential solutions are there to peacefully solving the conflict?*

Most states agree, with the exception of Morocco, that status quo is unacceptable. In the long run, it will lead to destabilization, and a new armed conflict might easily spread to other countries in the region. It might get particularly dangerous if Algeria involves itself directly against Morocco with military force. Thus, it is urgent to find acceptable solutions.

### THE PROCESS LEADING UP TO A SOLUTION

Scholars analyzing the conflict have introduced several potential options that in turn could lead to a peaceful solution between Western Sahara and Morocco.

One option often mentioned has been for Spain to resume its de facto administration of Western Sahara, a responsibility that Spain relinquished in February 1976. Although it is highly unlikely that Morocco peacefully would accept such a solution, Spain would be authorized to request that Western Sahara should be put under UN administration.<sup>46</sup>

Another radical option would be for the UN Security Council to recognize Western Sahara as an independent state, just as the Organization of African Unity (OAU) did in 1984.<sup>47</sup> Former Legal Counsel of the UN, Hans Corell, has supported such an option,

although he points out potential risks by doing so.<sup>48</sup>

Both options listed above would most likely require the UN to take strong measures to force Morocco to leave Western Saharan territory. Ultimately, it could require mandating use of military force in accordance with chapter VII of the UN Charter. In reality, such a solution is unlikely. Morocco is too strategically significant for several countries on the Security Council, including the US and France.

The third option is the one the UN has chosen to follow so far: a negotiated solution between the parties. Such a solution must, however, be based on clear legal principles of the right to self-determination, including the right to independence.

The right to self-determination must be expressed through the free will of the people and a democratic process. According to international law, the people must be able to express their opinion about independence from Morocco.

*Polisario and the international community cannot compromise on central tenets of international law. This would set a precedent for other situations and weaken the principles of cooperation between states that the international community is based on.*

The best and most representative way for the people to exercise their right would be through a referendum. Such a referendum may take place in several different forms. One alternative might be to choose the model for a referendum used in East Timor. That could mean that the parties negotiate autonomy based on the Moroccan draft, and reach a potential solution. Then one could organize a referendum in which the people will be given the opportunity to vote for or against an

autonomy solution negotiated between the parties. If the people votes against autonomy, it implicates that Morocco has to withdraw from Western Sahara.

When the UN negotiated the referendum in East Timor, the Indonesian government insisted they should have the responsibility for security arrangements during the ballot.<sup>49</sup> This turned out to be a fateful, but maybe necessary decision. Prior to the referendum, Indonesia used local militia supported by the security forces to intimidate the populace to vote in favor of autonomy. When it failed, they launched widespread and systematic attacks of killing and looting which left the territory in ruins. In the light of these events, it is important that the security arrangements for a referendum is organized in such a way that it secures a free and fair election and a peaceful transition, no matter which solution the people chooses.

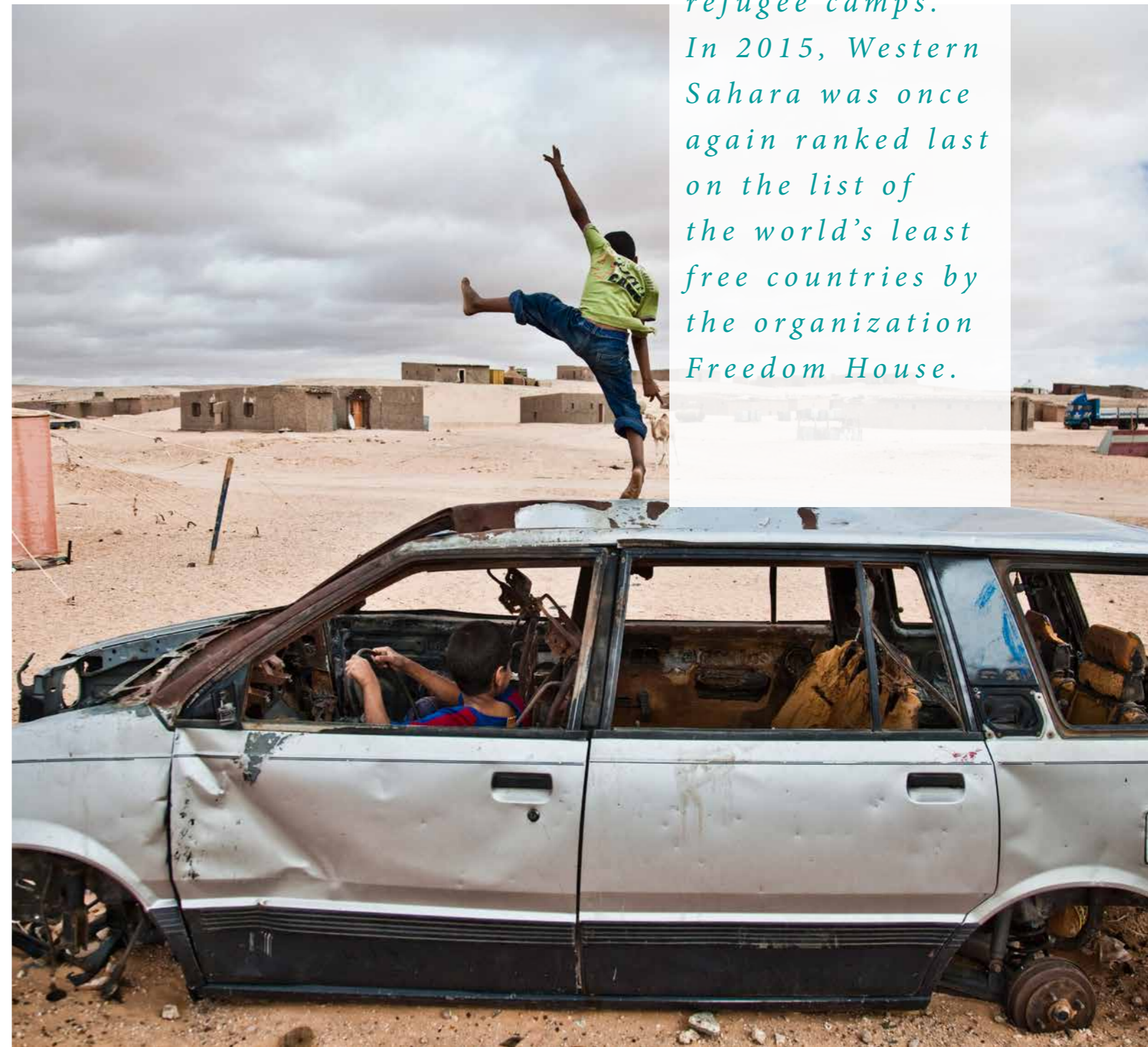
#### THE RESULT

In Western Sahara, it is not only the process that has been challenging during the negotiations. While the parties to the conflict previously agreed on holding a referendum, the greatest divide has been the potential outcome of the process. In principle, there are three potential alternatives:

- Full integration or autonomy within Moroccan borders

Morocco's current position is to can only accept either full integration or a solution based upon autonomy. While this end-result is a fully legitimate one, it requires under international law that it is based on the free will of the people expressed through an informed and democratic process. Full integration with Morocco must be grounded in the freely expressed will of the territory's peoples acting with full knowledge of the change in their status, their will having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.<sup>50</sup>

*Three generations of Sahrawis have grown up under Moroccan occupation or in refugee camps. In 2015, Western Sahara was once again ranked last on the list of the world's least free countries by the organization Freedom House.*



Morocco has, since rejecting James Baker's peace plan in 2004, actively been carving out a proposal for peaceful settlement based upon autonomy. In 2006, King Mohammed VI reopened an advisory institution for Western Sahara (CORCAS) for this very purpose.<sup>51</sup>

In 2015, the king stated in conjunction with the 40-year anniversary of the Green March, that Morocco would not accept anything less than autonomy:

"As I pointed out last year in my address commemorating the anniversary of the Green March, the Initiative is the most Morocco can offer. Its implementation will hinge on achieving a final political settlement within the framework of the United Nations Organization. Those who are waiting for any other concession on Morocco's part are deceiving themselves. Indeed, Morocco has given all there was to give. It has given of its sons' blood to defend the Sahara."<sup>52</sup>

It is important to stress that a solution based upon autonomy without including the option of independence in an informed democratic process, violates international law and UNs principles for decolonization.

- **Dividing the territory**

Western Sahara has been divided into two parts due to the armed conflict of which Polisario controls approximately one third and Morocco the remaining two thirds. In 2002, the UN Secretary General proposed negotiating a possible division of Western Sahara into an independent and a Moroccan part.<sup>53</sup> The Security Council declined to explore this further, in spite of Polisario's willingness to initiate talks based on this possibility.<sup>54</sup> Such a partition might, however, challenge principles of international law such as access to natural resources and the ability to move freely across the territories.

- **Independence**

The third and final alternative is that the entire territory gains independence. There are no procedural regulations for such a solution. In other words, it does not have to be the result of a democratic process, and hence it could also be achieved through the use of force authorized by the UN in accordance with chapter VII of the UN Charter.

**WHY DOES MOROCCO NO LONGER ACCEPT A REFERENDUM IN ACCORDANCE WITH INTERNATIONAL LAW?**

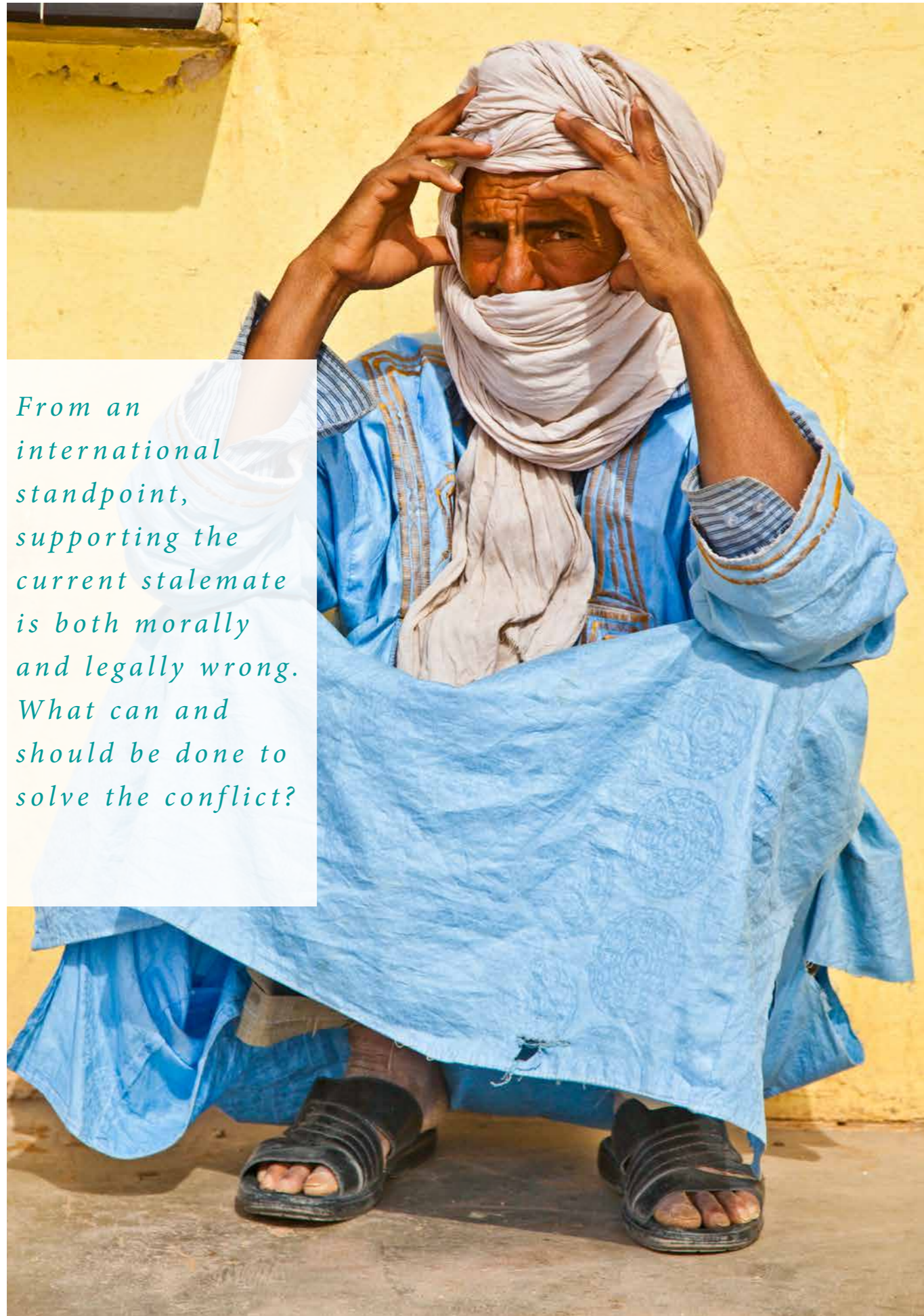
This is one of the central questions of the peace process. Why does Morocco not want a referendum that includes the right to independence? It would appear as an easy resolution for Morocco, in particular when according to King Mohammed VI, only a "few people" have been led astray by Morocco's enemies.<sup>55</sup> If the large majority of the population wants to keep their ties to Morocco, as the king claims, why not let them express it through a democratic process?

*Is the bare truth that Morocco is afraid of losing in a fair and independent referendum? Are they possibly afraid they do not have the support of the people as claimed by the king?*

Western Sahara has been listed as a non-self-governing territory by the UN since 1966. During the following years Morocco supported resolutions in the UN calling for decolonization of the territory through holding a referendum on independence.<sup>56</sup> The situation appeared to change late fall of 1975. At the time, Morocco saw an opportunity to claim the territory without a proper decolonization process as they had once supported. Since then, Moroccan authorities point to both technical and historical reasons for why independence cannot be accepted.<sup>57</sup>

The first, and for them foremost, argument is that Western Sahara is and has always been an integral part of Morocco, a standpoint which has been rejected by the International Court of Justice in their advisory opinion on Western Sahara. Second, they claim that the Madrid Accords signed in 1975 peacefully returned administration of Western Sahara to Morocco. In reality, Spain did not hold authority under international law to transfer territorial power to anyone.<sup>58</sup> Moreover, the accords only covered transfer of partial administrative power to Morocco as Mauretania were part of the agreement. Morocco's claims are thus not convincing under public international law.

A technical argument that Morocco often uses to avoid a referendum, is that in a nomadic society such as Western Sahara, it is impossible to make a list of eligible voters. This is obviously incorrect. Spain held a census as early as in 1974, and the UN has, in spite of strong attempts from Morocco to sabotage the process, finalized a voters list.<sup>59</sup> Morocco simply does not agree with the UN's conclusions as to who is eligible to vote.



*From an international standpoint, supporting the current stalemate is both morally and legally wrong. What can and should be done to solve the conflict?*

**T**he positions of the parties to the conflict appears more divided than ever and seems at first site almost unbridgeable. Polisario has international law on its side, yet re-engagement in direct talks would require a clear change of perspective from Morocco's point of view. From an international standpoint, supporting the current stalemate is both morally and legally wrong. What can and should be done to solve the conflict?

#### A UNITED SECURITY COUNCIL

Immediately after Ban Ki-Moon's visit to the refugee camps in Tindouf in March 2016, commentators noted that Morocco and Polisario's reactions were counterproductive to the peace process, possibly endangering the UN's long-term efforts to secure direct talks.<sup>60</sup> While Rabat was outraged by the Secretary General's description of the territory as 'occupied', Polisario published statements hailing his views and his visit to the region, which furthered the gap between the parties.<sup>61</sup>

Despite the apparent setback, the crisis caused by the visit may have opened up a window of opportunity for the UN Security Council. While several permanent members have continuously shielded Morocco, the recent action to weaken MINURSO may force the Council to take decisive action at last.

As a reaction to Ban Ki-Moon's description of the territory as occupied, Morocco demanded a reduction of more than 70 MINURSO staff, comprising approximately a third of its personnel. This puts the UN in a precarious situation, possibly necessitating the withdrawal of the entire mission, which in turn may lead to an increased risk of resumption of hostilities.

*The prospect of renewed fighting in an already fragile region could require the Security Council to finally take strong and decisive action towards a peaceful settlement of the conflict.*

Disappointingly, early attempts of the Security Council to reach consensus in relation to Western Sahara after

the visit revealed a continued division. The attempts to draft a statement condemning Morocco's demand for withdrawal of MINURSO staff were extremely complicated. On one hand, Egypt, France, Senegal and Spain appeared to support Morocco in watering down the statement, while their views could not be reconciled with other members, particularly those which recognize the Sahrawi Arab Democratic Republic (SADR), namely Angola, Uruguay and Venezuela.<sup>62</sup>

On 29th April 2016, the Security Council voted in favor of a resolution requiring the resumption of full functionality of MINURSO requesting the Secretary General to report on progress within 90 days. It remains to be seen if Morocco complies with the resolution or whether the current situation may force the council to take stronger action.

In any event, a peaceful solution in Western Sahara seems completely dependent upon a united and decisive Security Council demanding settlement of the conflict. States should thus take a clear stand against legitimizing the Moroccan presence in Western Sahara, and actively challenge and lobby Security Council members who support the Moroccan position on the conflict.

#### SUPPORT FROM A NEUTRAL MEDIATOR OR FACILITATOR – NORWEGIAN INVOLVEMENT?

Despite numerous attempts, successive UN Secretary Generals have failed in securing a lasting solution to the conflict. Following Ban Ki-Moon's visit to the camps in 2016, confidence in the Secretary General appears to be at an all-time low on the Moroccan side. Thus, it may be worth exploring whether external actors, with solid support from the Security Council, should resume responsibility as either mediators or facilitators in the peace process. Such involvement would obviously require consent from both Morocco and Polisario.

*One potential negotiator could be the government of Norway. Norwegians maintain good relations with all parties, and appear strategically well-placed to take on such a role.*

The Norwegian Ministry of Foreign Affairs has gained substantial competence on peace and reconciliation processes over the last decades, and conflict resolution comprises a central dimension in Norwegian foreign policy.<sup>63</sup> Support is coordinated through the ministry's special section for peace and reconciliation, and Norway has been heavily involved in peace processes in the Middle East, the Philippines, Sri Lanka, South Sudan and lately, in Colombia.

Norway, as a small non-EU member state, is by many parties to conflicts considered a neutral and benign partner. This may appear more appealing than receiving assistance from countries with vested interests in the conflict areas. Norwegians have also been successful in securing financial resources to support peace and reconciliation processes.

Norway has also contributed in other ways than through direct mediation support. Some examples are competence-building and the establishment of networks, often done under the auspices of the Oslo Forum, a series of events aimed at sharing experiences between international peace mediators.<sup>64</sup> Norway has also provided resources, logistical assistance, experts and venues for actors involved in peace processes.

Norwegian diplomats maintain good relations with all parties to the conflict, as well as with states of strategic importance to the peace process.

The Norwegian Ministry of Foreign Affairs hosts a yearly, high-level, political dialogue with Morocco. In 2015, talks were held in Rabat. Minister of Foreign Affairs Børge Brende met with the Moroccan Prime Minister, Minister of Foreign Affairs and the Speaker of Parliament. Topics discussed were, amongst others, conflict resolution, human rights and Western Sahara.<sup>65</sup>

Norway has strengthened its relationship with Algeria during the last several years. This is of importance due to its support for Polisario, and the fact that a large part of the Sahrawi population resides in refugee camps in Algeria. A Norwegian embassy opened in Algeria's capital, Algiers, in 2007. The main task of the embassy was to support Norwegian petroleum activities in the region, although then-Minister of Foreign Affairs Jonas Gahr Støre also mentioned global justice and international conflict resolution as issues of common interests during his opening speech.

Polisario has a representatives' office in Oslo, and

Norwegian government officials meet regularly with Polisario delegations when they visit the country.

Norway was actively involved in negotiations between Morocco and Polisario during its presidency of the UN Security Council in 2002, and publicly available documents reveal that Norway has been willing to take on an extended role if requested by the parties.

At a seminar in South-Africa in 2007, then-Deputy Minister of Foreign Affairs, Raymond Johansen, stated that Norway, based on Security Council resolution 1754 (2007), examined possibilities for supporting the process.<sup>66</sup> More specifically, Johansen referred to a mission the ministry had conducted in Algeria in February the same year. Along with the Norwegian Refugee Council, diplomats from the section for peace and reconciliation evaluated the humanitarian situation in the Saharawi refugee camps and explored whether Norwegian engagement in the Western Sahara peace process would be feasible.<sup>67</sup>

Information is limited as to what occurred after the mission. It is, however, publicly known that one of Polisario's political advisors, Carne Ross, from the organization Independent Diplomat has participated at the Oslo Forum each year from 2009 to 2013.

The UN Secretary General's special envoy, Christopher Ross, reportedly stated in June 2009 that he had a concrete offer from Norway to host talks between the parties later the same year.<sup>68</sup> Just a few weeks later, however, a child-kidnapping case involving Moroccan/Norwegian Olympic athlete Khalid Skah and his Norwegian wife, most likely ruined those chances.<sup>69</sup>

The relationship between Morocco and Norway is once more stable. High-level talks between politicians and diplomats of the two states have resumed, and it would be timely for Norway to reconsider its involvement in the Western Sahara peace process. A sign of interest may be Christopher Ross' participation in the Oslo Forum for the first time in 2015.<sup>70</sup>

#### INCREASED HUMANITARIAN AID

Until a peaceful settlement is found, it is of utmost importance to maintain a stable situation in the camps in Algeria. UN reports, however, recounts an increasing degree of dissatisfaction and frustration among the refugees, which presents political, economic and security concerns.<sup>71</sup> The situation is

further exacerbated by a decline in international aid.

*In order to reduce the risk of destabilization and potential extremism, the international community must support the UN High Commissioner for Refugees and other central actors assisting the Saharawi refugee population. Humane living conditions in the camps are prerequisites to successful conflict resolution.*

#### STRENGTHENED HUMAN RIGHTS PROTECTION

A report by the UN High Commissioner for Human Rights from 2006 concluded that the human rights situation in the occupied territories was of such a character that it affected the Sahrawi's right to self-determination.<sup>72</sup>

*The report pointed out that rights such as freedom of speech and freedom of assembly had been limited to the degree that it severely restricted the ability of the people to claim their rights under international law.*

It is thus of utmost importance that MINURSO's activities are strengthened and expanded to include human rights monitoring. A special focus should, in this regard, be on protection of human rights defenders who currently operate under extremely difficult conditions in the occupied territories. The government of Morocco has a duty to protect these individuals and groups in accordance with the UN Declaration on Human Rights Defenders. It is noted with interest that Morocco was among the states voting in favor of the resolution on human rights defenders introduced by Norway at the UN Human Rights Council in Geneva in December 2015.<sup>73</sup>

#### EMBARGO ON RESOURCE EXPLOITATION

Resource exploitation directly and indirectly affects the prospect for a peaceful settlement of the conflict, and is in violation of international law.

*Not only does it legitimize the Moroccan presence in the territory, it also provides financial incentives for Morocco to continue denying the Sahrawis their right to self-determination.*

Foreign companies should thus immediately cease exploiting the natural resources of Western Sahara, and recognize the principle that the interests of the inhabitants of these territories are paramount, in accordance with Chapter XI, Article 73 of the UN Charter. Governments should clearly advise companies against investing in or trading with the territory until the fundamental right to self-determination is fulfilled.

#### SUPPORT TO CIVIL SOCIETY

Although the current outlook for peace in Western Sahara seems bleak, it is important to keep in mind that conflicts that have appeared to be in a similar deadlock have been successfully solved. Few predicted the fall of apartheid in South Africa, independence for East Timor, or democracy emerging in Myanmar.

Change in these countries would not have been feasible without support from international and national civil society organizations for democracy and human rights. These groups constantly reminded governments of the international community's demand for change.

*In the case of East Timor, the title of the Indonesian Minister of Foreign Affairs's book on the process was "A pebble in the shoe". UN mediators agree that it was this "pebble", combined with internal changes in Indonesia, which eventually led to the East Timorese act of self-determination through the 1999 referendum and eventually, independence.<sup>75</sup>*

The potential impact of public awareness on the peace process for Western Sahara conflict must therefore not be underestimated, and donors should increase their support for Western Sahara public awareness activities.



*“International law is our first line of defense. International law is the main pillar of what was built upon the ruins of two devastating world wars. Respect for that is our most important guarantee of peace.”*

Ine Marie Eriksen Søreide,  
Norwegian Minister of Defense,  
Balsfjord, June 6, 2015



## 10.

### FROM REFERENDUM TO LASTING PEACE

**W**hen the UN negotiated the referendum in East Timor, what would happen after the announcement of the results were never discussed.<sup>76</sup> Despite the fact that some form of UN involvement would be needed, it was considered feasible to carve out these plans after the referendum. When the UN had to first approve a military peacekeeping force, and then assume administrative powers of the territory, this was a scenario that simply had not been considered. This in turn created numerous challenges, including securing sufficient financial resources, recruiting competent personnel and establishing governmental institutions in cooperation with the East Timorese themselves.<sup>77</sup>

*To create stability in Western Sahara, it is crucial not to repeat past mistakes.*

All potential scenarios must be analyzed thoroughly, and plans must be laid out to contribute to an effective administration of the territory, before a referendum takes place. In case the people choose independence, it will require a strong, long-term presence of both military and civilian UN personnel.

The period after the referendum will also be challenging for Morocco and not least Polisario. The transition from operating as a liberation movement during armed conflict to becoming a stable democracy post-conflict will require discipline and an understanding of the expectations of a civilian government.<sup>78</sup> Polisario's leadership will play a central role in securing a peaceful transition, and it is vital that they are prepared for the tasks they will be assigned in their new role.

1 S/RES/2229 XXI (1966)  
2 ICJ Western Sahara Advisory Opinion of 16 October 1975  
3 The Agreement is included in the UN Secretary General's Report to the UN Security Council in 1975: [http://repository.un.org/bitstream/handle/11176/71032/S\\_11880-EN.pdf?sequence=2&isAllowed=y](http://repository.un.org/bitstream/handle/11176/71032/S_11880-EN.pdf?sequence=2&isAllowed=y) Last read: February 7th 2016  
4 The original document is available here: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=164110> Last read: February 7th 2016  
5 The Declaration that establishes SADR is available here: <http://www.sadr-emb-au.net/proclamation-of-the-sadr/>  
6 The List of Member States of the AU: <http://au.int/en/countryprofiles> Last read: February 7th 2016. The Central African Republic used to be a member, but was suspended from the AU in 2013.  
7 A/RES/40/50  
8 S/RES/658 (1990)  
9 Erik Jensen (2005), Western Sahara: Anatomy of a Stalemate, International Peace Studies, p.40  
10 S/RES/690 (1991)  
11 Zunes & Mundy (2010), Western Sahara: War, Nationalism and Conflict Resolution. Syracuse University Press s.194  
12 S/23299 (1991)  
13 S/26185 (1993)  
14 Il Processo di identificazione per il referendum nel Sahara occidentale: analisi e contraddizioni, CISP 2009 p.87  
15 S/RES/1131 (1997)  
16 Il Processo di identificazione per il referendum nel Sahara occidentale: analisi e contraddizioni, CISP 2009 p.91  
17 Zunes & Mundy (2010) Western Sahara: War, Nationalism and Conflict Resolution. Syracuse University Press p.213  
18 S/RES/1292 (2000)  
19 S/RES/1359 (2001)  
20 S/2003/565  
21 S/RES/1495 (2003)  
22 The letter from Morocco to the UN is available here: <http://www.mission-maroc.ch/en/pages/252.html> - last read February 7th 2016, and mentioned in S/2003/565  
23 Zunes & Mundy (2010) Western Sahara: War, Nationalism and Conflict Resolution. Syracuse University Press p.236-237  
24 Polisario's plan is published here: <http://links.org.au/node/1300> - Last read February 7th 2016 - and S/2007/206  
25 Morocco's plan is published in S/RES/1754 (2007)  
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53 S/2002/178: "As a third option, the Security Council could ask my Personal Envoy to explore with the parties one final time whether or not they would now be willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory, with the understanding that nothing would be decided until everything was decided".  
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56 Morocco has voted in favour of Spain holding a referendum about independence in several resolutions, see for example: Resolution from 1973 A/RES/3162 (XXVIII).  
57 For an overview of Morocco's

viewpoints, visit the homepage of the Moroccan Ministry of Foreign Affairs: <https://www.diplomatie.ma/en/LeSaharaMarocain/tabid/2972/vw/1/ItemID/7989/language/en-US/Default.aspx> Last read February 7th 2016  
58 S/2002/161 para 6.  
59 The report of the Secretary General S/2004/39 confirms in section B. that the census is complete and transferred for secure storage in Genève.  
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61 See as an example, the following news report from the Algerian Press Service: <http://www.aps.dz/en/world/11369-ban-ki-moon-shows-through-latest-trip-that-western-sahara-conflict-decolonization-issue>  
62 See «The Security Council Report» monthly forecast April 2016, available on [http://www.securitycouncilreport.org/monthly-forecast/2016-04/western\\_sahara\\_6.php](http://www.securitycouncilreport.org/monthly-forecast/2016-04/western_sahara_6.php)  
63 The work is described on the Norwegian Ministry of Affairs thematic pages: <https://www.regjeringen.no/no/tema/utenrikssaker/fred-og-forsoning/id1158/> Last read February 7th 2016  
64 More information about Oslo Forum can be found on their homepages: <http://www.osloforum.org/> 65 See [https://www.regjeringen.no/no/aktuelt/svar\\_vestsahara/id2401378/](https://www.regjeringen.no/no/aktuelt/svar_vestsahara/id2401378/) and the Moroccan news service: <http://www.morocoworldnews.com/2015/03/154091/norway-lauds-moroccos-role-in-facilitating-inter-libyan-political-dialogue/> Last read February 7th 2016  
66 The full speech of Johansen is published here: <https://www.regjeringen.no/no/aktuelt/challenges/id467766/> Last read February 7th 2016  
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68 "Neither date nor site was fixed but Ross has a good offer from Norway to host the talks, which still could take place in early August" <https://saharadoc.files.wordpress.com/2010/12/wiki-leaks-about-western-sahara1.pdf> Last read February 7th 2016  
69 The case was broadly discussed in both Norwegian and Moroccan media: [http://www.dagbladet.no/2009/07/28/nyheter/khalid\\_skah/kidnapping/politi/inn-enriks/7390524/](http://www.dagbladet.no/2009/07/28/nyheter/khalid_skah/kidnapping/politi/inn-enriks/7390524/) Last read February 7th 2016  
70 The report from the forum states that "Frozen conflicts like Cyprus, Nagorno-Karabakh and

Western Sahara pose particularly difficult challenges in this regard. Where the parties are not hurting equally from the conflict, or where they benefit from the status quo, they can be reluctant to push for a resolution. External actors with political and economic interests can also become an obstacle. Even among neighbouring States, a shared interest in regional stability is not necessarily a given, and efforts to unite them in an alliance for peace (for example, through 'groups of friends') can backfire as selfish interests come to the fore. In the case of Western Sahara, for example, the 'group of friends' intensified divisions rather than reviving the peace process": [http://www.osloforum.org/sites/default/files/OSLO\\_FORUM-2015-WEB.pdf](http://www.osloforum.org/sites/default/files/OSLO_FORUM-2015-WEB.pdf) s.28  
71 See as examples S/2015/246 para 8,9,10 and 73: "Within parts of the refugee community, after 40 years in refugee camps, increasingly difficult economic conditions and no visible progress towards a political solution, frustration is coalescing. Individuals returning from higher education studies abroad bring greater civic and political awareness and compare the hardship in the camps with living standards elsewhere, applying pressure on the Frente Polisario leadership to secure better lives for camp inhabitants. Frente Polisario has also alerted MINURSO to the "hundreds and hundreds of idle youths" affected by an environment that includes proximity to smuggling routes and extremist activity in the Sahel."  
72 <http://www.arso.org/OH-CHRrep2006en.pdf> Last read February 7th 2016  
73 See the news report and voting records posted on <http://www.ishr.ch/news/general-assembly-adopts-important-resolution-human-rights-defenders-face-opposition-china-and>.  
74 See an interesting report on the launch of his book in New York Times: [http://www.nytimes.com/2006/08/17/world/asia/17jakarta.html?\\_r=0](http://www.nytimes.com/2006/08/17/world/asia/17jakarta.html?_r=0)  
"The title of his book comes from a remark Mr. Alatas once made to a Portuguese journalist who had asked him how he felt about the international stigma over East Timor. Yes, he had answered, it was a problem for Indonesia, "but only as bothersome as a pebble in a shoe," Mr. Alatas says. "In retrospect, however, I have to admit that in its final years, the East Timor problem was no longer a mere pebble in the shoe but had become a veritable boulder, dragging down Indonesia's international reputation to one of its lowest points."  
75 See Jamsheed Marker: East Timor: A Memoir of the Negotiations for Independence, McFarland & Company, 2003 pages 31 and 32.  
76 The United Nations Transitional Administration in East Timor

(Untaet): Debriefing and Lessons : Report of the 2002 Tokyo Conference (2003) s. 208  
77 Ibid. S. 213  
78 See as example of other post-conflict transitions Agus Wandu & Wolfram Zunzer (2008): From Politics to Arms to Politics Again: The Transition of the Gerakan Aceh Merdeka (Free Aceh Movement - GAM).

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